

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**RECOLOGY, INC.  
D/B/A HAY ROAD LANDFILL  
Employer**

**and**

**Case 20-UC-191943**

**TEAMSTERS LOCAL 315  
Petitioner**

**DECISION AND CLARIFICATION OF BARGAINING UNIT**

Teamsters Local 315 (Petitioner) filed the instant Petition on January 27, 2017, under Section 102.60(b) of the Board's Rules and Regulations seeking to clarify the existing bargaining unit to include the Material Reviewers job classification.<sup>1</sup> Pursuant to the provisions of Section 3(b) and 9(c)(1) of the Act, I caused an administrative investigation into the parties' positions and the appropriateness of clarifying the existing bargaining unit. The investigation involved taking sworn testimony from employees holding the disputed position. Based on the investigation, I hereby clarify the existing bargaining-unit description to include the Material Receiving Coordinator position for the reasons that follow.

**FACTS**

The Employer operates a solid waste disposal facility in Vacaville, California. It currently employs approximately 48 employees, including managers. The parties have a long established collective-bargaining relationship and the most recent collective-

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<sup>1</sup> The Petition describes the classification as Material Reviewer. The administrative investigation revealed that the employees in the classification at issue are referred to by the Employer as Material Receiving Coordinator. Hence, for accuracy, the disputed classification will herein be referred to as Material Receiving Coordinator (MRC).

bargaining agreement (Agreement) is effective October 1, 2016 through September 30, 2021. The bargaining unit consists of about 41 employees employed in the classifications of Weighmaster, Senior Operator I,<sup>2</sup> Operator I (Dozer, Compactor, Scraper), Operator II (Water Truck, Loader Operator, Farm Tractor, Grinder, Turner, Kid Steer), Equipment Servicer, Spotter/Traffic Control/Load Checker, and Landfill Labor (Roll Off, Pick-Up, ATV, Forklift).

All bargaining unit positions, including the MRCs work in the yard while non-bargaining unit positions, including management, work in the administrative office located on-site. The Site Supervisor is the direct supervisor of bargaining unit employees. She is responsible for employee scheduling and oversees employee performance. The General Manager also supervises the unit employees as part of the general responsibility to oversee the entire operation.

Bargaining unit employees are paid an hourly rate based on their classification, pursuant to the collective bargaining agreement. Their pay rates range from \$16.19 to \$27.61 per hour, with night shift employees and the Working Foreman receiving a premium. Unit employees' benefits are also set forth in the contract, and include paid holidays, a pension plan, and health insurance. The Employer does not require any specific educational degrees or certificates to hold a bargaining unit position.<sup>3</sup> All full-time bargaining-unit employees are guaranteed 40 hours of work per week.

In 2016, the Employer created the MRC position, and the parties have since been unable to agree on their inclusion in the bargaining unit. The two employees who were hired into the MRC classification began working on November 1, 2016. MRCs are directly supervised by the Site Supervisor and the General Manager. MRCs are paid at an hourly rate of approximately \$16.50. Although the terms of the MRC's benefits differ from the bargaining-unit, MRC benefits also include a health insurance plan and a 401(k) retirement plan. In addition, MRC employees also regularly work 40 hours per

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<sup>2</sup> Senior Operator I also performs Working Foreman duties.

<sup>3</sup> Operators are required to maintain a valid California Class C driver's license. The administrative investigation did not disclose whether the Employer requires Laborers who operate forklifts to have certification beyond a valid driver's license.

week. The Employer does not require any specific educational degrees or certificates to hold the MRC position.

Customers utilize the Employer's facility to dispose of debris. To do so, they enter the yard and are first required to stop at the scale house where the on-duty Weighmaster inspects the contents of the load. After inspecting and weighing the load, the Weighmaster prepares a weight ticket that identifies the type of debris contained in the load and collects payment for the appropriate dumping fees. Once payment is tendered, the Weighmaster directs the customer to the correct disposal area for the type of debris contained in their load. The customer must then travel some 200 yards to the second check point, a yellow observation tower manned by the MRC on duty.

The MRC verifies the accuracy of the customer's weight ticket by comparing the contents of the load with the type of debris listed on the ticket. The MRC utilizes an 8-foot platform and mirrors on an extended rod to inspect the contents of the load. If the MRC confirms all debris is accounted for on the ticket, the MRC directs the customer to the appropriate disposal area. The disposal area is located approximately three-quarters of a mile away from the MRC check point. The customer then interacts with the Spotter who is responsible for directing customer traffic within the disposal area. The Spotter informs the customer where their debris is to be discarded and ensures customers are following safety procedures while unloading.

In the event the MRC identifies an error on a customer's weight ticket (e.g. the vehicle contains additional waste not included in the ticket), the MRC is responsible for recording the discrepancy in a log and informing the Weighmaster of the error so the appropriate fees may be collected from the customer. This log is reviewed by the Site Supervisor and other management officials to determine if disciplinary action against the Weighmaster is warranted.<sup>4</sup> Additionally, the MRC routinely communicates with the Spotter to confirm whether a customer is dumping a specific type of debris in order to ensure the correct waste is recorded on the log.

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<sup>4</sup> There is no claim or evidence that the MRCs effectively recommend discipline; rather, they simply log the information and pass it up the chain of command.

All yard employees, including MRCs, wear a uniform provided by the Employer, including a safety vest or reflective top, work boots, and a company shirt. Employees also share a break room and clock in and out in the same manner. MRCs, Working Foremen, and Spotters receive training on the Employer's load check program and hazardous waste procedures. The Working Foreman will also assist the MRCs with mechanical issues, if necessary. MRCs do not perform work in other classifications or vice versa, and the investigation did not disclose any history of transfers between the MRC position and any bargaining unit position. However, the investigation established that there is daily interaction and communication between the MRC, Weighmaster, and Spotter.

### **ANALYSIS**

Initially, I note that unit clarification is warranted when, as here, there is no question concerning representation and it is necessary to resolve a unit-placement dispute that the parties have been unable to resolve.<sup>5</sup> While unit clarification is not appropriate for upsetting an agreement between a union and employer or their established practice, neither the parties' Agreement nor their past practice render unit clarification inappropriate here. See *Union Electric Co.*, 217 NLRB 666, 667 (1975).

Frequently, an accretion analysis is applied to determine whether the unit should be clarified to include the newly created classification. The Board examines the community of interest factors to determine whether the employees in the position at issue constitute a separate appropriate unit or constitute an accretion to the existing bargaining unit. See *Frontier Telephone of Rochester*, 344 NLRB 1270, 1271 (2005); *Safeway Stores*, 256 NLRB 918 (1981). Under this analysis, the employees sought to be added will be "accreted" only if it is shown that they share "little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." *CHS, Inc.*, 355 NLRB 914, 916 (2010).

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<sup>5</sup> See, generally, the Board's three *Bethlehem Steel* decisions that issued the same day at 329 NLRB 241, 243, and 245 (1999); respectively.

The community of interest factors evaluated are the following: interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, common supervision, and collective-bargaining history. *E.I. Du Pont, Inc.*, 341 NLRB 607, 608 (2004), citing *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). However, “the two most important factors” that have been identified as critical to an accretion finding are employee interchange and common day-to-day supervision. The absence of these two factors will ordinarily defeat a claim of accretion. *Frontier Telephone*, supra at 1271. The party seeking accretion bears the heavy burden of establishing that accretion is appropriate. See *Bay Shipbuilding Corp.*, 263 NLRB 1133, 1140 (1982).

The Employer contends that the petition should be dismissed on the basis that MRCs and bargaining unit employees do not share an overwhelming community of interest. Specifically, the Employer points to the lack of interchange and argues that MRCs have distinct job functions and duties. It further maintains that the MRC position should not be included in the unit because it created the position to be its “eyes and ears” in the yard and to inspect the accuracy of the Weighmasters’ work.

Contrary to the Employer’s contentions, however, the investigation disclosed that MRCs and bargaining unit employees all report on a daily basis to the same direct Site Supervisor, who manages all bargaining unit employee’s assignments and work schedules. Above the Site Supervisor, there is also common supervision by the General Manager. While MRCs do not have significant interchange with other members of the bargaining unit, the evidence establishes that there is daily contact and functional integration between MRCs and the Weighmasters and Spotters. The Employer utilizes a quasi-production line model where Weighmasters conduct an initial inspection of the debris and collect payment, the customer then proceeds to a check-point where MRCs conduct a second inspection of the debris and direct the customer to the dumping area, where a Spotter oversees the actual dumping of the debris. Both MRCs and Weighmasters inspect the contents of the customer’s load, direct the customer to the correct disposal area, and verify the customer was charged appropriately. In the

performance of their load inspection duties, MRCs maintain regular contact with the Weighmasters and Spotters.

The MRCs work in close geographic proximity to the bargaining unit employees, and are integral to the process carried out by bargaining unit employees. MRCs are the second link in the operational chain, and their work is almost indistinguishable from the Weighmasters'. As described in detail above, they have almost identical working conditions, skills and functions, and share a direct supervisor. The MRC position has the same basic skill and education requirements as bargaining unit positions, and MRCs work hand in glove with the bargaining unit. In sum, they share an overwhelming community of interest with the bargaining unit employees.

### **ORDER**

Based upon the above analysis, IT IS ORDERED that the petition for unit clarification is granted, and the MRCs are thus included in the bargaining unit.<sup>6</sup>

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by 5 p.m. EDT on October 27, 2017.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties

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<sup>6</sup> The Decision and Clarification of Bargaining Unit does not constitute a recertification of the Union.

and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

**DATED:** October 25, 2017

/s/ Jill H. Coffman

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