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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

Employer,

vs.

TEAMSTERS, LOCAL 315,

Petitioner.

Case No. 20-UC-191943

**RECOLOGY'S REQUEST FOR REVIEW
OF REGIONAL DIRECTOR'S DECISION**

**I.
INTRODUCTORY STATEMENT**

Recology Hay Road ("Recology") seeks Board Review of the Regional Director's Decision granting Teamsters Local 315's ("Local 315") UC Petition accreting the Material Receiving Coordinator ("MRC") position into the Local 315 bargaining unit. The Regional Director's decision represents a rote, formulaic and superficial analysis of the factual evidence in the case, resulting in erroneous factual and legal conclusions that are not supported by the record or reason. Review, and reversal, by the Board are warranted in this case because the Regional Director's Decision that the MRC position shares an "overwhelming community of interest" with Local 315 bargaining unit positions is flawed factually, inconsistent with Board precedent, and is prejudicial to Recology.

**II.
SUMMARY OF FACTS**

A. The Creation Of The MRC Position In Response To The Weighstation Theft Schemes

1. Recology's Hay Road Operations

Recology Hay Road provides solid waste disposal services to municipal and commercial customers in the San Francisco Bay Area and the Sacramento Valley. The Hay Road facility

1 processes various types of waste, including asbestos, yard trimmings, treated wood waste,
2 concrete, asphalt, construction and demolition debris, metal, appliances and white goods, and
3 general household refuse.

4 Customers disposing of waste enter Recology's Hay Road property with a vehicle/truck
5 containing debris. A vehicle is required to first stop at the weighstation where the Weighmasters
6 (Local 315 bargaining unit position) work. The Weighmaster's job is to review the contents of
7 the truck and prepare a weight ticket that identifies the type of debris (e.g., appliances, general
8 waste, concrete, green waste, asbestos, etc.). The Weighmaster then provides the customer with
9 the appropriate directions to the correct disposal area for the type of debris to be dumped, where
10 the customer is then guided by a Loadchecker/Traffic Control/Spotter ("Spotter") (Local 315
11 bargaining unit position) in safely positioning their vehicle to dispose of the debris. On the way
12 out of the facility, the customer returns to the weighstation where its vehicle is weighed after
13 dumping, and then pays the Weighmaster the appropriate fees based on the contents of the vehicle
14 (which determines the fee per ton) and the weight of the debris that was dumped.

15 There are six non-Union employees employed at the Hay Road facility: General
16 Manager, Organics/Landfill Manager, Site Supervisor, Administrative Assistant, and Material
17 Receiving Coordinator (two positions).

18 **2. The Significant Fraud And Theft Scheme Perpetrated By All Local 315** 19 **Weighmasters And A Local 315 Foreman**

20 In early 2016, Recology investigated two substantial fraud and theft schemes at its Hay
21 Road location involving *all of the Weighmasters and a Foreman in the Local 315 bargaining*
22 *unit*. One of the fraud schemes involved the Weighmasters not issuing weight tickets to
23 customers when weight tickets should have been issued (and instead taking cash kickbacks from
24 customers for personal gain). The other fraud scheme, involving the Foreman, involved
25 permitting haulers to falsify the type of debris (and resulting price) on weight tickets in exchange
26 for cash kickbacks to the Foreman for personal gain. Recology conducted an investigation into
27 both fraud schemes – which based on current information available to Recology amounted to a
28 revenue loss to Recology of approximately two million dollars. Law enforcement simultaneously

1 conducted a criminal investigation which is still ongoing.

2 Recology's investigation resulted in the termination of several Local 315 bargaining unit
3 members, including all three Weighmasters employed at the time and a Foreman. The Union did
4 not grieve these terminations.

5 **3. Recology's Creation Of The MRC Position In 2016 To Protect Its Property**
6 **From Potential Future Fraud And Theft**

7 Recology, in response to the significant theft of its revenue by the Local 315
8 Weighmasters (all three) and a Foreman, created the MRC position outside the Local 315
9 bargaining unit. The MRC position was created by Recology specifically to protect its revenue
10 and to guard against the type of fraud and theft by Local 315 bargaining unit Weighmasters and a
11 Foreman that had previously occurred. The impetus for the creation of the MRC position by
12 Recology was the substantial fraud and theft that had been perpetrated by the Local 315
13 Weighmasters and a Foreman.

14 The MRC monitors the accuracy of the Weighmasters' work at the scale house to make
15 sure that the Weighmasters or other Local 315 bargaining unit members are not stealing
16 Recology's revenues. To ensure the MRC's review of the accuracy of the weight tickets issued
17 by the Weighmasters, Recology has supplied the MRC with special equipment. A yellow
18 observation tower (two-level steel platform over 8 feet tall) was constructed specifically for the
19 MRC role and is situated approximately 200 yards down the road from the scale house. This
20 structure did not exist prior to the discovery of the fraud schemes.

21 The MRC stands at the observation structure, stops vehicles in route from the scale house
22 to the disposal area, verifies the accuracy of the customer's weight ticket, and inspects the load of
23 debris by examining the contents from the top of the observation platform and utilizing a mirror
24 on an extended rod. (See Appendix 1, Recology's May 15, 2017 Position Statement Photographs
25 1 and 2.)

26 The MRC monitors the honesty and accuracy of the Weighmasters' work on behalf of
27 management as follows:
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- ***Confirm that the Weighmasters have generated a weight ticket at the scale house and given it to the customer*** (the fraud/theft perpetrated against Recology by the Weighmasters involved the lack of a weight ticket being generated at the weighstation and issued to customers).
- ***Confirm that all weight tickets issued to customers by the Weighmasters correctly describe the type of waste being dumped by the customer*** (the fraud/theft perpetrated against Recology by the Foreman at times involved permitting customers to intentionally incorrectly describe the type of waste to be dumped to the Weighmasters, who at the time would frequently fail to check the contents of the trucks coming through, in order to pay less to Recology, in exchange for a cash kickback to the Foreman).
- ***Ensure that the weight ticket issued to customers by the Weighmasters reflects the correct price charged for the type of waste*** (the fraud/theft perpetrated against Recology by the Weighmasters as described above often resulted in Weighmasters incorrectly listing the price on the weight ticket). As discussed above, Recology built a special tower and provided equipment for the MRC not used by bargaining unit members to enable this review.
- ***Maintain A Discrepancy Log For Review And Use By Recology Management In Determining Whether Further Investigation Or Discipline Of A Local 315 Bargaining Unit Member Is Appropriate*** (the log maintained by the MRCs permits Recology to monitor the actions of the Weighmasters working at the scale house to enable it to guard against the recurrence of fraud/theft). The MRC identifies any waste materials in the vehicle that have not been listed on the ticket and enters the discrepancy in a log maintained for this specific purpose. This log is later reviewed by the Site Supervisor (Shirley von Uhlit). The Site Supervisor reviews the MRC's documented observations in the discrepancy log and determines with other Recology management whether further investigation and/or disciplinary action involving any Local 315 Weighmaster (or other Local 315

1 bargaining unit member) is warranted.¹ In this respect, the MRC enforces against
2 employees rules to protect Recology’s property.

3 Because the MRC position was specifically created to be management’s “eyes and ears”
4 in order to enable Recology to guard against further fraud and other misconduct by Weighmasters
5 and other Local 315 bargaining unit members, a Local 315 bargaining unit member *never* steps
6 into the MRC role or performs any of the MRC’s duties when the MRC is not working, or is
7 away from the MRC observation station for a meal or rest period. There is simply *no*
8 *interchange* of job duties or function between the MRC and any Local 315 bargaining unit job
9 classification.²

10 In addition to the current primary function of protecting the employer’s resources and
11 serving as management’s check on the Weighmasters’ performance of their duties, the MRC
12 position will soon begin performing additional regulatory compliance duties on behalf of Hay
13 Road’s management once the training is fully complete. The regulatory compliance duties for the
14 MRC will include compost sampling, compost pond monitoring, odor monitoring inspection, and
15 compost inspection. Training commenced in early 2017. Once all training is complete, Recology
16 intends to have the MRC perform these types of compliance testing at Hay Road as needed. No
17 union members have received, or will receive, this training or perform these regulatory
18 compliance job functions.

19 The MRC works a daily schedule. The MRC shift begins at 7:00 a.m. and ends at 5:30
20 p.m. The MRC is compensated at \$16.50/hour and receives medical, dental and vision health
21 benefits, as well as life insurance benefits, through Recology, which are different from those
22 received by Local 315 bargaining unit members.

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25 ¹ In addition to maintaining the discrepancy log, the MRC when needed notifies the scale house to
26 make sure that the customer returns to the scale house to pay the appropriate fee.

27 ² Upon occasion, a customer will ask the MRC questions about where to dump the waste (if the
28 Weighmaster has not provided the instructions, or the instructions provided were forgotten or not
understood by the Customer). The MRC also will assist the Site Supervisor with administrative
tasks in the office prior to opening of the Hay Road facility to the public for business, as needed.

1 **4. The Local 315 Bargaining Unit And The Weighmaster And Spotter Positions**

2 The Local 315 bargaining unit at Hay Road currently consists of the following
3 classifications: Foreman (3 positions), Equipment Operator (12 positions), Equipment Servicer (1
4 position), Spotter (1 position), Laborer (10 positions), and Weighmaster (3 positions). Local 315
5 contended in its UC Petition and during the Region’s investigation that the Spotter position –
6 created in 2015 before the fraud schemes were discovered – performs essentially the same duties
7 and serves the same function as the MRC. Recology has never been advised by the Region that
8 Local 315 contends that the Weighmaster and the MRC performed the same duties or function,
9 and in fact they do not perform the same duties or function.

- 10 • **The Weighmaster Position:** The Weighmaster spends his/her day working at the
11 scale house. The Weighmaster reviews the type of contents/debris in the
12 customer’s vehicle to be dumped (e.g., appliances, general waste, concrete, green
13 waste, asbestos, etc.). No observation platform or inspection rod are used by the
14 Weighmasters. The Weighmaster then prepares a weight ticket that identifies the
15 type of debris to be dumped, and the dumping fee charged for the type of debris
16 (e.g., appliances, general waste, concrete, green waste, asbestos, etc.). After
17 conducting the payment transaction, the Weighmaster then provides the customer
18 with the appropriate directions to the correct disposal area for the type of debris to
19 be dumped, where they are then guided by a Spotter (Local 315 bargaining unit
20 position) to safely position their vehicle to dispose of the debris.

21 The Weighmaster schedule is daily, 6:00 a.m. to 2:30 p.m. and 8:00 a.m. to 4:30
22 p.m. Weighmasters are compensated under Local 315’s Collective Bargaining
23 Agreement with Recology and earn \$21.65/hour. They also receive benefits in
24 accordance with Local 315’s Collective Bargaining Agreement.

- 25 • **The Spotter Position:** The Spotter position was created in 2015 by Recology as a
26 dedicated position to specifically assume more responsibility for vehicle safety in
27 the tipping/dumping area than was being exercised by Laborers. Recology and
28 Local 315 agreed that the new Spotter position was appropriately part of the Local

1 315 bargaining unit and entered into a Letter of Understanding dated October 20,
2 2015, placing the Spotter in the bargaining unit. The primary job function of the
3 Spotter is to safely direct traffic in the tipping/dumping area. The Spotter stands at
4 the active waste disposal area (approximately three-quarters of a mile from the
5 MRC station) directing traffic, including specifying where to dump the type of
6 debris. The Spotter ensures that no more than three vehicles are backing into
7 locations at the same time for safety purposes. The Spotter also ensures that
8 certain large vehicles (semi backend dumps) are spaced approximately 50 feet
9 apart, also for reasons related to safety. In addition, the Spotter generally observes
10 what types of material are being dumped. If the Spotter observes that hazardous
11 materials are being improperly dumped, a Spotter stops the dumping and contacts
12 the Weighmaster. Based on the Spotter's position, he/she is not able to verify the
13 work of the Weighmasters. (See Appendix 1, Recology's May 15, 2017 Position
14 Statement photographs 3 and 4.)

15 The Spotter rarely interacts with the MRC, and there is no interchange of duties
16 (either temporary or permanent) between the Spotter and the MRC. Spotters do
17 not perform MRC duties. Spotters sometimes perform Operator II duties, such as
18 operating a piece of equipment called a truck tipper if the Operator II (i.e., "tipper
19 operator") is on a rest or meal break.

20 The Spotter schedule is daily, from 7:00 a.m. to 5:30 p.m. Spotters are
21 compensated under Local 315's Collective Bargaining Agreement with Recology
22 and earn \$18.41/hour on the Local 315 pay scale. They also receive benefits in
23 accordance with Local 315's Collective Bargaining Agreement.

24 **B. Procedural Background**

25 **1. The Union's UC Petition And The Region's Administrative Investigation**

26 On January 27, 2017, Local 315 filed a UC Petition to clarify the bargaining unit and/or
27 accrete the newly created Material Receiving Coordinator ("MRC") position into the Local 315
28 bargaining unit. In relevant part, the UC Petition stated: "[t]he Union asserts that the 'Material

1 Review' position is the 'Spotter/Traffic Control/Load Checker' position that the parties
2 negotiated to be included in the existing bargaining unit. Alternatively, the Union asserts that the
3 'Material Review' position shares an overwhelming community of interest with the existing
4 bargaining unit, such that it should be added by accretion."

5 Recology submitted its position statement to the Region as agreed on May 15, 2017.
6 (Appendix 1, Recology's May 15, 2017 Position Statement.) The Region did not seek to
7 interview any of Recology's management or supervisory employees during the course of its
8 administrative investigation.

9 2. The Regional Director's Decision

10 On October 15, 2017, the Regional Director for Region 20, Jill H. Coffman, issued her
11 determination following the Region's administrative investigation, clarifying the Local 315
12 bargaining unit to include the MRC position. (Decision and Clarification of Bargaining Unit,
13 Appendix 2, hereinafter "Decision".) The Region's administrative investigation consisted of
14 "taking sworn testimony from employees holding the disputed position and reviewing and
15 considering the parties' position statements." (Decision, p. 1.) The Regional Director's
16 determination that the MRCs shared the requisite "overwhelming community of interest" with the
17 Local 315 bargaining unit was based, in relevant part, on the following findings and rationale:

- 18 • MRCs do not perform work in other classifications or vice versa, and the
19 investigation did not disclose any history of transfers between the MRC position
20 and any bargaining unit position. (Decision, p. 4.)
- 21 • While MRCs do not have significant interchange with other members of the
22 bargaining unit, the evidence established that there is daily contact and functional
23 integration between MRCs and the Weighmasters and Spotters. (Decision, p. 5.)
- 24 • The Employer utilizes a "quasi-production line model" where Weighmaster's
25 conduct an initial inspection of the debris and collect payment. The customer then
26 proceeds to a check-point where MRCs conduct a second inspection of the debris
27 and direct the customer to the dumping area, where a Spotter oversees the actual
28 dumping of the debris. (Decision, p. 5.)

- MRCs are the second link in the operational chain, and their work is almost indistinguishable from the Weighmasters’ – they have almost identical working conditions, skills and functions, and share a direct supervisor. The MRC position has the same basic skill and educational requirements as bargaining unit positions, and MRCs work hand in glove with the bargaining unit. (Decision, p. 6.)

III.
SUMMARY OF LEGAL ARGUMENT

A. Review Is Appropriate, Should Be Granted, And The Regional Director’s Decision Accreting The MRC Into The Local 315 Bargaining Unit Should Be Reversed

Review is warranted and should be granted because the Regional Director’s decision that the MRC position shares an “overwhelming community of interest” with the Local 315 bargaining unit is clearly erroneous on the record and prejudicial to Recology. (Rule, 102.67(d)(2) & (3).) The Regional Director’s erroneous and prejudicial decision merits reversal and a finding that Local 315 has failed to meet its heavy burden to demonstrate that accretion is factually or legally appropriate.

Accretion is the *exception, not the rule*, and Local 315 bears a heavy burden to demonstrate that the MRCs share an *overwhelming community of interest* with the Local 315 bargaining unit in order for accretion to be lawful. *See E.I Du Pont de Nemours, Inc.*, 341 NLRB 607 (2004). The Board utilizes the same “overwhelming community of interest” standard in accretion cases and cases where an employer seeks to expand the petitioned-for bargaining unit beyond an otherwise-appropriate petitioned-for unit. *Id.*; *Specialty Healthcare and Rehabilitation Center*, 357 NLRB 934 (2011).

While the Board examines several factors in determining whether an “overwhelming community of interest” exists: “interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective bargaining history,” the Board has deemed two factors – *employee interchange and common supervision* – critical to an accretion. ***The absence of these critical factors will ordinarily defeat a finding of overwhelming community of interest***

1 *necessary for accretion. See, e.g., Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271
2 and fn. 7 (2005); *DTG Operations*, 357 NLRB 2122 (2011) (limited one-way “interchange” is
3 insufficient to support a finding of overwhelming community of interest despite common
4 supervision, functional integration and similar benefits and base wages).

5 In the present case, the overwhelming community of interest standard is not met based on
6 the factual findings of the Regional Director or the relevant evidence.

7 **B. The Regional Director’s Finding That There Was An “Overwhelming Community
8 Of Interest” Between The MRC Position And The Local 315 Bargaining Unit Was
9 Erroneous And Prejudicial To Recology**

10 **1. The Regional Director’s Factual Findings Demonstrate That The *Critical*
11 *Factor Of “Interchange” Necessary For An “Overwhelming Community Of
12 Interest” Is Wholly Absent In This Case***

13 The Regional Director’s Decision appears to confuse contact and interaction between
14 employees with employee interchange, and erroneously determined that an overwhelming
15 community of interest existed. This significant error by the Regional Director is contrary to
16 Board law and the Regional Director’s factual findings in the case, and significantly prejudiced
17 Recology.

18 **a. “Employee Interchange” Is *Critical To Finding Overwhelming Community
19 of Interest***

20 The presence of actual “employee interchange” is a *critical factor* to finding an
21 “overwhelming community of interest.” The Board distinguishes between two types of
22 interchange – temporary transfers and permanent transfers; permanent transfers are regarded by
23 the Board as a less significant indication of actual interchange than temporary transfers. *Frontier
24 Telephone of Rochester, Inc., supra*, at p. 1271 (complete absence of evidence of temporary
25 transfers, and evidence of a very few instances of the less significant permanent transfers, falls
26 well short of supporting a finding of interchange.) Notably, contact and interaction between
27 employees is not the same as “employee interchange” and will not support a finding of
28 overwhelming community of interest where interchange is absent. *See DPI Secuprint, Inc.*, 2015
NLRB LEXIS 622 (2015) (regular contact between employees, *in the absence of interchange*,

1 does not establish an overwhelming community of interest). In addition, limited one-way
2 “interchange” is insufficient to support a finding of overwhelming community of interest despite
3 common supervision, functional integration and similar benefits and base wages. *DTG*
4 *Operations*, 357 NLRB 2122 (2011).

5 **b. The Regional Director Erroneously Found The Existence Of An**
6 **Overwhelming Community Of Interest Despite No Evidence Of The**
7 **Critical Factor Of “Employee Interchange”**

8 The Regional Director made the following factual finding: “*MRCs do not perform work*
9 *in other classifications or vice versa, and the investigation did not disclose any history of*
10 *transfers between the MRC position and any bargaining unit position.*” (Emphasis added.)
11 (Decision, p. 4.) Despite *no facts of employee transfers or performing other positions’ work*, the
12 Regional Director nevertheless concluded that the MRCs shared an overwhelming community of
13 interest with the Local 315 bargaining unit.

14 The Regional Director subsequently erroneously implies in her analysis that daily contact
15 and functional integration can make up for the complete absence of the critical “employee
16 interchange” factor. (Decision, p. 5.) However, Board precedent establishes that even regular
17 contact and interaction between employees, *in the absence of employee interchange*, does not
18 support a finding of overwhelming community of interest. *DPI Secuprint, Inc., supra*.

19 The Regional Director’s finding of an “overwhelming community of interest” between the
20 MRCs and the Local 315 Bargaining Unit – in the absence of the critical employee interchange
21 factor – was a significant factual and legal error resulting in prejudice to Recology. This
22 substantial factual and legal error in and of itself warrants reversal of the Regional Director’s
23 Decision since employee interchange is critical to a finding of overwhelming community of
24 interest. *Frontier Telephone of Rochester, Inc., supra; DPI Secuprint, Inc., supra*.

25 **2. The Regional Director’s Conclusions That The MRCs’ Work Is A Step In A Quasi-**
26 **Production Line And Is “Indistinguishable” From The Work Of The Weighmasters,**
27 **Are Clearly Erroneous And Factual Error Based On The Record**

28 The Regional Director’s conclusion that an overwhelming community of interest exists
between the MRCs and the Local 315 bargaining unit is further premised on other erroneous

1 factual findings. The Regional Director erroneously concluded that the MRCs function as a
2 “second link in an operational chain, and their work is almost indistinguishable from the
3 Weighmasters.” (Decision, p. 6.) This rote and superficial community of interest analysis is
4 unsupported by the factual record and was clearly erroneous and prejudiced Recology.

5 The error in the Regional Director’s Decision is demonstrated by the *complete absence* of
6 any discussion or consideration of the abundant factual evidence presented by Recology that the
7 impetus for creating the MRC position by Recology and the unique and distinct function the
8 MRC position serves are to protect Recology’s property from Local 315 Weighmasters and other
9 bargaining unit employees and for the MRC to monitor their compliance with Company policies.
10 Inexplicably, the Regional Director’s Decision fails entirely to even so much as mention the
11 considerable and credible factual evidence provided by Recology that is *crucial* to understanding
12 the MRC’s function at the Hay Road worksite and the lack of community of interest with
13 bargaining unit employees:

- 14 • Local 315 Weighmasters and a Foreman were terminated for their involvement in
15 two fraud schemes operating at the Hay Road facility that resulted in the loss of
16 *significant* revenue to Recology. Local 315 did not grieve the terminations and is
17 fully aware of the circumstances.
- 18 • The fraud/theft involved misconduct by the Weighmasters, i.e., failing to fill out
19 weight tickets in exchange for cash kickbacks from customers in a scheme to steal
20 significant sums of money from Recology via the weighstation.
- 21 • The MRC position was created by Recology to enable it to protect its property and
22 operations from future fraud/theft by the Weighmasters and other Local 315
23 bargaining unit members. Absent the significant embezzlement by the
24 Weighmasters and Foreman, the MRC position would not have been created.
- 25 • Recology built the MRC an observation tower and supplied a mirrored inspection
26 rod, both equipment utilized only by the MRC, so that the MRC could *verify that*
27 *the Weighmasters were not engaging in fraud or theft* of the Company’s revenues.
- 28 • The MRC is responsible for logging discrepancies in the Weighmasters’ weight

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tickets for the purpose of providing Recology’s management with a report of potential Weighmaster misconduct needing further investigation or discipline. The MRC functions in this regard similar to a security guard – protecting the property of the employer – by playing a crucial role in enforcing the observation and reporting of infractions by Weighmasters to prevent theft of Recology’s property and other misconduct during business hours. (*See, e.g., Allen Services Co., Inc.*, 314 NLRB 1060, 1060-62 (1994).)

Without any reference to Recology’s abundant evidence of why *Recology created the MRC position* and its distinct purpose at the worksite, the Regional Director conducted what can best be described as a superficial “factual” analysis to erroneously find that the work of the Weighmasters and the MRCs “is almost indistinguishable,” when in fact the functions are distinct and separate. (Decision, p. 5.) It is axiomatic that the Weighmaster does not and cannot police its own work.

**IV.
CONCLUSION**

Accordingly, the Regional Director’s Decision on substantial factual and legal issues is clearly erroneous, was prejudicial to Recology, and warrants review and reversal by the Board.

Dated: November 8, 2017

HIRSCHFELD KRAEMER LLP

By: 
Carmen Plaza de Jennings
Jayne Benz Chipman

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

Appendix 1



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May 15, 2017

VIA U.S. MAIL & FACSIMILE TO (415) 356-5156

Norma Pizano
Field Examiner
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
E-mail: Norma.Pizano@nlrb.gov

Re: Recology Hay Road, NLRB Case 20-UC-191943

Dear Ms. Pizano:

This letter serves as Recology Hay Road's ("Recology") response to the Region's May 1, 2017 request for its position on Teamsters' Local 315's Petition to accrete the recently created Material Receiving Coordinator ("MRC") position into the Local 315 bargaining unit. Local 315's Petition must be dismissed because there is *no community of interest* between the MRCs and Local 315 bargaining unit positions, much less the "*overwhelming community of interest*" required to find a lawful accretion.

As detailed more fully below, the MRC position was created by Recology in July 2016 for the specific purpose of safeguarding Recology's property following its investigation in early 2016 of a substantial theft ring at its Hay Road location involving all of the Weighmasters and a Foreman in the Local 315 bargaining unit. Local 315 is keenly aware of the circumstances prompting creation of the MRC position by Recology as a means to assist management in monitoring the work of Local 315 bargaining unit members to assure that similar significant on-the-job theft would not recur. In these circumstances, accretion is wholly inappropriate and would amount to an abuse of discretion.

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The primary job function of the Spotter is to safely direct traffic in the tipping/dumping area. After interacting with the MRC who checks the load and accuracy of the weight ticket, the customer drives approximately three-quarters of a mile to the waste disposal tipping/dumping location. The Spotter stands at the active waste disposal area directing traffic, including specifying where to dump the type of debris. The Spotter ensures that no more than three vehicles are backing into locations at the same time for safety purposes. He also ensures that certain large vehicles (semi backend dumps) are spaced approximately 50 feet apart, also for reasons related to safety. A Spotter generally observes what types of material are being dumped. If the Spotter observes that hazardous materials are being improperly dumped, a Spotter stops the dumping and contacts the Weighmaster. (*See* attached photographs 3 and 4.)

During the day, the Spotter rarely interacts with the MRC on duty (they work approximately three-quarters of a mile apart). The Weighmaster may use a walkie-talkie radio to communicate with the Spotter regarding an incoming vehicle that has a special type of debris to be disposed, such as dead animals or tree trunks. This happens infrequently. Notably, the Spotter does not check for whether a weight ticket has been issued or verify the accuracy of the weight ticket regarding the type of debris dumped or the price paid by the customer at the scale house.

While Spotters rarely interact with the MRCs during the work day and do not check weight tickets or review such weight tickets to verify that the type of debris matches the ticket, Spotters periodically perform duties of other Local 315 bargaining unit positions. Spotters sometimes perform Operator II duties, such as operating a piece of equipment called a truck tipper if the Operator II (i.e., “tipper operator”) is on a rest or meal break.

The MRC and the Spotter do not have interchangeable duties and they never work in each other’s position or perform the duties of the other’s role. Recology recognizes that the Spotter and MRC *job descriptions* are similar in describing the general position duties. However, the sole reason for the similarity in the written job description is due to Recology’s rush to create and implement the MRC position following investigation of the significant theft perpetrated by some Local 315 unit employees. The MRC written job description is not an accurate reflection of the duties actually performed by the MRCs on a daily basis, or the significant distinction in duties and function between the MRC and Spotter positions.

There are currently two individuals occupying the single Spotter position: Jerome Joseph and Manuel Escobar. Mr. Joseph works Monday through Saturday, while Mr. Escobar only works on Sundays. The Spotter schedule is daily, from 7:00 a.m. to 5:30 p.m. These employees are compensated under Local 315’s Collective Bargaining Agreement with Recology. Mr. Joseph earns \$16.91/hour, while Mr. Escobar earns \$15.19/hour. They also receive benefits in accordance with Local 315’s Collective Bargaining Agreement.

II. RECOLOGY'S RESPONSE TO THE ACCRETION PETITION

There is no factual basis for accreting the MRC position into the Local 315 bargaining unit. To do so would violate longstanding Board precedent making accretion appropriate only in limited factual circumstances, and would therefore be an abuse of discretion.

Lawful accretion requires the petitioner to meet the *heightened legal standard* of “overwhelming community of interest” between the non-bargaining unit position(s) at issue and the existing bargaining unit positions. Simple “community of interest” for determining “appropriateness of a bargaining unit” for representation purposes is insufficient. (*See Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB 934, 944 (2011) (two groups have an “overwhelming community of interest” when the traditional community-of-interest factors overlap “almost completely”); *see also Engineered Storage Products Co.*, 334 NLRB 1063 (2001) (the test is whether the community of interest is so strong that it requires or mandates the employees’ inclusion in the unit without an election).)

The Board’s traditional “community of interest” factors include the following: (1) interchange of employees; (2) supervision and conditions of employment; (3) job classification; (4) integration of units; (5) geographic proximity; (6) role of the new position; (7) similar interests in wages, hours and other terms and conditions of employment; (8) bargaining history; and (9) skills and education.

A. The Requisite “Overwhelming Community of Interest” Is Absent In This Case

1. There Is No “Interchange” Between The MRCs And The Local 315 Bargaining Unit Positions

A “key” factor in finding community of interest – and critical to finding “overwhelming community of interest” – is the “interchange of employees.” Where each classification has a separate role in the process and employees have only limited interaction and interchange with other classifications, the Board will decline to find an overwhelming community of interest between them. (*See Guide Dogs for the Blind*, 359 NLRB No. 151 (2013).) In this regard, it is immaterial in Board analysis that interchange is merely feasible; actual interchange is required to justify accretion. (*Judge & Dolph, Ltd.*, 333 NLRB 175 (2001).) Indeed, no weight is assigned to the fact that interchange is feasible when in fact there has been no interchange of employees. (*Combustion Engineering*, 195 NLRB 909, 912 (1972).)

In the case of the MRC, interchange (either temporary or permanent) with Local 315 classifications does not exist. No MRC has ever worked, permanently or temporarily, in the Spotter position or any other Local 315 bargaining unit position. No Spotter or any other Local 315 bargaining unit position employee has ever worked in the MRC role. Indeed, the whole

community of interest factors (e.g., lack of employee interchange, difference in role/duties, etc.).

* * * * *

The facts supporting the requisite heightened legal standard of “overwhelming community of interest” necessary to accrete the MRC position into the Local 315 bargaining unit *are nonexistent* in this case. The MRC position was created by the specific and urgent need for management to check the job performance of the Local 315 Weighmasters following the theft involving all of the former Weighmasters and a Foreman. The reason the MRC position was created was so that it would be outside of, and in no way beholden to, Local 315 or its members. Accreting the MRC into the Local 315 bargaining unit at this juncture would completely defeat the purpose for which the position exists and place the MRCs in conflict with the union employees given their duties and reporting obligation. The discrepancy log kept by the MRCs for the Site Supervisor can, where appropriate, prompt disciplinary action taken against Local 315 members. While the MRC job description may have been hastily and insufficiently drafted given the need to hire for the new position, the job description – particularly in light of the facts of this case – in no way establishes the facts of the “overwhelming community of interest” required for Local 315 to prevail on its petition. Indeed, longstanding Board law acknowledges that job descriptions alone are not dispositive of an employee’s labor status. (*See, e.g., Heritage Hall*, 333 NLRB 458 (2001).)

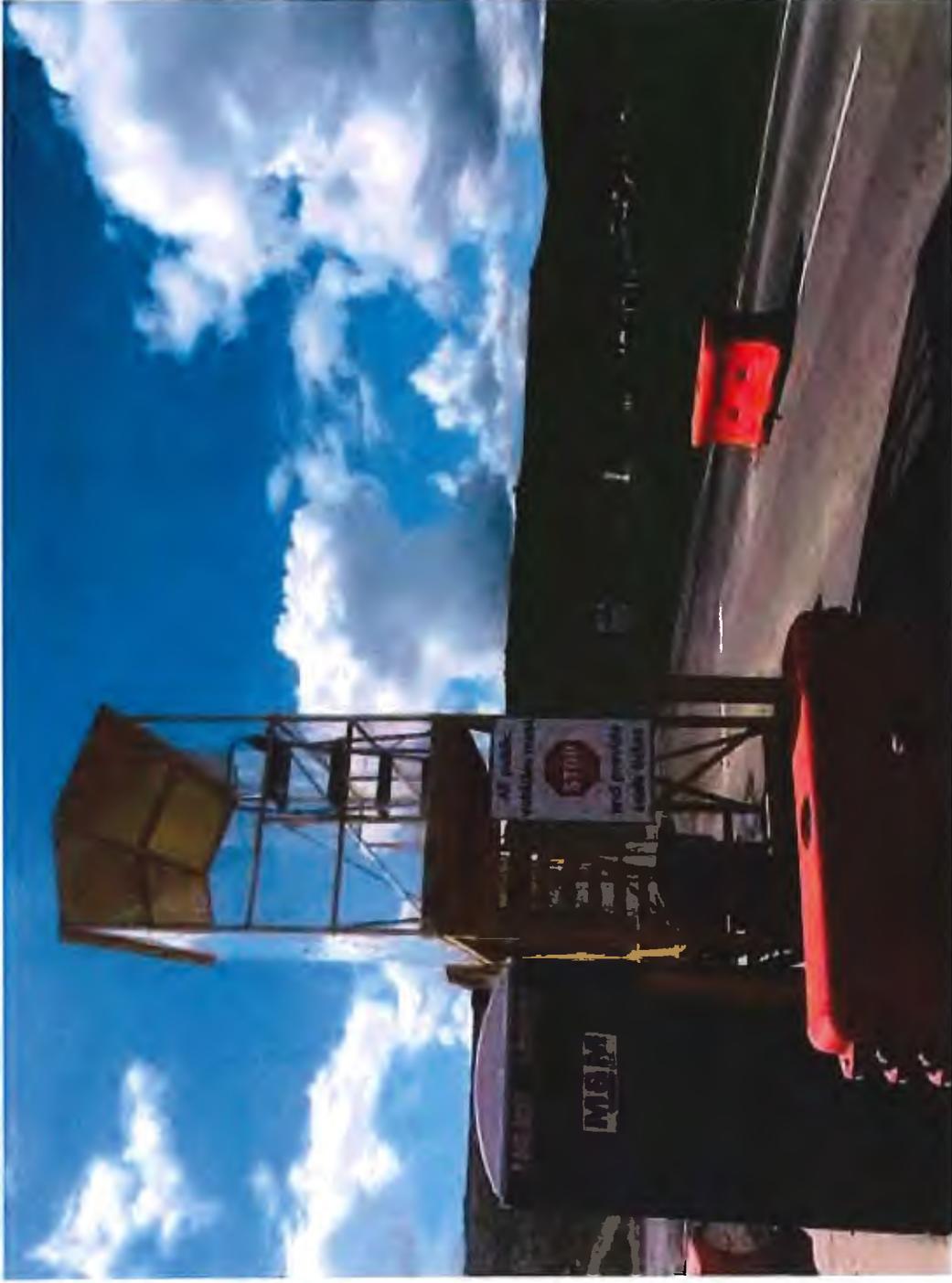
The petition must be dismissed given the utter lack of factual evidence to support the existence of an *overwhelming* community of interest between the MRC position and the Local 315 bargaining unit.

Very truly yours,



Carmen Plaza de Jennings

CPdJ/lh
Attachments



MRC LOOKOUT TOWER
(plus restroom)

Attachment 1



MRC LOOKOUT TOWER
(plus restroom)

Attachment 2



SPOTTER AT DUMP SITE
Directing Customer Vehicles

Attachment 3



SPOTTER AT DUMP SITE
Directing Customer Vehicles

Attachment 4

Appendix 2

**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.¹ Pursuant to 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 and reviewing and considering the parties' position statements. 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-

¹ 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,² 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.³ 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

² Senior Operator I also performs Working Foreman duties.

³ 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.⁴ 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.

⁴ 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.⁵ 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).

⁵ 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.⁶

RIGHT TO REQUEST REVIEW

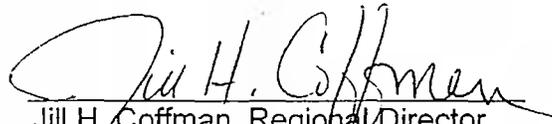
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules 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.nlr.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

⁶ 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

A handwritten signature in cursive script that reads "Jill H. Coffman". The signature is written in black ink and is positioned above the typed name and title.

Jill H. Coffman, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

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

ERRATUM

The *Decision and Clarification of Bargaining Unit (Decision)* in this matter that issued today contained on page 6 an incorrect due date for filing a request for review of my *Decision*. The correct due date is **November 8, 2017**. Accordingly, the penultimate paragraph on page 6 is hereby corrected to read:

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 November 8, 2017.

DATED AT San Francisco, California this 25th day of October 2017.

/s/ Jill H. Coffman

Jill H. Coffman, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103

HIRSCHFELD KRAEMER LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am a citizen of the United States and a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 505 Montgomery Street 13th Floor, San Francisco, California 94111. On November 8, 2017, I served the following document(s) by the method indicated below:

RECOLOGY'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION



by **email transmission** to the email address below.

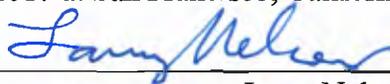


by placing the document(s) listed above in a sealed envelope(s) and consigning it to an **express mail service** for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.

Jill H. Coffman
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Attorneys for Teamsters Local 315

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on November 8, 2017 at San Francisco, California.



Larry Nelson