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

13 TEAMSTERS LOCAL 315,

14 Petitioner,

15 v.

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

18 Employer.

Case No. 20-UC-191943

**PETITIONER'S STATEMENT IN  
OPPOSITION TO RECOLOGY'S  
REQUEST FOR REVIEW OF REGIONAL  
DIRECTOR'S DECISION**

19 Petitioner Teamsters Local 315 submits this brief in opposition to the Employer's Request for  
20 Review of the Regional Director's October 25, 2017, Decision in the above-captioned matter. In that  
21 Decision, the Regional Director correctly concluded that the newly created position of Material  
22 Receiving Coordinator ("MRC") is appropriately added to the parties' existing bargaining unit.

23 The relevant facts are clearly and succinctly laid out in the Regional Director's Decision and  
24 need not be repeated in detail here. Suffice it to say that the undisputed evidence shows that the  
25 MRC classification shares common supervision with unit employees; works at the same facility as  
26 other unit employees; has a similar wage rate to that of unit employees; has benefits that overlap with  
27 those received by unit employees; works the same full-time schedule as unit employee; has no  
28 difference in qualifications necessary to hold the job compared to other unit jobs; is functionally  
integrated with other unit employees – in particular the Weighmaster and Spotter classifications; has  
daily interaction with the Weighmaster and Spotter classifications (and has NO functional interaction

1 or daily contact with any non-unit employees); performs many of the same tasks performed by the  
2 Weighmaster and Spotter classifications; wears the same uniform as other unit employees; shares a  
3 common break room with and uses the same clock-in/clock-out process as other unit employees; and  
4 receives common training with other unit employees.

5 In determining whether an employee in a newly created position shares a sufficient  
6 community of interest with employees of an existing bargaining unit that warrants accretion to the  
7 existing unit, several factors are considered. Among them are: interchange and contact among  
8 employees, degree of functional integration, geographic proximity, similarity of working conditions,  
9 similarity of employee skills and functions, supervision, and collective-bargaining history. *Archer*  
10 *Daniels Midland Co.*, 333 NLRB 673, 675 (2001). Cases in which every factor favors accretion are  
11 rare, and “the normal situation presents a variety of elements, some militating toward and some  
12 against accretion, so that a balancing of factors is necessary.” *Great A & P Tea Co.*, 144 NLRB  
13 1011, 1021 (1963).

14 Here, as the above-listed factors of commonality between the MRC and other unit employees,  
15 and as the complete operational integration of the MRC classification with the Weighmaster and  
16 Spotter classifications in the receiving, inspecting and dumping of waste coming into the landfill,  
17 demonstrate, the factors favoring accretion of the MRC to the existing bargaining unit are  
18 overwhelming.

19 In a feeble effort to reverse this obvious conclusion, the Employer makes two arguments,  
20 neither of which has merit.

21 First, the Employer argues that the lack of interchange between the MRC and any other unit  
22 classification is fatal to the accretion claim. In other words, the Employer argues that without  
23 evidence of employee interchange, no newly created classification may ever be accreted to an  
24 existing unit. While it is true that the Board has observed, “[e]mployee interchange and common  
25 day-to-day supervision are the two most important factors” (*Archer Daniels Midland Co.*, *supra* at  
26 675), the Board has NEVER held that employee interchange, by itself, is a *sine qua non* for finding  
27 accretion. Yes, it is a factor, indeed an important factor; but it is nonetheless just one of many factors  
28

1 that is to be considered in the “balancing of factors [as] necessary.” *Great A & P Tea Co., supra* at  
2 1021.

3 The case cited by the Employer to support its incorrect claim to the contrary, *DPI Secuprint,*  
4 *Inc.*, 362 NLRB No. 172 (2015), actually provides no support whatsoever. *DPI Secuprint* involved a  
5 representation petition, not a unit clarification petition, and the issue was whether offset-press  
6 employees shared an overwhelming community of interest with other press employees so that they  
7 must be added to the petitioned-for unit. The Board concluded that the offset-press employees did  
8 not share such an overwhelming community of interest with the other employees in the petitioned-for  
9 unit. The primary factor the Board relied on was not lack of interchange, but the facts that “the  
10 offset-press employees work in a separate department from the petitioned-for employees and that  
11 their work requires greater skill and lengthier training.” The Board also noted that the offset-press  
12 employees work different hours from the unit employees. *Id* at slip op., p. 5. Thus, the Board most  
13 emphatically did *not* rule or even suggest that but for evidence of interchange between the offset-  
14 press employees and other unit employees the offset-employees would have been added to the unit  
15 appropriate for election.<sup>1</sup>

16 The second argument the Employer makes is that the nature of the MRC’s work is such that  
17 the classification must be excluded from the existing unit. According to the Employer, the MRC  
18 position was created so that a classification other than the Weighmaster could perform a second  
19 inspection of incoming waste to double-check the accuracy of the “weigh ticket” prepared by the  
20 Weighmaster; that is, so that an MRC employee could “verify that the Weighmasters were not  
21 engaging in fraud or theft.” (Employer Request for Review, p. 12.)

22 The only legal authority the Employer cites for the proposition that an employee with this  
23 responsibility must be excluded from a unit that includes the employees whose work the employee is  
24 double-checking is *Allen Services Co., Inc.*, 314 NLRB 1060 (1994). But the security employees in  
25 that case were found to be *guards* within the meaning of the Act, and excluded on that basis. The

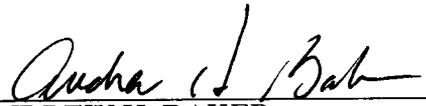
26 \_\_\_\_\_  
27 <sup>1</sup> In contrast, the Board *has* concluded that accretion is not appropriate where *both* common supervision *and*  
28 employee interchange are missing. *See, e.g., Nv Energy, Inc. & Int’l. Bhd. of Elec. Workers, Local 396*, 362  
NLRB No. 5 (2015) (“the absence of these two critical factors prevents us from finding an overwhelming  
community of interest here”).

1 MRC's duties, however, do not satisfy the Board test for guard status, and the Employer is not  
2 arguing otherwise. Thus, the Employer's argument breaks down to nothing more than a claim that if  
3 an employee has any inspection or lead responsibilities with respect to other unit employees, that  
4 employee must be excluded from the unit. But this of course is not consistent with Board law. Non-  
5 supervisory leads are commonly included in bargaining units with non-lead employees, and quality  
6 control employees who inspect the work of others have been accreted to units that contain employees  
7 whose work they inspect. *See, e.g., Tucson Gas & Elec. Co.*, 241 NLRB 181 (1979) (construction  
8 coordinator who operates as a "leadman" is appropriately accreted to unit that includes employees for  
9 whom coordinator performs lead functions); *Rogersville Printing*, 237 NLRB 1173 (1978) (new  
10 quality control employees who monitor work of pressroom employees properly accreted to pressroom  
11 unit).

12 For the reasons stated above,<sup>2</sup> as well as those stated in the Regional Director's Decision in  
13 this matter, Petitioner respectfully requests the Board to deny the Employer's Request for Review.

14 Dated: November 14, 2017

BEESON, TAYER & BODINE, APC

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17 By: 

ANDREW H. BAKER

Attorneys for Teamsters Local 315

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25 <sup>2</sup> The accretion doctrine is not applicable to situations in which the group sought to be accreted would  
26 constitute a separate appropriate bargaining unit. *Passavant Retirement & Health Center*, 313 NLRB 1216,  
27 1218 (1994); *Beverly Manor-San Francisco*, 322 NLRB 968, 972 (1997). But the Employer has not made that  
28 argument here. Indeed, the one or two employees who occupy the MRC classification – given their common  
working conditions with the unit employees, their common supervision, common pay and benefits, daily  
contact and interaction with unit, but not non-unit, employees, and complete functional integration with unit  
employees – would never constitute a separate appropriate unit for bargaining. And thus on this basis, too, is  
the Regional Director's decision here correct.

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**CERTIFICATE OF SERVICE**

**NATIONAL LABOR RELATIONS BOARD**

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 483 Ninth Street, 2nd Floor, Oakland, CA 94607-4051. On this day, I served the foregoing Document(s):

**PETITIONER'S STATEMENT IN OPPOSITION TO RECOLOGY'S  
REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION**

By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

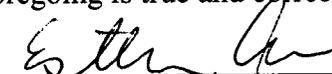
By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, November 14, 2017.

  
\_\_\_\_\_  
Esther Aviva