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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 BRIEF IN SUPPORT OF THE
REGIONAL DIRECTOR'S DECISION

19 The Board by order dated February 13, 2018, granted the Employer's Request for Review of
20 the Regional Director's Decision as to whether that decision finding that the Employer's Material
21 Receiving Coordinator classification is appropriately accreted to Petitioner's bargaining unit is
22 consistent with the standard articulated in *Safeway Stores*, 256 NLRB 918, 918 (1981). Petitioner
23 Teamsters Local 315 submits this brief in support of the Regional Director's Decision.

24 The Board's standards for accretion have been well-established and consistently applied by
25 the Board for many years. In the 1980's the Board issued several decisions clarifying the limited
26 scope of the accretion doctrine. In *Compact Video Services*, 284 NLRB 117 (1987), the Board sets
27 forth its policy regarding accretions, as follows:

28 The Board has followed a restrictive policy in finding accretions to existing units because employees accreted to an existing unit are not accorded a self-determination election and the Board seeks to insure that the employees' right to determine their own bargaining representative is not foreclosed. *Towne Ford Sales*, 270 NLRB 311

1 (1984), affd. sub nom. *Machinist District Lodge 190 v. NLRB*, 759 F.2d
2 1477 (9th Cir. 1985). The Board thus will find a valid accretion “only
3 when the additional employees have little or no separate group identity
4 and thus cannot be considered to be a separate appropriate unit and
5 when the additional employees share an overwhelming community of
6 interest with the preexisting unit to which they are accreted [footnotes
7 omitted].” *Safeway Stores*, 256 NLRB 918, 918 (1981).

8 That the Board in recent years has continued to adhere to these same basic principles is
9 reflected in the Board’s 2015 decision in *NV Energy, Inc.*, 362 NLRB No. 5 where the Board stated:

10 When the Board finds an accretion, it adds employees to an existing
11 bargaining unit without conducting a representation election. The
12 purpose of the accretion doctrine is to “preserve industrial stability by
13 allowing adjustments in bargaining units to conform to new industrial
14 conditions without requiring an adversary election every time new jobs
15 are created or other alterations in industrial routine are made.” *NLRB v.*
16 *Stevens Ford, Inc.*, 773 F.2d 468, 473 (2d Cir. 1985), quoted in
17 *Frontier Telephone of Rochester*, supra at 1271. However, because
18 accreted employees are added to the existing unit without an election or
19 other demonstration of majority support, the accretion doctrine’s goal
20 of promoting industrial stability is in tension with employees’ Section 7
21 right to freely choose a bargaining representative. *Frontier Telephone*
22 *of Rochester*, supra at 1271. The Board accordingly follows a
23 restrictive policy in applying the accretion doctrine. See *CHS, Inc.*, 355
24 NLRB 914, 916 (2010) (quoting *Archer Daniels Midland Co.*, 333
25 NLRB 673, 675 (2001)); *Super Value Stores*, 283 NLRB 134, 136
26 (1987). Under the well-established accretion standard set forth in
27 *Safeway Stores, Inc.*, 256 NLRB 918, 918 (1981), the Board finds “a
28 valid accretion only when the additional employees have little or no
separate group identity and thus cannot be considered to be a separate
appropriate unit and when the additional employees share an
overwhelming community of interest with the preexisting unit to which
they are accreted.” *Id.* (footnotes omitted). See also *Frontier Telephone*
of Rochester, supra at 1271; *E. I. Du Pont*, supra at 608 (quoting *Ready*
Mix USA, Inc., 340 NLRB 946, 954 (2003)). In determining whether
this standard has been met, the Board considers factors including
integration of operations, centralization of management and
administration control, geographic proximity, similarity of working
conditions, skills and functions, common control of labor relations,
collective-bargaining history, degree of separate daily supervision, and
degree of employee interchange. *Archer Daniels Midland*, supra at 675
(citing *Progressive Service Die Co.*, 323 NLRB 183 (1997)). However,
the Board has held that the “two most important factors--indeed, the
two factors that have been identified as critical to an accretion finding--
are employee interchange and common day-to-day supervision,” and
therefore “the absence of these two factors will ordinarily defeat a
claim of lawful accretion.” *Frontier Telephone of Rochester*, supra at
1271 and fn. 7 (internal quotations omitted). [footnotes omitted].

29 These are precisely the standards the Regional Director applied in concluding that the
30 Employer’s Material Receiving Coordinator (MRC) is appropriately accreted to Petitioner’s

1 bargaining unit. Indeed, the Regional Director in her Decision explicitly cited many of the cases
2 cited above, including *Safeway Stores, Inc.* And the Regional Director did not just pay lip service to
3 the standard articulated in *Safeway Stores, Inc.*; rather, her Decision carefully reviews all of the
4 factors the Board has traditionally evaluated in applying the *Safeway Stores, Inc.* standard for
5 determining whether accretion is appropriate.

6 In requesting review of the Regional Director's Decision, the Employer, by not arguing the
7 point, tacitly concedes that the MRC classification does not constitute a separate appropriate unit.
8 The only issue raised is whether the MRC classification shares an overwhelming community of
9 interest with the unit classifications. On this, the Regional Director's decision is sound, based on
10 existing Board law, and entitled to affirmation.

11 Most importantly, the Regional Director found that the MRC shared common first-level and
12 second-level supervision with the unit employees alongside of whom the MRC works. The Regional
13 Director also noted that the MRC physically works in the same area as the Weighmaster and Spotter,
14 both unit classifications, and has daily interaction and functional integration with the Weighmaster
15 and Spotter and no daily interaction or functional integration with any non-unit employees.

16 The Regional Director also noted that the undisputed evidence established that the MRC
17 classification has a similar wage rate to that of unit employees; has benefits that overlap with those
18 received by unit employees; works the same full-time schedule as unit employees; has no difference
19 in qualifications necessary to hold the job compared to other unit jobs; performs many of the same
20 tasks performed by the Weighmaster and Spotter classifications; wears the same uniform as other unit
21 employees; shares a common break room with and uses the same clock-in/clock-out process as other
22 unit employees; and receives common training with other unit employees.

23 All of this evidence convincingly establishes that the newly created MRC classification, a
24 classification that is fully integrated into the work process carried out by the Weighmaster and
25 Spotter, working under the exact same supervision as those two classifications, has little or no
26 separate group identity and thus cannot be considered to be a separate appropriate unit and shares an
27 overwhelming community of interest with the preexisting unit to which it is accreted.
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1 Accordingly, Petitioner respectfully requests the Board to affirm the Regional Director's
2 Decision dated October 25, 2017.

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4 Dated: February 27, 2018

BEESON, TAYER & BODINE, APC

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6 By: /s/ Andrew H. Baker

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