

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RECOLOGY, INC. d/b/a  
HAY ROAD LANDFILL,

Employer,

And

Case 20-UC-191943

TEAMSTERS, LOCAL 315,

Petitioner.

**EMPLOYER RECOLOGY'S BRIEF TO THE BOARD  
FOLLOWING GRANT OF REVIEW**

Carmen Plaza de Jennings (SBN 091742)  
Jayne Benz Chipman (SBN 140048)  
HIRSCHFELD KRAEMER LLP  
505 Montgomery Street 13th Floor  
San Francisco, CA 94111  
Telephone: (415) 835-9000  
Facsimile: (415) 834-0443  
cpdjennings@hkemploymentlaw.com  
jchipman@hkemploymentlaw.com

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	4
I. INTRODUCTORY STATEMENT .....	5
II. FACTS .....	5
A. Recology’s Hay Road Operations.....	5
B. The Significant Fraud And Theft Scheme Perpetrated By All Local 315 Weighmasters And A Local 315 Foreman .....	6
C. Recology’s Creation Of The MRC Position In 2016 In Direct Response To The Weighstation Theft Schemes In Order To Protect Its Property From Potential Future Fraud And Theft .....	7
D. The Local 315 Bargaining Unit And The Weighmaster And Spotter Positions .....	10
1. The Weighmaster Position.....	10
2. The Spotter Position.....	11
E. Procedural Background.....	12
1. The Union’s UC Petition And The Region’s Administrative Investigation.....	12
2. The Regional Director’s Decision .....	12
III. ISSUE.....	14
IV. SUMMARY OF LEGAL ARGUMENT .....	14
A. The Board’s Restrictive <i>Safeway Stores</i> Standard For Finding Accretion In Rare Circumstances .....	14
B. The Regional Director’s Decision Finding Accretion Appropriate Was Inconsistent With <i>Safeway Stores</i> And Should Be Reversed .....	16
1. The Regional Director Failed To Assess Whether the MRCs Have Retained Their Separate Group Identity .....	16

**TABLE OF CONTENTS (CONTINUED)**

	<b>Page</b>
2. The Regional Director’s Finding That There Was An “Overwhelming Community Of Interest” Between The MRC Position And The Local 315 Bargaining Unit Was Erroneous And Should Be Reversed.....	19
V. CONCLUSION .....	22

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Allen Services Co., Inc.</i> , 314 NLRB 1060 (1994).....	18
<i>Archer Daniels Midland Co.</i> , 333 NLRB 673 (2001).....	15
<i>AT Wall Co.</i> , 361 NLRB No. 62 (2014).....	15, 19
<i>Combustion Engineering, Inc.</i> , 195 NLRB 909 (1972).....	15, 19
<i>E.I. Du Pont de Nemours, Inc.</i> , 341 NLRB 607 (2004).....	19
<i>Essex Wire Corp.</i> , 130 NLRB 450 (1961), 453 (1961).....	14, 19
<i>Frontier Telephone of Rochester, Inc.</i> , 344 NLRB 1270 (2005).....	14, 15, 19
<i>Judge &amp; Dolph, Ltd.</i> , 333 NLRB 175 (2001).....	20
<i>NV Energy, Inc.</i> , 362 NLRB No. 5 (2014).....	14
<i>Safeway Stores, Inc.</i> , 256 NLRB 918 (1981).....	<i>passim</i>

**I.**  
**INTRODUCTORY STATEMENT**

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 is inconsistent with the Board’s restrictive standard set forth in *Safeway Stores, Inc*, 256 NLRB 918 (1981) (“*Safeway Stores*”) for finding accretion. The Board’s *Safeway Stores* restrictive standard for making accretion decisions assures that accretion is the exception and not the rule, by requiring two separate findings: (1) whether the subject employees “have little or no separate group identity and thus cannot be considered to be a separate appropriate unit,” *and* (2) whether the subject employees “share an overwhelming community of interest” with the bargaining unit to which they would be accreted. The *Safeway Stores* standard is thereby designed to assure that the right of employees to determine their *own* bargaining representative is not thwarted. (*Id.* at 918.)

The Regional Director incorrectly applied the *Safeway Stores* standard to find that accretion of the MRCs into the existing Local 315 bargaining unit at Employer Recology, Inc.’s (“Recology”)<sup>1</sup> Hay Road solid waste disposal facility was appropriate. Moreover, in addition to failing to apply the correct legal standard, the Regional Director’s decision reflects an incredibly 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. Reversal by the Board and denial of accretion are therefore warranted in this case.

**II.**  
**FACTS**

**A. 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

---

<sup>1</sup> The correct name of the Employer is Recology Hay Road. The Employer requests that its correct name be used in the case caption moving forward.

Valley. The Hay Road facility processes various types of waste, including asbestos, yard trimmings, treated wood waste, concrete, asphalt, construction and demolition debris, metal, appliances and white goods, and general household refuse.

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

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

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

In early 2016, Recology investigated two substantial fraud and theft schemes at its Hay Road location involving all of the Weighmasters and a Foreman in the Local 315 bargaining unit. One of the fraud schemes involved the Weighmasters not issuing weight tickets to customers when weight tickets should have been issued (and instead taking cash kickbacks from customers for personal gain). The other fraud scheme, concerning the Foreman, involved permitting haulers to falsify the type of debris (and resulting price) on weight tickets in exchange for cash kickbacks to the Foreman for personal gain.

Recology conducted an investigation into both fraud schemes – which based on current information available to Recology amounted to a revenue loss to Recology of approximately two million dollars. Law enforcement simultaneously conducted a criminal investigation which is still ongoing.

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

**C. Recology's Creation Of The MRC Position In 2016 In Direct Response To The Weighstation Theft Schemes In Order To Protect Its Property From Potential Future Fraud And Theft**

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

The MRC monitors the accuracy of the Weighmasters' work at the scale house to make sure that the Weighmasters or other Local 315 bargaining unit members are not stealing Recology's revenues. To ensure the MRC's review of the accuracy of the weight tickets issued by the Weighmasters, Recology has supplied the MRC with special equipment. A yellow observation tower (two-level steel platform over 8 feet tall) was constructed specifically for the MRC role and is situated approximately 200 yards down the road from the scale house. This structure did not exist prior to the discovery of the fraud schemes. (*See Appendix 1, Recology's May 15, 2017 Position Statement ("Position Statement") Photographs 1 and 2.*)

The MRC stands at the observation structure, stops vehicles en route from the scale house to the disposal area, verifies the accuracy of the customer's weight ticket prepared by the Weighmaster, and inspects the load of debris by examining

the contents from the top of the observation platform and utilizing a mirror on an extended rod as part of reviewing the accuracy and legitimacy of the Weighmaster's ticket. (See Appendix 1, Position Statement Photographs 1 and 2.)

The MRC monitors the honesty and accuracy of the Weighmasters' work on behalf of management as follows:

- *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 intentional 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 intentionally 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 members of Recology's management whether further investigation and/or disciplinary action involving any Local 315 Weighmaster (or other Local 315 bargaining unit member) is warranted.<sup>2</sup> In this respect, the MRC enforces against employees rules to protect Recology's property. This duty runs counter to the duty imposed by Local 315 on its bargaining unit members to not testify against other Local 315 bargaining unit members in disciplinary proceedings.

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

In addition to the current primary function of protecting the employer's resources and serving as management's check on the Weighmasters' honesty in

---

<sup>2</sup> In addition to maintaining the discrepancy log, the MRC when needed notifies the scale house to make sure that the customer returns to the scale house to pay the appropriate fee. The MRC also assists the Site Supervisor with administrative tasks in the office prior to opening of the Hay Road facility to the public for business, as needed. No Local 315 bargaining unit members assist the Site Supervisor with administrative tasks.

<sup>3</sup> Upon occasion, a customer will ask the MRC questions about where to dump the waste (if the Weighmaster has not provided the instructions, or the instructions provided were forgotten or not understood by the Customer).

the performance of their duties, the MRC position will soon begin performing additional regulatory compliance duties on behalf of Hay Road's management once the training is fully complete. The regulatory compliance duties for the MRC will include compost sampling, compost pond monitoring, odor monitoring inspection, and compost inspection. Training commenced in early 2017. Once all training is complete, Recology intends to have the MRC perform these types of compliance testing at Hay Road as needed. No Union members have received, or will receive, this training or perform these regulatory compliance job functions.

The MRC works a daily schedule. The MRC shift begins at 7:00 a.m. and ends at 5:30 p.m. The MRC is compensated at \$16.50/hour and receives medical, dental and vision health benefits, as well as life insurance benefits, that are different from those received by Local 315 bargaining unit members.<sup>4</sup>

#### **D. The Local 315 Bargaining Unit And The Weighmaster And Spotter Positions**

The Local 315 bargaining unit at Hay Road currently consists of the following classifications: Foreman (3 positions), Equipment Operator (12 positions), Equipment Servicer (1 position), Spotter (1 position), Laborer (10 positions), and Weighmaster (3 positions). Local 315 incorrectly contended in its UC Petition and during the Region's investigation that the Spotter position – created in 2015 before the fraud schemes were discovered – performs essentially the same duties and serves the same function as the MRC.

Recology has never been advised by the Region that Local 315 contends that the Weighmaster and the MRC performed the same duties or function, and in fact they do not perform the same duties or function.

##### **1. The Weighmaster Position**

The Weighmaster spends his/her day working at the scale house, a small, self-contained building. The Weighmaster reviews the type of contents/debris in the customer's vehicle to be dumped (e.g., appliances, general waste, concrete, green waste, asbestos, etc.). No observation platform or inspection rod are used

---

<sup>4</sup> These benefits are provided through Recology.

by the Weighmasters. The Weighmaster then prepares a weight ticket that identifies the type of debris to be dumped, and the dumping fee charged for the type of debris (e.g., appliances, general waste, concrete, green waste, asbestos, etc.). After conducting the payment transaction, the Weighmaster then provides the customer with the appropriate directions to the correct disposal area for the type of debris to be dumped, where they are then guided by a Spotter (Local 315 bargaining unit position) to safely position their vehicle to dispose of the debris.

The Weighmaster schedule is daily, 6:00 a.m. to 2:30 p.m. and 8:00 a.m. to 4:30 p.m. Weighmasters are compensated under Local 315's Collective Bargaining Agreement with Recology and earn \$21.65/hour. Unlike the MRC, they do not receive any Recology-sponsored benefits. They also receive benefits in accordance with Local 315's Collective Bargaining Agreement.

## **2. The Spotter Position**

The Spotter position was created in 2015 by Recology as a dedicated position to specifically assume more responsibility for vehicle safety in the tipping/dumping area than was being exercised by Laborers (also in the Local 315 bargaining unit). Recology and Local 315 agreed that the new Spotter position was appropriately part of the Local 315 bargaining unit and entered into a Letter of Understanding dated October 20, 2015, placing the Spotter in the bargaining unit. The primary job function of the Spotter is to safely direct traffic in the tipping/dumping area. The Spotter stands at the active waste disposal area (approximately three-quarters of a mile from the MRC station) 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. The Spotter also ensures that certain large vehicles (semi backend dumps) are spaced approximately 50 feet apart, also for reasons related to safety. In addition, the 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. Based on the Spotter's position, he/she is not able to verify the work of the Weighmasters. (See Appendix 1, Recology's May 15, 2017 Position Statement photographs 3 and

4.)

The Spotter rarely interacts with the MRC, and there is no interchange of duties (either temporary or permanent) between the Spotter and the MRC. Spotters do not perform MRC duties. 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 Spotter schedule is daily, from 7:00 a.m. to 5:30 p.m. Spotters are compensated under Local 315’s Collective Bargaining Agreement with Recology and earn \$18.41/hour on the Local 315 pay scale. They also receive benefits in accordance with Local 315’s Collective Bargaining Agreement. Unlike the MRC, Spotters do not receive Recology-sponsored benefits.

#### **E. Procedural Background**

##### **1. The Union’s UC Petition And The Region’s Administrative Investigation**

On January 27, 2017, Local 315 filed a UC Petition to clarify the bargaining unit and/or accrete the newly created Material Receiving Coordinator (“MRC”) position into the Local 315 bargaining unit. In relevant part, the UC Petition stated: “[t]he Union asserts that the ‘Material Review’ position is the ‘Spotter/Traffic Control/Load Checker’ position that the parties negotiated to be included in the existing bargaining unit. Alternatively, the Union asserts that the ‘Material Review’ position shares an overwhelming community of interest with the existing bargaining unit, such that it should be added by accretion.”

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

##### **2. The Regional Director’s Decision**

On October 15, 2017, the Regional Director for Region 20, Jill H. Coffman, issued her determination following the Region’s administrative investigation, clarifying the Local 315 bargaining unit to include the MRC

position. (October 25, 2017 Decision and Clarification of Bargaining Unit, Case 20-UC-191943, hereinafter “RD Decision.”) The Region’s administrative investigation consisted of “taking sworn testimony from employees holding the disputed position and reviewing and considering the parties’ position statements.” (RD Decision, p. 1.)

The Regional Director determined that accretion was appropriate. The Regional Director, in so concluding, focused solely on whether the MRCs shared an “overwhelming community of interest” with the Local 315 bargaining unit. The Regional Director concluded that the MRCs shared the requisite “overwhelming community of interest” with the Local 315 bargaining unit based, in relevant part, on the following limited findings and rationale:

- 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. (RD Decision, p. 4.)
- While MRCs do not have significant interchange with other members of the bargaining unit, the evidence established that there is daily contact and functional integration between MRCs and the Weighmasters and Spotters. (RD Decision, p. 5.)
- The Employer utilizes a “quasi-production line model” where Weighmaster’s 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. (RD 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. (RD Decision, p. 6.)

### **III.** **ISSUE**

The Board granted Recology's Request for Review on February 13, 2018, as to whether the Regional Director's finding that the MRCs constitute an appropriate accretion to the unit was consistent with the Board's standard articulated in *Safeway Stores, Inc.*, 256 NLRB 918 (1981).

### **IV.** **SUMMARY OF LEGAL ARGUMENT**

#### **A. The Board's Restrictive *Safeway Stores* Standard For Finding Accretion In Rare Circumstances**

The Board's *Safeway Stores* restrictive standard for making accretion decisions requires two separate findings: (1) whether the subject employees "have little or no separate group identity and thus cannot be considered to be a separate appropriate unit," and (2) whether the subject employees "share an overwhelming community of interest" with the bargaining unit to which they would be accreted. (*Safeway Stores, Inc.*, 256 NLRB 918 (1981) ("*Safeway Stores*"). Because the two *Safeway Stores* prongs of the standard are stated in the conjunctive, each provides an independent requirement and both prongs must be met for accretion to occur. The absence of either prong precludes accretion.

The Board's accretion standard is restrictive because accretion is the exception, not the rule. "The Board's fundamental concern ... is to insure that in cases where [accretion] is raised the right of interested employees to determine their own bargaining representative will not be thwarted." (*Safeway Stores*, 256 NLRB at 918; see also *NV Energy, Inc.*, 362 NLRB No. 5 at 23 (2014) (noting restrictive standard for finding accretion); *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005) ("*Frontier Telephone*") (noting "longstanding restrictive policy" in finding accretion); *Essex Wire Corp.*, 130 NLRB 450 (1961), 453 (1961) (noting that where factors favoring accretion are counterbalanced by factors which tend to establish the appropriateness of a separate unit, accretion is not appropriate).)

*Safeway Stores* restrictive standard for finding an accretion therefore

requires a heightened standard over a mere finding of “community of interest” among affected employees sufficient to order a representation election. The Board “rejects an accretion unless the two [*Safeway Stores*] prerequisites have been satisfied.” (*Frontier Telephone*, 344 NLRB at 1271, n. 7.) The first *Safeway Stores* finding – whether the employees can function as a separate unit – determines whether the employees should be allowed to exercise their free choice through an election. If the determination is made that the employees can function as a separate unit, an accretion is not appropriate. However, if it is determined that the employees cannot function as a separate unit – the second *Safeway Stores* finding (“overwhelming community of interest”) ascertains whether the unit is one to which the employees who could not be a separate unit should be accreted or determines whether they should be accreted to any unit at all. The *Safeway Stores* restrictive standard assures that accretion of employees to a bargaining unit will only occur in those *extraordinary cases* in which the Board can be reasonably certain that the accreted employees share such similar interests with employees in the bargaining unit that they would choose it.

The Board examines traditional community of interest factors in determining whether new employees share a community of interest with employees of an existing bargaining unit: integration of operations, centralization of management and administrative control, geographical proximity, similarity of working conditions, skills and functions, common control of labor relations, collective bargaining history, and interchange of employees. (*See, e.g., Archer Daniels Midland Co.*, 333 NLRB 673 (2001).) The Board has deemed two factors – *employee interchange and common supervision* – critical to the finding of an “overwhelming community of interest” necessary for accretion. The absence of these critical factors will ordinarily defeat the finding of overwhelming community of interest necessary for accretion. (*See, e.g., Frontier Telephone*, 344 NLRB at p. 1271 and fn. 7; *AT Wall Co.*, 361 NLRB No. 62 (2014), slip op. at 19 (citing critical factors rule for finding accretion); *Combustion Engineering, Inc.*, 195 NLRB 909 (1972) (“the absence, or infrequency, of interchange of employees is probably the one factor most commonly relied upon by the Board in

finding no accretion, and the Board has not deemed it material that interchange was feasible”).)

**B. The Regional Director’s Decision Finding Accretion Appropriate Was Inconsistent With *Safeway Stores* And Should Be Reversed**

Although the Regional Director cited the *Safeway Stores* standard, she did not properly apply it in Recology’s case. The Regional Director’s Decision should therefore be reversed and a finding entered that accretion is not appropriate.

**1. The Regional Director Failed To Assess Whether the MRCs Have Retained Their Separate Group Identity**

The Regional Director’s Decision is inconsistent with *Safeway Stores* because it does not contain any determination about whether the MRCs could be considered a separate appropriate bargaining unit. In this regard, the Regional Director appears to have ignored the *Safeway Stores*’ obligation to first determine whether MRCs retained a separate group identity, instead incorrectly focusing solely on whether the MRCs shared an “overwhelming community of interest” with the Local 315 bargaining unit. This failure, alone, justifies reversal of the Regional Director’s decision.

Had the Regional Director analyzed whether the MRCs could be a separate appropriate bargaining unit, she would have concluded that the MRCs have *retained their separate identity aligned with Recology’s management*, thus making accretion legally inappropriate.

The Regional Director’s Decision fails entirely to consider the abundant evidence about the role the MRC serves at Recology’s Hay Road facility. The Regional Director’s Decision evidences a *complete absence* of any discussion or consideration of the abundant factual evidence presented by Recology that the impetus for creating the MRC position by Recology, and the unique and distinct function the MRC position serves, is to protect Recology’s property from Local 315 Weighmasters and other bargaining unit employees and for the MRC to monitor their compliance with Company policies. The Regional Director’s Decision fails entirely to even so much as mention the considerable and credible

factual evidence provided by Recology that is *crucial* to understanding the MRCs' function at the Hay Road worksite, the MRCs' retention of their separate identity, and the lack of community of interest with Local 315 bargaining unit employees:

- Local 315 Weighmasters and a Foreman were terminated for their involvement in two fraud schemes operating at the Hay Road facility that resulted in the loss of *significant* revenue to Recology. Local 315 did not grieve the terminations and is fully aware of the circumstances.
- The fraud/theft involved misconduct by the Weighmasters, i.e., failing to fill out weight tickets in exchange for cash kickbacks from customers in a scheme to steal significant sums of money from Recology via the weighstation.
- The MRC position was created by Recology to enable it to protect its property and operations from future fraud/theft by the Weighmasters and other Local 315 bargaining unit members. Absent the significant embezzlement by the Weighmasters and Foreman, the MRC position would not have been created.
- Recology built the MRC an observation tower and supplied a mirrored inspection rod, both equipment utilized only by the MRC, so that the MRC could *verify that the Weighmasters were not engaging in fraud or theft* of the Company's revenues. This observation tower is situated separately from the scale house where the Weighmasters work (approximately 200 yards down the road). The MRC works alone for most of the MRC's workday at the tower.
- The MRC is responsible for logging discrepancies in the Weighmasters' weight 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), citing *Jakel Motors*, 288 NLRB 730, 742-43 (1988) (finding that where employees performed security work in addition to their maintenance work they were appropriately excluded from the unit as statutory guards as enforcing against employees and other persons rules to protect the property of the employer).)<sup>5</sup>

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.

Finally, Recology’s Hay Road operation is absolutely not analogous to that of a “quasi-production line” – with the role of the MRC being merely one step in the production – as posited by the Regional Director and urged by Local 315. In contrast to the Local 315 Weighmasters, Foreman, and the Spotters, the MRC was not established to be part of the “production process” at Hay Road. The *raison d’être* for the MRC is not simply “quality control” or a mere “check” in the processing line, but to monitor/police on behalf of Recology management the work done by Local 315 bargaining unit employees as a result of the

---

<sup>5</sup>Local 315 has contended, incorrectly, that the MRCs are more analogous to “quality control” or lead persons. (Petitioner’s Statement In Opposition To Recology’s Request For Review Of Regional Director’s Decision, p. 4.) This assertion is incorrect. It ignores the fact that the MRC position was created in direct response to the significant fraud and theft of Recology’s property (at least approximately two million dollars) and for the sole purpose to monitor the accuracy and legitimacy of Local 315 bargaining unit members’ work on behalf of the employer.

significant fraud perpetrated on Recology.

In Recology's case, these factors demonstrate that the MRCs have retained their separate identity, in fact have greater group identity with non-unit employees than Local 315 bargaining unit employees, and could be a separate appropriate bargaining unit. (*E.I. Du Pont de Nemours, Inc.*, 341 NLRB 607, 609 (accretion found improper in part because the PSM examiner position had greater group identity with non-unit employees); *Essex Wire*, 130 NLRB No. at 453 (accretion is not appropriate when new employees could be a separate unit.)

**2. The Regional Director's Finding That There Was An "Overwhelming Community Of Interest" Between The MRC Position And The Local 315 Bargaining Unit Was Erroneous And Should Be Reversed**

While the Regional Director assessed whether the MRCs share the requisite "overwhelming community of interest" with the Local 315 bargaining unit, the Regional Director erred in its analysis and application of the "overwhelming community of interest" standard to find accretion appropriate. The Regional Director's decision should also be reversed on this basis.

**a. "Employee Interchange" Is Critical To Finding Overwhelming Community of Interest And Is Wholly Absent In This Case**

The presence of actual "employee interchange" is a *critical factor* to finding an "overwhelming community of interest." (*See, e.g., Frontier Telephone*, 344 NLRB at p. 1271 and fn. 7 (absence of "critical factors" of employee interchange and common day-to-day supervision will normally defeat a claim for lawful accretion); *AT Wall Co.*, 361 NLRB No. 62 (2014), slip op. at 19 (citing critical factors rule for finding accretion); *Combustion Engineering, Inc.*, 195 NLRB 909 (1972) ("the absence, or infrequency, of interchange of employees is probably the one factor most commonly relied upon by the Board in finding no accretion").) The Board distinguishes between two types of interchange – temporary transfers and permanent transfers; permanent transfers are regarded by the Board as a less significant indication of actual interchange than temporary transfers. (*Frontier Telephone of Rochester, Inc., supra*, at p. 1271 (complete absence of evidence of temporary transfers, and evidence of a very few instances

of the less significant permanent transfers, falls well short of supporting a finding of interchange.) In this regard, it is immaterial that interchange is merely feasible; actual interchange is required to justify accretion. (*Judge & Dolph, Ltd.*, 333 NLRB 175 (2001).)

The Regional Director made the following factual finding: “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.” (Emphasis added.) (RD Decision, p. 4.) Despite *no facts* of employee transfers or performing other positions’ work, the Regional Director nevertheless concluded that the MRCs shared an “overwhelming community of interest” with the Local 315 bargaining unit.

The Regional Director’s finding of an “overwhelming community of interest” between the MRCs and the Local 315 Bargaining Unit – in the absence of the critical employee interchange factor – was a significant factual and legal error which in and of itself warrants reversal of the Regional Director’s Decision on accretion since employee interchange is critical to a finding of overwhelming community of interest.

**b. Other Community Of Interest Factors Do Not Support Accretion Of The MRCs Into The Local 315 Bargaining Unit**

The other community of interest factors, likewise, do not support accretion of the MRCs into the Local 315 bargaining unit, especially in the absence of the critical factor of employee interchange.

The MRCs and Local 315 have markedly different job responsibilities. There is no similarity of job classification or duties between the MRCs and the Local 315 bargaining unit employees. Nor are the MRCs part of a production line. The MRC, a non-union position aligned with management, does not share the same job classification or duties with the Weighmaster, Spotter or any Local 315 bargaining unit classification. As set forth fully above in Section II.D., the MRC’s sole purpose is to monitor the accuracy and legitimacy of the Weighmaster’s work in order to assist management in guarding against recurrence of significant fraud by the Weighmasters and other Local 315 bargaining unit

employees. In this regard, the Regional Director erroneously concluded that the MRCs, like the Weighmasters, “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” and that the work of the MRC is “almost indistinguishable from the Weighmasters’.” (RD Decision, pp. 3, 6.) This conclusion is clearly erroneous given the ample evidence that the MRC position was created to check the work of the Local 315 Weighmasters and Foreman for accuracy and legitimacy to guard against fraud perpetrated by Weighmasters and Foreman.

Recology prefers applicants for the MRC position to hold a high school diploma or general equivalency diploma, and neither role necessitates any type of specific experience. The same is true for other Local 315 bargaining unit positions which are entry level. Similarity of education and skill is therefore reasonable and, contrary to the Regional Director’s view, not evidence of “community of interest” in this case. (RD Decision, p. 6.)

Likewise, geographical proximity does not support community of interest in this case. The fact that the MRC works at the multi-acre Hay Road site is inconsequential given the absence of other key community of interest factors (e.g., lack of employee interchange, difference in role/duties, etc.). Indeed, the MRC works at the specially constructed tower that is located apart from the other Local 315 bargaining unit employees. The evidence establishes that MRCs stay in their own work area, and have only minimal contact throughout the work shift with Local 315 bargaining unit members during work time because of their separate work areas.

Finally, while common day-to-day supervision is also a critical factor for finding the requisite “overwhelming community of interest” to support accretion, it is of less import given the facts of this case. While the MRC and Local 315 bargaining unit positions are both supervised by the Site Supervisor (Shirley von Uhlit), this makes sense and is in no way dispositive of community of interest given the limited management structure at the Hay Road location (General Manager, Site Manager, and Site Supervisor). Although MRCs and Local 315 bargaining unit employees share a common supervisor, they are not supervised as

one group. Given the vastly different roles the MRC and Local 315 bargaining unit employees perform, and the differences in their conditions of employment, Ms. von Uhlit meets separately with the MRCs and the Local 315 employees under her supervision. Additionally, the MRCs receive training that no Union member receives (e.g., the regulatory compliance training referenced above). Likewise, the promotional opportunities between the MRC and Union positions differ. Union positions are posted, and only Union employees may bid on open positions.

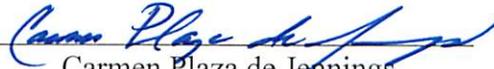
In sum, the Regional Director's conclusion that the MRCs share an "overwhelming community of interest" with the Local 315 bargaining unit is contrary to the facts. Therefore, the Regional Director's finding that accretion is appropriate should be reversed.

V.  
**CONCLUSION**

The Regional Director's Decision was inconsistent with the Board's *Safeway Stores* standard. The Regional Director's incorrect application of the *Safeway Stores* standard resulted in an erroneous conclusion that accretion was appropriate. In this regard, the Regional Director failed to perform its statutory role to protect the self-determination rights of the MRCs. The Regional Director's decision must therefore be reversed with a finding that accretion is not appropriate.

Dated: February 27, 2018

HIRSCHFELD KRAEMER LLP

By:   
Carmen Plaza de Jennings  
Jayne Benz Chipman

Attorneys for Employer  
RECOLOGY, INC. d/b/a HAY ROAD  
LANDFILL

# Appendix 1

HIRSCHFELD  
KRAEMER LLP  
O O O O O O O O O O O O

CARMEN PLAZA DE JENNINGS  
Tel: (415) 835-9000  
cpdjennings@hkemploymentlaw.com

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](mailto: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.

Southern California  
233 Wilshire Boulevard  
Suite 600  
Santa Monica, CA 90401  
T 310 255 0705  
F 310 255 0986

Northern California  
505 Montgomery Street, 13th Floor  
San Francisco, CA 94111  
T 415 835 9000  
F 415 834 0443

Nevada  
5441 Kletze Lane, 2nd Floor  
Reno, NV 89511  
T 775 826 7100  
F 775 826 8256  
4830-3319270932

**I. RELEVANT FACTS**

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

Customers disposing of waste enter Recology's Hay Road property with a vehicle/truck containing debris. A vehicle is required to first stop at the scale house where the Weighmasters work (Local 315 bargaining unit position). The Weighmaster reviews the contents of the truck and prepares a weight ticket that identifies the type of debris (e.g., appliances, general waste, concrete, green waste, asbestos, etc.). The accuracy of the weight ticket is critical to Recology's operations (and its customers) because the customer is charged different dumping fees depending on the type of debris. The customer then pays the Weighmaster the appropriate fees according to the weight ticket issued by the Weighmaster. After conducting the payment transaction, the Weighmaster then provides the customer with the appropriate directions to the correct disposal area for the type of debris to be dumped, where they are then guided by a "Spotter" (Local 315 bargaining unit position) in safely positioning their vehicle to dispose of the debris.

There are seven non-Union employees at the Hay Road facility: General Manager, Site Manager, Site Supervisor, Environmental Specialist, Administrative Assistant, and Material Receiving Coordinator (two positions).

**B. The Weighstation Theft Ring And The Resulting Creation Of The Material Receiving Coordinator (MRC) Position In 2016**

In early 2016, Recology investigated a substantial theft ring at its Hay Road location involving all of the Weighmasters and a Foreman in the Local 315 bargaining unit. The thefts involved the Weighmasters, in some cases, falsifying the type of debris and price on the weight ticket or, in other cases, not issuing weight tickets to customers when weight tickets should have been issued. Recology conducted an investigation into the thefts, in which Local 315 Business Agent Dustin Baumbach participated.<sup>1</sup> The results of Recology's investigation led to termination of several Local 315 bargaining unit members, including all of the Weighmasters and a Foreman.<sup>2</sup>

---

<sup>1</sup> Baumbach was present during Recology's workplace investigation interviews of Local 315 members and is therefore keenly aware of the investigation and reasons for terminations of certain Local 315 members. The law enforcement investigation is still ongoing.

<sup>2</sup> The union never filed grievances regarding these terminations.

In response to the significant theft of Recology revenue by the Local 315 Weighmasters (all three) and a Foreman, Recology created the MRC position outside the Local 315 bargaining unit to address its justifiable concern to protect its operations from theft. The MRC position was created by Recology to monitor the accuracy of the Weighmasters' work to make sure that they issued weight tickets to customers, correctly identified the type of waste on the weight ticket and obtained the corresponding payment from the customers. The MRCs are responsible for confirming that weight tickets have been generated by the Weighmasters at the scale house, reviewing such weight tickets and checking the actual commodity (debris) against the contents of the weight ticket and ensuring that the correct price is charged.

To facilitate the MRCs' review of the accuracy of the weight tickets generated by the Weighmasters in relation to the type of debris in a vehicle/truck to be dumped, Recology constructed a yellow observation tower specifically for the MRC's use. The MRC tower is located approximately 200 yards down the road from the scale house on the way to the disposal area. The observation structure is a two-level steel platform and is over 8 feet tall. (See attached photographs 1 and 2.)

The MRC stands at the observation structure. When a vehicle approaches after having gone through the weigh station, the MRC takes the weight ticket from the customer. He or she then climbs onto the platform to look down into the truck's load and ensure that the contents of the truck match the type of debris listed on the weight ticket prepared by the Weighmaster. The MRC also uses a mirror on an extended rod to facilitate a closer examination of the materials in the truck bed. The MRC identifies any waste in the vehicle that has 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 bargaining unit member) is warranted. In addition to maintaining the discrepancy log, the MRC when needed notifies the scale house to make sure that the customer returns to the scale house to pay the appropriate fee.

The MRC's *primary duty* is to be Recology management's "eyes and ears" checking that the Local 315 Weighmasters are properly performing their job duties.<sup>3</sup> Before Recology created the MRC position, there was no employee verifying that the Weighmasters completed a weight ticket for each incoming public vehicle or accurately characterized the type of debris or waste in the vehicle. Because the MRC position was specifically created to be management's "eyes and ears," a Local 315 unit member *never* steps into the MRC role or performs any of the MRC's duties when the MRC is not working, or is away from the MRC observation station for a meal or

---

<sup>3</sup> Although Recology installed cameras at the weigh station after the thefts were discovered, they are insufficient to detect the actual contents of the debris in the customer's vehicle or assess any discrepancy in the load ticket written by the Weighmaster. As such, they serve to only supplement the MRC's on-site review.



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.



reason the MRC position was created was to monitor employees within the Local 315 bargaining unit. Therefore, "interchange" would be completely contrary to the reason the MRC position exists. MRCs and Local 315 bargaining unit classifications do not cover for one another or assist each other in the performance of their duties. When the Spotter must be absent from the tipping point at the waste site, a Laborer (never the MRC) may fill in for him.

Thus, there is simply *no interchange*. On this basis alone, Local 315 fails to prove entitlement to accretion and its petition must be denied.

## 2. The Role And Duties Of The MRC And Local 315 Classifications Bear No Similarity

Another criterion in community of interest analysis is whether the non-bargaining unit position at issue has similar job functions to positions already within the bargaining unit. (*NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985) (mutuality of job functions and work is a factor looked at by the Board).)

The MRC's role is very straightforward. The MRC was specifically created, following the significant theft of Recology property by Local 315 bargaining unit employees, to be management's "eyes and ears" to check the accuracy of the Weighmasters' work. The MRC works at the MRC tower and compares the weight tickets filled out by the Weighmaster against the debris contained in the vehicle to be dumped. The MRC records all discrepancies between the weight ticket and vehicle debris content in the discrepancy log for the Site Supervisor's review. The discrepancy log is used by management to monitor the accuracy of the work performance of the Weighmasters, and take disciplinary actions when warranted.

The Spotter, on the other hand, was specifically created to safely direct vehicle traffic at the tipping/dumping area. No Local 315 classifications, including the Spotter, are responsible for reviewing every weight ticket to check the accuracy of the Weighmaster's description of the debris to be dumped against the actual debris contents of the vehicle, and recording any discrepancies in the log for management's review and use. While all Recology employees working at the Hay Road facility (union and non-union alike) are responsible for keeping watch for improper dumping of *hazardous materials* which Recology does not accept at its Hay Road location, this is an expectation of all employees and is not similar to the unique weight ticket/debris load review that is solely the responsibility of the MRC.

Likewise, the MRC does not conduct any similar duties as the Spotter. The MRC, who works nearly a mile away from the Spotter, does not direct traffic at the tipping/dumping site. The Spotter is exclusively responsible for ensuring that the dumping occurs 50 feet away from another vehicle. On rare occasion, if the Spotter sees improper items actively being dumped which were hidden from the MRC's view by virtue of being located at the bottom of a truck bed, the Spotter will inform another union member, the Weighmaster. The Spotter has not received

environmental testing training, will not receive such training in the future, and does not and will not perform any compliance duties. Nor will any other Local 315 bargaining unit employees perform such duties.

The dissimilarity of job function and duties between the MRC position and Local 315 positions, alone and certainly in conjunction with the lack of employee interchange, compels denial of Local 315's petition.

**3. The Remaining "Community of Interest" Factors Do Not Support Accretion In This Case**

The additional factors reviewed by the Board in community of interest analysis likewise do not support accretion of the MRC position into the Local 315 bargaining unit:

- *Supervision And Conditions Of Employment:* While the MRC and Spotter are both supervised by the Site Supervisor (Shirley von Uhlit), this makes sense and is in no way dispositive of community of interest given the limited management structure at the Hay Road location (General Manager, Site Manager, and Site Supervisor). Although they share a common supervisor, they are not supervised as one group. Given the vastly different roles the MRC and Spotter perform, and the differences in their conditions of employment, Ms. von Uhlit meets separately with the MRCs and Spotters (and other Local 315 employees under her supervision). The MRC and Spotter work different hours, have different shifts, and markedly different job responsibilities, as noted above. Additionally, the MRCs receive training that no union member receives (e.g., the regulatory compliance training referenced above). Likewise, the promotional opportunities between the MRC and Spotter or any other union position differ. Union positions are posted, and only union employees may bid on open positions.
- *Job Classification:* There is no similarity of job classification. MRC, a non-union position aligned with management, does not share the same job classification with the Spotter or any Local 315 bargaining unit classification.
- *Skills And Education:* Recology prefers applicants for either position to hold a high school diploma or general equivalency diploma, and neither role necessitates any type of specific experience. The MRC and Spotter positions are both entry-level, involve straightforward tasks, and it is therefore reasonable and not dispositive of "community of interest" that they have the same basic skill and education requirements.
- *Geographic Proximity:* Likewise, the fact that the MRC works at the multi-acre Hay Road site is likewise inconsequential given the absence of other key

HIRSCHFELD  
KRAEMER LLP  
●●●●●●●●●●●●●●●●

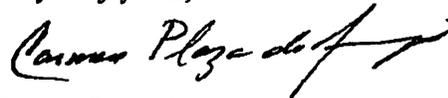
community of interest factors (e.g., lack of employee interchange, difference in role/duties, etc.).

\* \* \* \* \*

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



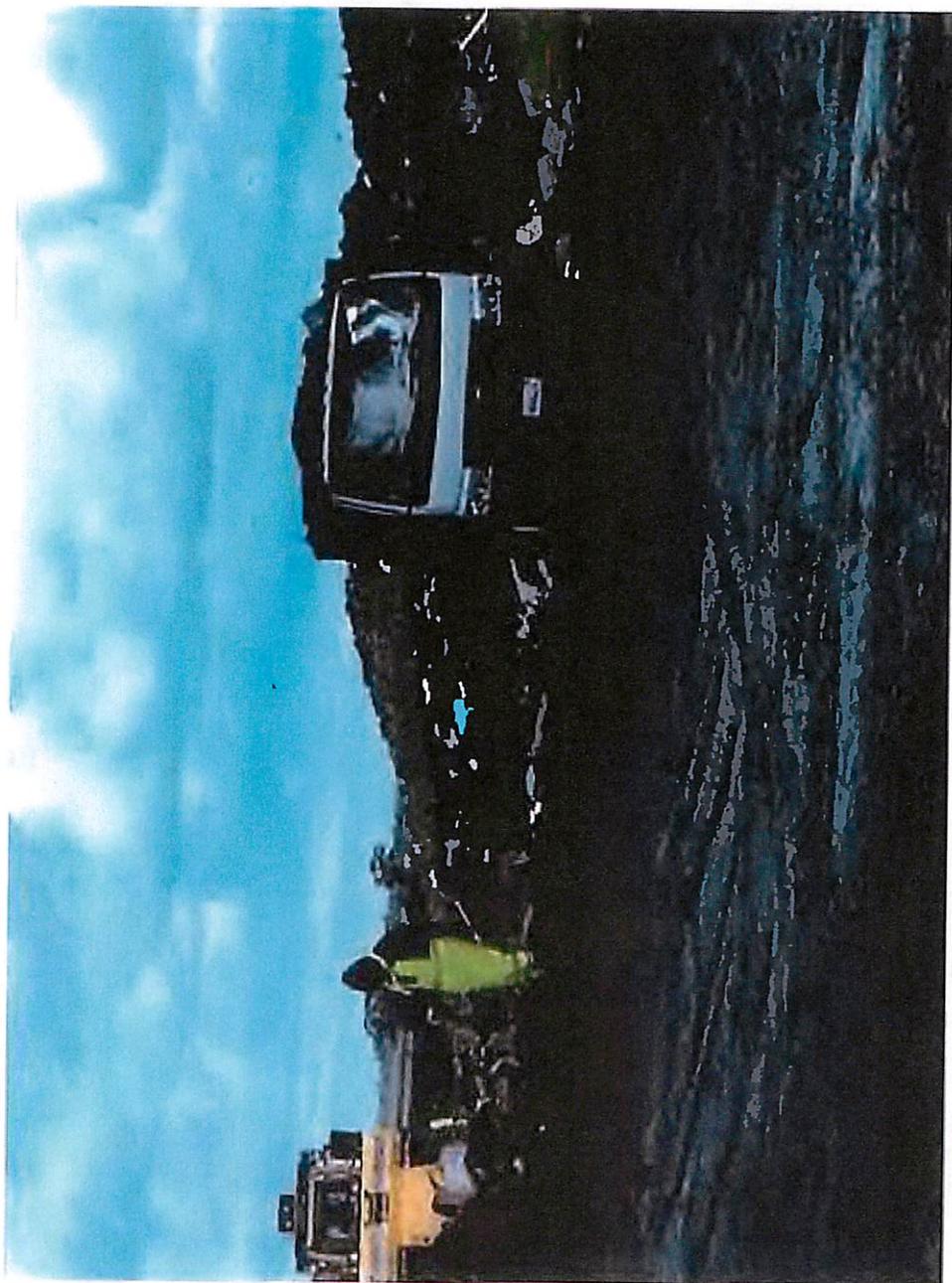
MRC LOOKOUT TOWER  
(plus restroom)

Attachment 2



SPOTTER AT DUMP SITE  
Directing Customer Vehicles

Attachment 3



SPOTTER AT DUMP SITE  
Directing Customer Vehicles

Attachment 4

## PROOF 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 February 27, 2018, I served the following document(s) by the method indicated below:

#### EMPLOYER RECOLOGY'S BRIEF TO THE BOARD FOLLOWING GRANT OF REVIEW

- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the **United States mail** at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Andrew H. Baker  
Beeson, Tayer & Bodine, APC  
483 Ninth Street, 2<sup>nd</sup> Floor  
Oakland, CA 94607-4051  
Tel. (510) 625-9700  
Fax (510) 625-8275  
E-mail: abaker@beesontayer.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am employed by an officer of a member of the bar of this Court at whose direction the service was made. Executed on February 27, 2018 at San Francisco, California.

  
Larry Nelson