

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

CR&R INCORPORATED

Employer

and

**Cases 21-RC-262469
21-RC-262474**

**PACKAGE & GENERAL UTILITY
DRIVERS, TEAMSTERS LOCAL
UNION NO. 396**

Petitioner

DECISION AND DIRECTION OF ELECTION

Package & General Utility Drivers, Teamsters Local Union No. 396 (Petitioner) seeks, by the instant petition, to represent a bargaining unit (Unit) of employees employed by CR&R Incorporated (Employer). Petitioner and the Employer agree to the scope of the proper unit, a single bargaining unit consisting of employees at the Employer's Perris and Cherry Valley facilities, both located in Riverside County, California.

Petitioner and the Employer disagree regarding the composition of the unit. Petitioner seeks a unit consisting of employees in numerous classifications employed at Perris and Cherry Valley, as well as all drivers working out of those locations. The Employer maintains that the only appropriate bargaining unit is one that excludes the drivers in its transportation department. There are approximately 286 employees in the petitioned-for Unit, 20 of whom are in dispute.

A Hearing Officer of the National Labor Relations Board (Board) held a hearing on July 15, 2020, in this matter. The Petitioner argued orally on the record. The Employer submitted a post-hearing brief. As fully explained below, based on the record evidence and the relevant Board law, I find the petitioned-for unit is an appropriate bargaining unit. Having found the petitioned-for unit appropriate, I have directed an election accordingly. Because of the ongoing COVID-19 pandemic, I have ordered this election to be conducted by mail.

I. RECORD EVIDENCE

A. *The Employer's Operations*

The Employer provides customers residential and commercial waste disposal out of a network of facilities located throughout Los Angeles, Orange, San Bernardino,

Imperial, and Riverside Counties in southern California. At issue in the present case are two facilities located in Riverside County, a large transfer station and full-service facility located in Perris, California (Perris or Perris facility) and a small satellite facility located approximately 30 miles from Perris in Cherry Valley, California (Cherry Valley or Cherry Valley facility). In addition to the Perris facility, the Employer also operates waste collection and transfer stations in Colton, San Juan Capistrano, Santa Fe Springs, and Stanton, California. The Employer's facility in Stanton also contains its corporate office. In addition to Cherry Valley, the Employer also operates five satellite facilities in Anza, Idyllwild, Nuevo, Garden Grove, and Mountain Center, California.

Drivers depart from the Employer's facilities to perform daily routes using side-loading trucks ("side loaders"), for collecting waste from residential bins, front-loading trucks ("front loaders"), for collecting waste from commercial bins, or roll-off trucks ("roll offs"), for collecting large commercial or industrial dumpsters. After completing their routes, these drivers typically return to their facilities and unload the collected waste, where it is sorted and otherwise prepared for transportation by yard employees. A second group of drivers uses tractor trailer combinations to transport waste between facilities. This may include hauling material from satellite facilities to transfer stations for further sorting and transportation, moving materials between transfer stations, or taking material to its ultimate destination, such as waste to a municipal landfill or recyclables to a processing plant. Because the side loaders, front loaders, and roll offs require a class B commercial driver's license to operate, the drivers that operate these trucks are referred to as "B drivers." Tractor trailer combinations require a class A commercial driver's license to operate and these drivers are referred to as "A drivers."¹

Approximately 270 employees are employed at the Perris facility, of whom about 165 are B drivers and 20 are A drivers. The Employer employs 16 employees at Cherry Valley, 13 of whom are B drivers. No A drivers are based at Cherry Valley. Both Perris and Cherry Valley report to the same regional operations manager.

Petitioner currently represents separate bargaining units consisting of employees employed at some of the Employer's other facilities. These include a unit of drivers, helpers, yardpersons, bin repairpersons, mechanics, and truck maintenance employees employed at the Colton facility, as well as a separate unit of operators, scale operators, and laborers employed at Colton. Petitioner also represents a unit of only drivers employed at the San Juan Capistrano facility, and a unit of drivers, helpers/swampers, bin repairpersons, mechanics, and truck maintenance classifications at Stanton. Two of these facilities, San Juan Capistrano and Stanton, have A drivers at the facility, but the A drivers are not included in the respective bargaining units. No employees at Perris or Cherry Valley are currently represented.

¹ The A drivers are also referred to as "transfer drivers" at points in the record. The term A drivers is used in this Decision to mirror the use of the term by the parties: a driver that is part of the transportation department. Although the term "A driver" refers to an employee with a class A commercial driver's license, some employees in various classifications may hold a class A license, but do not perform work requiring a class A license for the Employer, and do not work in the Transportation Division.

The Employer operates a “sister company,” Haulaway Storage Containers Inc. (Haulaway), also referred to as a subdivision of the Employer in the record, out of some of the same facilities described above. The exact relationship between Haulaway and the Employer is not detailed in the record. Some Haulaway drivers hold a class A license and some hold a class B license, and the class A Haulaway drivers are represented by the Petitioner in a separate bargaining unit.² The record indicates Haulaway drivers do work out of the Perris facility, but as these drivers are already represented by Petitioner in a separate bargaining unit they are not at issue in the instant case.

B. Community-of-Interest Factors

1. Departmental Organization

The Employer organizes certain departments on a local, single-facility basis, and some are organized on an Employer-wide basis. The B drivers, and the other employees in the petitioned-for unit, are in local departments at Perris based on the type of work performed. These include departments such as residential, commercial, and roll-off for drivers, and departments such as maintenance for other employees. These employees report to a supervisor located at Perris.

The A drivers at issue are organized differently. Prior to October of 2018, tractor trailers were assigned to facilities, as part of the structure described above. However, recognizing that the equipment was not being used efficiently, in 2018 the Employer reorganized all A drivers into one transportation department or division. The A drivers report to, and are dispatched by, the transportation operations manager, and two assistant managers, located at the Employer’s headquarters in Stanton.

Most of the A drivers’ work involves transporting sorted waste, but since the reorganization the Employer will occasionally enter hauling contracts for non-waste, and if the need for hauling waste is higher than the capacity of the Employer’s tractor trailers, the transportation department may contract with additional owner-operators to add additional trucking capacity.

The Employer operates its different departments, whether transportation or maintenance, as separate billing entities. If a side loader that is used on a residential route out of Perris requires repairs, the repair is done locally in Perris, but it is charged internally to the Perris residential department. Similarly, if a tractor trailer based in Perris needs repairs, those repairs are performed at Perris but billed to the transportation department.

² The collective-bargaining agreement between the Petitioner and the Employer applicable to the San Juan Capistrano facility lists the classifications included simply as “drivers.” From the testimony in the record this does not include the A drivers based at the facility. The collective-bargaining agreement between Petitioner and Haulaway applicable to Stanton also lists the classifications included simply as “drivers.” However, from the record evidence it appears that this unit only includes A drivers.

2. Distinct Skills and Training

The A drivers and B drivers share a common skill, operating a truck, and have similar training in the broad sense that they both hold a commercial driver's license. Both are subject to Department of Transportation requirements that are associated with a commercial driver's license, such as drug testing and medical evaluations. In order to obtain a commercial driver's license a driver is required to pass a written test, as well as a driving test in the appropriate vehicle.³

3. Distinct Job Functions and Distinct Work

Both A and B drivers travel from their residences to the facility where they are based each morning, typically starting their shift at 5:00 or 6:00 a.m. Once they arrive, they punch in and collect their paperwork for the day at their mailbox, including dispatch information and their vehicle inspection report. Drivers then report to the assigned vehicle, perform their pre-trip inspection, and leave on their route. The record does not indicate how frequently drivers simply follow their dispatch instructions without further input, or how often drivers are rerouted, or instructions are otherwise modified.

Facilities have limited truck access to the areas where loads are deposited, so it is not unusual for drivers arriving at the facility with a full load, both A and B drivers, to wait in line with their vehicles. When their shift is complete the drivers park their vehicles at the facility where they are based and submit their daily paperwork, including the inspection report, logs containing information such as mileage and break times, and any mechanical issues. A driver that experiences a mechanical issue would also typically speak to a mechanic. Once these end-of-shift duties are complete the driver punches out.

4. Functional Integration

The Employer's business functions more efficiently when the numerous, smaller side and front loaders, operated by B drivers, travel a short distance bring waste to a central location, allowing A drivers to make fewer trips to haul large loads with a tractor trailer. In this way, the two-phase transport of waste is one integrated operation with two distinct roles.

5. Contact and Interchange

The B drivers are not licensed to operate the tractor trailers utilized by the transportation department. However, A drivers can operate the vehicles that require a class B commercial driver's license, and at least some of the A drivers began work for the Employer operating these vehicles. Accordingly, the A drivers do engage in temporary interchange, operating side and front-loaders and performing a daily route, when necessary. The record indicates that sometimes this occurs because the residential or commercial departments are short a B driver, and need the help, and sometimes because, due to equipment breakdown, the transportation department has

³ On brief the Employer argues that obtaining a class A license requires completion of a training program from a trucking school, or two- or three-years' experience working for a trucking company. This would be a significant difference in training and in the requirements for the license, and may be true, but this contention is not supported by the record evidence.

more drivers than tractor trailers on a given day. When an A driver operates a side or front loader on a temporary basis, they are paid their usual A driver rate, and the cost is billed internally between departments in the same manner as a repair assessment. The transportation department manager estimated that this type of temporary interchange takes place several times a month.

As noted above, the evidence indicates that at least some of the current A drivers began their employment with the Employer as B drivers, but then permanently transferred to an A driver position. The record does not quantify the number of permanent transfers.

Regarding contact, the amount of contact between any drivers is limited due to the nature of their jobs: a single driver operating a truck away from the facility. Some contact and interaction do take place, as both A and B drivers at Perris report to the same location to begin their day, punching in and collecting their paperwork. While most days their route is performed on their own, some residential and commercial routes consist of a driver and a helper. When an A driver is performing work as a B driver, they may be in contact with the other driver the entire shift. Both A and B drivers also interact with the same maintenance employees, attendants, and other operations employees responsible for directing traffic at the transfer stations. The drivers have a shared break room and restrooms at Perris, and both A and B drivers attend the same safety meetings at Perris on the last Thursday of the month.

6. Terms and Conditions of Employment

The A and B drivers have separate pay scales, but these pay scales cover a similar range, starting at \$19 or \$20 an hour, based on locality, and increasing to \$24 or \$25 an hour with experience. Controlled for location and experience, an A driver will earn a slightly higher wage as a function of their additional qualification. Additionally, A drivers are eligible for a monthly bonus, although the details of what this bonus entails and how it is earned are not included in the record.

All employees, including all the petitioned-for employees and both the A and B drivers, receive the same fringe benefits and are subject to the same policies, handbooks, and rules. All drivers wear the same uniform.

7. Supervision

As noted previously, first-line supervision is a function of department. While all A drivers are supervised by the transportation operations manager in Stanton, the B drivers are supervised by their respective department supervisor, such as residential or commercial, located in Perris. These department supervisors in Perris in turn report to the regional operations manager for Perris. The transportation operations manager for the A drivers reports to the transportation director in Stanton. As a result, it is not until the third level that A and B drivers share the same supervision.

The record indicates that, as a result of this arrangement, management at Perris does not have significant control over the A drivers. Although the functional integration described above requires coordination between the A and B drivers, it is the transportation department that is responsible for assigning A drivers work via dispatch. The Perris facility is not involved in the hiring of A drivers, although they will pass along

an application physically provided to the Perris facility. Transportation department managers make decisions regarding A drivers' terms and conditions of employment, such as approving leave requests. The transportation department is also responsible for the discipline of A drivers, if necessary, and there is no evidence in the record of management at Perris effectively recommending discipline of an A driver to the transportation department.

ANALYSIS

When examining the appropriateness of a unit, the Board need not determine whether the unit sought is the only appropriate unit or the most appropriate unit, but rather whether it is "an appropriate unit." *Wheeling Island Gaming*, 355 NLRB 637, 637 n.2 (2010), citing *Overnite Transportation Co.*, 322 NLRB 723 (1996). If the petitioned-for unit is deemed inappropriate, the Board considers alternate unit proposals. *Overnite Transportation*, 322 NLRB at 723 ("[t]he Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining").

The Board has long held that a single-facility or employer-wide bargaining unit is presumptively appropriate. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514 (1998); *New Britain Transportation Co.*, 330 NLRB 397 (1999). More specifically, regarding drivers, single-terminal units are presumptively appropriate. *Groendyke Transport, Inc.*, 171 NLRB 997, 998 (1968) However, where a petitioned-for unit falls between these points, with a petitioner seeking to represent employees at only some of an employer's locations, neither presumption is applicable. *Alamo Rent-A-Car*, 330 NLRB 897 (2000). Instead, the Board considers traditional community-of-interest factors.

The Board reiterated the traditional community-of-interest factors in *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017). In making a community-of-interest determination, the Board considers whether the employees in question: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally integrated with other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structurals, slip op. at 11* (citing *United Operations*, 338 NLRB 123 (2002)). The Board considers all the factors together, as no single factor is controlling. *Id.*

Before addressing the community-of-interest factors present here, I note two preliminary items. First, I have not applied a presumption in the instant case. Although the petitioned-for unit appears to be a wall-to-wall unit of non-supervisory, non-professional, non-clerical employees, and a presumption may be appropriate if the scope of the unit was limited to one facility, the agreed upon scope of the unit is both Perris and Cherry Valley. Although the dispute in this case is limited to a single-facility, because no A drivers are based at Cherry Valley, I do not find it appropriate to apply a single-facility presumption in this case.

Second, the instant case does not involve a situation where a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for

unit, a situation under *PCC Structurals* the Board clarified in *The Boeing Co.*, 368 NLRB No. 67 (2019). As noted previously, here the Employer argues that the petitioned-for unit is overly expansive, not overly restrictive.

A. Community-of-Interest Factors

Turning to the community-of-interest factors I find that, on balance, a community of interest exists between the A drivers and B drivers sufficient to make inclusion of the A drivers in the petitioned-for unit appropriate in the instant case. That said, the first factor considered by the Board in a community-of-interest analysis, departmental organization, supports the Employer's position. Although it is a recent development, occurring less than 2 years ago, it is clear from the record that the A drivers are part of the transportation department, and their supervision lies entirely in that department. As a result, functions from hiring to assignment of work and discipline, are not made by Perris. Under these circumstances, the departmental organization, and supervision factor, weigh in favor of the Employer's position.

The departmental organization and supervisory factors cannot be viewed in isolation. While those factors support the Employer's position, I find the other factors support the Petitioner's position. The A drivers and B drivers share common skills, and both hold a commercial driver's license. Although it is true that a B driver cannot operate a tractor trailer or otherwise operate a combination vehicle, I find this is a relatively minor difference given that there is no evidence that obtaining a class A license has any additional requirements beyond paying an additional fee and actually being able to operate a combination vehicle. There is no evidence that an individual seeking a class A license must demonstrate that they have a certain degree or certificate from a training program. There is also no evidence of any additional training the Employer requires of A drivers. That the Employer addresses the drivers together in the training it does provide, such as the monthly safety meetings, supports the conclusion that this factor supports Petitioner's argument.

Similarly, I find the duties of the A and B drivers, while different, are not so different as to support the Employer's contention that the unit sought is inappropriate. Both A and B drivers report to their facilities, pre-trip their vehicles, and leave on their dispatched routes to collect loads. The nature of these routes is clearly different, with side and front-loaders repeating the same series of collections, while the tractor trailer combinations are moving loads based on present needs, but the nature of the work is similar. To the extent the A drivers perform outside trucking work, this appears limited, although it is not quantified in the record, and there is no evidence that this is anything more than the same type of local delivery. There is no evidence that the A drivers perform any over-the-road trucking, for example. Indeed, the evidence suggests that almost all of the A and B drivers' work is limited to the Employer's two-phase system, with B drivers collecting waste and bringing it to a central point, where the Employer can then efficiently move it to its destination with a tractor trailer combination. This degree of functional integration also supports Petitioner's argument.

The terms and conditions of employment of the drivers also support the Petitioner. Although I do note a bonus program exists that only applies to A drivers, that program is not described in the record, and the wage rates of the A and B drivers are

similar, if on different scales. The Employer's uniform approach to fringe benefits and all policies further accentuates that the terms and conditions of employment are similar for not just A and B drivers, but for all the petitioned-for employees.

Finally, I find the factor that most strongly supports Petitioner is the evidence of contact and interchange between the A and B drivers. Although it is true that B drivers cannot serve as A drivers due to the differences in licensing, I find it significant that A drivers regularly function as B drivers, covering shifts or performing work when a tractor trailer is unavailable. The fluidity between functions reflects that the departmental separation, and the Employer's practice of billing between departments for this type of coverage, is not a significant barrier to this type of cross-department work. On brief, the Employer argues that the A drivers "essentially work for a different company" because of their different department. I find that this is overstated, and that a practice such as billing between departments, which the Employer also does for maintenance and other departments it does not dispute, is more about accounting than actual separation. The regular and uncomplicated way A drivers fill in and perform the work of B drivers is a telling example of how the Employer's operations actually operate. Additionally, although not quantified on the record, it is apparent that permanent transfers from B driver to A driver have taken place.

In addressing temporary interchange on brief the Employer cites to *United Operations, Inc.*, 338 NLRB 124 (2002); and *Bradley Steel, Inc.*, 342 NLRB 215 (2004). But I find that neither case refutes the point that here the existence of temporary interchange weighs strongly in Petitioner's favor. In both *United Operations* and *Bradley Steel* the Board specifically noted that no temporary interchange was present.

While the relatively solitary nature of the drivers' duties limit contact, I do find it significant that when A drivers have contact with other employees, when they arrive and punch-in at Perris, in the break room at Perris, in the yard at Perris waiting to unload, or in a safety meeting, they are in contact with the B drivers and yard employees at Perris. There is no evidence in the record of A drivers based at Perris having any contact with other A drivers in the transportation department based at Colton, San Juan Capistrano, or Stanton.

B. Conclusion Regarding Community of Interest

For the reasons stated above I find the skills and training, job functions, functional integration, contact and interchange, and terms and conditions of employment factors all support Petitioner's argument.⁴ Although I do find that the departmental organization and shared supervision factors support the Employer, on balance I find the record evidence supports Petitioner's argument that the petitioned-for unit is appropriate. And I have directed an election accordingly.

⁴ Although not specifically articulated as a community-of-interest factor, the Board has considered bargaining history when considering the community-of-interest factors. *The Boeing Co.*, 368 NLRB No. 67 (2019). I have not considered bargaining history in depth in this case because the evidence regarding the scope and composition of the existing bargaining units is limited, and because the recent 2018 reorganization of the transportation department makes prior bargaining history of limited value. From what is available in the record, I would find that the parties' various bargaining units take many forms and do not clearly support either parties' position.

A MAIL BALLOT ELECTION IS APPROPRIATE

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Electric.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); and *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2. However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other extraordinary circumstances. *San Diego Gas*, *supra* at 1145.

On May 8, 2020, the Board, in an Order denying a request for review in *Atlas Pacific Engineering Company*, Case 27-RC-258742, addressed a mail ballot determination in the context of the COVID-19 pandemic. In its footnote to that Order, the Board noted that *San Diego Gas* contemplated "extraordinary circumstances" beyond the considerations described above, and that circumstances in place at the time – federal, state, and local government directives limiting nonessential travel, requiring the closure of nonessential businesses, and the Regional office conducting the election on mandatory telework – constituted a valid basis for directing a mail-ballot election in that case after considering the conditions surrounding a manual election.

On July 6, 2020, the General Counsel issued a memorandum titled "Suggested Manual Election Protocols." *Memorandum GC 20-10*. In that memo the General Counsel reiterated that Regional Directors have the authority, delegated by the Board, to make "initial decisions about when, how, and in what manner all elections are conducted." The General Counsel further noted Regional Directors have, and will:

make these decisions on a case-by-case basis, considering numerous variables, including, but not limited to, the safety of Board agents and participants when conducting the election, the size of the proposed bargaining unit, the location of the election, the staff required to operate the election, and the status of pandemic outbreak in the election locality.

The memorandum then addressed suggested election mechanics, certifications and notifications required to verify that a safe election can occur, and the need to include election arrangements in an election agreement. The memo concludes with additional notes regarding the assignment and travel of Board agents.

The question of whether the Region can safely conduct a manual election must be considered in every instance during the ongoing COVID-19 pandemic. It is not enough that, as here, simply because the parties agree on a manual election a manual election can be ordered. It is incumbent on me as the Regional Director to consider the circumstances present and conclude whether sending a Board agent to a location, and having employees gather under the auspices of a Board election, is a responsible choice.

At present, it is difficult to order a manual election considering the COVID-19 pandemic and the present circumstances of that pandemic in southern California. Regarding COVID-19 generally, the risks are well known, and have profoundly changed many parts of daily life. The guidelines provided by Federal, state, and local governments make the precautions to take clear: avoid social gatherings, avoid discretionary travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use cloth face coverings when around other people.⁵ This is particularly true in regard to COVID-19 because of the risk of presymptomatic or asymptomatic transmission.⁶

In light of these risks, CDC guidelines on elections generally encourage officials to “consider offering alternatives to in-person voting if allowed” and that “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19.”⁷ The CDC further states the virus can survive for a short period on some surfaces and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one’s mouth, nose, or eyes,” but “it is unlikely to be spread from domestic or international mail, products or packaging.”⁸ To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: “After collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol.”⁹

California, like many states, issued a restrictive stay-at-home order in March 2020 when the COVID-19 pandemic began. When the situation improved in subsequent months these restrictions were loosened. Unfortunately, by summer transmission was resurgent and restrictions were again tightened. This was the case in Riverside County, where both the Perris and Cherry Valley facilities are located. On July 2, 2020, California public health officials issued a public health order for Riverside County requiring recently reopened restaurants to close and restricting indoor operations.¹⁰ As

⁵ How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

⁶ Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic, https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article

⁷ Considerations for Election Polling Locations and Voters, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

⁸ Am I at risk for COVID-19 from mail, packages, or products? <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

⁹ Running Essential Errands, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>

¹⁰ https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/July/GovernorOrders/Order_Closing_Indoor_Services_and_Sectors-Riverside.pdf?ver=2020-07-02-132939-667×tamp=1593721789591

of August 11, 2020, Riverside County has recorded 43,376 cases among its residents, and 824 deaths caused by COVID-19.¹¹

As noted, the parties both seek a manual election in this case, and the Employer provided significant detail on the record regarding how a manual election could be conducted.¹² While I find that plan comprehensive, and do not find fault with any particular portion of the proposal, I nonetheless am not willing to order a manual election at this time. Unfortunately, during the month of July 2020, the COVID-19 pandemic in California represented a worsening, not an improving, situation. The bargaining unit involved in this case is large, involving hundreds of employees. Here, directing a manual election would be to require a gathering of a large group of voters in a community with widespread COVID-19 transmission. I find in these circumstances that it is appropriate to use the procedure that avoids the risks associated with in-person contact, the Board's the mail-ballot procedure. Under the present circumstances I find it prudent to order a mail-ballot election.

CONCLUSIONS

I have considered the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold an election among the employees in the petitioned-for unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹³
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

¹¹ <https://www.rivcoph.org/coronavirus>

¹² Instead of reviewing those plans in detail in this Decision, I will note that they are generally consistent with the procedures outlined in *Memorandum GC 20-10*.

¹³ During the hearing the parties stipulated to the following commerce facts:

The Employer, CR&R Incorporated, a California corporation with its main office located in Stanton, California and facilities located at 1706 Goetz Road, Perris, California and 40590 High Street, Cherry Valley, California is engaged in the business of providing recycling and solid waste collection to retail and non-retail customers along with transportation. During the past calendar year, a representative period, the Employer purchased and received goods valued in excess of \$50,000, which goods were shipped directly to the Employer's Perris and Cherry Valley, California facilities from points located outside the state of California.

5. The following employees of the Employer constitute an appropriate bargaining unit within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time operations employees, maintenance employees and drivers including Driver A, Driver B, Driver B/RO, Driver B/C, Driver C/C, Driver C, Driver-Lead, Driver C/ST, Driver B/S, Scout Driver, Driver Helper, Site Attendant, Equipment Operator, Night Equipment Operator, Plant Operator, I&E Technician, Preventive Maintenance Mechanic, Yard Person, AD Plant Lead Operator, Industrial Mechanic, Mechanic, Maintenance Mechanic, EMSW Lead, Operator Assistant, Engineered Municipal Solid Waste Maintenance, Welder, Container Repair, Night Yard Dumper, Yard Dumper, Bin Repair, Sweeper, Yard Attendant, Laborer, Yard Driver, Maintenance Helper, Parts Clerk, Truck Polisher, Tire Technician, Steam Cleaner, Class C/M Mechanic, Truck/Equipment Mechanic, Fueler, Lead Mechanic, Janitor/Laborer, Janitor, Tarper/Forklift, Laborer-Yard, Cart Bin Maintenance, Laborer/Forklift/Traffic Director employed by the Employer at its Perris facility currently located at 1706 Goetz Road, Perris, CA 92572 and its Cherry Valley facility currently located at 40590 High Street, Cherry Valley, CA 92223.

Excluded: All other employees, office clerical employees, confidential employees, managerial employees, Operations Managers, Route Managers, Lab Supervisors, Maintenance Supervisors, Area Supervisors, Shop Managers, TMT and Shop Managers, Office Assistants, Administrative Assistants, Day Dispatchers, Operations Coordinators, Sustainability Coordinators, Sales/Marketing Representatives, Material Buyers, Customer Service Representatives, Weighmaster/Scale Attendants, Scalehouse Operators, Traffic Directors, Sorters, employees primarily assigned to the Anza, Pinion Pines, and Idyllwild locations, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **PACKAGE & GENERAL UTILITY DRIVERS, TEAMSTERS LOCAL UNION NO. 396**.

A. Election Details

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit **at 2:30 p.m. on Friday, August 21, 2020**. Ballots will be mailed to voters by the National Labor Relations Board, Region 21. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail **by Friday, August 28, 2020**, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations

Board by either calling the Region 21 office at (213) 894-5254 or our national toll-free line at (844) 762-NLRB ((844) 762-6572).

The ballots will be commingled and counted by the Region 21 office **at 10:00 a.m. on Friday, September 4, 2020**. In order to be valid and counted, the returned ballots must be received by the Region 21 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during **payroll period ending Saturday, August 8, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as described above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, August 14, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman

10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. English and Spanish-language versions of the Notice will be sent by the Region separately. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board. A request for review must be filed electronically (E-Filed) on the Agency's website unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review 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, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or why

filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. A request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at Los Angeles, California this 12th day of August, 2020.



William B. Cowen, Regional Director
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