

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

STERICYCLE, INC and
STERICYCLE OF WASHINGTON,
a single employer¹

Employer

and

Case 19-RC-088671

TEAMSTERS LOCAL 174, AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under § 9(c) of the National Labor Relations Act (Act), as amended, a hearing was held before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.³

I. SUMMARY

The Employer is engaged in the business of transporting and processing medical waste at multiple facilities throughout the United States, including its facility in Kent, Washington (Kent facility). Petitioner filed the instant petition seeking to represent a unit of all full and part-time drivers employed at the Employer's Kent facility, excluding all other employees. The petitioned-for unit includes approximately 13 route drivers, 1 fill-in driver, and 1 long-haul driver.

The Employer asserts the petitioned-for unit is not appropriate both in terms of its scope and composition. With respect to the scope of the unit, the Employer asserts the smallest appropriate unit encompasses all its facilities located in its Northwest Pacific District (District), also referred to in the record as "Old District 96." The geographic scope of the District covers the Employer's 10 facilities in Washington, Oregon, Idaho, Montana, and no facilities in Wyoming but a few service routes there. As for the composition of the unit, the Employer asserts that the smallest appropriate unit should include the following job classifications filed by

¹ The Employer's name appears as stipulated by the parties.

² The Petitioner's name appears as corrected herein.

³ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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. The labor organization involved claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of § 9(c)(1) and §§ 2(6) and (7) of the Act.

the approximately 113 employees working at the 10 facilities in the District: (1) route drivers; (2) long-haul drivers; (3) warehousemen;⁴ (4) dispatchers; (5) an RBA/billing position; (5) a safety manager; (6) sharps management supervisors; (7) biosystem techs (techs);⁵ (8) regulated medical waste (RMW) plant workers; (9) biosystem (BS) plant workers; (10) a sanitarian; (11) maintenance employees; and (12) office administrative (admin) employees. The parties do not dispute excluding the following employees from the unit found appropriate herein: sales staff, healthcare compliance specialists, environmental manager, recruiter, regional service manager, regional operations manager, plant managers, RMW plant supervisors, and transportation supervisors. The Employer also refused to stipulate to Petitioner's labor organization status, which then raises the issue as to whether Petitioner falls within the definition of a labor organization as defined in §2(5) of the Act.

After a close review of the record, the parties' arguments at hearing and in their briefs, I initially find that Petitioner is a labor organization within the meaning of the Act. On the unit scope issue, I find that the Employer failed to meet its burden of rebutting the presumption in favor of a single facility unit. As for the composition of the unit, I find that the Employer failed to meet its burden of showing that any of the other classifications working at the Kent facility share an overwhelming community of interest with the petitioned-for drivers, thereby warranting the expanded unit argued by the Employer. Accordingly, I shall direct an election in the petitioned-for unit.

Below, I have set forth a section containing record evidence regarding Petitioner's labor organization status and evidence regarding an overview of the Employer's District operations. Following the operations overview, I have set forth record evidence relating to the factors the Board considers when addressing unit determinations involving scope and composition. While the factors for scope and composition are different in some respects, they also share many common features. Consequently, factors with common features are combined in the record evidence presentation.

Following the record evidence section, I have set forth my analysis dealing with labor organization status, unit scope, and unit composition. I finish the decision with concluding findings, followed by the direction of election, and the process for requesting review of my decision.

II. RECORD EVIDENCE⁶

A. Labor Organization Status

Abraham Taylor, Petitioner's organizer and executive board trustee member, testified that Petitioner is a labor union, affiliated with the International Brotherhood of Teamsters. He further testified that Petitioner represents employees in dealing with employers concerning wages, working conditions, and benefits. The record reveals that Petitioner currently represents

⁴ Warehouse work at the Kent facility is performed only by drivers.

⁵ Techs are also referred to in the record as biosystem service techs, service techs, and Stericycle service specialists.

⁶ The Employer called Employer Regional Director Michael Philpott, Operations Manager Christopher Dunn, Transportation Supervisor Michael Lewis, Safety Manager Kelly Merriman, Dispatcher Don Wilson, Dispatcher Tonia McElderry, Sharps Management Supervisor Vera Benton, and Route Driver Scot Geoghegan. The Petitioner called Employer's Counsel Peter Fischer, Organizer Abraham Taylor, and Route Driver Chris Horne.

about 6,000 employees, who work for various employers in a variety of jobs, including truck drivers, clerical employees, and sanitation workers.

B. The Employer's Operations

The Employer transports and processes waste, dealing primarily with regulated medical waste (RMW). The Employer collects waste from customer facilities, such as hospitals, doctors' and/or dentists' offices, and gas stations. The waste is picked up in reusable containers or boxes provided by the Employer. The waste is then transported in small route trucks to transportation hubs, from where it is loaded onto semi-trailers and taken to treatment plants for processing.

The chart below lists the Employer's 10 facility locations, the nature of those operations, and the number of employees employed in each job classification in each facility at issue herein.

Facility Location	Nature of Operations	Job Classifications
Morton, WA	treatment plant long-haul hub	6 - full-time long-haul drivers 1 - part-time long-haul driver 2 - regulated medical waste (RMW) lead positions 10 - RMW plant workers 5 - BS plant workers 1- sanitarian 2 - maintenance positions 2 - office admin positions
Butte, MT	treatment plant	4 - long-haul drivers 5 - plant workers
Kent, WA	warehouse central transport hub	13 - route drivers 1 - long-haul driver 1 - fill-in driver 2 - dispatchers 1 - RBA billing position/dispatcher 2 - sharps management supervisors 8 - full-time techs 17 - part-time techs 1 - safety manager

Portland, OR ⁷	transport hub	7 - route drivers, (cont'd below) 1 - sharps management supervisor 2 - full-time techs 9 - part-time techs
Spokane, WA ⁸	warehouse transport hub	3 - route drivers 1 - lead route driver 3 - techs
Woodinville, WA	transport hub	3 - route drivers 1 - lead route driver
Pasco, WA	transport hub	1 - route driver 2 - techs
Boise, WA	transport hub	3 - route drivers
Billings, MT	transport hub	1 - route driver
Myrtle Creek, OR ⁹	transport hub	1 - route driver

The Employer provides two different types of waste collection for its customers located throughout the District: the sharps program and RMW. Different types of containers and boxes are used for different types of waste. The sharps program uses small boxes. RMW is picked up in large plastic containers.

I now turn to a description of the general functions performed by the various classifications at issue in this case and employed by the Employer in its District operations.

Techs

The sharps program uses techs to collect full sharps containers from various places in a hospital or clinic, leaving empty containers in their place. The techs, who largely work at customers' sites, collect the full containers on a cart, which they deliver to a transport location within the hospital or clinic. Nonhazardous pharmaceutical waste is collected by the same techs, using the same method.

Route Drivers

The Employer uses route trucks to transport waste from customer facilities to the Employer's transportation hubs. Route drivers drive these trucks, pick up the waste from customer facilities, and drop off empty clean containers for customers to collect waste until the

⁷ This location is also referred to as Troutdale in the record.

⁸ This location is also referred to as Airway Heights in the record.

⁹ This location is also referred to as Roseburg in the record.

next pick-up. Route drivers follow route sheets, which list customer accounts to be serviced that day. Route drivers are permitted to serve customers in the order of their choice, but major hospitals are usually served first, with subsequent customers served largely based on their size, i.e., largest to smallest.

On average, route drivers service about 30 to 35 routes per day in the District. Each route covers a single geographic area. The customers in a route area may change on a daily basis, but the area covered is fairly static. This allows the driver to become familiar with the area. The record indicates that route boundaries are changed on an as-needed basis, but details regarding the regularity, frequency and/or impact of such changes on the drivers is lacking in the record.

Route drivers use handheld personal data trackers (PDT) throughout their day, scanning waste container labels with the PDTs. The labels are provided by the Employer and have a barcode on them. The PDT records when the pickup was made, the number of containers picked up, and the volume of waste collected. The PDT generates a receipt, which, depending on the customer's preference, is electronic or paper. All of the Employer's PDTs use the same nationwide system. The route driver also writes down the same information collected by the PDT on a paper manifest or route sheet.

Route sheets are required any time a driver is serving a customer-loaded route. The route sheet states the name of the Employer's facility at the top of the page. For example, route sheets for route drivers out of the Kent facility state "Kent District" at the top of the page.

If route drivers encounter problems during the day, they call a dispatcher with an Employer-provided cell phone. Kent facility drivers also call a dispatcher to let the dispatcher know they are on their way back to the facility. Upon return to the facility, Kent route drivers offload the waste they collected onto semi-trailers, with the assistance of other Kent route drivers. The semi-trailers must be loaded in a certain order. After a trailer is fully loaded, loading of another trailer may begin.

After off-loading the waste, route drivers complete paperwork, including a vehicle condition report, which they also complete before starting their route. They download their PDTs and print out a summary report. Drivers also check their route sheets against their PDT summaries to make sure that all collected and delivered containers are accounted. Route drivers then debrief with a dispatcher or transportation supervisor. During the debriefing, drivers go over their paperwork with the dispatcher or supervisor.

Long-Haul Drivers

Long-haul drivers transport the semi-trailers of waste to the Morton or Butte treatment plants for processing. Long-haul drivers also transport processed waste in a landfill trailer to a landfill located in Roosevelt, Washington. The landfill trailer, also called a walking floor trailer, has a hydraulic activated floor that moves the waste out in stages.

Long-haul drivers do not generally pick up waste directly from customers. The exception is for customer-loaded trailers, where the customer loads its own waste into a semi-trailer, and a long-haul driver picks up the trailer. Six customers use customer-loaded trailers. Two customers have their waste picked up on a weekly basis. The remaining four customers call-in for servicing, and their waste is picked up once every 4 to 12 weeks. The record is not clear where the six customers are located or which Employer facilities service these customers.

Dispatchers

Dispatchers are responsible for scheduling pick-ups, maintaining driver paperwork, answering the phone, and debriefing drivers. All dispatchers work out of the Kent facility. There are three individuals who hold the dispatch position: Don Wilson (Wilson), Tonia McElderry (McElderry), and Emily Cowan (Cowan). Wilson, McElderry, and Cowan are cross-trained on one another's duties. Cowan is now classified as RBA billing, but this change was made only 3 to 4 weeks prior to hearing. Cowan is referred to as a dispatcher throughout the record, and she is referred to as a dispatcher in this decision, unless specifically noted otherwise.

While Wilson holds the position of dispatcher, he has broader responsibilities. In addition to assigning routes to the drivers, Wilson is primarily responsible for building routes. This involves determining which customer stops are assigned to a particular route. In assigning a stop to a route, Wilson looks at the location, amount of waste to be picked up, and the amount of other stops on the route. There is variation in the routes because different customers have different pick-up schedules. The Employer offers 1, 2, 4, 8, 12, and 24 week cycles for pick-ups, as well as an on-call service. On-call customers do not have prescheduled pick-ups, but call in for service. On-call customers may be serviced on the same day of the call, if possible, but this requires that a driver be in the neighborhood and timely run a route. There is nothing in the record to indicate the regularity and/or frequency of servicing on-call customers on the same day of the customer request.

McElderry handles route driver debriefings and the bulk of route driver calls. On average, a debriefing takes 7 to 10 minutes. Once the debriefing is over, the paperwork is given to Cowan. Drivers average about 30 calls to the dispatcher each workday, only 20 percent of which are from Kent drivers. While there was testimony about calling drivers to ask them about a customer stop, the record does not contain concrete examples detailing the nature and extent of these calls.

McElderry reviews the drivers' logs to record the hours that each driver worked. This information is used for payroll purposes. McElderry also organizes the route bins for the drivers at the Kent facility. Each route bin contains the driver's PDT, cell phone, printer, notes, and labels. Additionally, McElderry performs office-associated tasks, such as checking emails from the Employer's call center, printing container labels, and handling the office shipping and receiving.

Cowan answers driver calls, as well, and handles the billing work. Cowan performs the final review of the drivers' paperwork before it is sent off to generate customer invoices. If the numbers on the PDT summary and route sheet match, she inputs the information into a corporate database. If the PDT and route sheet numbers do not match, Cowan is alerted. She has final say as to whether the numbers may be reconciled.

Waste Treatment/Plant Workers

Once at the treatment plant, the waste containers are off-loaded from the semi-trailers by the Employer's plant workers. The record does not indicate how long this takes, or if it requires contact between the long-haul driver and plant workers. Plant workers load the waste containers onto a conveyor system at the plant. The conveyor system takes the containers through a scan station and a scale. The waste is then dumped. The waste from the sharps program is dumped out of its containers by a robot and placed in autoclave bins. An autoclave is a pressurized steam cooker that sterilizes the waste. At the Morton facility, the Employer

employs two maintenance employees who maintain the machinery and a sanitarian who performs janitorial duties and fills in for a plant worker when needed.

The dirty containers that carried waste to the treatment plant are placed in autoclave bins, cleaned, and transported by semi-trailers to the Employer's transport facilities/hubs for later disbursement to customers.

Warehousemen

The Employer does not employ employees whose sole function is warehouse work. The petitioned-for unit of Kent drivers performs warehouse work at the Kent facility on their relief days. Most Kent drivers have one relief day a week, but there are a few drivers who are not assigned a relief day. In addition to warehouse work on a relief day, a driver may fill-in for an absent driver.

Clean containers are warehoused at the Kent facility. Normally, about four to five semi-trailers of supplies are delivered daily to the Kent facility. In their warehouse work at Kent, drivers offload supply trailers, prep the empty trailers to receive waste, and load a semi-trailer of supplies destined for the Woodinville facility. Drivers operate forklifts to load and unload the semi-trailers. A supply list directs what is to be loaded onto the Woodinville trailer. This trailer contains clean containers and drivers' route sheets. A Kent long-haul driver delivers the supply trailer to Woodinville.

C. The Employer's Organizational Structure

Michael Philpott (Philpott) is regional director of operations. He is in charge of all plants, drivers, and matters relating to transportation for Washington, Oregon, Idaho, Montana, Northern California, part of Nevada, and a small part of Wyoming. Philpott works out of the Kent facility and his home. Philpott's direct reports are: Operations Manager Chris Dunn (Dunn); Program Manager for Reasonable Sharps David Rhodes (Rhodes); Regional Program Manager for Integrated Waste Shawn Roe (Roe);¹⁰ and Operations Manager David Williams (Williams).¹¹ The parties stipulated that both Dunn and Rhodes are supervisors within the meaning of § 2(11) of the Act.

Operations Manager Dunn works out of the Employer's main transportation hub in Kent. He oversees plant and transportation operations, and is responsible for all 10 locations in the Employer's proposed District-wide unit. Falling under Dunn's oversight are the two plant managers and two transportation supervisors. Mark Couch (Couch) is the Morton plant manager and Jim Close (Close) is the Butte plant manager. The transportation supervisor positions are held by Mike Lewis (Lewis) and Laverne Sites (Sites). The parties stipulated that Couch, Close, Lewis, and Sites are supervisors within the meaning of § 2(11) of the Act.

Couch and Close oversee plant employees at their respective plants. However, neither Close nor Couch directly supervises the drivers working out of their plants. Rather, the drivers at both plants are supervised by their respective transportation supervisors. The Morton plant also has an RMW plant supervisor, Bob Nephew (Nephew). Nephew is responsible for plant safety, efficiency, cleanliness of the containers, cleanliness of the plant floor, the flow of inbound and outbound trailers, and managing the plant employees. The parties stipulated that Nephew is a supervisor within the meaning of § 2(11) of the Act.

¹⁰ Roe manages the integrated waste program. Integrated waste consists of solid waste, hazardous waste, and recyclables. The record does not contain what locations Roe oversees or who reports to him.

¹¹ Williams has the same responsibilities as Dunn, but he covers the Employer's Northern California and Nevada locations, which are not involved in the instant case.

Sites works out of the Portland facility and oversees the route and long-haul drivers in Morton, Portland, Myrtle Creek, and Boise. As a result, Sites is in charge of most of the long-haul drivers in the District. If there is a problem during the day, long-haul drivers contact Sites; they typically do not communicate with the dispatchers.

Lewis oversees the long-haul and route drivers in Kent, Woodinville, Spokane, Pasco, Butte, and Billings. However, Woodinville and Spokane each have a lead employee who assists Lewis in his duties. For example, if there is a problem with an employee at either of those two facilities, Lewis will call the employee and the lead regarding the problem. After speaking with Lewis, the lead will then have an in-depth discussion about the problem with the driver.

Jim Homer (Homer) holds the lead position in Woodinville, in addition to driving routes and performing related route duties. As lead, Homer is responsible for ensuring that route drivers follow procedure, maintain their equipment, process their paperwork, and have an appropriate appearance at work. Homer communicates his assessment of and/or disappointment in employees' performance to Lewis. However, the record does not provide concrete examples or details regarding such communications.

Shawn McDevitt (McDevitt) holds the lead position in Spokane, but he does not perform much route work, as his duties are primarily related to his position as a lead. McDevitt has an office at the Spokane facility. Lewis testified that McDevitt is responsible for supervising the drivers in Spokane and Pasco. In this regard, McDevitt processes driver paperwork, conducts ride-alongs, and ensures driver attendance. In performing ride-alongs, McDevitt evaluates whether the driver is following proper procedure, and coaches the driver if there is a deficiency. As with Homer, the record lacks concrete examples of McDevitt carrying out his lead responsibilities.

Rhodes' position as program manager for reasonable sharps is also referred to as the regional service manager. Rhodes oversees the sharps program in the District. The sharps management supervisors -- also referred to in the record as biosystem service tech supervisors -- report to Rhodes. Jane Benton (Benton), Jodi Lester (Lester), and Dustin Singleton (Singleton) hold the three sharps management supervisor positions. There is a lead tech, Kim Atkins, who reports to Benton and Lester. Benton and Lester work at the Kent facility and oversee the techs in Washington and one self-service account in Idaho. The self-service account does not use techs but services its own containers, which are picked up by a Spokane driver. Singleton works at the Portland facility and oversees all of the techs in Oregon. The sharps management supervisors do the scheduling, hiring, and annual reviews of techs. They will also fill in when a tech is unavailable to work.

The safety manager reports to Chris Stromerson (Stromerson). Stromerson is the area safety and health manager responsible for covering the Employer's West Coast operations. Stromerson works primarily from his home located outside the District.

Kelly Meriman (Meriman) is the safety manager, and reports to Stromerson. She primarily works out of the Kent facility, where she has an office on the second floor. Merriman travels to other facilities for her job, including to: Morton weekly; Butte and Portland monthly; and Woodinville, Spokane, Pasco, and Boise on a quarterly basis. However, she rarely travels to Myrtle Creek or Billings. She conducts the new hire training, annual training, and other as-needed training. If she is unable to provide the training, she prepares the training material for the employees' supervisor who will then conduct the training.

D. Relevant Unit Scope and Composition Factors

Separate Departments

The record reveals that the Employer is not organized into formal departments. Rather, the record indicates the organization is based largely on employee classifications and/or functions.

Skills and Training

Generally, employees, within the classifications at issue, possess the same skill set, regardless of which facility they work. However, the record reveals that each classification requires a separate set of skills, education, experience, and/or licensing.

Training is conducted by the safety manager or by the employee's supervisor. All employees receive training on: blood borne pathogens; personal protective equipment; proper lifting, slips, trips, and falls; injury/accident reporting; emergency action plans; and exposure to medical records. However, some employees must receive specific training based on their job class. Below, I have set forth the different education, experience, licensing, and training requirements, for each employee classification.

Techs are required to have a high school diploma or equivalent. They are also required to have a valid driver's license because they must drive their personal vehicle to customer sites. In addition to the universal training provided all employees, techs must also complete training required by the customer whose facility the tech services. Techs receive about 6 hours of training upon hire.

Sharps management supervisors are required to have an associate degree or equivalent work experience, including 3 or more years of supervisory experience, preferably in a hospital setting.¹² They, too, are required to have a valid driver's license.

Drivers are required to have a high school diploma or equivalent. Prior experience is an important consideration. Route drivers must have a valid driver's license and a Department of Transportation (DOT) medical card. The medical card qualifies the driver to drive a commercial vehicle under 26,000 pounds in Washington State. Long-haul drivers are required to have a class A commercial driver's license (CDL). While some route drivers have a CDL, only Montana route drivers are required to have one. Drivers have job-specific training; they must receive training regarding DOT "CSA", hours of service, "FMC" safety regulations, vehicle conditions reports, wellness training, and whistleblower policy and procedures. The details of this training are not clearly defined in the record. Drivers also receive ride-along training. Upon hire, drivers receive 8 hours of training.

Dispatchers are required to have at least a high school diploma or equivalent, but some college education is preferred. Experience is also an important consideration for this job. Dispatchers are not required to have a driver's license. There is nothing in the record to show that dispatchers receive job-specific training.

¹² The record raises issues as to whether the sharps management supervisor possesses indicia of supervisory authority as that term is defined in § 2(11) of the Act. However, that issue was not fully addressed either in the record and/or in the parties' respective arguments and briefs. In light of my findings herein, I do not reach that supervisory issue.

Plant employees are required to have a high school diploma or equivalent. The Employer prefers that office admins, working at the plants, possess some college education. There is no record evidence regarding the education requirement, if any, for maintenance employees and/or the sanitarian position. Prior experience is an important consideration for maintenance employees, but not for the sanitarian due to the simple nature of his janitorial duties. Plant employees are not required to have a driver's license.

The safety manager position requires safety and health education. While the level of education required is unclear, the record reveals that the current safety manager has a bachelor's degree in safety and health management. There is no record evidence as to whether the safety manager's position requires a driver's license. The safety manager is familiar with all training provided by the Employer because she is responsible for administering that training.

Job Functions

As more fully discussed below, the record evidence shows that each job classification performs a different function.

Techs have the only position requiring them to report directly to a customer site, go inside, and retrieve waste from various points. Techs also assist with installation of sharps containers in new customer facilities. Techs drive their own vehicles to customer facilities and typically only service one facility a day. Techs call in at the end of their day for a debriefing with their respective sharps management supervisor. Thus, techs spend their work day away from their assigned facility, at the customers' sites or in route to such.

Sharps management supervisors only service customer facilities when filling in for an absent tech. Sharps management supervisors are responsible for hiring, scheduling, debriefing, and conducting tech annual reviews. The annual reviews relate to wage rate raises. Sharps management supervisors participate in the raise decision.

Route drivers and long-haul drivers use Employer-provided commercial vehicles to transport waste. They are the only employees who do so. The route truck is a box truck that comes in three or four different sizes. Route drivers use the route truck to pick up waste from customer facilities along the routes, and they use PDTs in the process. Most of the trucks are between 20 to 26 feet long. A smaller truck is used to service customers in downtown areas. Montana drivers drive a combined vehicle similar to a tractor-trailer. After servicing the customers on their route sheet, route drivers return to their assigned facility and off-load the waste onto semi-trailers. Route drivers are the only employees who load and remove waste from their vehicles. In addition to the above, Kent drivers must operate a forklift while performing warehouse work. They are the only drivers required to operate a forklift and perform warehouse work as part of their job.

Long-haul drivers transport the trailers to treatment plants for processing. They haul 28-foot trailers or 53-foot trailers. The only time that a long-haul driver collects waste directly from a customer is when retrieving a customer-loaded trailer; this is the only time a long-haul driver uses a PDT.

Dispatchers build driver routes, review route drivers' paperwork, answer drivers' calls, and perform other office related tasks. They do not drive vehicles or collect waste as part of their job.

The safety manager is the only purported non-supervisory, non-managerial employee tracking and regularly providing training as part of her job. The record indicates, without detail,

that the safety manager also tracks motor vehicle violations issued to drivers, which may result in adverse employment actions. The safety manager's duties do not include collecting waste or driving vehicles.

RMW and BS (biosystem) plant workers are the only employees involved with waste processing. The plant maintenance employees are responsible for the upkeep of the plant machinery. The sanitarian is responsible for janitorial duties at the Morton plant. None of these employees drive vehicles or collect waste as part of their job.

The record does not contain evidence as to what Morton office admin employees do, other than their work is related to billing and accounts payable. There is no record evidence to show that these employees collect waste or drive vehicles.

Functional Integration

The level of functional integration between employees depends upon their classification.

Techs play no role with respect to RMW picked up by route drivers. While route drivers pick up sharps program waste that techs have collected from a customer facility, the techs' and drivers' jobs are not highly integrated because they do not work together to collect the waste. The Employer introduced only two examples where techs may bring their carts directly to a route driver: Dynacare and Labcorp.

Dynacare, a customer located in downtown Seattle, is the only example where a tech is *required* to meet the route driver with their waste cart(s) at the customer transport location. Dynacare has pick-ups three times a week. There is no record evidence regarding how the Dynacare pick-up is coordinated, and what the route-driver would do if the tech were not present. Benton, a sharps management supervisor, suggested that techs may assist loading carts on route trucks at Lab Corp because of the large number of carts. However, the record does not detail the full extent and nature of this assistance. Neither Christopher Horne (Horne) nor Scot Geoghegan (Geoghegan), the only route drivers who testified, was aware of any customers requiring service techs to meet them. In fact, Benton admitted that it is unusual for a tech to be present at the transport location when a driver arrives.

Sharps management supervisors manage tech work by scheduling and debriefing the techs. Techs occasionally assist the sharps management supervisors with preparation for installation of sharps containers at customer sites. The record does not reveal that sharps management supervisors manage or work closely with any other employee classification.

Route drivers and long-haul drivers do interact with each other in performing their respective duties. For example, route drivers off-load waste from their trucks onto the trailers that are pulled by long-haul drivers. At the Kent facility, long-haul drivers cannot leave until their trailer is loaded. At other locations, such as Woodinville, the semi-trailer of waste is loaded the day before pick-up, and the long-haul driver later comes to take the semi-trailer while route drivers are out servicing customers.

Long-haul drivers take the waste to the processing plants, where plant workers offload it. The waste is then processed by the plant employees and put onto a loading-trailer. A long-haul driver then takes the loading-trailer to the landfill. Long-haul drivers also transport clean waste containers.

The Employer presented evidence that a copy of the long-haul driver's schedule is posted at the plant. While plant workers may have access to the long-haul schedule, there is no evidence as to how this knowledge specifically affects the work they do. No other evidence of functional integration between plant employees and the other classifications was introduced into the record.

Dispatchers build and sequence the routes driven by route drivers. At the end of the day, dispatchers or transportation supervisors debrief the route drivers. Drivers upload the information from their PDTs, which the dispatchers view via computer. There is nothing in the record to show that dispatchers stay late if a driver is delayed while on route. Dispatchers do not interact with long-haul drivers, unless the long-haul driver is picking up a customer-loaded trailer or something unusual has occurred. The record contains some evidence that for extra work hours, techs assist the dispatchers with office paperwork, such as stapling documents together; there is no record evidence as to how frequently or regularly this occurs.

The safety manager trains all employees and tracks route and long-haul drivers driving violations. Aside from the training, the record does not reveal whether the safety manager spends additional time with any particular classification or whether she performs other jobs when an employee is unavailable.

Contact and Interchange

As for **route drivers**, the record reveals that the amount of contact between the employees in this classification is largely facility dependent. Route drivers at the Kent facility have ample opportunity for contact. Specifically, the Kent facility has a punch clock, dressing room, lockers, a driver's room, and a communal coffee pot. Only Kent drivers change into their uniforms in the drivers' room, and grab their route equipment from their route bins located in the drivers' room. At the beginning of their workday, Kent drivers assist each other in loading their respective trucks with clean containers and other supplies at a loading gate. The Kent drivers also engage in casual conversations while waiting to load their trucks. At the end of the workday, Kent drivers return to the Kent facility where they assist each other in off-loading their waste onto semi-trailers.

Kent route drivers do not typically interact with other drivers while on route, but if a problem arises, another driver from the same facility may be sent with equipment or supplies in an effort to resolve the problem. Kent route drivers service other Kent route drivers' routes when the regular driver is absent.

Kent drivers also attend driver meetings at the Kent facility. The meetings are held in the conference room. The meetings are normally run by Dunn, Lewis, or Merriman, and are usually safety related. The meetings typically occur on weeks with a holiday. Drivers from other facilities and other employee classifications do not attend these meetings.

Regarding the one Kent long-haul driver, Jeff Chandler (Chandler), he is usually present to interact with the route drivers in the morning. If Chandler is absent, Tyrone Street (Street), the fill-in driver, drives Chandler's route. When Street is not performing long-haul work, he does warehouse work. Street performs the same warehouse work at the Kent facility as the other route drivers. The record does not reveal whether Chandler performs warehouse work. With respect to contact, the record does not reveal Kent route drivers having the same regular contact with employees working out of the Employer's nine other facilities in the District.

The only record evidence regarding employee interchange within classification concerns drivers. While Kent drivers will fill-in for other drivers, that rarely results in contact with other facilities. Wilson estimated that a route driver from Kent reports to another facility once to twice a year. Geoghegan, a Woodinville driver, estimated that he reported to the Kent facility on a quarterly basis; the Employer submitted no documents verifying Geoghan's testimony in this regard.

With respect to Kent **long-haul driver** Chandler, Kent fill-in driver Street normally covers Chandler's assignments when the latter is unavailable. There is some indication that Morton

long-haul drivers may also substitute for Chandler, but the Employer did not detail the regularity and/or frequency of such interchange in the record via testimony or documents.

With respect to long-haul drivers, the record is clear that they drive from facility to facility as part of their job. However, the record does not state the nature and extent of contact the long-haul drivers may have with each other when they drive to other facilities.

There have been a few instances of drivers transferring to different facilities throughout the United States. However, there is evidence of only one transfer of a driver to another facility within the District. Thus, no other evidence was detailed in the record regarding interchange and/or contact between the long-haul drivers working in the District.

The **techs' and route drivers' contact** at the Dynacare or Lab Corp. facilities is provided to support an argument of functional integration. However, the Employer did not produce evidence detailing the full extent and nature of this contact during drivers' visits to the facilities.

Techs and drivers do not interact with each other at the Kent facility. Techs occasionally come to the Kent warehouse to retrieve things. Indeed, Horne, the only Kent driver to testify, described techs' presence in the warehouse as extremely brief. Techs do not use the drivers' room or other common areas frequented by drivers. The only example of a driver transferring to the sharps management program is Rhodes, the highest level manager of the program. Moreover, there is no evidence to indicate that this was a direct transfer.

Sharps management supervisors and drivers do not interact with each other. Horne testified that he was not sure he could name the sharps management supervisors who work out of their offices on the second floor at Kent facility. Horne explained that he does not visit the second floor unless to attend a driver meeting. The sharps management supervisors do not attend these meetings.

The **drivers and dispatchers**, as described above, have varying degrees of contact depending on the facility at which the driver works. On average route drivers at the Kent facility call dispatch twice a day, although one of the calls is to inform the dispatcher that the driver is coming back to the facility. Kent drivers meet face-to-face with the dispatchers or their transportation supervisor for debriefings. Route drivers from other facilities must debrief the dispatchers by phone, if they are required to debrief at all. On average dispatchers take about 30 calls from District drivers throughout a day; 20 percent of which come from the Kent drivers. Dispatchers and long-haul drivers do not normally communicate with each other.

Before becoming a dispatcher, Wilson was a driver. This transfer occurred many years ago. About 10 to 12 years ago, another driver was promoted to dispatcher, and transferred to a facility in California. There is no other evidence that dispatchers perform the duties of any other employee classification.

The **safety manager** has contact with the drivers when conducting trainings or ride-alongs. There is no interchange between the drivers and the safety manager.

Route drivers and plant employees do not have contact with each other. Plant employees do not perform driver duties. There is only one instance of a permanent transfer between a plant worker and a driver, Don Grimsey (Grimsey), who transferred to the Kent facility a few months before the pre-election hearing in this case.

Terms and Conditions of Employment

Drivers wear uniforms consisting of: steel toe boots; blue pants; and a blue shirt. As noted below, this uniform differs from the non-driver classifications' work attire.

Route drivers earn an hourly wage. Route-driver wages range between \$15.00 and \$23.08. The two route driver leads earn \$23.60 and \$23.61, respectively. The hourly wage for long-haul drivers is between \$15.25 and \$19.36. Most long-haul drivers are paid by the hour when performing yard or paper work; they are paid by the mile when driving, earning between 29 and 39 cents per mile.

However, two long-haul drivers, one in Kent and one in Butte, are paid by the hour. These drivers are paid hourly because that was their historical pay structure. In the case of the Kent long-haul driver, he was a transfer from a New England facility. In the case of the Butte long-haul driver, he came to the Employer as part of an acquisition. The Employer employs at least one fill-in driver, but the fill-in driver's pay structure is not in the record.

Dunn approves raises for drivers, but it is Lewis or Sites who makes the recommendation. Drivers typically receive a 2 ½ to 3 percent annual raise. This raise applies only to the driver's hourly rate. The mileage rate may also be adjusted, but the amount of adjustment is not as clearly defined. The raises are performance based, such that a driver will not receive a raise if they have poor performance or poor attitude.

Drivers normally work 4 days a week. Kent drivers, both route and long-haul, must punch-in on a time-clock at the Kent facility. Route drivers from other facilities will mark their start times with their PDT.

Route drivers do not have set start times, but must start early enough to service their customers in a timely manner. Some accounts must be serviced at a particular time, and that may affect the time the driver starts a workday. Route drivers start work between 1:00 am and 7:00 a.m. and finish between 11:00 a.m. and 6:00 p.m. However, some route drivers work "doubles" whereby the driver will drive for 14 hours, take 10 hours off during the night, and drive another 14 hours the next day. Butte drivers must pull a double once a week. The Billings driver also routinely performs doubles, but the exact frequency is not in the record. Only one Kent driver, Richard Hunter (Hunter), has a route which requires him to pull a double; that occurs once every 4 weeks on an Aberdeen, Washington, route.

Most long-haul drivers work out of the Employer's central long-haul hub located in Morton. There, long-haul drivers have set start times. There are two shifts, one that starts around 3:00 a.m., and another that starts at 1:00 p.m.

Drivers are permitted to take two, 10 minute breaks, one in the morning and one in the afternoon. The breaks may be taken in the truck or at an Employer facility. Driver vacations are scheduled by seniority within facility. At the start of the year, drivers request the days they want off. There is no evidence as to how other employees are allotted vacation.

There are some differences between the working conditions of Kent drivers and those of other drivers. As indicated earlier, the Kent drivers change into their uniforms at work. The Woodinville drivers come to work dressed in their uniform because they do not have access to a changing area at their facility. The record does not contain information regarding whether other drivers change into their uniforms at work. Further, Kent drivers have access to a break room, but Woodinville drivers do not. The record is unclear as to whether the Employer provides break rooms at other facilities. Kent driver PDTs, cell phones, and printers are maintained at the Kent facility when not in use. The record also shows that route drivers at other locations, such as Woodinville, take their PDTs home with them. Kent route drivers do not use their PDTs to log their start times, as other drivers do. Kent drivers receive their route sheets at the Kent office. In Woodinville, these sheets are shipped to drivers in the supply trailer. Kent driver route sheets always state "Kent District" at the top of the page, even if the driver is driving a route for another facility. In Woodinville, if the driver is substituting at another facility, the route

sheet may say the name of the other facility on it. Kent drivers debrief in person, whereas other drivers debrief by phone. Kent drivers present their route paperwork during the debriefing, while drivers at the other facilities fax in their paperwork, with a few exceptions. The drivers in Pasco and Myrtle Creek do not send any paperwork ahead of their debriefing because they do not have fax machines. They merely report if there were any issues that day.

Techs must wear a uniform consisting of khaki pants and a navy blue polo or a light blue button up shirt. Techs are paid hourly, earning between \$14.00 and \$16.86. The tech lead earns \$17.60 an hour. The techs also receive travel mileage after the first 20 miles on the way to the customer site and after the first 20 miles on the way home. The mileage rate is 55 cents per mile. They are also reimbursed for parking fees. Techs receive annual raises around 2 ½ percent of wages. If a sharps management supervisor wants to award more than a 2 ½ percent raise, they must provide supporting documentation to upper level management.

Techs normally start work around 5:00 a.m. and finish at 1:30 p.m. Techs report directly to the customer facility and may leave for home as soon as their work is completed. They clock-in on phones containing a GPS verifying their location. Most techs are part-time and work between 15 to 20 hours per week.

Plant workers are also paid hourly. RMW plant employees' hourly wages range from \$11.00 to \$14.71. RMW leads earn between \$15.17 and \$15.50 an hour. BS (biosystem) plant employees earn between \$14.07 and \$15.62 an hour. The BS plant leads earns \$19.56 an hour. The record does not contain information regarding uniforms, raises, or hours of plant employees.

As for **office admins**, there is no evidence regarding the working conditions for these employees.

Dispatchers are paid hourly: Wilson earns \$25 an hour; McElderry earns \$16.50 an hour; and Cowan earns \$18.20 per hour. Dispatchers work 5 days a week. Wilson works from 6:00 a.m. to 3:00 p.m., and McElderry works from 7:00 a.m. to 4:00 p.m. While Cowan's start time is not in the record, she leaves work at 5:00 p.m. Dispatchers punch in on the same time-clock as the Kent facility drivers. However, dispatchers do not wear uniforms and there is no record evidence addressing their annual wage rate raises.

Sharps management supervisors and the **safety manager** are paid a salary. Benton, a sharps management supervisor, receives approximately \$45,000 a year. The safety manager earns \$64,000 a year. The record does not contain evidence regarding the work schedules or annual raises of these individuals, and the record does not reveal whether these individuals wear uniforms.

Control over Daily Operations, Labor Relations, and Shared Supervision

The record evidence shows that the Employer maintains some corporate-wide practices. For example, all employee issues related to hiring, termination, discipline, benefits, and payroll are directed through the Employer's human resources organization. However, the level of human resources involvement depends on the issue. Regarding a termination of a driver, the matter is directed to Ed Zapata, a human resources official. The termination decision is made with input from Dunn and the transportation supervisor. After the termination decision is made, the transportation supervisor executes it. However, for minor disciplines, a supervisor may issue the discipline without consulting human resources. It is up to the supervisor to determine if a disciplinary issue warrants consulting human resources.

With respect to hiring, the decision to create an opening is made by Jim Hortonstein, who is Philpott's superior and is based out of Texas. Once a position opens, a recruiter collects

job applications and reviews them with the appropriate immediate supervisor. The supervisor then conducts the interviews. For example, in the case of a driver, human resources and the transportation supervisor make the hiring decision. While the transportation supervisor has the final say on whether or not to hire a candidate, he cannot hire a candidate without consulting human resources. Moreover, supervisors must complete the same new hire checklist for all newly hired employees at all locations.

All full-time employees are offered the same benefits: health care, disability/life insurance, 401(k) and employee stock purchasing plans, and a college saving plan. However, part-time techs are only offered 401(k) and stock purchasing plans. All employees receive the same employee handbook and internal newsletter.

However, day-to-day supervision of employees is based on the location where the employee works. Plant managers only supervise the plant employees who work within their plant. Transportation supervisors supervise the employees in their geographic area. Supervisor Sites oversees the route and long-haul drivers in Morton, Portland, Myrtle Creek, and Boise. Because of his geographic coverage, Sites manages most of the long-haul drivers. Lewis oversees the long-haul and route drivers in Kent, Woodinville, Spokane, Pasco, Butte, and Billings. As mentioned earlier, there are two leads assisting Lewis with supervising the employees at the Woodinville, Spokane, and Pasco locations.

Similarly, sharps management supervisors manage the techs in their assigned area. Supervisors Benton and Lester cover Washington, and Singleton covers Oregon. The sharps management supervisors report to Rhodes. Even if a service tech has a problem with their vehicle, they contact their sharps management supervisor rather than Lewis.

The dispatchers are the only employees directly supervised by Operations Manager Dunn. The safety manager is supervised by the area safety and health manager.

As noted above, there is no shared supervision between employee classifications. Moreover, the record does not reveal cross-supervision with respect to employees within a classification. The Employer presented its Exhibit 17 showing 22 instances of temporary interchange of route drivers during the period of July 1, 2012, until September 19, 2012. However, there is nothing in the record to indicate that this short, summer vacation period is representative of the extent and nature of temporary transfers occurring in the District over a longer period of time. Further, only on four occasions was a driver, none of whom was from Kent, required to actually report to a facility other than to the one normally assigned. In these four instances, the drivers were supervised by Sites – not Lewis -- and they were required to report to facilities supervised by Sites.

In sum, there is no evidence of cross-classification supervision by the day-to-day supervisors.

Geographic Separation and Bargaining History

With respect to geographic separation of facilities in Washington, the distance between Kent and Woodinville is about 25 to 30 miles, about 100 to 110 miles between Kent and Morton, about 220 miles between Kent and Pasco, and about 250 miles between Kent and Spokane. As for Oregon, the distance between Kent and Portland is approximately 210 miles, and about 370 to 380 miles between Kent and Myrtle Creek. There are about 500 miles between Kent and Boise, Idaho. Regarding the Montana facilities, the distance between Kent and Butte is about 500 miles and about 700 miles between Kent and Billings.

There is no history of collective bargaining in either the petitioned-for single facility unit or the multi-location unit proposed by the Employer.

III. ANALYSIS

A. Labor Organization Status

Respondent refused to stipulate to the Petitioner's labor organization status but did not brief the issue. Petitioner's business agent testified without contradiction that Petitioner admits employees to membership and deals with employers concerning wages and other terms and conditions of employment. In light of the above and the record as a whole, I find Petitioner to be a labor organization within the meaning of Sec. 2(5) of the Act. *E.I. Du Pont De Nemours & Co.*, 311 NLRB 893, 894 (1993); *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851 (1962).

B. Appropriate Unit

The Employer argues the petitioned-for unit is not an appropriate unit in terms of its scope because it fails to include all 10 of its facilities in the District. The Employer further argues that the composition of the unit is not appropriate because the unit sought should also include all route drivers, long-haul drivers, dispatchers, a safety manager, office admins, plant workers, plant maintenance employees, a sanitarian, techs, and sharps management supervisors employed throughout the District. Moreover, the Employer argues that the petitioned-for unit fractures the only appropriate unit in the circumstances of this case, i.e., the unit proposed by the Employer.

The Act does not require that a unit for bargaining be the only appropriate unit or the most appropriate unit; it need only be *an* appropriate unit. *Barron Heating and Air Conditioning, Inc.*, 343 NLRB 450, 452 (2004), citing *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, in determining whether a unit is appropriate, the Board first examines the petitioned-for unit, and if the petitioned-for unit is *an* appropriate unit, the inquiry ends. *Barlett Collins, Co.*, 334 NLRB 484, 484 (2001). A union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). Thus, there is ordinarily more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

1. Single Facility Presumption and the Multi-Facility Test

The Board has long held that a single facility bargaining unit is presumptively appropriate, unless the employees at the facility have been merged into a more comprehensive unit by bargaining history, or the facility has been so integrated with the employees in another facility (or facilities) as to cause the single facility unit to lose its separate identity. *Trane*, 339 NLRB 866 (2003); *New Britain Transportation Co.*, 330 NLRB 397 (1999). The Board considers a number of factors in assessing whether the single facility retains its separate identity, including: (1) control over daily operations and labor relations; (2) employee functions, skills, and working conditions; (3) employee interchange or contact; (4) bargaining history; and (5) distance between facilities. *Trane*, *supra*; *Alamo Rent-A-Car*, 330 NLRB 897 (2000). The Board has articulated these factors in different ways, separating supervision of daily operations from overall control of labor relations, for example, but the test is substantively the same regardless of how the factors are precisely articulated.

Even if there are some factors supporting a multi-location unit, the appropriateness of such a unit does not establish the inappropriateness of a smaller unit. *McCoy Co.*, 151 NLRB 383, 384 (1965). Indeed, the single facility presumption applies even where a larger, more comprehensive unit might also be found to be appropriate. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). Rather, in weighing these factors, a heavy burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993). Here, that burden rests with the Employer.

The record contains no evidence of a history of collective bargaining on either a single or multi-facility basis. Thus, this factor favors neither party's position. I now turn to analyzing the four remaining factors.

Control over Daily Operations and Labor Relations

This factor compares the autonomy of local supervision at an employer's various locations to the control of a centralized management structure. Frequently this is a question of whether front line supervisors have discretion to address employee problems, grant requests for time off, issue verbal discipline, participate in the hiring process, or whether decisions regarding these matters are controlled by upper management. *Rental Uniform Service Inc.*, 330 NLRB 334, 335 (1999); *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988). For example, in *New Britain*, *supra*, significant local autonomy was found where local dispatchers scheduled employees, approved time off, and conducted training on a site-by-site basis, thus, favoring the petitioned-for single facility unit.

Here, the dispatchers in Kent create the route drivers' routes, which are largely dictated or based on customers' needs within the local routes. Thus, the dispatched routes are largely a factor of local demands. Moreover, the Employer does not argue that the dispatchers are supervisors as defined in § 2(11) of the Act and/or managers as defined by Board law. Thus, the dispatchers here do not fall within the Employer's centralized management structure or control.

In *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993), the Board found the single facility unit to be appropriate despite the fact that night shift drivers at satellite facilities called into a central facility supervisor for instructions before departing on their route. *Id.* at 729-30. Here, while the petitioned-for drivers at the Kent facility share supervision at an immediate level with drivers at five other facilities, they do not share such supervision with drivers at the Employer's four remaining facilities in the District. In short, this supervision is at an intermediate level significantly lower than the District-wide level argued by the Employer.

As the Board made clear in *J&L Plate*, *supra*, the burden is on the Employer to present "affirmative evidence establishing a lack of autonomy" at each facility. 310 NLRB at 429. Here, some evidence was presented that hiring and termination decisions are directed through human resources and Operations Manager Dunn. However, the record does not indicate whether human resources and/or Dunn conduct independent investigations or merely assess the recommendations of the day-to-day supervisors with respect to hiring and termination. Thus, the Employer has failed to produce affirmative evidence in this respect.

Moreover, the record reveals that local supervisors have the authority to issue discipline, other than discharge, without consulting with human resources or management. Regarding hiring, the record reveals that the transportation supervisors play a significant role, as they review applications for open positions, then interview candidates, and appear to have final say over which candidate to hire notwithstanding any consultation that may occur in this regard.

While the record does not reveal the full nature and extent of this hiring/consulting process, it is clear that the transportation supervisors significantly participate in the hiring process. As for wage increases, local supervisors appear to effectively recommend increases in the 2 ½ percent range for their direct reports. This evidence regarding discipline, hiring, and wage increases, further establishes that sufficient local autonomy resides at the facility level rather than at the District-wide level argued by the Employer.

The Employer relies upon *Dayton Transport Corp.*, 270 NLRB 1114 (1984); *Purolator Courier Corp.*, 265 NLRB 659 (1982); and *American Courier Corp.*, 184 NLRB 602 (1970) in support of its contention that its centralized control of daily operations favors the Employer in overcoming the single facility presumption. However, I do not find these cases persuasive because the facts of the instant case are materially different. In the above-cited cases, all of the employers transported goods through a system of terminals, and once a driver arrived at a terminal, the driver became subject to the supervision of that terminal and assigned work. *Dayton Transport Corp.*, 270 NLRB at 1115; *Purolator Courier Corp.*, 265 NLRB at 662; *American Courier Corp.*, 184 NLRB at 603.

In the instant case, there is limited or no evidence of overlapping supervision between classifications or within classifications, and most notably with respect to the petitioned-for unit of drivers. The fact that there is no on-site supervisor or lead to cover a single driver at Pasco, a single driver at Billings, and four long-haul drivers in Butte does not alter my findings in this regard. Rather, the record reveals that these drivers are supervised by Lewis, the Kent transportation supervisor, mostly by phone, as he only visits these facilities once a quarter. This supervision is materially different than the three cases relied upon by the Employer, as here, the drivers do not regularly or frequently report to other facilities and are not subject to other supervision and assigned work if they go to another facility. In this regard, I noted the four instances of temporary transfers of drivers during the recent summer months. However, relative to the Employer's District-wide operations, these temporary transfers were limited and/or isolated, as the Employer failed to submit documentary evidence fully detailing such cross supervision to a higher degree over a more representative period.

In light of the above and the record as a whole, I find that the Employer has failed to meet its burden of establishing that this factor weighs in favor of its proposed District-wide unit.

Employees' Functions, Working Conditions, and Skills

The Employer has produced evidence showing that all full-time employees receive the same benefits, handbooks, and internal newsletter. However, these shared conditions do not overcome the many differences between Kent employees and those at other facilities.

For example, Kent employees perform entirely different functions than the employees employed at the Employer's treatment plants. None of the Kent employees process waste and sterilize containers, as the plant employees do. None of the Kent employees maintain the machinery used to process and sterilize containers as the plant maintenance employees do. There is no evidence that Kent employees perform janitorial duties, as the sanitarian does at the Morton plant. Kent employees do not perform office admin work. Moreover, the Employer does not employ route drivers at either the Morton or Butte treatment plants, the very employee classification that composes all but two of the employees in the petitioned-for unit. Even when comparing the one Kent long-haul driver with the Morton and Butte plant long-haul drivers, there are differences. Unlike the plant long-haul drivers, the Kent long-haul driver and fill-in do not transport waste to the landfill and are paid an hourly wage rate rather than a mileage rate.

I also find there to be significant differences between the functions of Kent drivers and drivers at other transport facilities. Kent drivers are the only drivers who perform warehouse work. With respect to working conditions, Kent drivers are also the only drivers who punch-in on a time clock, change into their uniforms at the facility, and perform their debriefings in person. Notably, while the Employer maintains a uniform vacation policy, the vacation itself is granted by classification according to seniority within each facility. Hence, Kent drivers' vacation time is dependent largely upon what other drivers within the facility request, rather than upon all drivers in the District.

Further, there are differences in licensing requirements between Kent drivers and other facility drivers. For example, Montana route drivers must have class A CDLs to drive their vehicles. On the other hand, Kent route drivers are only required to have a valid driver's license and a medical DOT card.

In light of the above and the record as a whole, I find that the Employer has failed to carry its burden of establishing that this factor -- employee functions, working conditions, and skills -- rebut the single facility presumption.

Employee Interchange or Contact

The evidence of temporary and permanent interchange between facilities in this case is minimal given the size of the Employer's workforce. In *New Britain*, *supra*, the Board stated "the [single facility] presumption has not been rebutted where the Employer interchange data is represented in an aggregate form rather than as a percentage of total employees." *Id.* at 398. The Board recently repeated the importance of analyzing interchange as a percentage of overall hours in *DTG Operations*, 357 NLRB No. 175 (2011). In *DTG Operations*, the employer made an analogy to *United Rentals*, 341 NLRB 540 (2004), a case where a few employees "pitching in" outside their classification constituted significant interchange. The Board in *DTG Operations* rejected an analogy noting the small number of employees, 18, involved in *United Rentals*. *Id.* However, with a significantly larger number of employees at issue in *DTG Operations*, 109 employees, a few instances of cross-department work only constituted limited and infrequent interchange, and the Board reiterated limited and infrequent interchange was not a barrier to finding a smaller unit appropriate. *Id.* slip op. at 8, fn. 25.

Here, the Employer introduced evidence that a route driver from Kent may have to report to another facility a mere two times a year. With respect to the routes covered by Kent drivers evidenced in Employer Exhibit 17, the record is clear that Kent drivers started and ended their day at the Kent facility, maintaining their regular routine. As to Geoghegan's assertion that he reports to the Kent facility for work once a quarter, I note that he stated that he volunteers to work on his day off. Voluntary interchange has traditionally been given less weight than involuntary interchange in assessing a community of interest. *New Britain Transportation* at 398, citing *D&L Transportation*, 324 NLRB 160, fn. 7 (1997). In sum, this evidence does not show substantial interchange between the Kent facility and the other facilities the Employer seeks to include in the unit.

Further, the record evidence fails to show significant contacts between Kent employees and employees working at the Employer's nine other facilities. While dispatchers conduct debriefings with route drivers from other facilities via phone, these communications are only between 7 and 10 minutes long and do not involve the Kent drivers. Further, the record reveals insufficient evidence regarding the other types of calls between dispatchers and drivers to characterize them as substantial contacts. Here, again, the Employer failed to submit testimony

and/or documents fully detailing the full extent and nature of purported contacts between the 10 facilities respective employees.

Thus, the record as a whole fails to support the Employer's proposed District-wide unit and fails to rebut the single facility presumption.

Distance between Facilities

The Board has found a single facility appropriate where the physical separation was 6 to 12 miles apart. *New Britain*, supra. See also *Hilander*, 348 NLRB 1200, 1204 (2006) (8 to 13 miles apart). Here, the Employer's other facility locations range widely in their distance from Kent. All, but two, of the locations are over 200 miles from Kent, and three of them are 500 miles or more. These are significant distances.

The Employer correctly cites *Orkin Exterminating Co.*, 258 NLRB 773 (1981), for the proposition that large geographic distances between facilities is not a determinative factor in multi-facility analysis. However, even in *Orkin* the distances were not as extreme as in the instant case, as the facilities there ranged from 50 to 230 miles from each other. *Id.* at 774. Moreover, in that case, the employer was able to show evidence of similar skills, functions, working conditions, and frequent interchange among employees. *Id.* at 774. Unlike *Orkin*, such evidence is missing in the record before me. Thus, while distance alone may not be determinative, here, the great distance is not the only factor supporting the single facility presumption.

On the basis of the record as a whole, I find that the geographic distances between the 10 facilities in the District, do not weigh in favor of rebutting the single facility presumption. *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988).

2. Conclusion Regarding Single Facility Presumption

I have found that the following factors -- central control of labor relations; employee functions, skills, and working conditions; employee interchange or contact; and distance between facilities -- do not favor the Employer in overcoming the single facility presumption. Thus, the record reveals that the Employer has failed to meet its burden showing that the Kent facility has been so effectively merged into the Employer's other 9 facilities, or that all 10 facilities are so functionally integrated that they have lost their separate identities to the point where the presumptive appropriateness of the petitioned-for Kent unit has been rebutted. In sum, insufficient evidence exists to establish that that the only appropriate unit in the circumstances of this case is one including the disputed employees from all 10 locations. I now turn to the issue of the composition of the petitioned-for unit.

C. Composition of the Unit

Petitioner seeks a unit of all drivers, specifically, approximately 13 route drivers, a long-haul driver, and a fill-in driver. The Employer argues the composition of the petitioned-for unit is not appropriate in that it fails to also include the 3 dispatchers, 2 sharp management supervisors, 8 full-time and 17 part-time techs, and a safety manager, all employed at the same facility in Kent.

The Board's recent decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), set forth the principles that apply in cases like this, where a party

asserts that the smallest appropriate bargaining unit must include additional employees (or job classifications) beyond those in the petitioned-for unit. As explained in that decision, the Board first assesses, as in the usual case, whether the petitioned-for unit is an appropriate bargaining unit: the “employees in the petitioned-for unit must be readily identifiable as a group and the Board must find that they share a community of interest using the traditional criteria.” *Id.*, slip op. at 11 fn. 25; see also *id.*, slip op. at 8-9.

If the petitioned-for unit satisfies that standard, the burden is on the proponent of a larger unit to demonstrate that the additional employees it seeks to include share an “overwhelming community of interest” with the petitioned-for employees, such that there “is no legitimate basis upon which to exclude certain employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Id.*, slip op. at 11-13, and fn. 28 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421, 422 (D.C. Cir. 2008)). Here, that burden falls on the Employer.

An overwhelming community of interest exists where the unit sought “fractures” an appropriate unit, seeking only an “arbitrary segment” of the unit where there is no rational basis for including some, but not others. *Specialty Healthcare*, slip op. at 13. In this regard, the following traditional community of interest factors must be analyzed: (1) separate departments; (2) skills and training; (3) job functions; (4) functional integration; (5) interchange and contact; (6) terms and conditions of employment; and (7) shared supervision. *Specialty Healthcare*, slip op. at 14.

Here, as an initial matter in addressing the composition issue, I find that the record reveals that the petitioned-for unit, of Kent facility drivers, is “readily identifiable as a group” in that they all largely perform driving functions for the Employer. Further, I find that the Kent drivers share a sufficient community of interest as they work at the same facility, possess the same driving skills and training, perform the same function of driving trucks, most work with each other in performing their warehouse functions, have contact with each other on a frequent and regular basis, and share supervision.

I now turn to an analysis of the community of interest factors considered by the Board to determine if the Employer has met its burden of establishing that the petitioned-for drivers share an overwhelming community of interest with the techs, sharps management supervisors, dispatchers, and the safety manager.

1. The Board’s Overwhelming Community of Interest Factors

Separate Departments

The record reveals that the Employer does not maintain formal departments. Therefore, this factor does not weigh in my decision.

Skills and Training

The record reveals that the Kent drivers and techs do not possess the same skills or training. Techs do not operate commercial vehicles. Rather, they work at customers’ facilities and collect waste at those facilities for later pick-up by the route drivers. Further, techs and Kent drivers do not receive identical training, further illustrating that these employees perform separate functions.

As for the sharps management supervisors, they similarly do not have similar skills and training. Sharps management supervisors do not operate commercial vehicles, nor do they

receive the same exact training as Kent drivers. Moreover, sharps management supervisors are required to have an associate's degree, a higher level of education than the high school diploma or equivalent required of drivers.

Dispatchers do not operate commercial vehicles. The only common training between Kent drivers and dispatchers is the limited training provided by the Employer to all employees, regardless of classification. The Employer prefers dispatchers to have some college education, and prior experience is very important. This need for prior experience illustrates that the skill set required for dispatchers is unique to their position.

With respect to the safety manager, she is trained on all of the training that Kent drivers receive. However, this is a product of her duty to administer all training. The record is clear; she does not perform the same work as Kent drivers. She also has a different education requirement than drivers.

In light of the above and the record as a whole, I find that the drivers' skills and particularized additional training reveal that they do not share similar skills and training with the other classification of employees working at the Kent facility. I further find this factor weighs against the Employer's meeting its burden regarding the composition of its proposed larger unit.

Job Functions

As noted above, the petitioned-for unit of drivers, alone, performs the driving functions at the Kent facility. On the other hand, the petitioned-for drivers do not perform the functions of the other Kent facility classifications sought in the unit by the Employer. In light of the foregoing and the record as a whole, I find this factor does not favor the Employer's position on the composition of the unit.

Functional Integration

The Employer essentially argues functional integration exists because the techs and route drivers work together to service customers. However, the Employer presented only minimal evidence of techs meeting route drivers with their carts at two customer facilities and presented no evidence that either of these two classifications wait for the other to perform their functions. Further, the Employer showed no such contact between the other drivers and other techs or between drivers and sharps management supervisors. Moreover, the Employer failed to quantify or detail the full extent and nature of contact between techs and drivers in the isolated examples it provided.

The record does reveal some functional integration between Kent drivers and dispatchers. Dispatchers build the routes that are serviced by route drivers, debrief the Kent drivers, process their paperwork, and answer their calls. However, the record does not reveal whether dispatchers stay late when drivers are delayed on route. Further, I recognize that Kent drivers need their assigned route sheet from the dispatchers in order to work. Yet, once drivers are assigned their respective routes, they are largely free to complete the routes with minimal to no interaction with the dispatcher during the day. Conversely, nothing in the record establishes that the dispatchers are unable to perform their work independent of the drivers. While much was made of the debriefings by the Employer, those short debriefings are just as effective when conducted by the transportation supervisor with drivers, as they are when conducted by the dispatcher, and just as effective as providing the dispatcher with the information necessary for input into the Employer's system.

There is also limited integration between Kent drivers and the safety manager, as it is the job of the latter to train the drivers and track their driving records. However, this is not sufficient to prove an overwhelming community of interest as the record does not detail the

regularity and/or frequency with which this purported integration occurs. Here again, on a daily basis, it would appear that the drivers largely operate independent of the safety manager.

I recognize an argument could be made to the extent the Employer could not produce a final service or product for its customers without all the disputed classifications from the Kent facility. However, it is also true of most workplaces that the whole cannot function without its parts. This is not the issue in analyzing functional integration. Rather, the issue is whether each classification has a separate role in the process. See *DTG Operations, Inc.*, 357 NLRB No. 175, slip op. at 8 (2011). Here, the record establishes that drivers are largely free to perform their daily functions independent of the other Kent facility classifications that the Employer argues must be included in a larger unit.

In view of the above and the record as a whole, I find this factor weighs against the Employer's position on the composition of the unit.

Interchange and Contact

The record reveals no evidence of interchange between the Kent drivers and the other Kent facility job classifications that the Employer argues should appropriately be included in the unit. Further, there is no evidence of substantial contact between Kent drivers and techs, sharps management supervisors, and the safety manager.

However, there is evidence of daily contact between dispatchers and Kent drivers. On average, Kent drivers call the dispatchers twice a day, although one of these calls is to inform the dispatcher that the driver is on his way back to the facility. Kent drivers also do their debriefing in person with the dispatcher or with their transportation supervisor.

In sum, I find the lack of interchange and contact between drivers and the techs, sharps management supervisors, and the safety manager, weigh against finding an overwhelming community of interest with Kent drivers. While I note that the contact between the dispatchers and Kent drivers weighs in favor of finding a community of interest, the lack of interchange does not favor such a finding.

In view of the record, I find, on balance, that the Employer has failed to meet its burden of showing this factor weighs in favor of the expanded Kent unit that it proposes.

Terms and Conditions of Employment

As explained in the unit scope analysis above, there is some evidence of shared terms and conditions of employment among employees. However, the weight of the evidence demonstrates that Kent drivers do not share the same terms and conditions of employment as techs, sharps management supervisors, safety manager, and the dispatchers for the reasons noted above and further discussed below.

While techs and Kent drivers are both paid hourly, techs' wage rate are significantly lower in range than the drivers and the techs also receive payment for mileage for commuting to and from work sites, after the first 20 miles in either direction. Kent drivers do not receive such commuting benefits. Kent drivers are employed full-time, as opposed to the majority of techs who are employed part-time. Techs and Kent drivers also have different schedules. Techs normally start their day at 5:30 a.m. and finish at 1:30 p.m., while Kent drivers work 4 days a week, work a wide range of hours, may start their workday anywhere between 1:00 a.m. and 7:00 a.m., and finish anywhere between 11:00 a.m. and 6:00 p.m. Further, drivers wear different uniforms from the work attire worn by the other Kent classifications at issue herein.

The record further reveals that the sharps management supervisors and the safety manager are paid salaries, not an hourly wage rate as Kent drivers are. Neither the sharps management supervisors nor the safety manager are required to wear uniforms, as the drivers

are. Neither the sharps management supervisors nor the safety manager's work schedules are set forth in the record so as to determine whether drivers share similar work schedules.

While dispatchers are paid an hourly wage rate, as are Kent drivers, dispatchers work fixed and more traditional work schedules, unlike Kent drivers. Moreover, dispatchers do not have to wear uniforms. They also spend their time at the Kent facility while the drivers largely spend substantial time away from the facility driving trucks.

In sum, the record does not support finding this factor favors the Employer's position regarding the composition of the unit.

Common Supervision

All of the employee classifications at the Kent facility have separate day-to-day supervision. Kent drivers are supervised by the transportation supervisor. Techs initially report to the sharps management supervisors, who are in turn are supervised by the program manager for the sharps program. Dispatchers are supervised by the operations manager. The safety manager reports to the area safety and health manager. Hence, this factor weighs against finding an overwhelming community of interest between the Kent drivers and the other disputed job classifications at the Kent facility.

2. Conclusions Regarding Composition of Unit

As an initial matter, I find the petitioned-for unit of Kent drivers has been shown to be prima facie appropriate, as the record discloses that these employees share: work location; classification; skills; job functions; wages and benefits; and supervision. See *Specialty Healthcare*, slip op. at 12, n. 25, citing *Blue Man Vegas, LLC v. NLRB*, 529 F. 3d 417 (D.C. Cir. 2008) at 423. Having found the petitioned-for unit is prima facie appropriate, the burden then shifts to the Employer to establish that the petitioned-for unit is inappropriate because the drivers in that group share an overwhelming community of interest with the Kent facility techs, sharps management supervisors, dispatchers, and safety manager, thus, making the petitioned-for unit a fractured or inappropriate unit.

Turning to the Employer's burden, I have fully considered and analyzed the community of interest factors the Board assesses in determining unit appropriateness, namely departmental organization; skills and training; job functions; functional integration; contact and interchange; terms and conditions of employment; and shared supervision. Here, I find that none of these factors support the Employer's burden to show that the techs, sharps management supervisors, dispatchers, and/or safety manager share an overwhelming community of interest with the petitioned-for drivers. Accordingly, I have directed an election in the petitioned-for unit.

IV. CONCLUSION

I find the Employer has neither overcome the single facility presumption nor met its burden of showing that any of its other employee classifications share an overwhelming community of interest with the petitioned-for unit of drivers.

For these reasons, and in view of the record evidence, I shall direct an election in the following appropriate unit (Unit):

All full-time and regular part-time drivers employed at or working out of the Employer's Kent, Washington facility; excluding all other employees, techs, sharps management supervisors, dispatchers, safety managers, transportation supervisors, managers, guards and supervisors as defined by the Act.¹³

¹³ As noted earlier, it is clear that the drivers perform the warehouse work at the Kent facility. Accordingly, this work is covered and included in the Unit description covering the drivers at the Kent facility.

There are approximately 15 employees in the Unit found appropriate.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Region among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any 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. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters Local 174, affiliated with the International Brotherhood of Teamsters.**

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Region 19 of the National Labor Relations Board, 915 Second Avenue, Suite 2948, Seattle, Washington 98174, on or before **October 24, 2012**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice Posting Obligations

According to Board Rules and Regulations, § 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. § 103.20(c) of the Board's Rules and Regulations

requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **5:00 p.m. (ET) on October 31, 2012**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.¹⁴

DATED at Seattle, Washington on the 17th day of October, 2012.



Ronald Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

¹⁴ To file a request for review electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab.