

**Waste Management of Washington, Inc. d/b/a Waste Management Northwest and Teamsters Local 174, affiliated with International Brotherhood of Teamsters, AFL-CIO, Petitioner.** Case 19-RC-13951

June 8, 2000

DECISION ON REVIEW AND ORDER  
BY CHAIRMAN TRUESDALE AND MEMBERS  
HURTGEM AND BRAME

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent parts are attached as an appendix). The request for review is granted.

Based on the Regional Director's factual findings, we reverse the Regional Director and find that the single-facility presumption favoring a unit of Port-O-Let employees at the Woodinville location has been rebutted. We find that the functional integration of the Employer's operations; centralized control over personnel and labor relations policies; lack of local autonomy and common supervision of employees at both locations; identical skills, duties, and other terms and conditions of employment; and the evidence of interaction and coordination between these two groups outweighs two factors which would favor the single-facility presumption—the 42-mile geographical distance between the two locations and the Employer's failure to introduce relevant affirmative evidence demonstrating more than minimal interchange.<sup>1</sup> See *R & D Trucking, Inc.*, 327 NLRB 531 (1999). Cf. *Rental Uniform Service*, 330 NLRB 334 (1999).

ORDER

The Regional Director's Decision and Direction of Election is reversed, and the case is remanded to the Regional Director for further appropriate action.

APPENDIX

DECISION AND DIRECTION OF ELECTION

Facts

The Employer is engaged in a portable toilet rental service at its facility in Woodinville, Washington. While the Petitioner seeks a unit of all employees involved in the Woodinville rental service, the Employer contends that the appropriate unit must also include rental service employees employed at its Fife, Washington facility. There is no bargaining history involving either location.

The Employer's Woodinville facility includes a transfer station, recycling facility, and the Port-O-Let operations. Only the Port-O-Let operations are involved herein. John Davis is the site manager for Port-O-Let, and Doug Spear is the route supervisor. Davis has an office in the Woodinville facility.

There are approximately 18 unit employees in Woodinville, including 9 service route drivers, 4 pickup and delivery drivers, 3 yard employees, and 2 sales employees. The service route drivers

drive trucks equipped with 1500-gallon tanks, with room on the back for two toilet units. Each morning they are given a route sheet listing 50 to 80 toilet units at various locations. They go to the sites and clean the units, and also make a few deliveries or pickups of toilet units.

The pickup and delivery drivers use a flatbed truck capable of holding four to six toilet units. Such trucks are also equipped with a lift gate and a 200- to 600-gallon tank. Each morning pickup and delivery drivers are given individual tickets designating locations for deliveries and pickups. Sales employees drive the same type of truck as the pickup and delivery drivers, or a pickup truck with a small tank on the back. They follow up on sales leads from drivers, generate new business, take care of emergency situations such as a call from a customer regarding a tipover, and substitute as needed for drivers.

The three yard employees take care of the stock of toilet units kept in the yard. One is responsible for making sure all units are ready to go at any time; one performs maintenance and also repairs any damage on the units; the third cleans the units. Lightly soiled units picked up by Fife personnel are cleaned in the Fife yard.

The Fife facility is 42 miles from the Woodinville facility. The Fife location contains an old office trailer, as well as a gravel, fenced yard with storage containers for paper supplies. No one regularly works in the trailer; it is merely a place for the employees to report for work. Davis meets there with the Fife employees each morning to make work assignments. There are five service route drivers, five pickup and delivery drivers, and two sales drivers assigned to Fife. They perform the same job duties as their Woodinville counterparts.

Davis and Spear hire all employees for Woodinville and Fife in some undefined manner.<sup>3</sup> The record does not reveal whether any prior experience or special skills are required for hire. Drivers for the two areas are solicited via ads in local newspapers for the respective areas, but trained to some unspecified extent at Woodinville. Port-O-Let employees at both locations are paid according to the same wage scale, receive the same benefits, and are subject to the same work rules. Except for Davis' Fife appearance at the beginning of the day, he spends the entire workday in Woodinville, as does Spears. Davis testified that the Fife personnel report to him "more directly" than those in Woodinville, "but it's pretty much commingled."<sup>4</sup> The record does little to inform what it is that Davis and Spear do during their workdays, and how their duties are differentiated. There is no full-time supervisor at the Fife location. Fife employees keep in contact with the Woodinville office by radio throughout the day. All calls from customers for both Woodinville and Fife are answered in the Woodinville office.

The Employer provides toilet units for construction sites, industrial plants, parks, and special events such as weddings, picnics, carnivals, and fairs. Some such events are very large, such as the "Bite of Seattle," "Issaquah Salmon Days," and the "Evergreen Fair." For the largest events, drivers from both Woodinville and Fife deliver toilet units to the customer's site, and return daily to service the units.<sup>5</sup> Davis generally testified that in such circum-

<sup>3</sup> Jointly, interchangeably, or individually by location.

<sup>4</sup> It seems reasonable to conclude that while Davis is getting the Fife crew "started" each morning, someone—presumably Spear—must be doing the same in Woodinville.

<sup>5</sup> The record indicates that Woodinville drivers tend not to volunteer for overtime, and that special events, which usually occur on weekends and involve more overtime, tend to be covered more by Fife personnel.

<sup>1</sup> See *New Britain Transportation Co.*, 330 NLRB 397 (1999).

stances employees from the two locations have discussions with each other with respect to dividing up the servicing of units. However, a Woodinville pickup and delivery driver who has been employed for 9 years testified that he has worked such large events, but never at the same time as any Fife driver. For the special event known as “Renton River Days,” there were several toilet locations where a Woodinville driver delivered, a Fife driver did the servicing, and a Fife or Woodinville driver did the pickup. That special event apparently took place in or near the city of Renton, which is on the border dividing the Employer’s Woodinville and Fife operational territories. The record, however, provides no further, significant details about any employee contacts or interactions that may have occurred during the “Renton River Days” event.

There is no evidence that Woodinville and Fife employees have any regular face-to-face contact. During the day, each driver is working on his own, according to his assignment list, away from the Employer’s facilities. Both Woodinville and Fife drivers are in “continuous”<sup>6</sup> contact with the Woodinville office by radio; they can all hear each other talking to the office; and, occasionally a driver will offer directions or other advice to another driver who is having a problem. There is, however, no substantive evidence as to how often this happens, or whether the number of radio contacts between Woodinville drivers and Fife drivers is significant. There is no indication that drivers call in to report completion of each assignment, or to obtain their next one.

During the past month, a Woodinville route has been driven by a Fife-based driver four or five times a week.<sup>7</sup> The record does not indicate this is a “typical” example of a routine practice. The record also contains three specific examples where Woodinville routes were handled by two Fife drivers one day, and by a Woodinville driver the next day. The circumstances and reasons for such occurrences are unclear. In addition, there is also one specific record example of a service route driven partly by a Woodinville driver and partly by a Fife driver.

There is no evidence that Woodinville drivers are regularly assigned Fife routes. On the other hand, Davis testified that Fife-based pickup and delivery drivers are more readily available for Woodinville work. Thus, although specific examples were not provided, Davis explained that such increased availability exists because the work normally assigned to Fife-based pickup and delivery drivers can be passed on to the Fife sales drivers. Davis also testified that although Fife pickup and delivery drivers are basically 4-day-a-week employees, many prefer to work a fifth day if work is available. In such instances, drivers *may* be sent to Woodinville for the day. The record, however, contains no detailed data concerning the frequency of such occurrences or the number of employees involved.

Woodinville employees swipe their timecards daily through a computerized timeclock; Fife employees fill out timecards by hand. Once a week, Davis takes Fife employees’ timecards to Woodinville, where he enters the information into a computer. On days when Fife employees work in Woodinville, they still report

<sup>6</sup> “Continuous” is obviously an overstatement to the extent it refers to each driver. The drivers get their assignments at the start of the day, and go perform them. There is only one radio channel in use, generally. The record does not reflect how many times daily the average driver needs to radio in to Woodinville.

<sup>7</sup> There is no explanation about the recent apparent deviation from past practice, nor is there any indication that it is a permanent or indefinite feature.

first to the Fife facility where they enter starting times on their timecards. They thereafter drive to Woodinville on the clock.

The Employer has about 28 trucks it regularly services at the Woodinville facility, although sometimes an outside vendor in the Fife area will service Fife-based trucks. Trucks are normally assigned to Woodinville or Fife, and to a particular driver; at times, however, a truck normally assigned to one location may be used for a few days or longer at the other location.

#### CONCLUSION

A single-facility unit is presumptively appropriate unless it has been “so effectively merged into a more comprehensive unit, or has lost its separate identity.” *J&L Plate*, 310 NLRB 429 (1993). The burden of rebutting such presumption rests on the party requesting a multifacility unit—here, the Employer. In determining whether the presumption has been rebutted, the Board considers various factors such as centralized control over daily operations and labor relations; similarity of skills, functions, and working conditions; degree of employee interchange; geographic separation; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999). In particular, in *Esco Corp.*, 298 NLRB 837 (1990), the Board emphasized the amount of employee interchange and geographic separation as critical elements in determining whether the single-facility presumption has been overcome. Thus, in the *Esco* case, the Board found a single facility appropriate for bargaining despite the existence of centralized operations and labor relations, limited local autonomy, and common employee skills, and functions. Further, in *New Britain*, supra, the Board explained that proffered incidents of temporary interchange are of little evidentiary value unless given some meaningful context, e.g., portrayed as a percentage of total routes involved in such interchanges, or as a percentage of total employees so involved.

Concerning the instant case, I initially find that the Employer maintains centralized control over labor relations and substantial centralized control over daily operations. Although it is unclear whether similar skills are required, both Woodinville and Fife rental service employees share common job functions, as well as the same wages and benefits; presumably, the skills required are identical. At the same time, however, it is apparent that the Fife facility maintains at least some degree of local autonomy and clearly is not functionally integrated with the Woodinville operation in a substantial way. Thus, Fife employees report for work in Fife, receive their assignments there, park their trucks at such location, and also keep timecards at the same site. Davis, whose office is in Woodinville and who is the “site” manager for both Fife and Woodinville, makes scheduled daily assignments to Fife employees, but he does so face-to-face in Fife, rather than remotely from Woodinville. (Spear does not perform this function so far as the record indicates.) Later assignments or changes would be done by radio, from Woodinville. To use Davis’ words, the Fife drivers report “more directly” to him than do those in Woodinville. It is also of some note that the Fife complement is relatively large, being two-thirds the size of the Woodinville work force. Further, the regular work of the Fife employees is assigned on the basis of geographic location. In such regard, the Employer maintains separate Fife and Woodinville territories with a dividing line near the city of Renton. Based on the above, I conclude the work of the Fife employees is not substantially functionally integrated with that of the Woodinville employees, in that each group separately performs its day-to-day work without any substantial reliance on the other group. Finally, I find the mere fact that there

is no statutory supervisor stationed full time in Fife does not overwhelm the above-cited aspects which tend to show local autonomy and identity. See, e.g., *Esco Corp.*, supra at 849. If Davis appears regularly at the start of the workday in Fife, to give out daily assignments, etc., it would appear that that same function must be performed in Woodinville by someone else, presumably Spear. Thereafter, Davis' testimony, without illustration, is that everything else is "pretty much commingled."

Although the Employer proffered evidence concerning employee interchange and interaction, I find such falls short of the *New Britain* standard. Thus, the Employer relies on wholly non-specific evidence that Fife drivers have driven Woodinville routes four or five times a week during the past month, and on four specific examples. Such evidence, however, does not really establish how the cited incidents compare (on a percentage or other basis) to the total number of route days or hours that involved temporary interchange. Similarly, the evidence fails to indicate what percentage of employees is involved in such interchange/interaction situations over any significant time period, instead of just 1 month. In short, such data lacks any meaningful comparative context and I find it of little evidentiary value. As noted above, the record provides no information as to how these interchanges came about, or whether they are permanent. Moreover, even assuming an appropriate context for such proffered examples of interchange and interaction, the cited incidents appear minimal compared to the degree usually found significant in a multifacility analysis.<sup>8</sup> Compare *Purolator Courier Corp.*, 265 NLRB 659, 661 (1982); *Dayton Transport Corp.*, 270 NLRB 1114 (1984). Additionally, it is significant that some amount of interchange is voluntary, in that route drivers in Fife may request to work an additional "fifth" day in Woodinville. In such regard, the Board stated in *New Britain* that "voluntary interchange is given less weight in determining if employees from different locations share a common identity." Finally, the Employer failed to provide evidence that Woodinville and Fife employees have a significant number of regular contacts. Thus, although Woodinville and Fife drivers do communicate with the Woodinville office, and to a lesser extent with "other" drivers, on the same radio channel, I find such insufficient, without more (even including the contested evidence of Fife and Woodinville drivers distributing assignments for large events by radio, or working "together" to some degree at such events), to establish the existence of meaningful contacts or a strong community of interest between the two groups. I note that it is unlikely that Fife drivers are giving driving instructions to Woodinville drivers, or vice versa, in view of the separate, wide territorial assignments and the limited interchange shown.

Concerning geographic separation, I note the involved facilities are 42 miles apart. This is a significant distance which, although not controlling, is yet another factor militating against a multifacility unit. It is noteworthy that no bargaining history exists concern-

<sup>8</sup> Admittedly, this is a difficult assessment in view of the scant numeric evidence offered and that over a short time period.

ing either the Fife or Woodinville employees, and no labor organization is seeking to represent both facilities in a single unit.

Based on the above-cited factors and the record as a whole, I cannot conclude the single-facility presumption has been adequately rebutted in this case. I, therefore, find the Petitioner's requested unit appropriate. In so concluding, I note that although the Woodinville and Fife facilities are subject to centralized control over daily operational (to some extent) and labor relations matters, the Fife location also maintains some degree of separate supervision through Davis and is not functionally integrated with the Woodinville operations to a significant degree. The Employer, as noted, generally treats the two employee groups as separate operations. Further, the disputed facilities are 42 miles apart. More significant, however, is the lack of evidence of any meaningful employee interchange or interaction. Such factor, as noted, can be particularly critical in finding the presumption favoring a single-facility unit has been rebutted. Here, however, the record is insufficient to establish that such employee interchange and/or interaction occurs to a substantial degree; in fact, quite the opposite. Further, I find the evidence concerning this subject is largely unconvincing and of limited value because it was presented without meaningful context or other parameters. In this regard, I note that the Employer's record is fraught with ambiguity and lack of detail in many critical regards. The hearing officer repeatedly attempted to develop clarity from the Employer's witnesses, but the witnesses were unable or unwilling to provide such. And finally, while there does appear to be some degree of common supervision over the two locales, even if Spear and Davis were otherwise totally interchangeable, the contrary factors cited and the fluffy record would preclude finding the Woodinville group to be an inappropriate unit.

To summarize, although some factors favor the broad unit urged by the Employer—or hint that if developed they might (or might not)—on balance, the record fails to sufficiently establish the requested Woodinville group has been effectively merged with the Fife facility, or that the Woodinville operation has no separate identity. On this scant, ambiguous, and conclusionary record, I find the Employer has not met its burden of rebutting the single-location appropriateness. The test is whether Woodinville is *an* appropriate unit, not whether Woodinville/Fife is appropriate, or even "more" appropriate. I conclude, therefore, that a unit confined to the employees in Woodinville is appropriate, and shall direct an election in that unit.

There are approximately 18 employees in the unit.<sup>9</sup>

<sup>9</sup> The record does not contain a stipulation regarding the supervisory status of Davis and Spear. It seems clear that both parties deem their status obvious. Davis obviously is, and he is, in charge overall of the sites. Both hire. Based on the entire record, I find both to be statutory supervisors excluded from the unit.