

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

CROWN CONTAINER TRANSFER STATION CO., INC.
and CROWN CONTAINER WASTE SERVICES CORP.
Employer-Petitioners^{1[1]}

and

LOCAL 890, LEAGUE OF INTERNATIONAL
FEDERATED EMPLOYEES
Union^{2[2]}

Case No. 29-UC-533

and

LOCAL 813, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS
Union^{3[3]}

DECISION AND ORDER

The instant case involves three companies in Flushing, New York, which are owned and operated by the same family, and which involve three components of waste removal and recycling. Crown Container Co., Inc. (herein abbreviated as “CC Co.”) is engaged in picking up customers’ garbage and debris and dumping it at various transfer stations. For at least 10 years, CC Co.’s drivers and helpers have been represented for collective bargaining purposes by Local 813, International Brotherhood of Teamsters (“Local 813”). A second company, Crown Container Transfer Station Co., Inc. (“CC Transfer Station”) operates a transfer station, where construction debris is dumped, sorted and processed. CC Transfer Station

^{1[1]} The Employer-Petitioners’ names appear as amended at the hearing.

^{2[2]} Local 890’s name appears as amended at the hearing.

^{3[3]} Local 813’s name appears as amended at the hearing.

employs approximately 20 mechanics, welders, truck cleaners, bulldozer operators and payload operators, who have been represented for collective bargaining purposes by Local 890, League of International Federated Employees ("Local 890") for approximately nine years. The third company, Crown Container Waste Services Corp. ("CC Waste Services") employs four tractor-trailer drivers who haul residual debris from the CC Transfer Station to landfills and recycling facilities.

In late December 2005, the Employer-Petitioners (CC Transfer Station and CC Waste Services) jointly recognized Local 890 as the collective bargaining representative of the tractor-trailer drivers, and combined them in a unit with the existing 20 transfer station employees who were already represented by Local 890. Thus, the 2006 - 2009 collective bargaining agreement between Local 890 and the Employer-Petitioners covers a combined unit of 24 transfer station employees and the tractor-trailer drivers. At some point, Local 813 objected that the tractor-trailer drivers employed by CC Waste Services should be included with the drivers' unit employed by CC Co. The Employer-Petitioners disagreed.

The Employer-Petitioners, therefore, filed the instant petition under Section 9(b) of the National Labor Relations Act, in order to clarify that the transfer station bargaining unit represented by Local 890 includes the tractor-trailer drivers -- in other words, to validate what the Employer-Petitioners and Local 890 had already done by agreement.

A hearing was held before James Kearns, a hearing officer of the National Labor Relations Board. In support of their position, the Employer-Petitioners called owner Jerry Antonacci to testify. Neither Local 813 nor Local 890 called any witnesses. Thus, all the facts described below are based on Antonacci's undisputed testimony, unless indicated otherwise.

For the reasons discussed in more detail below, I conclude that the combined unit of transfer station employees and tractor-trailer drivers is an appropriate unit for collective bargaining, and I will grant the Employer-Petitioners' petition to clarify the unit accordingly.

FACTS

The three companies in question are owned by two brothers, Jerry and David Antonacci. Although the companies are separately incorporated, they have the same website which lists their services together (Local 813 Ex. 1).^{4[4]}

The facilities

The three companies share a common location. Their facilities are primarily located on 34th Avenue in Flushing, New York, although Jerry Antonacci also has a home office in Plainview, New York.

Jerry Antonacci described the Flushing facilities as across the street from each other, i.e., across 34th Avenue. The property on one side totals 10,000 square feet, including a 6,000 square-foot yard and a 4,000 square-foot mechanics' shop building. The mechanics on this side repair the bulldozers and other equipment used by CC Transfer Station. The transfer station itself is outdoors, as part of the yard.

The property on the other side of 34th Avenue totals 18,000 square feet, including a mechanics' shop/garage where CC Co.'s roll-off trucks are parked. There is a small room in the back of the garage, where the packer and roll-off drivers punch in and receive instructions. There is also a trailer office, a scale area where trucks are weighed, and an area to park CC Waste Services' tractor-trailers. Behind the transfer station on 35th Avenue, they rent a

^{4[4]} References to Board, Employer and Local 813 exhibit numbers are herein abbreviated as "Bd. Ex. #", "Er. Ex. #", and "Local 813 Ex. #", respectively.

parking area for CC Co.'s garbage packer trucks. On the "next block" (unclear) they rent another area, for storing CC Co.'s containers.

Jerry Antonacci testified that he travels back and forth from the home office to the Flushing facilities every workday. He employs one secretary who works in his home office. His wife also helps do clerical work there, and "does the books" for CC Co. His daughter, Lynn Antonacci, helps oversee the operations at CC Waste Services. Antonacci stated that his daughters Diana and Jennifer also do the books for CC Transfer Station and CC Waste Services, although the record does not indicate their work location.

Crown Container Co., Inc.

As noted above, CC Co. is engaged in picking up customers' garbage and debris and dumping it at various transfer stations. Specifically, there are two categories of work, involving packer trucks and roll-off trucks.

Packer trucks: Packer trucks pick up garbage from various commercial customers, such as restaurants, stores and warehouses. They then dump their loads at various garbage and recycling transfer stations owned by other companies. (They do not dump garbage at CC Transfer Station, which accepts only demolition and construction debris.) Each packer has one driver and one helper. The driver actually drives the truck, whereas the helper throws the garbage into the rear of the truck. The packer drivers must have a Class B commercial drivers' license.^{5[5]}

The packer trucks pick up garbage from the same customers, every day or three times per week. Each truck has a route of approximately 500 customers, located in Queens, Brooklyn and Manhattan. Antonacci explained that the drivers and helpers work an overnight

^{5[5]} Antonacci also testified that CC Co. is licensed by the New York City Business Integrity Commission (BIC), which screens all garbage companies who do business in the City for ties to organized crime. CC Co. is licensed by BIC to perform both the garbage work and the construction/demolition work.

shift, from 6:00 or 7:00 p.m. to 3:00 a.m., because they get more done when there is no traffic on the streets. When they arrive each evening, they first punch a time clock in a room in back of CC Co.'s garage in Flushing, pick up their worksheets there, pick up their truck in the yard around the block, and do their whole route. When they finish the route in the early morning, they bring the truck back, bring their worksheets back into the garage room, and punch out. They do not come back to the yard in Flushing at any time during their shift. Antonacci testified that the packer drivers and helpers do not spend much time at the Flushing facility but, rather, spend almost all of their work time on the road.

Antonacci testified that Wilfredo Garcia supervises the packer-truck drivers and helpers. He hires drivers and helpers, as do Jerry and David Antonacci. Garcia also deals with Local 813 on labor relations issues. He is not in the bargaining unit represented by Local 813.

Roll-off truck drivers: CC Co.'s second category of work involves roll-off trucks. The roll-off drivers deliver large, empty containers for construction and demolition debris. After the construction contractors fill the container, the roll-off drivers pick up the container and dump the debris at CC Transfer Station or another transfer station, whichever is closer and quicker.^{6[6]} Roll-off trucks pick up about 6 or 7 containers per day, from all five boroughs of New York City.

Roll-off drivers also have a Class B commercial drivers' license, the same as packer drivers. Nevertheless, Antonacci testified that picking up the heavy containers requires more skill. Roll-off drivers work by themselves, with no helpers.

^{6[6]} Antonacci estimated that 25% of the construction and demolition material received at CC Transfer Station comes from CC Co.'s roll-offs. 75% comes from other customers.

Roll-off drivers work from about 2:00 a.m. to 11:00 a.m. or 12:00 noon. They report to the same room in CC Co.'s 34th Avenue garage as the packer drivers. They punch in there, get their assignments for the day, and get the roll-off trucks parked in the same garage building as the room. Antonacci testified that roll-off drivers spend most of their work time away from the facility, but they sometimes come back to dump construction debris at the CC Transfer Station. He claimed that it only takes 5 minutes for a roll-off truck to get weighed on the scale, to dump its load, and to get weighed again before leaving.

Antonacci testified that he and his brother supervise the roll-off drivers, with some help from dispatcher Moses Acevedo.^{7[7]} However, he also stated that Acevedo works from 6:00 p.m. until 3:00 a.m. or slightly later – essentially the same hours as the packer drivers, not the roll-off drivers. Antonacci said that, after “the guys” return to the garage in the early morning, Acevedo makes their assignment lists for the next evening, and goes home. It appears in that context that he was referring to the packer drivers.

All of the drivers and helpers employed by CC Co. are paid on an hourly basis.

CC Co.'s bargaining unit represented by Local 813: There are 12 employees in the CC Co. unit represented by Local 813, including 8 drivers and 4 helpers. Local 813 has represented them for at least 10 years.

CC Co. and Local 813 had a collective bargaining agreement in effect from December 1, 2002, to November 30, 2005 (Bd. Ex. 3(a)). They thereafter negotiated a Memorandum of Agreement, effective from December 1, 2005, to November 30, 2008 (Bd. Ex. 3(b)), which continued the 2002-2005 agreement with certain modifications. Jerry Antonacci was personally involved in negotiating the contracts with Local 813.

^{7[7]} Acevedo is in the bargaining unit represented by Local 813.

Article 1 of the collective bargaining agreement states that CC Co. recognizes Local 813 as representative of all “chauffeurs [drivers], helpers, mechanics and welders.” In practice, the unit has consisted of drivers and helpers, but not mechanics or welders. Article 1 further provides: “The area of work includes, but not by way of limitation, loading and/or removing garbage, rubbish, cinders, ashes, waste materials, building debris and similar products.” Article 25(f) provides that “Bargaining unit Employees shall consist of Chauffeurs and Helpers on trucks handling commercial garbage as listed in Article 1 of this Agreement from the original point of pick up to the first dump site.”

Local 813’s contract also includes a letter agreement (Bd. Ex. 3(b), p. 10) which states in part: “[I]t is agreed that in the event the Employer, through acquisitions or new business, acquires work which the Employer believes one (1) person can reasonably handle, the Employer will so notify the Union of its intention to establish a one (1) person route.”

In June 2003, after Local 890 started representing certain mechanics and welders, Local 813 and CC Co. signed the following letter agreement: “It is understood that irrespective of Article 1 Recognition, the Employer also employs mechanics and welders that are represented by another Union” (Er. Ex. 1). It is not clear from the record why the letter agreement refers to “Crown Container Corp.” rather than “Crown Container Transfer Station Co.” In any event, Antonacci testified that Local 813 has never claimed “jurisdiction” over the mechanics and welders employed by CC Transfer Station.

Crown Container Transfer Station Co., Inc.

As noted above, Crown Container Transfer Station Co., Inc. (“CC Transfer Station”) operates a transfer station, where construction debris is dumped, sorted and processed. Jerry Antonacci testified that he and his brother started operating a transfer station in 1995 under the

original company's name, Crown Container Co. However, they created CC Transfer Station as a separate company in 2001, when they decided to start letting other businesses dump in their facility. Antonacci did not want the two portions of the business to be "co-mingled," so that they could keep better track of whether each separate portion was profitable. CC Transfer Station makes money by charging the carting companies who dump their loads of construction debris there, and also by selling the metal that gets picked out. Antonacci testified that approximately 40 trucks (mostly roll-offs, but also some packers) come to the transfer station each day to dump their loads. Antonacci estimated that 25% of the construction and demolition material received at CC Transfer Station comes from CC Co.'s roll-off trucks. 75% comes from other customers.

CC Transfer Station is licensed by the New York City Department of Sanitation and the New York State Department of Conservation. Unlike CC Co., transfer stations are not licensed by the NYC Business Integrity Commission.

The transfer station is located across 34th Avenue from CC Co.'s location described above. The transfer station site totals 10,000 square feet, including the 6,000 square-foot outdoor transfer station itself and a 4,000 square-foot mechanics' shop building. The mechanics repair the bulldozers and other equipment used by CC Transfer Station employees.

When the carting company trucks arrive at the transfer station, they must first be weighed. Then, after they dump the containers of debris onto the transfer station floor, they are weighed again to determine the amount of debris dumped, and the driver gets a ticket indicating the weight. Transfer station employees then start processing the load. A grapple picks up the material and puts it on a conveyor belt. The dirt gets sifted out, and the machine pulls out rocks. Employees also hand-pick other rocks that the machine missed, and they also

pick out metal pieces. Everything else goes down to a grinder. Eventually, transfer station employees use bulldozers or payloaders to load the processed material onto tractor-trailers. (The CC Waste Services tractor-trailer drivers will be described in more detail below.)

The transfer station is open 22 hours per day from Monday to Friday, closing only for a couple of hours at around midnight for cleaning. On Saturday it closes at 3:00 p.m., and re-opens early Monday morning. The record does not indicate the exact shifts of CC Transfer Station employees.

CC Transfer Station employs approximately 20 mechanics, welders, pickers, sorters, truck cleaners, bulldozer operators and payload operators. None of these employees need any special license to operate the machinery. They punch a time clock near the truck scale. Unlike CC Co.'s packer drivers and roll-off drivers, they do not have any routes, and their duties do not require them to leave the facility at all.

CC Transfer Station's bargaining unit represented by Local 890: The unit employed by CC Transfer Station has been represented by Local 890 LIFE for approximately nine years. A contract which was in effect from January 15, 2003, to January 13, 2006 (Er. Ex. 2), described the bargaining unit as follows:

“all non-supervisory personnel involved in recycling operations, which includes the collection, processing and shipping of woodchips, cardboard, paper and production, such as welders, truck cleaners, mechanics, bulldozer operators, payload operators, over-the-road waste materials handlers, etc., excluding all office clericals, guards and supervisors.”

The unit does not expressly include tractor-trailer drivers, but Antonacci testified that “over-the-road waste materials handlers” includes tractor-trailer drivers, at least for long trips (e.g., a six hour trip to upstate New York). For some reason, “Schedule A” of the parties’ 2003 - 2006 contract includes wage rates for “over-the-road tractor trailer drivers” and “local tractor

trailer drivers,” even though CC Transfer Station did not employ tractor-trailer drivers at the time the contract was negotiated in 2003. This discrepancy was not explained on the record. Nevertheless, as described in more detail below, the 2006 - 2009 contract between Local 890, CC Transfer Station and CC Waste Services (Bd. Ex. 4), expressly added tractor-trailer drivers to the bargaining unit.

As noted above, Local 813 has not sought to represent CC Transfer Station mechanics and welders. In a side letter agreement between Local 813 and CC Co. (Er. Ex. 1), Local 813 acknowledged that mechanics and welders are represented by “another union.”

CC Transfer Station employees are supervised by Louis Vertigo.^{8[8]} Antonacci testified that Vertigo works from 5:00 or 5:30 a.m., to 5:30 or 6:00 p.m. He generally oversees the operation, to make sure employees do their jobs. Vertigo also hires CC Transfer Station employees, as do Jerry and David Antonacci. Antonacci testified that, in theory, Vertigo would handle employee discharges and any grievances with Local 890, although in practice CC Transfer Station has not had any such issues.

Crown Container Waste Services Corp.

CC Waste Services Corp. hauls residual debris from CC Transfer Station out to landfills and other recycling facilities, as described below in more detail.

When the Antonaccis first started the transfer station in 1995, they used approximately 10 independent tractor-trailer drivers to haul the residual waste and recyclables from the transfer station. In 2001, Jerry and Dave Antonacci decided to employ their own tractor-trailers drivers, and incorporated CC Waste Services Corp. at that time. However, Antonacci testified that when another opportunity came up, they put CC Waste Services on the “back

^{8[8]} Vertigo also supervises the CC Waste Services tractor-trailer drivers, as described in more detail below. For some reason, Vertigo is in the bargaining unit represented by Local 890, even though the contractual unit description excludes supervisors.

burner.” Specifically, the Antonacci brothers formed a company called Preferred Trucking Services with Andrew Markos, who previously worked as a manager at CC Transfer Station. Each man owned a third of Preferred. For about four years (2001 to 2005), they used five tractor-trailer drivers employed by Preferred and five independent drivers to haul debris from the station. The trucks were painted with Preferred’s name, and the drivers were supervised by Markos.

However, in May 2005, the Antonaccis had a “falling out” with Markos, and decided to break up Preferred Trucking Services. Markos became the 100% owner of Preferred, and he kept the five trucks. The Antonaccis decided to start operating their own tractor-trailer operation, using the CC Waste Services name which they had incorporated in 2001.^{9[9]} They immediately ordered three tractor-trailer trucks, but those trucks would not arrive for another 4 to 6 weeks. Thus, during that transition time, they continued to subcontract the tractor-trailer work to Preferred. Then, when the trucks arrived in late June 2005, Preferred stopped working from the CC Transfer Station. The three new trucks had CC Waste Services’ name painted on them. CC Waste Services initially hired two new drivers, who had not previously worked for CC Co. or CC Transfer Station. Eventually CC Waste Services bought more trucks and hired more drivers. Both Louis Vertigo (CC Transfer Station supervisor) and Jerry Antonacci’s daughter Lynn have overseen the tractor-trailer operation.

CC Waste Services currently employs four tractor-trailer drivers, and it also continues to use some independent contractors to haul debris from the station.^{10[10]} They are required to have a Class A commercial drivers’ license. Antonacci explained that this is a higher level

^{9[9]} CC Waste Services is not regulated by the Business Integrity Commission.

^{10[10]} There are also two mechanics in Local 890’s unit who fix the tractor-trailers. It is not entirely clear from the record whether those mechanics are paid by CC Transfer Station or CC Waste Services.

than the CC Co. drivers' Class B license, because the tractor-trailers are heavier and carry much more material. During cross-examination, Antonacci stated that CC Waste Services' tractor-trailer drivers with a Class A license are authorized to drive garbage packers and roll-off trucks, but they do not actually do so.

CC Waste Services' tractor-trailers are parked on the Employer's property, next to the scale where trucks are weighed, or sometimes on a nearby street. Antonacci testified that they are not parked in the same lot or garage as CC Co.'s packers and roll-off trucks.

The tractor-trailer drivers generally start working between 5:00 and 6:00 a.m., and continue until 3:00 p.m. They park their cars on the street nearby. For their first load of the day, the trucks have already been loaded the night before by CC Transfer Station employees, and have been parked at the street curb. The drivers may go to their trucks immediately and leave for the first drop off. Antonacci testified that there is no "paperwork" involved at that point, such as route sheets. The drivers simply know where to go, depending on the type of load. For example, Antonacci explained, if a truck is loaded with rocks, the driver knows to bring it to the rock dump. Drivers also know to bring certain light materials to a railyard in New Jersey.

When tractor-trailer drivers return from a dump, they return to the scale house to sign a document verifying where they dumped the load. They then return to their truck to wait for CC Transfer Station employees to load their truck again. Antonacci testified that loading the tractor-trailer takes approximately 30-40 minutes. The total amount of time at the facility between trips (including some waiting time) can be up to an hour. But, since drivers makes about three or four trips per day, they spend most of their time on the road. At the end of the day, the drivers submit all their tracking documents to Lynn Antonacci.

Tractor-trailer drivers are paid by the load. At the time of the hearing, the minimum rate was \$60 per load. Drivers do not have to “punch in” or otherwise keep track of their hours.

As mentioned above, Louis Vertigo (CC Transfer Station supervisor) and Jerry Antonacci’s daughter Lynn generally oversee CC Waste Services’ trucking operation, although Jerry Antonacci testified that the tractor-trailer drivers know where to go, and do not require much daily supervision. Lynn Antonacci collects the tracking documents from the drivers at the end of each day. Vertigo has been involved in hiring -- for example, when CC Waste Services acquired its fourth tractor-trailer in January 2006, Vertigo hired a new driver. Antonacci also testified generally that Vertigo would have authority to discharge CC Waste Services’ employees, but no tractor-trailer drivers have actually been discharged.

Recognition of Local 890 as representative of the tractor-trailer drivers:

As noted above, the prior collective bargaining agreement between CC Transfer Station and Local 890 governing the transfer station unit was effective from January 15, 2003, to January 13, 2006 (Er. Ex. 2). Antonacci testified that he negotiated the successor agreement (Bd. Ex. 4) with representatives from Local 890 in late December 2005. He recalled reaching an agreement in December 2005, before he was scheduled to go to the hospital in early January 2006. His brother David signed the agreement in January 2006, while Jerry was in the hospital.

Antonacci testified that, during those negotiations in December 2005, an issue arose regarding the representation of tractor-trailer drivers employed by CC Waste Services. A Local 890 representative named “Deena” (full name not indicated on the record) showed him authorization cards signed by two of the three tractor-trailer drivers employed at that time, and

verbally demanded recognition of Local 890 as their bargaining representative. Antonacci testified that he agreed to recognize Local 890 as representative of the tractor-trailer drivers employed by CC Waste Services in December 2005. The three parties -- CC Transfer Station, CC Waste Services and Local 890 -- negotiated and executed a contract in January 2006 (Bd. Ex. 4), covering employees of both companies together. The parties expressly added “tractor trailer drivers” to the unit description in the 2006 – 2009 contract.^{11[11]} Schedule A of the new contract also included wage rates for the tractor-trailer drivers, specifically a minimum of \$60 per load as of January 2006, then increases of \$2 per load in January 2007 and January 2008.

As noted above, the Employer-Petitioners filed the instant petition in order to clarify that the transfer station unit represented by Local 890 includes the tractor-trailer drivers -- in other words, to validate what the Employer-Petitioners and Local 890 had already done by agreement.

Antonacci testified that he saw Local 813’s representative for CC Co.’s unit of drivers and helpers, Sean Campbell, three or four times between June 2005 (when CC Waste Services started using its own tractor-trailer trucks and drivers) and March 2006, including at Local 813’s own contract negotiations. However, during that nine-month period, Campbell never asked about CC Waste Services’ tractor-trailer drivers. Finally, in late March 2006, Campbell inquired about including the tractor-trailer drivers in Local 813’s unit, but Antonacci explained that those drivers were already covered by another contract, i.e., the 2006 - 2009 contract with Local 890. On March 31, 2006, Local 813 filed a grievance regarding those

^{11[11]} The unit description thus reads as follows: “all non-supervisory personnel involved in recycling operations, which includes the collection, processing and shipping of woodchips, cardboard, paper and production, such as welders, truck cleaners, mechanics, bulldozer operators, payload operators, over-the-road waste materials handlers, **tractor trailer drivers**, etc., excluding all office clericals, guards and supervisors.” (Bd. Ex. 4, p.3, emphasis added.)

drivers. The record does not indicate the status of the grievance, but the Employer argues that the instant petition should supersede the grievance in any event.

Extent of interchange between CC Co. drivers and CC Waste Services drivers

As described above, the packer and roll-off drivers employed by CC Co. drive different types of trucks, have different types of licenses, and perform different types of routes than the tractor-trailer drivers employed by CC Waste Services. Specifically, each packer driver picks up garbage from commercial customers in Queens, Brooklyn and Manhattan, and dumps it at various garbage and recycling transfer stations owned by other companies. The roll-off drivers pick up containers filled with construction and demolition debris from all five New York City boroughs, and brings them to CC Transfer Station or other transfer stations. By contrast, the tractor-trailer drivers do not pick up material from any CC Co. customers, only residual debris from the CC Transfer Station. Antonacci testified that only 2% of their material is dumped in New York City (some metal that is dumped in Brooklyn), and the other 98% of their work brings them outside the city to points located in New Jersey and on Long Island.

Antonacci also testified that CC Co. drivers have never worked for CC Transfer Station, nor have they ever become tractor-trailer drivers for CC Waste Services. Likewise, transfer station employees and tractor-trailer drivers have never worked for CC Co. Antonacci added that CC Co. drivers and CC Waste Services drivers do not fill in for each other, and do not even have any contact with each other.

Finally, Antonacci testified that each group's supervisors do not supervise drivers from the other group. Specifically, Wilfredo Garcia of CC Co. does not supervise the tractor-trailer drivers, and Louis Vertigo does not supervise the CC Co. drivers. The only contact that

Vertigo has with CC Co. drivers is to direct them where to put their loads at the transfer station. However, Vertigo has not been involved in hiring or otherwise dealing with the CC Co. drivers.

THE PARTIES' POSITIONS

Employer-Petitioners

The Employer-Petitioners (CC Transfer Station and CC Waste Services) ask for clarification that the bargaining unit represented by Local 890 appropriately includes the tractor-trailer drivers employed by CC Waste Services. The Employers argue specifically that Article 25(f) of Local 813's contract covering CC Co.'s drivers and helpers limits that union's jurisdiction "from the original point of pick up to the first dump site," i.e., to various garbage and recycling transfer stations (including CC Transfer Station). According to the Employers, Local 813's "jurisdiction" has never covered what happens to construction debris *after* recycling, i.e., from the transfer station out to landfills and other recycling facilities. Thus, the Employers argue that CC Co. was not required to include the tractor-trailer drivers (who do not pick up garbage "from the original point of pick up to the first dump site") in the unit represented by Local 813.

Second, the Employers contend that, even if the three companies constitute a single employer, they would not be required to include the tractor-trailer drivers in Local 813's unit, inasmuch as the tractor-trailer drivers do not share a close community of interest with CC Co.'s drivers and helpers. By contrast, the Employers argue, the tractor-trailer drivers share a sufficient community of interest with the transfer station employees to include them in the Local 890 unit.

Third, the Employers argue that CC Waste Services lawfully recognized Local 890 as representative of the tractor-trailer drivers, based on a showing of majority support in December 2005. Citing “recognition bar” cases, the Employers contend that they were entitled to a reasonable period of time to negotiate and execute a contract, which they did in January 2006, and that Local 813 has no basis for challenging Local 890’s status.^{12[12]}

Finally, the Employers argue that Local 813 waived any right to represent the tractor-trailer drivers by waiting until March 2006 to assert its claim.^{13[13]}

Local 890

Local 890 makes many of the same arguments as the Employer-Petitioners, i.e., that Local 813’s contract includes drivers only up to the point of the first dump site; that the tractor-trailers drivers share a closer community of interest with the transfer station employees represented by Local 890 than they do with the drivers and helpers represented by Local 813. However, Local 890 also argues that the petition must be dismissed as untimely, inasmuch as it was filed in mid-term of Local 890’s 2006 – 2009 contract, citing Safeway Stores, Inc., 216 NLRB 819 (1975). Local 890 also contends that Local 813’s attempt to include the tractor-trailer drivers in its unit via the arbitration procedure had an “illegal objective.”

^{12[12]} I do not find that recognition bar doctrine is relevant to resolve the issue raised by the petition, and therefore I do not address it.

^{13[13]} The Employers further contend that Local 813 waived its right to represent the CC Transfer Station mechanics and welders when it signed Er. Ex. 1 in 2003. However, mechanics and welders are not involved in the instant case, and that issue will not be addressed here.

Local 813

Local 813 argues that the three companies involved herein are a single employer, and that the tractor-trailer drivers share a close community of interest with the drivers and helpers represented by Local 813. Local 813 denies that Article 25(f) (“from the original point of pick up to the first dump site”) limits their unit only to traditional garbage pick-up routes. Local 813 also points to the side letter requiring “the Employer” to notify Local 813 of its intention to establish a one-person route (Bd. Ex. 3(b), p.10). On those grounds, Local 813 contends that the Employers should have automatically included the tractor-trailer drivers in the Local 813 unit (essentially as an accretion, although Local 813 does not use that term), or at least should have notified Local 813 of their intent to establish new tractor-trailer routes. Finally, Local 813 denies that it waived any right to represent the tractor-trailer drivers. As soon as it learned of CC Waste Services’ drivers (as opposed to the previous independent contractors and drivers employed by Preferred Trucking) in March 2006, it sought to assert its “jurisdiction” over that work.

DISCUSSION

Propriety of resolving the issue via the UC procedure

It is well settled that the Board will not defer a unit clarification petition to an arbitrator’s decision. Magna Corp., 261 NLRB 104 (1982) at n.2 and cases cited therein, *enft denied on other grounds*, 734 F.2d 1057 (5th Cir. 1984); Ziegler, Inc., 333 NLRB 949 (2001). This policy is based in part on the Board’s statutory duty to determine appropriate bargaining units, and the desire to avoid the possibility of a conflicting arbitration decision. Ziegler, Inc., *supra*, 333 NLRB at 950. On that basis, I reject Local 813’s argument that the tractor-trailer

drivers' placement must be arbitrated under Local 813's contract with CC Co. Rather, I find that unit clarification is the appropriate procedure for resolving this issue.

I also reject Local 890's argument that the petition must be dismissed as untimely, inasmuch as it was filed in mid-term of Local 890's 2006 – 2009 contract, citing Safeway Stores, Inc., 216 NLRB 819 (1975). As the Board explained in Union Electric Co., 217 NLRB 666, 667 (1975):

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category – excluded or included – that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals.

In the instant case, the Employer-Petitioners are not trying to “upset” their agreement with Local 890 during their contract's term. On the contrary, they are trying to *affirm* the placement of tractor-trailer drivers under the Local 890 contract, and to address Local 813's challenge to that placement via the grievance-arbitration procedure. Therefore, clarification regarding the tractor-trailer drivers -- a newly-established classification of “disputed unit placement” -- is an appropriate mechanism for resolving this “real doubt” among all three parties, even during the term of Local 890's contract. Union Electric, supra. See also Crown Cork & Seal Co., 203 NLRB 171 (1973).

In these circumstances, the only issue that needs to be resolved is whether the placement of the tractor-trailer drivers into the existing Local 890 unit renders the resulting unit inappropriate.

Appropriateness of unit; community of interest

For the reasons detailed below, I find that the combination of transfer station employees and tractor-trailer drivers did not render the resulting unit inappropriate for bargaining.

First, it should be noted that, even if multiple businesses are found to constitute a single employer, it does not necessarily follow that their employees constitute a single bargaining unit. Peter Kiewit Sons' Co., 231 NLRB 76 (1977), *enf'd* 595 F.2d 844 (D.C. Cir. 1979). For even if the three companies involved in this case were assumed to be a “single employer,” it would not necessarily mandate the inclusion of CC Waste Services’ tractor-trailer drivers in unit employed by CC Co. and represented by Local 813. For the present purpose of resolving the unit clarification issue presented herein, therefore, I need not determine whether the three companies are a single employer. Even assuming *arguendo* that they are, the relevant inquiry must focus on whether the tractor-trailer drivers’ community of interest with CC Co.’s drivers and helpers is so overwhelming that they “should have” been included in the Local 813 unit (i.e., as an accretion), or whether they share a sufficient community of interest with CC Transfer Station employees to validate their voluntary inclusion into the combined Local 890 unit.

In determining appropriate bargaining units and related accretion issues, the Board weighs such factors as bargaining history, functional integration of operations, similarity of duties and skills, interchange of employees, common supervision, and working conditions. The Board follows a particularly restrictive policy in accreting unrepresented employees to an existing bargaining unit, since it precludes those employees from exercising their right to free choice regarding union representation. Towne Ford Sales, 270 NLRB 311 (1984), *enf'd* 759 NLRB 1477 (9th Cir. 1985). Thus, accretion is not warranted unless the group of

employees in question has lost its separate identity. Local 144, Hotel, Hospital, Nursing Home & Allied Services Union v. NLRB, 9 F.3d 218, 223, 144 LRRM 2617, 2620 (2nd Cir. 1993).

The record indicates that the tractor-trailer drivers drive a different kind of truck, requiring a higher level license, than the packer and roll-off drivers. They have different kinds of routes in different locations. Specifically, the packer drivers (and their helpers) pick up garbage from hundreds of commercial customers in Queens, Brooklyn and Manhattan, and roll-off drivers pick up containers of construction debris per day from customers in all five boroughs of New York City. Both groups of CC Co. drivers haul their loads to various transfer stations. By contrast, the tractor-trailer drivers do not pick up any material from CC Co.'s customers. They drive much heavier trucks, hauling debris from CC Transfer Station to various dumps and rail yards, 98% of which are outside of New York City.

CC Co.'s operations at the Flushing, New York, location are somewhat separate from CC Transfer Station and CC Waste Services' operations there, although they are both on 34th Avenue. As described above, the transfer station and related mechanics' shop building is across the street from CC Co.'s garage (where the packer and roll-off drivers punch in and receive their instructions) and a parking area for CC Co.'s trucks.

The record also indicates almost no contact or interaction between drivers in the Local 813 unit and the tractor-trailer drivers. They work at different times. Specifically, packer drivers work overnight from 6:00 p.m. to 3:00 a.m., roll-off drivers work in the morning from 2:00 a.m. to 11:00 a.m., and tractor-trailer drivers work from 5:00 or 6:00 a.m. to 3:00 p.m. Antonacci's testimony was undisputed that the two groups of drivers have virtually no contact with each other. By contrast, the tractor-trailer drivers have some contact with the transfer

station employees (in the Local 890 unit) who load their trucks. Antonacci also testified that there have been no transfers between drivers in the Local 813 unit and tractor-trailer drivers in the Local 890 unit, and that they never substitute for each other.

Furthermore, the record indicates that these drivers have separate lower-level supervision, although the Antonacci brothers obviously constitute the common management for the companies, including their common labor-relations management. Specifically, Wilfred Garcia of CC Co. does not supervise the tractor-trailer drivers, and Louis Vertigo of CC Transfer Station and CC Waste Services does not supervise the CC Co. drivers.

The record also indicates different types of payment for the two groups of drivers. The Employers pays packer and roll-off drivers on an hourly basis, whereas they pay the tractor-trailer drivers on a per-load basis. Unlike the drivers in the Local 813 unit, tractor-trailer drivers do not have to punch in and out.

Finally, as for bargaining history, it seems clear that Local 813's contract is limited to traditional commercial garbage pick-ups, i.e., "from the original point of pick up to the first dump site" under Article 25(f). Even the letter agreement (Bd. Ex. 3(b), p.10) regarding the establishment of one-person routes refers to picking up "waste" from "customers." Contrary to Local 890's argument, it does not appear that this agreement would require CC Co. to include other types of drivers (who do not pick up waste from customers) in the Local 813 unit.

Based on the foregoing, I reject Local 813's argument that the tractor-trailer drivers should have been automatically added to the Local 813 unit, essentially as an accretion. The tractor-trailer drivers do not share such an overwhelming community of interest with the packer and roll-off drivers so as to lose their separate identity. Local 144, Hotel, Hospital,

Nursing Home & Allied Services Union v. NLRB, *supra*. Rather, I conclude that the tractor-trailers' inclusion in Local 890's unit of transfer station employees created a separate, appropriate unit for bargaining. Accordingly, I will grant the Employer-Petitioners' petition to clarify the tractor-trailer drivers into the Local 890 unit.^{14[14]}

CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding,^{15[15]} including the parties' stipulations and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The record in this proceeding reveals that Crown Container Transfer Station Co., Inc., is a domestic corporation with its principal office and place of business located at 126-46 34th Avenue, Flushing, New York, where it operates a waste transfer station for commercial customers. Annually, CC Transfer Station purchases and receives at its Flushing, New York facility, goods and supplies valued at more than \$50,000 directly from sources outside the State of New York.

The record also reveals that Crown Container Waste Services Corp. is a domestic corporation with its principal office and place of business located at 126-46 34th Avenue, Flushing, New York. It is engaged in hauling residual debris from the CC Transfer Station to landfills and recycling facilities. Annually, CC Waste Services purchases and receives at its

^{14[14]} It should be noted that my conclusion is based neither on Local 813's alleged "waiver" of any right to represent the tractor-trailer drivers (as the Employer-Petitioners contend), nor on Local 813's alleged "illegal objective" in pursuing its grievance regarding those drivers (as Local 890 contends). I make no findings regarding Local 813's alleged behavior or misbehavior. My conclusions are based, rather, on Local 890's undisputed majority support at the time of recognition, and appropriateness of the combined bargaining unit created by that voluntary recognition.

^{15[15]} The undersigned Regional Director hereby amends the transcript sua sponte as indicated in the Appendix attached hereto.

Flushing, New York facility goods and supplies valued at more than \$50,000 directly from sources outside the State of New York.

Based on the stipulation of the parties, and on the record as a whole, I find that CC Transfer Station and CC Waste Services (the Employer-Petitioners) are each engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Local 890, League of International Federated Employees, and Local 813, International Brotherhood of Teamsters, are both labor organizations within the meaning of Section 2(5) of the Act.

4. Based on the foregoing discussion, I clarify the bargaining unit employed by the Employer-Petitioners and represented by Local 890 to include tractor-trailer drivers, as stated in their 2006 -2009 agreement:

All non-supervisory personnel involved in recycling operations, which includes the collection, processing and shipping of woodchips, cardboard, paper and production, such as welders, truck cleaners, mechanics, bulldozer operators, payload operators, over-the-road waste material handlers, tractor-trailer drivers, etc., employed at [the] 126-46 34th Avenue, Flushing, New York facility, but excluding all office clerical employees, guards and supervisors.

ORDER

IT IS HEREBY ORDERED that the bargaining unit of employees employed by Crown Container Transfer Station Co., Inc., and Crown Container Waste Services Corp., at their 126-46 34th Avenue, Flushing, New York facility be clarified to include the tractor-trailer drivers.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 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, N.W., Washington, D.C. 20570. This request must be received by **May 21, 2007**.

The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov. On the homepage of the web site, select the **E-Gov** tab and click on **E-filing**. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated: May 7, 2007.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

APPENDIX

The transcript is hereby amended as follows:

Page 5, line 2 et seq.: All references to Crown “Transfers” Station should be spelled Crown “Transfer [singular]” Station.

Page 9, line 10: Crown Container “Waste” Services, not “Weigh”.

Page 17, line 11: “accreted,” rather than “accredited”.

Page 21, line 10 et seq.: All references to “Shawn” Campbell should be spelled “Sean”.

Page 26, line 14 et seq.: “Amby” Avenue, rather than “Anby”.

Page 60, line 7: Transfer and “Waste” Services, rather than “Weight”.

Page 77, line 16: “drivers” rather than “divers”.
