

International Union of Operating Engineers, Locals 15 and 14,
77 OCB 2 (BCB 2006) [Decision No. B-2-2006(IP)] (Docket No. BCB-2470-05).

Summary of Decision: The Union claimed that the Department of Sanitation failed to bargain in good faith over the transfer of unit work from Operating Engineers to Sanitation Workers. This Board found that since members of the Union had not been the exclusive operators of certain equipment for waste disposal in New York City, the assignment did not violate NYCCBL § 12-306(a)(1) and (4), and the City was not required to bargain. ***(Official decision follows.)***

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING**

In the Matter of the Improper Practice Proceeding

-between-

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCALS 15 AND 14,**

Petitioner,

-and-

**DEPARTMENT OF SANITATION
OF THE CITY OF NEW YORK,**

Respondent.

DECISION AND ORDER

On April 13, 2005, the International Union of Operating Engineers, Local 15, 15A, 15C, and 15D, and Local 14-14B (“Union” or “IUOE” or “Locals 15 and 14”), filed a verified improper practice petition against the Department of Sanitation of the City of New York (“City” and “DSNY”) alleging that in violation of § 12-306(a)(1) and (4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”), DSNY transferred the unit work of operating front end loaders (“FELs”) and excavators – work claimed to have been performed

exclusively by members of IUOE – to members of the Uniformed Sanitationmen’s Association, which represents Sanitation Workers. This Board finds that members of IUOE have not been the exclusive operators of FELs and excavators for waste disposal in New York City, and, therefore, the assignment did not violate NYCCBL § 12-306(a)(1) and (4). Accordingly, we dismiss the petition.

BACKGROUND

IUOE, Local 15, represents Tractor Operators, and Local 14 represents Crane Operators, all of whom serve as prevailing wage rate employees and are not covered by the Citywide Agreement.¹ Until December 2002, DSNY employed 82 Tractor Operators and 12 Crane Operators at the Fresh Kills Landfill on Staten Island (“Landfill”).

The job description of a Tractor Operator identifies a typical task as:

Using a front end loader, loads refuse and other material into payhaulers and trucks. . . .

* * *

Operates specialized equipment for various functions, including the following: . . . front end loader . . . , excavators. . . .

The job description of a Crane Operator identifies a typical task as:

Operates and is responsible for the operation of all types of assigned equipment. . . .

The job description of a sanitation worker includes the following responsibilities:

[P]erforms the work and prepares and operates the equipment involved in street cleaning, waste collection, recycling collection, snow removal, and waste disposal. . . .

¹ The facts are derived from the pleadings and from a Settlement of Facts and Clarification of Pleadings signed by both parties.

A typical task is:

[D]rives and/or operates department vehicles and equipment.

The Landfill opened in around 1954, and by 1990 employees used FELs and excavators. A FEL is a tractor loader that both digs and dumps with a large bucket in front. An excavator is a hydraulic-powered shovel or digger that has an extended, articulated arm with a bucket attached. It can be either on a track or on wheels. The excavator used at the Landfill was an “O + K 1000” or “O + K 1200,” both very large machines.

The Landfill received garbage from all City boroughs. Crane Operators were responsible for operating excavators to unload waste from barges and empty the waste into a pit. From there, Tractor Operators operated FELs to load waste onto trucks; drove pay haulers up the road to the face of the Landfill; bulldozed, flattened, rolled, and buried waste; and then brought in dirt to cover the waste. Only Crane Operators operated the excavators and only Tractor Operators operated FELs in this manner at the Landfill. Sanitation Workers at the Landfill tied up the barges’ ropes and untied them when the barges were empty; fueled trucks; used flushers (water trucks for dust control); and swept. In 1996 the state legislature determined that the Landfill would no longer accept solid waste for disposal after January 1, 2002.

Sanitation Workers throughout the City have operated and continue to operate FELs for various functions, including: snow removal; emergency work, such as cleanup if a truck spills contents on the road; cleanup after parades; lot cleaning for City property, including property for the Department of Parks; and removal of derelict vehicles. IUOE asserts that these assignments by Sanitation Workers are different from regular waste disposal. The City maintains that the use of FELs by Sanitation Workers is essentially the same as that by the Tractor Operators at the Landfill.

In an affidavit attached to the City's answer, Martin Bellew, Director of the Bureau of Waste Disposal at DSNY, states that many Sanitation Workers who have Class B commercial licenses get training and receive the requisite certification to operate FELs.

There are two other facilities in Staten Island. One is a concrete recycling plant, where only Tractor Operators use FELs. The Crane Operator operates what DSNY calls a "piston," an arm mounted to the top of the hopper used to crush rocks. Since only one Crane Operator is assigned, when he is not present, a Sanitation Worker runs the piston. DSNY operates this plant. The other facility is a Compost, where, before 1999, Tractor Operators operated FELs on dirt and Sanitation Workers operated FELs on asphalt. Now this facility is run by a private contractor.

DSNY has also contracted out disposal of waste to 8 contractors that operate 19 facilities in New York City, Long Island, and New Jersey. Neighborhood collection trucks dump the garbage at these facilities. Privately-employed Laborers, not Tractor Operators or Sanitation Workers, operate FELs to load trash into tractor-trailers or railroad containers. The waste is then carried to sites outside New York City. Work at these facilities is different from work at the Landfill insofar as no barges have to be unloaded and garbage is not carried to any fill. Use of excavators varies, but if the site has an excavator, it is operated by a Laborer. These facilities are still in operation.

In the past, DSNY also had truckfills and marine transfer stations. A "truckfill" is a landfill that has material waste delivered by truck rather than barge. New York City operated about 100 truckfills. By 1994, all were closed. After collection trucks dumped garbage at a truckfill, Tractor Operators pushed garbage with bulldozers to the active face of the fill. Tractor Operators used FELs to load dirt for layering on the garbage and to even out layers of dirt on the fill. Sanitation Workers at truckfills used FELs to deliver parts and supplies, such as cable or fencing material, but did not

use FELs to work with garbage. Sanitation Workers were also in charge of repairs and of litter control by hand or vacuum truck, and they operated flushers and fuel trucks. Excavators were not generally used at truckfills or marine transfer stations.

Marine transfer stations operated from about 1940 to 2001. Currently, only one, for paper, is in use on the west side of Manhattan. Collection trucks would dump garbage directly onto barges. If garbage was spilled, Sanitation Workers used FELs to clear the garbage and clean the area. Only Sanitation Workers, not Tractor Operators or Crane Operators, were assigned to these sites, and only Sanitation Workers operated FELs.

After the last delivery of refuse to the Landfill in March 2001 and after the cleanup operation following September 11, 2001, Tractor Operators working to close up the Landfill used FELs to carry dirt and layer it to bring the Landfill “up to grade.” In addition, DSNY started building the Staten Island Transfer Station (“Transfer Station”). On December 6, 2002, DSNY laid off 51 of 82 Tractor Operators and 11 of 12 Crane Operators at the Landfill. Pursuant to the Civil Service Law (“CSL”), these employees were placed on a preferred list for those to be hired should a position for that title become available. Fourteen Tractor Operators and one Crane Operator remained at the Landfill to continue closing the site. (Other Tractor Operators were transferred or were provisional and terminated.)

In September 2003, DSNY issued Requests for Proposals either to operate the new Transfer Station or to dispose of the waste from the Transfer Station or both. DSNY contracted out transportation and disposal of waste. But at the close of the record, DSNY had not yet determined whether to accept a bid from a private contractor to operate the Transfer Station in the future. Also when the record was closed, the 14 Tractor Operators assigned to close the Landfill were operating

“Trax-cavators” (excavators with tracks), bulldozers, and other off-road vehicles, and DSNY itself was starting to operate the Transfer Station, using Sanitation Workers.

DSNY’s plan is that once the Transfer Station receives solid waste, DSNY intends to utilize 12 Sanitation Workers, 8 attendants, 6 clericals, and other support for vehicles and buildings. Sanitation Workers will operate FELs, excavators, mechanical brooms, “bobcats,” fork-lifts, pick-up trucks, and compactors. Sanitation Workers will also be assigned to manual labor, cleaning, litter control, and power-washing. Collection trucks that arrive at the Transfer Station will be weighed on a scale, drive up a ramp to a “tipping floor,” back up, and dump garbage down 15 feet to a processing floor. Under DSNY plans, on the processing floor, Sanitation Workers will operate FELs to push garbage onto a conveyor. The waste will go into a compactor, be made into a “log,” and then pushed into a container. Once the container doors are closed, the container will be put on a train for transport. The City anticipates that the Transfer Station will be receiving 850 tons of garbage from Staten Island per day, down from 12,000 tons received from all of New York City at the Landfill.

DSNY states that excavators at the Transfer Station will be used only when necessary and will not require full-time staffing. The excavator that DSNY plans to use is a Caterpillar Hydraulic Excavator 322, with both the body and the bucket smaller by about half than the O + K excavator previously used at the Landfill. Pictures provided by both parties also indicate that the smaller machine is on wheels and has the driver’s compartment just above the wheels, whereas the O + K excavator has tracks and has the driver’s compartment high off the ground.

On December 22, 2004, Augustino Martiniello, Business Representative for Local 15, wrote a letter to the Commissioner of DSNY asking that the new work assignments for the Transfer Station be made from the preferred list of laid-off Tractor Operators, not from applications by Sanitation

Workers. DSNY responded on January 7, 2005, that it sought to “utilize employees who would provide the greatest operational flexibility,” and thus precluded employees “whose duties are restricted to a particular function. Accordingly, single purpose titles such as Tractor Operator would be inappropriate.”

On January 17, 2005, DSNY posted a Position Vacancy for 12 Sanitation Workers at the Transfer Station. The duties listed include operation of a FEL and an excavator to load compactors, conveyors and/or containers, as well as other functions, including porter duties and litter control. On February 22, 2005, representatives of Locals 15 and 14 met with management from DSNY and the New York City Office of Labor Relations to request that assignments to the Transfer Station be made from the preferred lists for Tractor and Crane Operators. DSNY held to its position that it wanted to assign employees who could perform multiple tasks.

Martiniello then wrote on March 15, 2005, to the Commissioner of the Department of Citywide Administrative Services (“DCAS”) contending that nothing in the Sanitation Workers’ job description “suggests operation of heavy equipment” and questioning “the safety and productivity” of employees who have not received the extensive training that members of IUOE receive before operating the equipment at issue. Martiniello stated that those in the title of Tractor Operator historically performed the operation of the same types of equipment to be used at the Transfer Station. Finally, Martiniello noted that when DSNY opened up the operation of the Transfer Station for competitive bidding pursuant to New York Labor Law § 220, private contractors were asked to include the prevailing wage rate for Operating Engineers to run the heavy equipment. Martiniello stated that DSNY appeared to be circumventing the bidding process by assigning employees in an “unexplained flexibility title.” In response on April 28, 2005, the Commissioner of DCAS stated

that the operation of sizable equipment is well within the job description of Sanitation Workers and that there was no basis upon which to conclude that they are precluded from operating that equipment or that their doing so is inconsistent with the CSL.

As a remedy, the Union requests: (1) that this Board determine that utilizing Tractor Operators to operate FELs and Crane Operators to operate excavators at the Transfer Station is a mandatory subject of bargaining, and (2) that this Board direct DSNY to bargain in good faith with Locals 15 and 14 concerning the hiring of members of IUOE to operate FELs and excavators.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that at the Landfill in Staten Island, Tractor Operators exclusively operated FELs and Crane Operators exclusively operated excavators. The Union states that its claim of exclusivity is not geographically based, that is, the allegation would be made even if the Transfer Station were in a different borough. Rather than being predicated on the location of the facility, the claim is that disposal of waste with FELs and excavators throughout the City belongs only to the members of IUOE. The Union also states, however, that the Landfill is the "predecessor facility" of the new Transfer Station. Since historically at the Landfill members of IUOE operated the machinery that will be used at the Transfer Station, the Union says, DSNY's refusal to bargain in good faith over the assignment of the work violates NYCCBL § 12-306(a)(1) and (4).²

² NYCCBL § 12-306(a) provides in pertinent part:

It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

* * *

The Union claims that the job descriptions for the Tractor Operators and Crane Operators expressly state that FELs and excavators, respectively, are within operators' duties. The job description for the Sanitation Workers, on the other hand, does not name these machines, and Sanitation Workers did not use these at the Landfill. The duties of Sanitation Workers include performance of physical activity that is directly related to collection of waste, whereas the responsibilities of Tractor and Crane Operators are limited to the operation and maintenance of heavy machinery. Thus, the plan to utilize Sanitation Workers instead of Operating Engineers to operate FELs and excavators at the Transfer Station is not simply an assignment of work but an improper transfer of unit work.

According to the Union, Sanitation Workers have operated FELs only for the collection of refuse, not for the disposal of waste at a facility. The Union cites to the Sanitation Workers' assignments with FELs, for example, removing snow or cleaning up after an emergency, as "permanent special assignments" (pursuant to prior litigation in which DSNY referred to them as such) and says that these assignments are different from regular waste disposal.

Furthermore, the Union states that even though the excavator to be used at the Transfer Station is smaller than that used at the Landfill, both machines function in the same manner. Therefore, since members of IUOE operated the larger machine before, they should operate the smaller one at the Transfer Station.

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees. . . .

§ 12-305 provides in pertinent part:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing

The Union also notes that in accepting bids for the work at the Transfer Station, DSNY relied on Labor Law § 220 prevailing wage rates for Tractor and Crane Operators. To the City's argument that only 12 Sanitation Workers are needed at the Transfer Station, compared to the approximately 100 Tractor and Crane Operators in 2002 at the Landfill, the Union says that the Transfer Station will be a 24-hour facility with plenty of work. The City, according to the Union, is using the small number now as an excuse to say that there is not enough work for the Tractor and Crane Operators. The Union observes that lot cleaning of City properties, once a small operation using Sanitation Workers to operate FELs, was extended to a full division, and the Union anticipates that the number of employees will grow at the Transfer Station as well.

Finally, Tractor Operators and Crane Operators can operate and have operated not just FELs but also fork-lifts, bobcats, loaders, rollers, pay haulers, and lube trucks. Thus, DSNY should fill the vacancies at the Transfer Station by choosing from the CSL preferred list of laid-off Tractor and Crane Operators and bargain in good faith over these assignments.

City's Position

The City contends that staffing of Sanitation Workers at the Transfer Station is a management right under NYCCBL § 12-307(b) and not a mandatory subject of bargaining.³ While Tractor and Crane Operators were assigned to operate FELs and excavators, respectively, at the Landfill, Sanitation Workers have also operated and continue to operate this very type of equipment at other

³ NYCCBL § 12-307(b) provides in pertinent part:

It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted . . . ; and exercise complete control and discretion over its organization. . . .

locations. As Martin Bellew's affidavit indicates, many Sanitation Workers receive the requisite training and certification to operate this equipment and myriad types of other sanitation equipment. Nothing in the Sanitation Workers' job description prevents assignments to operate these vehicles. Thus, the assignment of operating FELs or excavators is not a new assignment for Sanitation Workers.

The City disagrees with the Union's labeling the use of FELs for such work as snow removal, parade cleanup, or emergency cleanup as a "permanent special assignment." Indeed, in the section of the collective bargaining agreement between DSNY and the Sanitation Workers that enumerates "permanent special assignments," operation of FELs is not listed.

Furthermore, the excavators used at the Landfill to carry garbage from barges were about double the size of those to be used at the Transfer Station. Thus, at the Transfer Station, the function of the machine, as well as its size, will be different from that at the Landfill.

The City states that the Transfer Station will have far fewer employees – from about 400 to just over 20. According to the City, members of IUOE have not in the past operated mechanical brooms and other vehicles that employees who work at the new Transfer Station will be required to run. Nor do members of IUOE perform the duties of litter cleanup or dust control. Employees at the Transfer Station will be required to perform many functions, and, therefore, the City needs job flexibility and cannot utilize Tractor and Crane Operators, who work on specialized tasks. According to the City, since the qualifications of the job have changed, the Union cannot show that the job is exclusive to the Tractor and Crane Operators.

DISCUSSION

The issue in this case is whether DSNY violated NYCCBL § 12-306(a)(1) and (a)(4) when it failed to bargain with members of Locals 15 and 14 over the assignment of work using FELs and excavators at the Staten Island Transfer Station. This Board finds that although the Tractor Operators exclusively operated FELs and the Crane Operators exclusively operated excavators at the Staten Island Landfill, these members of IUOE were not the exclusive operators of FELs and excavators for the handling of waste under the auspices of the DSNY. Since DSNY has the right to make assignments and IUOE has not shown exclusivity of the work at issue, DSNY is not required to bargain over the assignment of the operation of FELs and excavators at the Transfer Station.

Generally, management has the right to determine the “methods, means and personnel by which government operations are to be conducted.” See NYCCBL § 12-307(b); *Uniformed Sanitation Ass’n, Local 831*, Decision No. B-6-87 at 10; see also *State University of New York (Stony Brook)*, 33 PERB ¶ 3035 (2000). This Board has stated that management is limited from exercising this right if it has so agreed in a contract provision, if a statutory provision prevents such unilateral exercise, or if a party makes “a showing that the work belongs exclusively to the bargaining unit.” *Patrolmen’s Benevolent Ass’n*, Decision No. B-5-80 at 8. In *Uniformed Sanitationmen’s Ass’n*, Decision No. B-68-90, a case involving the same unions and agency as those in the instant case, the Uniformed Sanitationmen’s Association (“USA”), brought a petition against the City claiming that after the City decided to construct a paved road, instead of a dirt road, from the barges to the face of the Staten Island Landfill, the City improperly refused to bargain over the DSNY’s assignment of Tractor Operators instead of Sanitation Workers to the work of moving garbage by means of new equipment – self-contained tractor-trailers instead of “Athey” wagons

pulled by tractors. USA argued, among other things, that the job description of Tractor Operators did not include the operation of the new type of equipment. *Id.* at 10. IUOE, which intervened in the case, argued, among other things, that the assignment of the work in question was “within the City’s managerial prerogative” and that members of IUOE had been performing the transport of garbage from barges to the fill site for 35 years. *Id.* at 15, 23. This Board found that management was not limited in determining personnel in operating the Landfill and that DSNY could continue to assign the Tractor Operators to the duty of carrying waste to the face of the Landfill, albeit with slightly different equipment. Thus, the City was not required to bargain over the assignment.

In a previous scope of bargaining case, *District Council 37, Locals 983 and 1062*, Decision No. B-6-90, the union claimed that motor vehicle operators (“MVOs”) in the Human Resources Administration should continue to perform the duties of transporting children in protective services or foster care. The City had decided to use private sector employees through a contractor instead. Looking to decisions by the Public Employment Relations Board (“PERB”), this Board wrote that “PERB continues to limit the scope of mandatory bargaining in subcontracting cases to circumstances where ‘the work in question has been performed exclusively by the unit claiming the right of retention.’” *Id.* at 24. The Board found that the same work performed at that time by MVOs had in the past been performed by private contractors for several years. Thus, as the Board in the USA case wrote of the DC 37 case, “we found that because the union could not demonstrate that the work had been performed exclusively by the unit, it did not ‘have a reasonable claim of entitlement of preservation of the work.’” *Uniformed Sanitationmen’s Ass’n*, Decision No. B-68-90 at 25 n.45.

In *Niagra Frontier Transportation Authority*, 18 PERB ¶ 3083 (1985), PERB’s seminal case

on exclusivity, PERB enunciated a basic standard to establish an improper transfer of unit work. A party must prove: (1) that the work in question had been performed by unit employees exclusively, and (2) that the reassigned tasks are substantially similar to those previously performed by unit employees. If both are answered in the affirmative, PERB says, the employer violated its requirement to bargain in good faith pursuant to § 209-a.1(d) of the CSL, unless the qualifications for the job have been changed significantly. If the qualifications are changed, PERB invokes a balancing test to weigh the interests of the employer and those of the unit employees, individually and collectively. *Id.* at 3182.

In cases in which unit work involves multiple tasks, multiple-function jobs, or multiple locations, PERB analyzes exclusivity by determining whether a “discernible boundary” has been established around work. Thus, PERB assesses the nature, location, and frequency of the work that unit employees perform. *See County of Rockland (Correction Officers)*, 37 PERB ¶ 3032, at 3094-3095 (2004), *citing City of Rome*, 32 PERB ¶ 3058, at 3140 (1999). In determining whether the performance of some tasks by non-unit employees breached a unit’s exclusivity, PERB analyzes “core components,” or work “intrinsic to the position.” When unit employees have exclusively performed core components of the work, the fact that tasks incidental or peripheral to the position have been performed by non-unit employees will not destroy exclusivity as to the duties of the position. On the other hand, when non-unit employees have performed core component duties of a position, unit employees have not established exclusivity even if they have exclusively performed tasks incidental to the core duties of that position. *See City of Rome, supra*, at 3140-3141; *County of Westchester*, 31 PERB ¶ 3035 (1998); *County of Westchester*, 31 PERB ¶ 3034 (1998).

Town of Southampton, 30 PERB ¶ 3069 (1997), concerns, in part, the conversion of a landfill

to a transfer station. At the landfill, the only location to accept commercial debris in Southampton, unit employees weighed garbage to determine how much to charge, sold garbage bags to the public, and operated a pump to remove liquid from wells. When the transfer station opened at the site of the previous landfill, the town assigned non-unit part-time employees. The record showed that non-unit employees assigned to the town's three other existing transfer stations counted the number of bags of garbage (rather than weighed the garbage) to determine the charge, also sold garbage bags to the public, and operated pumps, though slightly differently from the way they were operated at the landfill. The union argued that it had established a discernible boundary around the unit work at the landfill, and, therefore, the work at the new transfer station should be assigned to union members. PERB found, however, that because the work at the landfill had been similar to that at the town's three other transfer stations, the union had not established exclusivity. *Id.* at 3172. PERB held that the nature of the trash and the method used to ascertain the charges for its disposal do not provide a sufficient basis by which to define unit work. *Id.*, citing *Town of Brookhaven*, 27 PERB ¶ 3063.

In a second, consolidated action addressed by the decision, the union argued that its members had exclusively cleaned the woods around the landfill, one time renting bulldozers and a tractor to do so, and, therefore, the town's unilateral hiring of a contractor to perform that work violated the duty to bargain. PERB found that cleanup in the woods had routinely been performed by full-time unit employees, part-time non-unit employees, private contractors, and community service workers, and was not exclusive to unit employees even though only they had once used machines, not just pitchforks and shovels. PERB refused to define unit work based on an isolated incident of using bulldozers and tractors to clean up the wooded area around the landfill. Since substantially similar

work had been performed by both unit and non-unit employees, PERB found no exclusivity and no requirement to bargain.

In *Town of Brookhaven*, 27 PERB ¶ 3063 (1994), the town operated three landfills. Unit employees transported trash, compacted it, and buried it. However, the town, during the same period, also entered into several contracts with private carters to haul garbage within the town. When the town contracted with one carter to load trash from the containers at the main landfill and then transport it from the main landfill to another town, the union brought a claim arguing that its members had exclusively performed the duties of compacting, transporting containers, and hauling garbage at that landfill. PERB found that the union had not established exclusivity concerning the transportation of trash because the private contractors had performed essentially the same tasks as those by unit members hauling garbage for the town.

The union in *Brookhaven* also attempted to distinguish regular trash from recycled materials. PERB held that the nature of the garbage could not be used to define a unit's work – what matters are the functions and duties of the job. *See also Town of Southampton*, 30 PERB ¶ 4660, at 4876 (1997) (although unit employees exclusively performed the duties regarding tin can metal, non-unit private contractors also collected and transported various kinds of recyclable materials; thus there was no transfer of unit work and no requirement to bargain).

In the instant case, the parties do not dispute that Crane Operators exclusively operated excavators to unload waste from barges at the Landfill and that Tractor Operators exclusively operated FELs to load the waste onto trucks, drove the waste to the face of the Landfill, and buried the waste with dirt. Tractor Operators are also the exclusive operators of FELs at the concrete recycling plant and were the exclusive operators handling waste at the now defunct truckfills.

However, Sanitation Workers have also operated FELs throughout the City for years. Currently, Sanitation Workers operate FELs to clean paper after parades, clear snow, remove derelict vehicles, clean roadways after an accident, and clean City lots. In the past, Sanitation Workers operated FELs exclusively at the marine transfer stations to clear the spilled garbage and clean the area. At the Compost in Staten Island, while Tractor Operators drove FELs on dirt roads, Sanitation Workers drove them on asphalt.

Furthermore, Laborers hired by private companies that have contracted with DSNY operate FELs at 19 facilities to load trash onto tractor-trailers or railroad containers.

This Board finds that the Union has not established that members of IUOE have exclusively operated FELs for waste disposal for DSNY. The tasks in operating a FEL to load garbage and then dump it into a truck or rail container are essentially the same for clearing confetti and other parade trash as for clearing household waste. The nature of the trash is not dispositive. The core functions for operating the FEL to move garbage have been the same for Tractor Operators, Sanitation Workers, and Laborers under the auspices of DSNY.

In addition, the job specification for Sanitation Workers includes responsibilities such as: “operates the equipment involved in street cleaning, waste collection, recycling collection, snow removal, and waste disposal. . . .” At the Transfer Station, a FEL will be used by Sanitation Workers in the waste disposal process.

As to the Crane Operators, one unit employee now operates a piston at the Concrete Recycling Center. If he is not present, a Sanitation Worker operates the machine. While the Union notes that a Sanitation Worker performs that job only because DSNY did not hire more than one Crane Operator, the Union has not sought bargaining over that position and, therefore, we make no

finding of exclusivity.

The record indicates that Laborers operate excavators used at facilities run by private contractors.⁴ While the record is unclear as to the tasks the Laborers perform with the excavators or as to the amount they are used, we cannot find that Crane Operators have been the exclusive operators of excavators for use of waste disposal in New York City.

Finally, this Board does not find that the City's plan to assign Sanitation Workers rather than Operating Engineers is improperly motivated. Although the Union argues that the City relied on the Labor Law § 220 prevailing wage rate for Operating Engineers in its Requests for Proposals for the operation of the Transfer Station, and although the Union alleges that DSNY underestimates the amount of work that will be required, the Union does not allege a violation under NYCCBL § 12-306(a)(3), and we find no *prima facie* case that the assignments are motivated by reasons prohibited by the NYCCBL. *See Uniformed Sanitation Ass'n*, Decision No. B-68-90 at 25.

Thus, this Board determines that the Tractor Operators did not operate FELs exclusively and the Crane Operators did not operate excavators exclusively for DSNY. Therefore, DSNY is not required to bargain over the utilization of Sanitation Workers at the Transfer Station, and, accordingly, we dismiss the petition.

⁴ There has been no showing whether Sanitation Workers have operated the smaller excavators that will be used at the Transfer Station.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the improper practice petition, BCB-2470-05, filed by the International Union of Operating Engineers, Local 15, 15A, 15C, and 15D, and Local 14-14B, be, and the same hereby is, denied in its entirety.

Dated: January 23, 2006
New York, New York

MARLENE A. GOLD

CHAIR

GEORGE NICOLAU

MEMBER

CAROL A. WITTENBERG

MEMBER

BRUCE H. SIMON

MEMBER

M. DAVID ZURNDORFER

MEMBER

ERNEST F. HART

MEMBER