

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(San Leandro, CA)

STERICYCLE, INC.

Employer¹

and

Case 32-RC-5603

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AUTO TRUCK DRIVERS,
LINE DRIVERS, CAR HAULERS and
HELPERS, LOCAL NO. 70 OF
ALAMEDA COUNTY, CALIFORNIA,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Stericycle, Inc., herein called the Employer, is in the business of picking up, transporting, treating and disposing of various forms of medical waste from hospitals, doctor's offices, nursing homes, laboratories, veterinarians, and other medical facilities throughout the United States. The Employer's operations in Northern California consist of District 93, which includes facilities in San Leandro, Rancho Cordova, Fresno, and Redding. International Brotherhood of Teamsters, Auto Truck Drivers, Line Drivers, Car Haulers and Helpers, Local No. 70 of Alameda County, California, herein called the Petitioner or the Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time route drivers employed by the Employer at 1366

¹ The name of the Employer appears as amended at the hearing.

Doolittle Drive, San Leandro, California; excluding all other employees, including plant workers, warehouse workers, plant supervisors, roll-off drivers, long-haul drivers, shuttle drivers, dispatchers, biotrack administrators, clerical employees, employees at other Stericycle locations, guards, and supervisors as defined by the Act. A hearing officer of the Board held a hearing, and the Petitioner and Employer each filed post-hearing briefs, which I have duly considered.

The Petitioner seeks to represent a traditionally appropriate single facility drivers unit at San Leandro, where the Employer maintains both a transportation department with its own separate facility and a medical waste processing plant. The Petitioner asserts that the petitioned-for unit is *an* appropriate unit, and that the Board thus need not consider any alternative unit(s) suggested by the Employer. Conversely, the Employer asserts that the petitioned-for unit is both arbitrary and artificial, and that the petitioned-for San Leandro route drivers do not possess a distinct community of interest separate from the other employees working at San Leandro nor a distinct community of interest separate from the employees of the Employer's other facilities in Rancho Cordova, Fresno, and Redding.

For the reasons noted below, I find that the petitioned-for driver only unit is not appropriate insofar as it fails to include clerical employees of the Employer's transportation department. However, I find, in agreement with the Petitioner, that the Employer's plant employees do not share such a community of interest with the transportation department employees that they must be placed within the same unit.² Finally, I find that the Employer has failed to rebut the single facility presumption in this case due to the substantial local autonomy exercised by the supervisors at San Leandro and the absence of substantial interchange between

² Because I have concluded that the plant employees are not to be included in the unit found appropriate herein, I do not reach the issue as to whether plant supervisors Ken Barnes, Victor Jasso and Steve Douglas constitute statutory supervisors and should be included in the unit.

the employees in the unit found appropriate herein and the employees at Rancho Cordova and Fresno, and I therefore find appropriate a unit confined to the Employer's San Leandro facility.

OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer is involved in the comprehensive collection, treatment and disposal of medical waste for commercial customers. The medical waste is picked up by route drivers who transport it to one of the Employer's facilities, where it is either sterilized, disposed of, or transported out of state for disposal. The Employer deals with several different types of waste or "waste streams", including "blue bag" wastes (comprised of biosystems waste and pharmaceutical waste, as well as newer, reusable biosystems sharps), "red bag" wastes (mainly comprised of materials picked up from large hospitals and bioresearch companies, such as blood, gloves, tissue, and gowns), and regular non-reusable "sharps" waste (comprised of needles, syringes and broken glass).

The Employer is heavily regulated by, among others, the Environmental Protection Agency, the Department of Transportation, the Occupational Health and Safety Administration, and the California Department of Public Health. The primary persons responsible for assuring compliance with all applicable state and federal laws are Plant Manager Henry Gonzalez at San Leandro and Facility Manager Dave Williams at Fresno and Rancho Cordova. It is approximately 106 miles between the Employer's San Leandro and Rancho Cordova facilities, approximately 166 miles between the Employer's Rancho Cordova and Fresno facilities, and approximately 166 miles between the Employer's San Leandro and Fresno facilities. While the address of the Employer's Redding facility is not in the record, it is approximately 330 miles from the Fresno facility to Redding, 221 miles from the San Leandro facility to Redding, and approximately 180 miles between the Rancho Cordova facility and Redding.

The Employer's San Leandro Facility

The Employer's San Leandro facility is divided into two parts, a plant located at 1345 Doolittle Drive and a transportation facility located at 1366 Doolittle Drive, each of which has its own separate parking lot. At most Employer facilities, the plant and transportation operations are under one roof rather than separate, as they are at San Leandro. The San Leandro plant and transportation facilities are across the street from each other, such that it takes a maximum of five minutes to travel from one to the other by truck or car. The plant has three or eight docks or bays used for the loading and unloading of trucks.³ Prior to 2002 or 2003, San Leandro was merely licensed as a transfer facility and not a treatment plant, such that all treatment of wastes occurred at the Employer's Fresno facility. The San Leandro facility serves customers in the San Francisco Bay metropolitan area as far south as Monterey, as far north as Ukiah, as far east as Stockton, and as far west as the ocean. The Employer utilizes approximately 22-24 bobtail trucks, 6 tractor trailers, and 2 small 16-foot vans at the San Leandro facility.

The San Leandro facility employs approximately 33 route drivers, approximately 16 plant employees (including two lead plant employees), a dispatcher, a biotrack administrator, two roll-off/shuttle/long haul drivers, and a maintenance employee. There are three teams of 11 route drivers, who report to one of three transportation supervisors, Terry Hales, Angel Diaz or Bobby Tauala.⁴ The transportation supervisors in turn report to Transportation Manager Sam Escobar, the highest ranking person at the San Leandro transportation facility. From this facility, the Employer services hundreds of medical customers throughout and beyond the San Francisco Bay

³ Transportation Manager Sam Escobar testified that there were three bays or docks at the plant, as did route driver William "Willy" Rivera. However, Plant Supervisor Ken Barnes testified that there were eight docks at the plant, but only five "full use" docks and three docks limited to chemotherapy waste, pathological waste, and the wastes handled by the roll-off drivers.

⁴ The parties stipulated that Hales, Diaz and Tauala constitute statutory supervisors within the meaning of Section 2(11) of the Act. Hales, Diaz and Tauala share two desks and/or offices at the San Leandro transportation facility.

Area metropolitan area, with almost all route drivers having regular, albeit evolving, routes at which they learn their customers' needs, preferences, and practices. The route drivers generally pick up full containers of various types of wastes from their route customers and simultaneously strive to drop off with these customers the same number of clean, empty containers. The route drivers then bring all collected waste containers back to San Leandro to either be treated there, or to be repackaged and transferred to Fresno for treatment there, or to be repackaged and transferred to Rancho Cordova for purposes of being shipped on to Salt Lake City or Kansas City for ultimate disposal. The plant workers at San Leandro do not process pharmaceutical waste or "sharps" waste but, instead, merely transfer the racks that the sharps are on from the trailer they come in on to another trailer ultimately bound for Fresno.

The route drivers at San Leandro report to work at times varying from 4:00 a.m. to 6:00 a.m. to begin their routes. Upon completion of their routes, the route drivers typically park their trucks at the transportation facility, because the docks/bays at the plant are usually occupied, especially in the afternoon. The route drivers typically return from their routes at any time during a period from approximately 12:30 p.m. to 5:00 p.m. However, most return to the transportation facility between 3:00 and 4:00 p.m. The returned trucks are later moved to the plant by various plant employees, including plant shuttle drivers. The route drivers generally do not assist in the unloading of their trucks, which is instead left to the plant workers. According to San Leandro route driver Vince Burns, who testified at the hearing, he has never unloaded his truck during the five and one-half years in which he has worked for the Employer.⁵ Instead the route drivers focus on completing their post-trip inspections of their vehicles, completing their

⁵ One exception to this practice sometimes occurs when a route driver's truck becomes unexpectedly and prematurely full of waste containers at a time when he has not yet completed his route, such that he has to return to San Leandro to drop off his load in order to create space in his truck for him to complete the rest of his route. The record did not establish how often this occurs. In such situations, where a route driver is anxious to get back out on the second portion of his now split route, he might assist the plant workers in unloading his truck.

paperwork, including route sheets and manifests, and providing such paperwork along with their Portable Data Terminals (PDT's) to dispatcher Susan Ollison or biotrack administrator Gretchen Bonilla. All of the foregoing work is performed in or adjacent to the transportation facility. The waste containers transported by the route drivers all have unique bar codes that can be scanned into the PDT's and subsequently into the Employer's computer system.⁶ Once all paperwork is completed and Ollison or Bonilla have verified the information contained therein, and once the drivers' "load sheets" with the amount and type of containers they expect to need for their routes the next day are provided to the plant, the route drivers are free to go home for the evening.⁷

After the arrival of the route drivers' trucks at the plant, which, as noted, are usually driven there from the plant facility by plant shuttle drivers, the plant workers scan in the containers as they come off conveyor belts from the trucks, and send such containers to huge autoclave bins to dump the waste into the autoclave steam sterilization unit.⁸ The autoclave bins are typically heated to a temperature of 300 to 325 degrees for a period of one hour, after which time they are considered to be disinfected. Such bins are then unloaded from the autoclave and dumped into a compactor, where they are compacted and placed in containers, to then be driven to a landfill by a roll-off driver. The maximum number of containers transferred to the landfill in a day is five.

The San Leandro processing plant operates 24 hours per day on three shifts (day, swing and graveyard) from approximately 7:00 a.m. Monday to 8:00 a.m. Saturday.⁹ A higher number

⁶ The PDT's are also used for inputting when drivers arrive at and leave customer facilities, when they take meal or rest breaks, full containers picked up and empty containers dropped off, and other tracking information.

⁷ If a driver realizes after his departure that he has omitted information from the load sheet for the next day, that driver may contact Plant Supervisor Victor Jasso for assistance in revising the load sheet.

⁸ The labels on the containers include information such as a serial tracking number with a barcode, and the customer's name, address, phone number, and account number.

⁹ The plant has recently been operating on Sundays in order to meet recent high demand for sufficient numbers of clean containers for Mondays, but the record does not indicate whether the Employer has plans to continue this Sunday operation indefinitely.

of plant employees work on the early graveyard or late swing shift than work on day shift. Thus, most of the plant employees are at the San Leandro facility after the route drivers have ended their work day. Moreover, the key plant work occurs overnight at times when no route drivers are on duty. Four p.m. until 4:00 a.m. is considered the critical waste processing time period at the plant when the whole dock floor is ordinarily packed with containers. During the swing and graveyard shifts, the plant employees will wash and dry the containers and then reload route drivers' trucks with empty containers for distribution on their routes the next day. The primary focus is on loading, unloading, and processing the materials from the route drivers' trucks. The plant generally deals with the shuttles from Rancho Cordova during the day shift prior to the arrival of the route drivers' trucks.

Each shift has at least four plant workers doing loading/unloading, washing, dumping waste into the autoclave, or scanning/operating the autoclave—the four principal plant functions which represent 70% of its man hours. One shift supervisor and a dedicated transfer operations person focus on reloading of waste destined for incineration outside California.¹⁰ While scanning only takes seconds per container, loading and unloading take several minutes per container. Unloading takes longer than loading since unloading involves full, hazardous containers, while loading involves empty, safe containers.

Unlike Fresno and Rancho Cordova, the San Leandro facility has separate break and locker rooms at both the plant facility and the transportation facility. Route drivers almost always take their meal and rest periods while out in the field on their routes, whereas plant employees take their breaks at the plant. Non-driving transportation-side employees like dispatcher Susan Ollison and biotrack administrator Gretchen Bonilla take their breaks in the

¹⁰ There is one dedicated transfer operator for each of the three shifts, Adan Barajas, Victor Ceja and Brian Radsord.

break room on the transportation side. There is no evidence of plant employees using the transportation-side locker room or route drivers using the plant locker room. The route drivers generally punch in and out at the transportation facility but sometimes punch out at the plant, while the plant workers punch both in and out at the plant.¹¹

The Employer's Fresno Facility

The Employer's Fresno facility is both a red bag autoclave plant and a biosystems plant, and it serves customers approximately as far north as Modesto and San Jose and as far south as Bakersfield. The Fresno autoclave system is essentially identical to the autoclave used at San Leandro. The Fresno facility is the only Employer facility within its Northern California District 93 that has the capacity to deal with types of pharmaceutical and biosystems wastes that cannot be treated at San Leandro or Rancho Cordova.

The Fresno facility employs approximately 22-24 route drivers (including 2 lead drivers), 14 plant employees, a combined dispatcher/biotrack administrator, a maintenance employee, and two roll-off/shuttle/long haul drivers. The Fresno facility was described by witnesses as "cramped," having only one loading dock for use by 22-24 route drivers. This limited space necessitates frequent and extensive communication between plant workers and route drivers at Fresno regarding the availability and timing of use of the loading dock. Trucks for which no dock space is available must be staged on the street nearby. When the dock opens, it is usually plant workers who retrieve and drive the trucks the short distance to the dock.

The route drivers at Fresno report to work at times varying from 3:00 a.m. to 7:00 a.m. There are no plant workers at Fresno in the morning, as they do not start work until 2:00 p.m.

¹¹ Based on the testimony of San Leandro Plant Manager Henry Gonzalez that route drivers "usually" punch out on the plant side, the Employer argues that route drivers "often" punch out at the plant. However, San Leandro route driver Vince Burns testified that he only has occasion to punch out at the plant approximately twice a year. Route driver Danny Whitney also testified that he swipes out at the transportation facility. No other route drivers who testified were asked where they generally punch out.

Thus, there is no interaction between Fresno route drivers and plant workers before 2:00 p.m. If trucks scheduled to go out are missing handtrucks or containers, the route drivers must seek to find and obtain the handtrucks and containers where they can. There is only a single locker room and break room at Fresno used by all employee classifications on both the plant side and transportation side.

The Employer's Rancho Cordova Facility

The Employer's Rancho Cordova facility employs approximately 13-14 route drivers, three warehouse workers, a combined dispatcher/biotrack administrator, and a roll-off/shuttle driver. Unlike San Leandro, Rancho Cordova is not a waste processing facility and is not a 24 hour operation. Because the Rancho Cordova facility is only licensed as a transfer station and not a plant, there is no autoclave or incineration equipment at this facility but, rather, only a dock area. Therefore, autoclaveable red bag waste obtained from customers in the Rancho Cordova/Sacramento area is transferred down to San Leandro by long haul driver Wade Arp at least once per day in order to undergo autoclave treatment at San Leandro.¹² The Rancho Cordova facility depends entirely on San Leandro for clean containers, while San Leandro depends on Fresno for clean biosystems containers.

Route drivers at Rancho Cordova, as at most Employer locations, generally go out on their routes with two or three different types of containers. However, route drivers at the San Leandro facility often take up to six or seven different types of containers out on their routes. Unlike San Leandro, Rancho Cordova drivers must sometimes load their own trucks because of the absence of warehouse workers. The Employer's Rancho Cordova drivers go as far north as

¹² To the extent that customers in the Rancho Cordova area produce the types of pharmaceutical and biosystems wastes that can only be treated in Fresno, the record is not clear as to whether such wastes are transported directly from Rancho Cordova to Fresno or whether they pass through San Leandro while in transit from Rancho Cordova to Fresno.

the Chico and Paradise, California areas and as far east as the South Lake Tahoe, Nevada area. There is only a single locker room and break room at Rancho Cordova used by all employee classifications.

The Employer's Redding Facility

The Employer's Redding facility has only one employee (David "Mark" Hancock), who is listed on the Employer's list of San Leandro, Rancho Cordova, Fresno and Redding employees as a Rancho Cordova route driver. Hancock services locations in the Redding, Red Bluff, Weaverville, and Susanville areas, and brings the containers back to the Redding transfer facility for subsequent transport to Rancho Cordova, or possibly takes the containers directly to the Rancho Cordova facility twice per week without ever stopping at the Redding facility. There is little evidence in the record as to the warehouse functions at Redding, if any, and no witnesses were presented who have worked at Redding or interacted with the Redding employee. Customers in the Redding area depend on obtaining clean containers from the Rancho Cordova facility, which containers were previously cleaned at the San Leandro facility.

The Employer's Supervisory Structure

District Manager Tom Stalberger presides over the Employer's District 93, which runs from just north of Los Angeles to the Oregon border, a distance of approximately 560 miles south to north. Stalberger works in the Employer's Vernon, California facility in the Los Angeles metropolitan area.¹³ Stalberger regularly visits the Employer's San Leandro, Fresno and Rancho Cordova facilities but is domiciled in Vernon.¹⁴ The two top managers at San Leandro who report directly to Stalberger are Transportation Manager Sam Escobar and Plant Manager Henry Gonzalez. Gonzalez and Escobar are stationed at the San Leandro facility. Escobar, who

¹³ The Employer's District 90 is based in Southern California and includes locations in Vernon, Fontana and San Diego. No party to this proceeding seeks to include any of the Employer's employees working in District 90.

¹⁴ Stalberger testified that he visits San Leandro approximately twice per month.

has an office at the transportation facility at 1366 Doolittle Drive, and who has only been at the San Leandro facility for three months, runs the transportation facility, while Gonzalez, who has an office at the plant facility at 1345 Doolittle Drive, runs the plant. Beneath Escobar on the transportation side are three transportation supervisors (Terry Hales, Angel Diaz and Bobby Tauala), each of whom has 11 route drivers who report to them. The dispatcher and biotrack administrator also report to Escobar. Beneath Gonzalez on the plant side are maintenance supervisor Ramon Rivas, plant supervisor Victor Jasso, and plant supervisor Ken Barnes. Gonzalez supervises approximately 14 plant employees, as well as two roll-off/shuttle/long-haul drivers (Marvin Tayag and Menfid Albizures).

Facility Manager Dave Williams is the highest ranking person at both the Fresno and Rancho Cordova facilities (although he routinely works out of the Fresno location). Williams reports directly to Stalberger. Directly beneath Williams at the Fresno facility are Plant Supervisor Steve Douglas and Fresno Transportation Supervisors Jim Edwards and Chad Willnoite. There are only transportation supervisors at Fresno and no transportation manager equivalent to Escobar in San Leandro. Approximately 14 plant employees report to Douglas, and approximately 22-24 drivers report to Edwards or Willnoite. The dispatcher/biotrack administrator reports to Edwards or Willnoite.

Beneath Williams at Rancho Cordova is Transportation Supervisor Eric Hultman. Approximately 13-14 route drivers, 3 warehouse employees, and a dispatcher/biotrack administrator report to Hultman.

Job Classifications Utilized by the Employer

Most of the route drivers at each facility drive 20 to 26-foot bobtail trucks. Although these vehicles only require Class B commercial licenses, most if not all of the route drivers have

Class A commercial licenses. Some route drivers drive tractor trailers, anywhere from 28 foot to 53 foot, which require Class A commercial licenses. Most route drivers have their own regular routes on which they become well acquainted with their customers' needs, practices and preferences. The drivers are provided with the same personal protective equipment used by plant workers (e.g., safety glasses, gloves, steel safety boots, and occasionally face shields). The route drivers all wear the same Employer-provided uniform consisting of a green shirt and blue pants. Route drivers generally take their meals and breaks while out on their routes or sometimes in the break room at the transportation facility.

The Lead route drivers have somewhat higher responsibilities than normal route drivers, because they are expected to know and cover for multiple routes, to train other drivers, and to make suggestions to transportation supervisors about how to improve operations. Lead drivers do not have their own set routes or specific trucks designated to them. Lead drivers do not direct the work of other drivers or discipline other drivers. The Employer has three lead drivers at San Leandro, one for each Transportation Supervisor, but the record does not indicate who the three lead drivers are.¹⁵ The lead drivers receive a slightly higher safety bonus than do regular route drivers.

The Employer employs one dispatcher at each of the three pertinent facilities. San Leandro dispatcher Susan Ollison, Rancho Cordova combined dispatcher and Biotrack Administrator Philip Coyle, and Fresno dispatcher Dale Ortiz did not testify. The dispatchers communicate with the route drivers and with customers on a daily basis. If a pick up is missed or if a driver is getting behind on his/her route, it is the dispatcher who will be notified and will

¹⁵ Employer's Exhibit 7, on which the parties relied throughout the hearing, inexplicably shows two lead drivers at Fresno but no lead drivers at San Leandro. Plant Supervisor Ken Barnes described San Leandro employee George Martinez as a lead driver, but this status is not reflected on Employer's Exhibit 7.

coordinate a solution with the customer and the route driver.¹⁶ The dispatchers print and distribute to the route drivers route sheets, manifests, bar code labels, map directions and other paperwork. Manifests are legally mandated documents retained by the drivers showing each container of waste they have collected, from whom, and how much. The manifests contain both pre-printed information and information added by drivers. Manifests are used both by route drivers and roll-off drivers, and copies of them are provided by drivers to customers, who must sign the drivers' copies. The dispatchers do not drive trucks themselves, do not load or unload trucks, and in San Leandro do not visit the plant. At the end of their routes, the route drivers turn in their paperwork and PDT's to the dispatchers, who then download and reconcile the information provided by the route drivers. The dispatchers make sure that all customers have been serviced and that all manifests and other paperwork have been signed, and they also back up and support biotrack administrators as needed. Ollison works from 7:00 a.m. to 4:00 a.m. each day, such that all or almost all route drivers have returned from their routes before she departs.¹⁷ Ollison wears the same basic Employer-provided uniform worn by the route drivers, in contrast to the plant employee uniform consisting of heavy duty grey work pants and a pinstriped grey long sleeve button up shirt with an optional jacket.

The Employer employs a single biotrack administrator (Gretchen Bonilla) at San Leandro, a combined biotrack administrator/dispatcher (Philip Coyle) at Rancho Cordova, and a combined biotrack administrator/dispatcher (Dale Ortiz) at Fresno.¹⁸ The biotrack administrators are responsible for maintaining and continuously updating the customer information base, for

¹⁶ The dispatcher is also to be notified when a driver is falling behind on his route so that alternatives may be explored that minimize the need for overtime. There is no contention that the dispatchers authorize or deny overtime. The Employer has a nationwide policy calling for the avoidance of unnecessary overtime.

¹⁷ There was testimony that any route driver should inform Ollison in the event of circumstances that will cause him/her to be unable to complete his/her route before the time at which Ollison normally leaves, so that Ollison can then arrange for someone else to receive the post-route information from that driver.

¹⁸ Biotrack administrators/dispatchers, like dispatchers, have regular daily contact with route drivers, both in person and over the phone, and work out of the transportation department (not plant) of their respective facilities.

downloading information contained in the route drivers' PDT's after completion of their routes, "debriefing" route drivers, and verifying and authenticating information contained on driver manifests and route sheets. Thus, route drivers have regular contact with the biotrack administrator with respect to customer address changes and pickup point changes.¹⁹ San Leandro Transportation Manager Sam Escobar described Bonilla as "pretty much my eyes," with a sense at any time of which drivers are back at the facility and which are still out on their routes. The biotrack administrator regularly interacts by telephone with plant supervisors at the facility across the street in order to make sure that her information corresponds with theirs, but there is no evidence in the record that she interacts with rank and file plant workers.

When dispatchers and/or biotrack administrators are not available, such as when on vacation, their work is performed by temps hired from temp agencies rather than by any supervisors or potential bargaining unit employees. Biotrack Administrator Bonilla wears street clothes, whereas dispatcher Susan Ollison wears the same green shirt and blue pants worn by route drivers.²⁰ Bonilla usually works from 8:00 a.m. to 5:00 p.m.

San Leandro has two plant drivers, Marvin Tayag and Menfid Albizures, both of whom are sometimes referred to as roll-off drivers, shuttle drivers, or long haul drivers. One of them drives a truck each day, up to four times per day, from San Leandro to the landfill in Pittsburg, California (roll-off work). Similarly, either Tayag or Albizures drives a truck from San Leandro to Rancho Cordova one to two times per day hauling waste that will ultimately be incinerated in Salt Lake City or Kansas City (long haul work). Tayag and Albizures report to and are

¹⁹ The record does not reflect any significant differences between the duties and functions of the dispatcher and biotrack administrator positions. However, much of the testimony regarding these positions addressed the Rancho Cordova and Fresno locations, at which the two positions are consolidated, rather than the San Leandro facility where they are separate. Nevertheless, based in part on the testimony that the separate positions exist at San Leandro due to the sheer size of and volume of waste handled at the San Leandro facility, it appears that there is overlap of functions as between Ollison and Bonilla at San Leandro in fielding drivers' calls and processing drivers' information.

²⁰ There is no explanation in the record as to the reason for the difference in outfits between Ollison and Bonilla.

supervised by Plant Manager Henry Gonzalez rather than a supervisor from the transportation side. Tayag and Albizures never cover the routes driven by regular route drivers on the transportation side, but they generally cover for each other when the need arises. However, when Tayag and Albizures are not available, their duties are performed by Plant Supervisor Victor Jasso and, perhaps, Plant Supervisor Ken Barnes, plant maintenance worker Martin Casillas, lead plant worker Victor Alonso, lead plant worker Enrique Gonzalez, or lead route driver George Martinez (a former plant worker and roll-off driver). There is no evidence that any other route drivers other than George Martinez, who does not have a regular route, cover for Tayag or Albizures.²¹

In addition to his other driving duties, Tayag shuttles trucks back and forth between the transportation facility and the plant in the evenings. He was principally hired to help drive the incineration waste materials to Rancho Cordova, but he also supports the transporting of containers to and from Rancho Cordova, which is primarily the responsibility of Rancho Cordova long haul driver Wade Arp. Albizures generally works from 6:00 a.m. to 4:00 or 5:00 p.m., Tuesday through Saturday, spending 60% of his time driving, 30% of his time dumping or moving bins, and 10% of his time on meal or rest breaks. The record did not indicate whether Tayag also participates in waste processing or loading duties at the plant.

Tayag and Albizures both have Class A commercial truck driving licenses. Further, because they drive double trailers, Tayag and Albizures must and do have special doubles endorsements on their Class A licenses, which the normal route drivers are not required to have. However the training to obtain such a license endorsement is mainly on the job. Because of the need to keep pathological waste chilled, the long-haul drivers will drive refrigerated vehicles, whereas regular route drivers do not operate vehicles that have refrigeration capability.

²¹ The record did not establish how often Martinez is called upon to substitute for Tayag or Albizures.

Long haul driver Wade Arp, based in Rancho Cordova, is the person who drives a truck from Rancho Cordova to San Leandro each day containing red bag autoclaveable waste that will be treated at San Leandro. Arp then returns to Rancho Cordova carrying clean, empty containers for use by customers in the Rancho Cordova/Sacramento area.²² If Arp gets stuck in San Leandro waiting for his truck to be unloaded, he will usually assist the San Leandro plant workers in unloading his truck so as to minimize his down time. The role of Fresno-based long haul driver Kevin Henshaw is similar to that of Arp. Henshaw transports to Fresno the types of biosystems wastes that can only be treated at Fresno and not San Leandro, and returns to San Leandro with containers cleaned at Fresno. Henshaw's loads also contain the types of wastes which will continue on from Fresno to Rancho Cordova and then on to Salt Lake City or Kansas City.

Plant workers operate the autoclave at both the Fresno and San Leandro facilities. There is no evidence that any route drivers at San Leandro or Fresno ever operate the autoclave equipment. Plant workers are responsible for unloading containers from trucks, putting containers on conveyors, dumping the waste in containers, scanning containers, washing containers in the tub washer, and loading containers on to trucks. Plant workers frequently rotate among these tasks and are cross-trained in them.

Plant workers shuttle trucks back and forth between the plant and the transportation facility so long as the vehicles are less than 26,000 pounds in weight and, thus, do not require anything more than a Class C license. The vehicles over 26,000 pounds may only be moved by persons with Class A licenses.

²² Arp sometimes does this by way of a "drop and hook," wherein he drops off his truck full of red bag waste and immediately drives back a different truck which is either empty or already loaded with empty containers ready for use, rather than wait for the truck he drove down to San Leandro from Rancho Cordova to be unloaded.

Currently, Victor Alonso is the lead plant worker at San Leandro on the swing shift, and Enrique Gonzalez is the lead plant worker at San Leandro on the graveyard shift. Alonso and Gonzalez are sometimes also characterized as shift supervisors. The lead plant worker on the day shift is effectively Ken Barnes, although his title is plant supervisor rather than lead plant worker. There is a brief time period each day before Transportation Manager Sam Escobar and Maintenance Supervisor Ramon Rivas arrive in which Gonzalez is the highest ranking person at the entire San Leandro facility. There is also a time where Alonso is the highest ranking person at the facility each day before a higher ranking supervisor arrives. The duties of lead plant workers Alonso and Enrique Gonzalez are similar to those of plant supervisors Victor Jasso and Ken Barnes. Jasso and Barnes are hourly plant supervisors who direct employees as to their duties for the day but do not have authority to hire or fire.²³ Barnes is the person who a driver would contact if a driver discovered he was short on containers while out on his route and needed to come back for more. Barnes, Jasso, and Gonzalez share two desks at the plant.

Victor Alonso and Enrique Gonzalez, like other plant workers, assist in preloading trucks at night so that they are ready to be used by route drivers, who arrive as early as 4:00 a.m. to begin their normal routes. Alonso and Gonzalez will also drive trucks back and forth between the transportation facility and plant facility as needed, because they apparently possess the appropriate Class A licenses for vehicles exceeding 26,000 pounds.²⁴ Lead plant workers are responsible for operating the scanning equipment, operating the autoclave, and ensuring that the roll-off/long-haul driver takes the proper trailer from San Leandro to Rancho Cordova. Lead plant workers are also primarily responsible for photographing improperly stacked or poor

²³ Neither party contends that Victor Alonso or Enrique Gonzalez constitute statutory supervisors.

²⁴ The record is unclear whether Alonso and Gonzalez possess Class A licenses. Some portions of the transcript suggest that Alonso and Enrique Gonzalez have the necessary Class A licenses with which to move all types of trucks, yet some Employer witnesses suggest that the only persons with Class A licenses other than route drivers are Albizures, Tayag, George Martinez, Ken Barnes, Martin Casillas and Victor Jasso.

quality loads. The lead plant workers resolve employee disagreements about where particular employees will be working on a given day, track which trucks have been completed and still need to be completed, monitor the flow of waste to make sure the autoclave is being used in an optimal fashion, determine when employees take breaks, decide when compactor bins will be changed out, and perform other functions. Lead plant workers move trucks and load bins themselves and do not simply direct others to perform such tasks.

There is one maintenance plant worker at San Leandro (Martin Casillas-Olmos), whose responsibility is to maintain and repair the plant equipment, including two pressure vessels in the autoclave, one washer, and one dumping platform. This person comes into contact with other plant workers but rarely has any contact with drivers. The maintenance plant worker only performs maintenance functions at the plant and does not repair or maintain the vehicles used by the transportation department. However, Casillas-Olmos has a Class A commercial drivers license and assists in moving trucks between the plant and the transportation facility at night. The maintenance plant worker and maintenance supervisor (Ramon Rivas) are the only skilled welders at the San Leandro facility. The maintenance employees regularly utilize tools not used by other plant workers, such as wrenches, hammers, screwdrivers, grease guns, grinders, crowbars, and ratcheting sockets.

There are two maintenance supervisors, one at San Leandro (Ramon Rivas) and one at Fresno (Harry Hensley, Jr.). While San Leandro maintenance employee Martin Casillas-Olmos reports to Rivas, no employees report to Fresno Maintenance Supervisor Hensley. Both maintenance supervisors are responsible for both preventative maintenance and repair of all equipment at their respective facilities. Maintenance Supervisor Hensley is hourly and non-

exempt under the Fair Labor Standards Act, while Maintenance Supervisor Ramon Rivas is salaried and exempt under the FLSA.

The three warehouse workers at Rancho Cordova unload all waste collected by Rancho Cordova route drivers and then segregate and transfer it accordingly. The warehouse workers will load the autoclaveable waste on one truck for transport to and treatment at San Leandro, and will load the pathology, chemotherapy, and any other waste requiring incineration on another truck for transport to Salt Lake City (or possibly Kansas City). The warehouse workers will load the biosystems waste for transport to and treatment at Fresno. Because there is only one loading dock at Rancho Cordova, the trucks must frequently be staged in the street, and the warehouse workers must drive them from where they are staged to the dock on a daily basis. The employees at Rancho Cordova are classified as warehouse workers because there is no plant at Rancho Cordova and no treatment of wastes is conducted there.²⁵

ANALYSIS

A Single Facility Unit is Appropriate

Resolution of unit composition issues begins with an examination of the petitioned-for unit. Only if it is found inappropriate will an alternative unit be imposed. Bartlett-Collins Company, 334 NLRB 484 (2001). In making a determination as to whether a petitioned for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioning union be an appropriate unit for purposes of collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. See

²⁵ There is minimal discussion in the record of the biosystems technician position, sometimes also known as the biosystems services technician, and neither party has contended that they should be included in any unit herein found appropriate. While such persons are technically employees of the Employer, they work from their homes and visit hospitals and medical facilities without any apparent need to ever visit the Employer's premises. They also appear to be outside the immediate supervisory structure at the Employer's four pertinent facilities in this case, reporting instead to biosystems service supervisors, who report to biosystems service managers, who report to an area biosystems manager with jurisdiction over several states.

Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950); National Cash Register Co., 166 NLRB 173, 174 (1967); Dezcon, Inc., 295 NLRB 109, 111 (1989) (the Board need only select an appropriate unit, not the most appropriate unit). A union is not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with the requested unit does not exist. Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997); P. Ballentine & Sons, 141 NLRB 1103, 1107 (1963). In evaluating the appropriateness of a petitioned-for unit, the Board relies upon the community of interest standard. Overnite Transportation, 322 NLRB 723, 724 (1996). The Board considers several factors in determining community of interest among employees, such as method of pay; hours of work; benefits; common supervision; qualifications, training and skills; job functions; amount of time spent away from the plant situs; interaction and contact among employees; functional integration; and bargaining history. Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962); Ore-Ida Foods, 313 NLRB 1016 (1994). A petitioner's preference is always a relevant, but not dispositive, consideration. E.H. Koester Bakery & Co., 136 NLRB 1006 (1962). Where a petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, and may even select an appropriate unit that is different from the alternative proposals of the parties. Boeing Co., 337 NLRB 152, 153 (2001); Overnite Transportation, 331 NLRB 662, 663 (2000).

As referenced above, the Petitioner seeks a single-facility unit consisting of the San Leandro route driver employees, whereas the Employer seeks a more comprehensive, multi-location unit. The Board has long held that a single location unit is presumptively appropriate for collective bargaining. D&L Transportation, 324 NLRB 160 (1997); J&L Plate, 310 NLRB 429 (1993); Bowie Hall Trucking, 290 NLRB 41 (1988). The presumption in favor of a single

location unit may be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” Bowie Hall Trucking, 290 NLRB at 41. In determining whether the presumption has been rebutted, the Board considers various factors such as: centralized control over daily operations and labor relations; common or autonomous supervision; similarity of employee skills, functions and working conditions; the degree of employee interchange; geographic separation; and bargaining history. New Britain Transportation Co., 330 NLRB 397 (1999); Esco Corp., 298 NLRB 837, 839 (1993).

Relying upon Capital Coors Co., 309 NLRB 322 (1992) and Hazard Express, 324 NLRB 989 (1977), the Employer argues in its post-hearing brief that no single-facility presumption applies in this case. I find the Employer’s reliance on those cases to be misplaced. The petitioners in Capital Coors and Hazard Express sought to represent employees at two facilities and all employer facilities respectively, unlike the single facility sought by Petitioner herein. Thus, while it is correct that no single facility presumption applies where a union petitions to represent employees at two or more facilities, Petitioner in the instant case has at all times sought only to represent the employees at the San Leandro facility.

Having found that the Petitioner is not precluded from relying upon the single-facility presumption, I find, for the reasons set forth below, that the Employer has not rebutted the single-facility presumption in this case. Thus, despite the high degree of functional integration between the Employer’s San Leandro, Rancho Cordova and Fresno locations, and the similarities of employees’ skills and working conditions at those locations, the local autonomy of the supervisors at the San Leandro location, the lack of temporary and permanent interchange among the facilities, and the geographical distances between the facilities strongly support the

application of the single facility presumption in this case, such that a unit limited to San Leandro employees is an appropriate unit herein.

Centralized Control over Daily Operations, and Local Autonomy

San Leandro, Fresno and Rancho Cordova employees work under the same employee handbook and personnel policies centrally administered by the Employer's Human Resources Department based at the Employer's Illinois headquarters. All employees nationwide are thus subject to the same policies as to sexual harassment, equal employment opportunity, overtime, attendance, promotional opportunity, funeral leave, jury duty, family medical leave, leaves of absence, military service, bulletin boards, confidentiality, discipline coaching, conflicts of interest, and many others.

However, I must also consider whether the single facility possesses any local autonomy notwithstanding a degree of centralized control from elsewhere. See Alyeska Pipeline Service Co., 348 NLRB No. 44, slip op. at 4 (2006) ("with respect to the factor of centralized control, the record shows that there is some local autonomy"). Here, the record establishes that a substantial degree of local autonomy exists at the San Leandro facility.

While District Manager Stalberger occasionally visits the San Leandro, Rancho Cordova, and Fresno facilities,²⁶ the record reflects that the first line supervisors at least at San Leandro have considerable autonomy and discretion. As Plant Manager Henry Gonzalez acknowledged, "I write all reviews, I approve all pay raises, I hire and fire everybody", and "it's my ship. I run it my way." Even Stalberger admitted that Gonzalez was "totally responsible for the plant." Plant supervisor Victor Jasso, who testified extensively as to the situations in which he must consult with Gonzalez, never once indicated that he had to contact Stalberger or some supervisor

²⁶ Stalberger testified that he visits San Leandro approximately twice per month and Rancho Cordova every two to three months. It is not clear how often he visits Fresno.

outside of San Leandro in connection with any situation that had arisen. Plant Manager Gonzalez described himself as the “sole arbitrator” when it came to employee performance reviews and indicated that he did not need approval from outside personnel like Stalberger unless an employee’s proposed raise exceeded 3 percent. There is no evidence that any employees have sought to speak with Stalberger rather than local management about their wages or raises.

Disciplinary matters are also apparently handled at the local level. There is no indication of the involvement of non-San Leandro managers in the attendance-related discipline issued to driver Vince Burns by Transportation Supervisor Terry Hales nor in the failure to work overtime discipline issued to plant employee Elmer Martinez in September 2008. As Plant Manager Gonzalez again acknowledged, “discipline, it’s my ball.” Gonzalez even made clear that it is usually he, rather than the plant supervisors beneath him, who usually initiates the disciplinary process. To the extent that Gonzalez only handles 90 percent of the disciplines at the San Leandro plant, the remaining 10 percent are handled by San Leandro plant supervisors Ken Barnes and/or Victor Jasso rather than by any persons outside San Leandro. Gonzalez also testified about how he works problems out between employees and between shifts, making no mention of any need to consult with Stalberger or anyone else.

Transportation Manager Sam Escobar appears to possess the same degree of autonomy as Plant Manager Gonzalez. Escobar testified that he has issued three or four disciplines within his first few months at San Leandro, and there is no indication from the record that Stalberger or any managers or supervisors outside San Leandro had to be consulted in connection with such disciplines. As Escobar put it during his testimony, “not one thing occurs without me knowing about it.”²⁷

²⁷ Certain testimony in the record suggests that Stalberger had some personal involvement in the disciplines of route driver Willy Rivera and Vince Burns relating to improperly secured loads. However, the record does not reflect

The Employer relies heavily on the centralized control of corporate operations emanating out of the Employer's Illinois corporate headquarters. However, centralized control of corporate operations, a common characteristic of multifacility enterprises, does not by itself militate against finding a single facility unit appropriate. The Concrete Company, 336 NLRB 1311, 1315 (2001); Centurion Auto Transport, Inc., 329 NLRB 394, 400 n. 24 (1999). In light of the evidence discussed above, I find that the San Leandro facility retains a considerable degree of local autonomy, which supports rather than rebuts the application of the single facility presumption in this case.

Common Versus Autonomous Supervision

Common supervision is a major consideration in assessing the single facility presumption, and the supervisory evidence in this case strongly supports the conclusion that a single facility unit would be an appropriate unit in this case. I first note that the Employer did not present as witnesses any of the supervisors from the Rancho Cordova or Fresno facilities. Therefore, there is scant evidence in the record as to the extent to which these Rancho Cordova and/or Fresno supervisors ever have occasion to supervise or even interact with San Leandro-based employees. What evidence there is suggests the contrary. San Leandro route drivers need not communicate with Fresno or Rancho Cordova supervisors or dispatchers, and Fresno or Rancho Cordova route drivers do not need to communicate with San Leandro supervisors or dispatchers. San Leandro Plant Manager Henry Gonzalez made it clear that he is on call at all times with respect to any plant problems that arise at San Leandro, and there was no evidence to

whether Stalberger became involved because of a need for his involvement or whether it simply happened that he was visiting the San Leandro plant on the days for which Rivera and Burns faced potential discipline. The anecdotal testimony on these matters comes from Rivera and Burns rather than from Stalberger, even though Stalberger testified on three of the five days of hearing in this matter (Nov. 24, Nov. 25, Dec. 1, 2008). Nor did the Employer, the party on whom the burden of rebutting the single facility presumption rests, seek to introduce copies of any written disciplines signed by Stalberger that might have shed further light on his purported involvement in disciplinary matters.

suggest that San Leandro employees ever need to contact a supervisor from an Employer facility other than San Leandro.

The highest ranking employees at San Leandro (Gonzalez on the plant side and Escobar on the transportation side) testified as to very few matters which they could not handle themselves and which instead required them to involve someone outside San Leandro, such as Vernon-based District Manager Tom Stalberger.²⁸ Moreover, the Rancho Cordova and Fresno facilities have stipulated statutory supervisors in charge of those facilities. See, e.g., Trane, 339 NLRB 866, 868 (2003) (Regional Director improperly relied upon single facility presumption where excluded facility lacked any separate supervision or other oversight); Waste Management of Washington, Inc., 331 NLRB 309 (2000) (lack of local autonomy at second facility where there was no permanent supervisor). Thus, unlike in Trane and Waste Management, the Rancho Cordova and Fresno facilities have not been shown to lack supervision separate from that of San Leandro.

Similarity of Skills, Functions and Working Conditions

The job classifications, skills and duties and working conditions of the San Leandro employees are essentially identical to those of the Rancho Cordova and Fresno employees, with the sole exception being that Rancho Cordova is a warehouse/transfer station rather than a plant, like San Leandro and Fresno. Route drivers' jobs are essentially the same regardless of where they are performed. Thus, route drivers from all three facilities at issue collect wastes from a variety of types of medical customers and return such wastes to their home facility for either treatment or further transit elsewhere for treatment. At each of the three facilities, route drivers

²⁸ Gonzalez did testify, however, that he needs approval from Stalberger at the Vernon facility if he wants to give any employee a higher than 3 percent raise.

report to transportation managers or supervisors, and plant personnel report to plant supervisors or managers.

At all three of the pertinent Employer locations, drivers with a Class B license earn a starting hourly rate that is \$1 less than the starting wage for a driver with a Class A license. The starting hourly wage in San Leandro for a Class A driver is \$17, with the equivalent starting hourly wage in Fresno and Rancho Cordova being \$16. Route drivers at San Leandro can earn as much as \$25 per hour. Lead drivers earn \$1 more per hour than regular route drivers. The highest wage received by any Class B driver at San Leandro is \$18/hour. There is no significant difference in pay between the route drivers and the roll-off driver/shuttle drivers, and this appears to be true at all of the locations. With respect to the plants, plant workers earn between \$12 and \$17 per hour at all locations. Therefore, there is no significant difference in wages, benefits and working conditions as between the petitioned-for San Leandro employees and the employees at the Rancho Cordova and/or Fresno locations.

Employee Interchange

In determining whether the single-facility presumption has been rebutted, the Board views employee interchange as a critical factor. First Security Services Corp., 329 NLRB 235 (1999). It is well settled that the Board attaches less weight to permanent transfers than temporary transfers.²⁹

While San Leandro-based routes may border on Fresno-based routes and/or Rancho Cordova-based routes, there is no evidence of any interaction between San Leandro route drivers, Fresno route drivers or Rancho Cordova route drivers.³⁰ Nor is there evidence in the

²⁹ See Red Lobster, 300 NLRB 908, 911 (1990); Lipman's, a Division of Dayton-Hudson Corporation, 227 NLRB 1436, 1438 (1977).

³⁰ Contrary to the Employer's contention, the evidence is insufficient to establish a substantial overlap among the routes emanating out of San Leandro, Rancho Cordova, and Fresno.

record of any customer facility being serviced by drivers from more than one Employer facility. In this regard, District Manager Stalberger and Plant Manager Gonzalez testified that other than in catastrophic circumstances like an earthquake, or unusual circumstances like a plant shutdown to replace a floor, there are no circumstances in which employees from one facility are called upon to work at other Employer facilities. For example, San Leandro route driver William “Willy” Rivera testified that he has never worked or been asked to work at the Fresno or Rancho Cordova facilities. Plant manager Henry Gonzalez testified that San Leandro has not needed to call upon employees from other Employer facilities nor offer its own employees to other Employer facilities.³¹

The evidence is also limited at best of persons moving between the San Leandro, Rancho Cordova, and Fresno facilities on a permanent basis. Former Rancho Cordova warehouse workers Jose Avila and Brian Radsord are now plant workers in San Leandro. There is also evidence that San Leandro route driver Dionisio Casillas formerly worked as a route driver at Rancho Cordova. However, the record did not establish if these employees transferred to other facilities pursuant to some kind of bidding process or whether the moves were voluntary or involuntary. The Board routinely gives less weight to voluntary interchange driven by the convenience or personal needs of employees rather than the operational demands of the employer. See New Britain Transportation Co., 330 NLRB 397, 398 (1999); D&L Transportation, 324 NLRB 160, 162 n. 7 (1997); Red Lobster, 300 NLRB 908, 911 (1990).³²

³¹ In its post-hearing brief, the Employer asserts that the Employer has a practice of having employees relocate to recently acquired new locations in order to get them up and running. However, there is no evidence that any employees from the San Leandro, Rancho Cordova and Fresno locations at issue herein have relocated to any such newly opened or acquired facilities. Moreover, the Board has historically given little weight to even substantial transfers from existing locations to newly opened facilities. See Alamo Rent-A-Car, 330 NLRB 897, 898 (2000); White Castle System, Inc., 264 NLRB 267, 268 (1982).

³² San Leandro route driver Juan Vazquez “transferred” to Fresno but then ultimately “transferred” back to San Leandro. However, like the other employees, there is no evidence that the transfer of Vazquez from San Leandro to

Thus, the evidence of temporary and permanent interchange falls far short of that found indicative of rebuttal of the single facility presumption. See White Castle System, 264 NLRB 267 (1982) (200 employees involved in temporary transfers out of 350-400 employees); J & L Plate, 310 NLRB 429, 430 (21 transfers out of 172-182 employees over 3-4 years deemed insubstantial); Dayton Transport Corp., 270 NLRB 1114 (1984) (400-425 temporary employee interchanges among a work force of 87 over 1 year); We Care Transportation, LLC, 353 NLRB No. 9, slip op. at 4 (2008) (450 instances of interchange). Indeed, the instant case appears closer to Kroger Limited Partnership d/b/a Hilander Foods, 348 NLRB No. 82, slip op. at 4 (2006) (three instances of temporary transfer in over a year among 150 employees, and 8-9 instances of permanent transfers in over 3 year period not sufficient to rebut single facility presumption).

Bargaining History

The Petitioner formerly represented a unit comprised solely of route and shuttle drivers at the San Leandro facility pursuant to a Board certification dated December 31, 1991. However, the Union was decertified pursuant to a Certification of Results of Election on November 25, 2003. Petitioner argues that the bargaining history demonstrates the presumptive appropriateness of a single facility unit limited to drivers. Conversely, the Employer argues that the bargaining history has no such probative value because the San Leandro plant did not exist as of the date of the original certification in Case 32-RC-3491. Given that there were no plant employees as of the 1991 date of the original certification, I do not assign this factor great weight.

Geographic Separation

It is approximately 106 miles between the Employer's San Leandro and Rancho Cordova facilities, approximately 166 miles between the Employer's Rancho Cordova and Fresno

Fresno was involuntary. Moreover, each time Vazquez transferred to and from San Leandro, he was treated like a new employee because his wage rate was reduced to the starting wage rate for route drivers at the particular facility.

facilities, and approximately 166 miles between the Employer's San Leandro and Fresno facilities. While the address of the Employer's Redding facility is not in the record, it is approximately 330 miles from the Fresno facility to Redding, 221 miles from the San Leandro facility to Redding, and approximately 180 miles between the Rancho Cordova facility and Redding. See Employer's Exhibits 2-4.

The Board has found distances much less than the distance between San Leandro and Rancho Cordova or Fresno to be indicative of geographic separation and, thus, supportive of a single-location unit. See Rental Uniform Services, 330 NLRB 334, 336 (1999); Van Lear Equipment, Inc., 336 NLRB 1059, 1063 (2001); Cargill, Inc., 336 NLRB 1114 (2001). See also New Britain Transportation Co., 330 NLRB 397, 398 (1999) (finding distances of six and twelve miles militated against a multi-facility unit); Massachusetts Society for Prevention of Cruelty to Children v. NLRB, 297 F.3d 41, 46 (1st Cir. 2002) (holding distances of 20 to 95 miles between facilities fit within Board case law finding geographic distance to favor single facility units). Indeed, in the Board's recent decision in Kroger Limited Partnership d/b/a Hilander Foods, 348 NLRB No. 82 slip op. at 3, n. 8 (2006), the Board found that the single facility presumption had not been rebutted even though the additional facilities which the employer sought to include ranged from only 8 to 25 miles away from the petitioned-for single facility.

To be sure, where other important factors militate against a single-location unit, the Board does not give geography controlling significance. Orkin Exterminating Co., 258 NLRB 773 (1981). See also Waste Management of Washington, Inc., 331 NLRB 309 (2000). However, where, as here, other factors favor the single facility unit, I find that the geographic separation of the San Leandro, Rancho Cordova and Fresno facilities strongly favors the application of the single-facility presumption. See also D&T Limousine Service, Inc., 328

NLRB 769, 779 (1999) (single facility presumption applied despite centralized control of corporate operations where facilities ranged from 20 to 300 miles away from petitioned-for facility).

Functional Integration

The record reflects that the San Leandro facility depends on the Fresno facility to process certain types of wastes which cannot be processed at San Leandro and that the San Leandro facility depends on the Rancho Cordova facility as a transfer station for types of wastes that must be sent outside California for ultimate disposition. Similarly, Rancho Cordova depends on San Leandro for clean containers to distribute to its customers. This evidence of functional integration provides support for a finding that a single facility unit at San Leandro would not be an appropriate unit. See Seaboard Marine Ltd., 327 NLRB 556 (1999) and Atlanta Hilton & Towers, 273 NLRB 87 (1984).

However, in American Directional Boring, Inc., 353 NLRB No. 21, slip op. at 24 (2008), the Board found that the single facility presumption had not been rebutted despite centralized control of labor relations policies and an executive comparable to District Manager Stalberger, who traveled among the facilities in his district. There, as here, such evidence of functional integration was offset by evidence of local control, for in that case, local management at the single facility was in charge of hiring, overtime, vacations and leaves; job vacancies at the single facility were not posted at the employer's other facilities;³³ and employees did not travel to other facilities for trainings. In Kroger Limited Partnership, supra, as here, local store managers established work assignments, set work schedules, approved overtime, authorized time off, scheduled employee vacations, and determined breaks, handled routine problems, handled

³³ San Leandro route driver Vince Burns testified that he has never seen job openings posted on a bulletin board at San Leandro for any of the Employer's other facilities.

orientations, and issued discipline. While there were visits from managers from other facilities, “these visits do not meaningfully limit local management’s authority over day-to-day labor relations.” 348 NLRB No. 82, slip op. at 4. Thus, the Board found that the centralized personnel and labor relations policies, similarity of employee skills and working conditions, and functional integration (all factors which arguably favor the Employer in the instant case) were outweighed by the significant local autonomy, lack of substantial interchange, geographic separation, and absence of bargaining history. 348 NLRB No. 82, slip op. at 5.

In sum, I find that notwithstanding the evidence of functional integration between the Employer’s San Leandro, Rancho Cordova and Fresno locations, and the similarities of employees’ skills and working conditions at those locations, those factors are outweighed by the geographical distances between those locations, the local autonomy of the supervisors at the San Leandro location and the lack of significant interchange among the facilities. Accordingly, I find the single facility presumption to be applicable in this case, such that a unit limited to San Leandro employees is appropriate.

A Separate Unit of the San Leandro Route Drivers and Transportation Facility Employees Is Appropriate

As noted in Publix Super Markets, Inc., 343 NLRB 1023, 1029 (2004), “the Board generally does not require truck drivers to be included in a unit of other employees when they spend most of their day away from the facility, have little interchange and contact with [other facility] employees, and do not perform . . . [other employees’] work.” See Home Depot USA, Inc., 331 NLRB 1289 (2000). Here, as will be discussed, the employer’s San Leandro route drivers fall within the foregoing description when considered in relation to the plant employees at that location but do have more significant interchange and contact with certain employees

working in that location's transportation facility. I will now apply a traditional community of interest test in determining whether the San Leandro route drivers constitute an appropriate bargaining unit.

Employee Qualifications and Training

With respect to skills, the vast majority of route drivers possess Class A commercial drivers licenses permitting them to drive a variety of different types of large trucks. In contrast, there is no indication that plant workers are required to possess such licenses and no indication that anything but a handful of plant employees possess such licenses. Also, under DOT regulations, the drivers are required to speak some English and understand road signs in English as a condition of their employment. In contrast, there has been no showing that plant workers are required to speak or understand English.

The Employer's drivers, upon being hired, are subject to extensive training regarding such matters as DOT regulations, how to conduct pre-trip and post-trip vehicle inspections, and injury and accident prevention. Thereafter, the drivers receive on the job training, as well as subsequent safety training on a monthly, quarterly and yearly basis. Not all trainings given to drivers have been shown to be required on the part of plant employees. Accordingly, I find that this factor weighs in favor of the appropriateness of a separate unit for route drivers.

Employee Duties and Job Functions

While the record reflects establishes that route drivers occasionally assist in loading and unloading trucks, the record also shows that such loading and unloading on their part is infrequent.³⁴ Usually the route drivers simply drop off their trucks at the transportation facility

³⁴ While the Employer cites the written Route Driver job description as an illustration of route drivers having loading and unloading duties akin to those of plant workers, it is not clear from the job description that the loading and unloading described therein is not limited to loading and unloading occurring out in the field servicing customers rather than at the plant.

from where plant employees move it to the plant for unloading and the reloading of clean containers, most of which work is done after the drivers' shifts have already ended. The evidence suggests that drivers only assist with loading or unloading when there is some urgent need to get a truck back on the road to complete an unfinished route. Further, it appears that loading and unloading are the only plant functions engaged in by route drivers. Plant Supervisor Ken Barnes testified that drivers only rarely assist plant workers in scanning containers or in other plant functions, and never operate the autoclave. Just as plant workers are not qualified to drive Class A trucks, drivers are not qualified to operate the autoclave.

While plant workers are primarily responsible for drying and deodorizing containers, mainly by shaking out as much water from them as possible, drivers have their own deodorizing squirt bottles for use out on their routes in drying and removing odors from containers, with drivers knowing which customers are especially sensitive to smelly or slightly damp containers. However, it appears that drivers dry and/or deodorize containers almost exclusively while out on their route. Thus, the fact that drivers may or may not dry containers while out on a route does not constitute evidence of shared functions as between plant workers and route drivers.

The Employer utilizes whomever is available to shuttle trucks between the transportation and plant facilities, subject to the limitation that only those persons possessing Class A licenses may move vehicles over 26,000 pounds in weight. The Employer also utilizes supervisors to shuttle trucks back and forth between the transportation facility and the plant. Notwithstanding this "whomever is available" approach to shuttling trucks between the transportation and plant facilities, the record establishes that the shuttling of trucks between the two facilities is a function of the plant employees. Route drivers are not involved in the shuttling of trucks other than to occasionally park their trucks at one of the plant docks, if available, when they return from a

route. Most shuttling of trucks is accomplished without the route drivers' having any direct contact with the shuttle drivers, for the route drivers typically park their trucks in the transportation facility lot and then go inside the transportation facility, after which someone from the plant moves the parked trucks to plant loading docks. See Overnite Transportation Company, 322 NLRB 347 (1996) (mechanics not required to be in petitioned-for drivers unit despite fact that jockeying trailers in and out of loading dock area was performed by all employees including drivers and mechanics).

The limited degree of overlap in job functions and employee interchange in the instant case is insufficient to overcome my conclusion that the route drivers share a distinct community of interest from plant employees. My conclusion in this regard is supported by Home Depot USA, Inc., 331 NLRB 1289 (2000) wherein the Board upheld a traditional drivers unit that excluded warehouse employees. Most importantly, the Board in Home Depot relied on the fact that the drivers spent most of their day out on the road making deliveries, not at the plant interacting with plant employees. The Board also relied in part upon factors such as the medical examinations and drug testing required of drivers but not of other employees, and the commercial drivers license with hazardous materials certification required of drivers but not of other employees. 331 NLRB at 1289. See also Publix Super Markets, Inc., 343 NLRB 1023, 1029 (2004) where the Board, citing Home Depot, noted that it generally does not require truckdrivers to be included in a unit when they spend most of their day away from facility, have little interchange and contact with unit employees, and do not perform unit work; Office Depot v. NLRB, 184 F.3d 506 (6th Cir. 1999) (drivers unit appropriate notwithstanding that drivers performed work of warehouse employees when drivers were placed on light duty or when they returned early from road).

In addition, the record establishes that route drivers have infrequent occasion to come into contact with plant employees when they return to the San Leandro facility. Employer District Manager Stalberger admitted that because the San Leandro facility does not have its plant and transportation functions consolidated under one roof (unlike the Employer's practice at the vast majority of its other locations), there is consequently less communication and interaction between drivers and plant workers at San Leandro than at the Employer's other facilities.

As illustrations of the lack of contact between plant workers and transportation employees, San Leandro driver Juan Vazquez testified that he only needs to interact with plant workers at most twice per month, and that such interactions may be as minimal as asking for a handtruck.³⁵ While San Leandro route driver Danny Whitney testified that he talks to at least one plant worker once a day every day, he admitted that more of the interactions were social than work-related. San Leandro driver Vince Burns testified that when his truck does not have enough containers, he will engage in self-help by "scrounging around" the transportation area for containers rather than go to the plant to ask plant workers for extra containers, or will "improvise" by slightly reducing the amount of containers going to his larger customers so that he will have enough for his smaller customers.³⁶ Further, San Leandro route driver William "Willy" Rivera testified that he had not been over to the plant side at all in the three months prior to the date on which he testified, and that even prior to the last three months, he only had occasion to go over to the plant looking for containers once or twice per month. There are also

³⁵ Similarly, San Leandro route driver Julio Siguenza testified that his twice per week interactions with plant workers generally concerned his efforts to get a handtruck or extra containers.

³⁶ The record establishes that there are occasions that could potentially require communications between rank and file plant employees and drivers with respect to issues of inventories, delays, and improperly stacked containers. However, the record does not make clear whether such communications predominantly take place between supervisors at the plant and transportation facility, rather than by rank and file employees. Cf. Cargill, Inc., 336 NLRB 1114 (2001) (assertions of interchange unsupported by documentary evidence of actual hours spent during each instance of interchange and specific testimony regarding context of interchanges insufficient to overcome single facility presumption).

little to no interactions between drivers and plant workers regarding the next day's load sheets, because the drivers can simply provide the load sheets to a plant supervisor or put them on a clipboard where they can be accessed by the plant workers without there ever being a need for any discussion between the driver and the plant worker.³⁷

The record reflects that the transportation facility holds regularly scheduled monthly meetings not attended by plant employees, and that the plant holds regularly scheduled monthly meetings not attended by transportation employees. Further, the transportation employees generally do not come into contact with plant workers at social events sponsored by the Employer at the San Leandro plant. While plant employees are not technically excluded from a transportation social event and transportation employees are not excluded from a plant social event, the events are viewed as separate, notices of them are not widely disseminated to the other side, and non-supervisory persons from the other side rarely attend. Along the same lines, I note that the transportation facility and plant have separate break and locker rooms.

To further underscore the lack of significant interchange between route drivers and plant employees, trucks, as a general matter, are loaded and unloaded by plant workers rather than by drivers. However, when drivers divide their routes into two halves or components, and consequently stop at the Employer's facility in the middle of their route in order to drop off and/or pick up containers, the driver and plant workers may unload the truck together to speed up the process given the need to get the driver back out on the road.³⁸ It is more common for route

³⁷ Given this ability to put load sheets on clipboards, as well as the evidence that lead plant workers Victor Alonso or Enrique Gonzalez sometimes pick up load sheets from drivers at the transportation facility after having driven a truck over from the plant, I do not assign great weight to the testimony of District Transportation Manager Eloy Jimenez (not based in San Leandro) that he regularly observes drivers walking over to the plant side to hand load sheets to plant workers. Jimenez is based in Vernon and does not visit the San Leandro facility more than once a month.

³⁸ However, there was only evidence in the record of one driver (Danny Whitney) who divides up his route in this way, so the opportunities for drivers and plant workers to unload trucks alongside each other during the day appear to be extremely limited.

drivers to do their route in one swoop without returning to the facility at some point during it. Therefore it is only in unusual circumstances that drivers are forced to load or unload a truck at the plant. In J&L Plate, 310 NLRB 429, 430 (1993), the Board explained that the evidence of minimal interchange and lack of meaningful contact between employees in the requested unit and comparable employees outside the unit diminished the significance of other factors such as the functional integration between the facilities and the distance between the facilities. The Board has found that a low level of interchange among groups of employees is indicative of a separate community of interest. American Security Corp., 321 NLRB 1145, 1146 (1996); Executive Resources Associates, 301 NLRB 400, 401 (1991). See also Birdsall, Inc., 268 NLRB 186, 191-192 (1983).

In Home Depot USA, Inc., 331 NLRB 1289 (2000), the Board stressed the lack of employee contact and interchange in reaching its conclusion that drivers shared a distinct community of interest from pullers, despite the fact that the drivers in Home Depot spent hours in the employer's warehouse pulling their own merchandise several days each week. Thus, it would appear to be a significantly greater degree of interchange with other employees than has been shown to exist here between the route drivers and the plant employees.

Taking all of these factors into account, I conclude that the lack of ongoing daily interaction between transportation employees at 1366 Doolittle Drive and plant employees at 1345 Doolittle Drive supports my conclusion that a unit limited to the transportation facility is appropriate in this case.

Permanent and Temporary Interchange

The record indicates about six instances of persons moving from plant worker jobs to driver jobs or vice versa on a permanent basis. However, there is substantially less evidence of

temporary interchange. There was evidence that plant supervisor Victor Jasso ran regular transportation-side routes approximately once a month over an unspecified period. However, San Leandro route driver Danny Whitney testified that he has never filled in for a plant employee in the six years in which he has worked for the Employer and that he is not aware of any route drivers filling in for plant employees. Similarly, stipulated supervisor Terry Hales admitted that plant employees do not fill in for route drivers and do not come along on routes to assist drivers. Plant Supervisor Ken Barnes indicated that he began as a plant worker during the week while doing routes in the transportation department on the weekends before assuming his current Plant Supervisor position.

With respect to permanent interchange, I note that there appear to be more plant employees who have become route drivers than vice versa. See Warner-Lambert Co., 298 NLRB 993 (1990) (permanent transfers by production employees into packing machine mechanics positions does not establish community of interest, where packing machine mechanics did not transfer into production positions). Moreover, it is not clear from the record when many of the permanent transfers took place. See Bartlett-Collins Company, 334 NLRB 484, 485 (2001) (finding diminished significance to transfers occurring over a period of years). In this case, the record does not establish whether the permanent transfers reflected in the Employer's records introduced at hearing were driven by employer needs, employee desires, or some combination thereof, thus further diminishing their relevance as evidence of interchange. See New Britain Transportation Co., 330 NLRB 397, 398 (1999); D&L Transportation, 324 NLRB 160, 162 n. 7 (1997); Red Lobster, 300 NLRB 908, 911 (1990). In light of the absence of such explanatory evidence as to permanent transfers, combined with the absence for the most part of

temporary transfers, I find that the overall absence of interchange supports my finding of an appropriate transportation only unit.

Common versus Separate Supervision

The record reflects that the plant and transportation employees are separately supervised, a factor which strongly supports the transportation unit found appropriate in this case. While District Manager Tom Stalberger is the overall person in charge of both the plant and transportation facilities at San Leandro and other locations, the two levels of supervisors beneath Stalberger at San Leandro are exclusively assigned to either the plant or the transportation facilities at that location. There is no evidence in the record of any supervisor or management meetings at the San Leandro location commonly attended by both plant and transportation supervisors.³⁹

The highest ranking supervisor at the transportation facility is Transportation Manager Sam Escobar, who has three stipulated statutory supervisors beneath him. Escobar has the undisputed power to discipline employees, and there is no evidence in the record that any persons at the plant facility would play any part in any decision by Escobar to discipline a transportation employee. Escobar conducts regular meetings with transportation employees that are separate from the plant meetings conducted by Plant Manager Henry Gonzalez, with such meetings held approximately 6 to 8 times per year.

The highest ranking person at the plant is Plant Manager Henry Gonzalez, who generally arrives at work by 8:30 a.m. each day and does not leave until 7:00 or 8:00 p.m., thus enabling him to observe both the day shift and the swing shift. Gonzalez has no power to supervise

³⁹ The Human Resources meeting testified to at length by Plant Supervisor Victor Jasso was apparently attended only by plant-side supervisors, such as Henry Gonzalez and Ramon Rivas, along with Vernon-based District Manager Tom Stalberger. There is no evidence that any transportation-side supervisors, such as Sam Escobar, Terry Hales, Angel Diaz or Bobby Tauala, were at this meeting.

transportation employees, and there is no evidence in the record that he has done so. Nor is there evidence of any transportation personnel playing any part in Gonzalez's decisions with respect to disciplining plant employees.

Under these circumstances where there are multiple levels of separate supervision, I find that the lack of common supervision over the plant and transportation facilities supports the placement of transportation and plant employees in separate units.

Functional Integration

There is a substantial degree of functional integration between the plant side and transportation side of the Employer's San Leandro operation. Thus, all plant employees and route drivers work towards the common goal of satisfying the Employer's customers and ensuring that the customers are in compliance with all applicable laws and regulations at all times. The Employer has created a program called "One Team, One Goal," which stresses collaboration and cooperation among salespersons, managers, drivers, plant workers, maintenance workers, clerical employees, and supervisors on a daily basis in order to achieve the common objectives of the Employer. However, the Board has held that functional integration can be outweighed by other factors such as the lack of employee contact and interchange. See Home Depot, supra.

Terms and Conditions of Employment

All employees' wages are set by the Employer's wage and compensation department, which is part of the Employer's Human Resources department at its Illinois headquarters. The starting hourly wage in San Leandro for a Class A driver is \$17, with the equivalent starting hourly wage in Fresno and Rancho Cordova being \$16. The pay range for plant workers is from \$12/hour to \$17/hour. Plant workers and drivers qualify for a safety bonus or incentive of \$100

every two weeks or quarter. The plant worker bonus is primarily premised on attendance and safety, whereas the driver bonus considers a wide array of criteria, including accidents, preventable injuries, absences, disciplines or excessive overtime. Nevertheless the bonus programs are similar for both groups of employees.⁴⁰

However, with respect to wages, it is evident that the route drivers are paid at a significantly higher pay scale than the plant employees. While \$17/hour represents the floor of the route driver wage scale, it is the ceiling of the plant worker wage scale. Accordingly, I find that this significant discrepancy supports the inclusion of the plant workers in a separate unit from the drivers.

Benefits

All employees, both those in Petitioner's proposed unit and those additional classifications sought by the Employer, are eligible to receive the same benefits such as vacations, holidays, time off, and 401K contributions. In addition, all employees receive or are eligible for the same medical plan, vision plan, dental plan, employee assistance program, flexible spending account, disability benefits, life insurance, accidental death and dismemberment insurance, employee stock purchase plan, and other benefits.⁴¹ Therefore, the employees in the petitioned-for unit do not possess any community of interest as to benefits that is distinct from the community of interest shared with the larger group of employees sought by the Employer.

⁴⁰ The record is not clear as to whether dispatchers, biotrack administrators or combined dispatcher/biotrack administrators are eligible for any safety bonuses/incentives. Tr. 543.

⁴¹ Such benefits are available to Stericycle employees on a nationwide basis and are not limited to those employees within District 93 which the Employer claims would constitute an appropriate unit.

Hours of Work

The route drivers primarily work during the later hours of the graveyard shift and the entirety of the day shift. By contrast, the plant workers work on all three shifts, given that the plant at San Leandro is a 24 hour operation. Because of these different hours, as expressed elsewhere herein, the bulk of the plant workers' work occurs during the crunch time between 4:00 p.m. and 4:00 a.m., while the bulk of route driver work occurs between 4:00 a.m. and 4:00 p.m. In addition, as Petitioner points out, the plant workers take coordinated group breaks at set times, whereas the route drivers take breaks at unpredictable times while out on their routes and sometimes forgo their breaks entirely. Based on the foregoing, the hours of work factor supports the exclusion of plant workers from the transportation unit found appropriate herein.

Bargaining History

The Petitioner formerly represented a unit comprised solely of route and shuttle drivers at the San Leandro facility pursuant to a Board certification dated December 31, 1991. However, the Union was decertified pursuant to a Certification of Results of Election on November 25, 2003. Given that there were no plant employees as of the 1991 date of the original certification, I do not assign this factor great weight.

As a final matter in weighing the various community of interest factors bearing on the inclusion or exclusion of the plant employees, I do not find that the roll-off drivers, shuttle drivers or long haul drivers are required to be included in the transportation-side unit I find appropriate herein. All of these driver classifications, unlike the transportation department route drivers, work out of the plant, where they are supervised exclusively by plant facility supervisors, do not regularly interact with customers, do not cover for route drivers, and drive different types of trucks than do route drivers.

In sum, the circumstances here are substantially similar to those in Home Depot and Publix Super Markets where the Board recognized that the drivers at issue in those cases need not be included in a larger unit that included plant or warehouse employees having little contact or interchange with the drivers. Accordingly, I find appropriate a bargaining unit that does not include the Employer's plant employees, and I will now address whether the route drivers should be included in a unit with the other transportation facility employees.

The Dispatcher and Biotrack Administrator

The Employer argues that the dispatcher (Susan Ollison) and biotrack administrator (Gretchen Bonilla) are plant clericals who should be included in the unit, while Petitioner argues that they are office clericals who should be excluded from the unit. The line between office clericals and plant clericals is not always clear. Hamilton Halter Co., 270 NLRB 331, 332 (1984); Gordonsville Industries, 252 NLRB 563, 590 (1980). A key element in determining whether a community of interest exists is whether the asserted plant clericals perform functions closely allied to the work of the employees with whom they are sought to be grouped. Palagonia Bakery Co., 339 NLRB 515, 535 (2003); Desert Palace, Inc., 337 NLRB 1096, 1098 (2002).

It is apparent that the dispatcher and biotrack administrator work hand in hand with the route drivers to service the Employer's wide variety of customers. The dispatcher and biotrack administrator debrief route drivers at the completion of their routes, including downloading and reconciling the PDT information from the drivers, and assist in preparing the drivers' route sheets for the following day. The dispatcher and biotrack administrator can tell supervisors at any time which drivers have returned from their routes and which are still out on the road. The dispatcher and biotrack administrator serve as liaisons between customers and route drivers

juggling a host of issues posed by missed stops, prematurely full trucks, dissatisfied customers, evolving customer needs, and other daily developments.

Dispatchers and biotrack administrators work at the same transportation facility as the route drivers, report to the same second level transportation supervisor as the drivers (Sam Escobar), and are paid on an hourly basis like the drivers. The dispatcher and biotrack administrator are subject to the same Employer policies and practices as the drivers and many of the same terms and conditions of employment as the drivers.

Dispatchers who, as here, answer requests, determine who is qualified to handle and respond to the request, and then send that person to the appropriate location to take action, have been found to be plant clericals. See, e.g., Desert Palace, Inc., 337 NLRB 1096, 1098 (2002) (citing Colonial Lincoln Mercury Sales, 197 NLRB 54, 64 (1972) (dispatcher who receives repair orders and assigns work to mechanics on basis of who is qualified to do work or in accordance with availability is plant clerical)). The dispatcher and biotrack administrator in the instant case perform such functions when they address and resolve problems such as missed pickups, customers with dirty or insufficient containers, and traffic delays, by deciding which drivers are in the best position to address these customer concerns quickly and effectively.

As the party seeking to exclude an employee from the bargaining unit and participation in a board election, Petitioner bears the burden of establishing ineligibility. The Kroger Company, 342 NLRB 202, 204 (2004). Like the petitioner in Kroger, Petitioner herein has failed to meet its burden of establishing that the work of Ollison and Bonilla is not integral to the production process. Instead, there is ample evidence of substantial direct daily contact between the dispatcher and biotrack administrator and the route drivers with whom they would be placed.⁴²

⁴² Cook Composites and Polymers Co., 313 NLRB 1105, 1108 (1994) cited by Petitioner in support of its contention that the dispatcher and biotrack administrator are office clericals, is distinguishable. In contrast to the

For all of these reasons, I find that the dispatcher and biotrack administrator constitute plant clericals rather than office clericals and that they share an overwhelming community of interest with the drivers who I have already found constitute an appropriate unit. Accordingly, I find that they should be included in the same bargaining unit as the route drivers.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter 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 are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

data entry operators found to constitute office clericals in that case, there is no evidence in the present case that the dispatcher or biotrack administrator perform traditional secretarial functions such as typing and filing, that they perform human resource functions such as responding to employee questions about paychecks, that they do not punch a time clock, or that they sometimes leave the facility in order to run errands. The data entry operators in Cook Composites also worked in a different building from the employees with whom they were to be combined, whereas the dispatcher and biotrack administrator in the instant case work in the same transportation facility to which the route drivers report.

All full-time and regular part-time route drivers, lead route drivers, dispatchers, and biotrack administrators employed by the Employer at the Employer's 1366 Doolittle Drive, San Leandro, California facility; excluding all other employees, including plant employees employed by the Employer at the Employer's 1345 Doolittle Drive, San Leandro, California facility, plant supervisors, lead plant workers, roll-off drivers, long haul drivers, shuttle drivers, warehouse workers, maintenance workers, maintenance supervisors, employees of contractors or temporary agencies, professional employees, office clerical employees, guards, and supervisors as defined by the Act.

There are approximately 37 employees in the unit.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Brotherhood of Teamsters, Auto Truck Drivers, Line Drivers, Car Haulers and Helpers, Local No. 70 of Alameda County, California, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their

replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **December 29, 2008**. No extension of time to file this list will be granted except in

extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website, www.nlr.gov,⁴³ by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

⁴³ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

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. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **January 2, 2009**. The request may be filed electronically through the Agency's web site, www.nlr.gov,⁴⁴ but may not be filed by facsimile.

Dated: December 19, 2008

/s/ William A. Baudler
William A. Baudler, Acting Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

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⁴⁴ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.