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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Stericycle, Inc.,

Employer,

Teamsters Local 70,

Petitioner.

Case No. 32-RC-5603

**PETITIONER'S OPPOSITION TO THE
EMPLOYER'S REQUEST FOR REVIEW**

1 Pursuant to Board Rule 102.67(e), Teamsters Local 70 (the “Union”) hereby files this
2 opposition to the Employer’s Request for Review (the “Request for Review”), which was filed
3 electronically with the Board on January 2, 2008, of the Regional Director’s Decision and Director of
4 Election (the “Direction”) issued on December 19, 2008. The Union seeks to represent all route
5 drivers employed at the Employer’s facility at 1366 Doolittle Drive, San Leandro, California, and
6 excluding all other employees. The Employer seeks a unit of all non-supervisory personnel at its four
7 Northern California locations, including drivers and Plant workers. The Regional Director directed
8 an election among the employees the Union sought to represent, as well as two clerical employees
9 who also work at the 1366 Doolittle facility, the Biotrack Administrator and the Dispatcher. (The
10 Union has not sought review of the Regional Director’s Direction with respect to these two clerical
11 employees.)

12 For the reasons set out below, as well as in the Direction and the Union’s post-hearing brief
13 (the “Union’s Brief”), filed on December 16, 2008 with the Regional Director in this case, and
14 attached hereto as Exhibit A, the Union respectfully requests that the Board deny the Employer’s
15 Request for Review and uphold the Direction. Contrary to the Employer’s claims, the Direction
16 conforms to Board precedent and is wholly justified by the record. Further, contrary to the
17 Employer’s claim, the hearing was conducted properly.

18 In support of its position, the Union relies on the Direction and its Brief except on three
19 matters. First, the Union notifies the Board of the Employer’s failure to comply with Board rules in
20 filing its Request for Review. Second, the Union here responds to some of the many misstatements
21 of fact contained in the Employer’s post-hearing brief (“Employer’s Brief”), which it incorporated
22 into the Request for Review. Third, the Union responds to the Employer’s claim in the Request for
23 Review that the Hearing Officer improperly conducted the hearing.

24 First, Stericycle’s counsel violated Board Rule 102.114(i) in filing its Request for Review.
25 Rule 102.114(i) requires a party filing a document electronically with the Board to notify any parties
26 who must be served with the document “by telephone of the substance of the transmitted
27 document” The Request for Review was filed electronically on January 2, 2008, and served on
28 the Union’s counsel by overnight delivery, received on January 5, 2008, four days before any

1 opposition was due. Until then, Union’s counsel had not been notified of the filing by telephone or
2 any other means.

3 Second, the Employer’s Brief contains numerous misstatements of fact, some of which are set
4 forth here. The Employer states on the first page of its Brief: “All benefits and pay policies are the
5 same for all job classifications, affecting all categories of compensation” (Employer Brief 1-2)
6 In fact, as set out in the Union’s Brief and the Direction, the pay policies applicable to route drivers,
7 whom the Union seeks to represent, and Plant workers, whom the Employer seeks to include in the
8 unit, are different. Specifically, Plant workers are entitled to a “safety bonus.” (Tr. 284-85) Drivers,
9 on the other hand, are entitled to an “incentive.” (Tr. 484) The full amount of the drivers’
10 “incentive” is withheld if the driver misses one day of work for any reason, including legitimate
11 sickness, during the two-week period. (Tr. 397) The Plant workers’ safety bonus, on the other hand,
12 is pro rated for each day they miss during the two-week period. (Tr. 284-85) Similarly, the driver’s
13 incentive is reduced or withheld entirely if they perform “excessive” overtime (Tr. 422) or receive
14 customer complaints. (Tr. 484) The Plant workers’ bonus is not subject to these parameters. The
15 Plant workers are also entitled to a quarterly bonus of \$100 based on the performance of all the Plant
16 workers. (Tr. 285) The drivers are not entitled to any quarterly, or similar bonus. (Tr. 661) As the
17 Regional Director found, any other similarities in pay and benefits across classifications does not
18 establish a community of interest.

19 The Employer also claims in its Brief: “Safety training, personal protective equipment,
20 accident investigations and responses, and safety meetings are the same for all job classifications with
21 District 93.” (Employer Brief 12) In fact, initial and ongoing training is provided by the Employer’s
22 safety manager and by the employee’s direct supervisor, who is different for Plant workers and
23 drivers. (Tr. 130) It is also provided by fellow workers on the job. The substance of the training is
24 also largely distinct. (Tr. 131-32, 135 (describing driver training) compare Tr. 133-34, 135, 198
25 (describing Plant worker training)) This makes obvious sense, since, as set forth at length in the
26 Direction and the Union’s Brief, the two job classifications have almost entirely distinct job duties.

27 The Employer further claims: “The workweek is the same for everyone.” This statement,
28 although technically accurate, is so meaningless as to be misleading. The cited portion of the

1 transcript includes testimony from the District Manager that the “workweek” for all employees is
2 “seven times 24 beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Monday.” (Tr. 109)
3 More relevant, as the Regional Director pointed out, is the fact that the Plant workers and route
4 drivers have entirely distinct work schedules, as the Plant is open 24 hours a day with three shifts,
5 and almost all drivers work from the early morning to the mid to late afternoon.

6 The Employer has also attempted to mislead the Board by exaggerating the amount of time
7 the Plant workers spend loading and unloading trucks in order to demonstrate that the sporadic time
8 the route drivers spend loading empty containers creates some similarity in job functions. On page
9 four of the Employer’s Brief, the Employer states: “Seventy-five percent of the plant work during a
10 typical 12-hour period from 8:00 am to 8:00 pm is loading and unloading” (Employer Brief 4)
11 This claim is surprisingly misleading based on the record. At the hearing, the Employer’s counsel
12 twice attempted to elicit testimony from the Plant Manager, Henry Gonzalez on this point, on both
13 occasions cutting off his witness, but received only vague answers to his vague questions: “Q BY
14 MR. STOKES: So, 75 percent of the time that you’re [at the Plant], there’s loading and unloading,
15 correct? 10 A Correct, because I’m –” (Tr. 188) Even if the Employer’s interpretation in its
16 Brief of its witnesses’ testimony were reasonable, to clear matters up, on cross-examination, Union
17 counsel questioned the witness for most of almost forty pages of transcript regarding the percentage
18 of time spent on each task in the Plant. (Tr. 244-81) In the end, the Plant manger agreed that “28 and
19 35 percent of the overall work in your facility, is that your estimation? A Yes. Goes to unloading
20 and reloading of trucks.” (Tr. 80). In all, the Employer’s claim that seventy-five percent is spent on
21 loading and unloading is belied by its own witnesses’ testimony on both direct and cross
22 examination. In any event, as the Regional Director found, any such sporadic loading or unloading
23 work by the route drivers in no way creates a community of interest with the Plant workers.

24 The Employer’s Brief is rife with exaggerations, as well. It claims that drivers “often clean
25 any remaining water [in the containers] with a rag” (Employer Brief at 6) To the contrary, only
26 one driver testified that he ever dried out containers. Other drivers testified that they did not, and
27 Sam Escobar, the driver manager, stated that he saw drivers perform this task only once and that he
28 does not oversee the task, which would be the Plant workers’ responsibility. (Tr. 363) The Employer

1 also claims that drivers “often” punch out at the Plant, rather than in the drivers’ building. To the
2 contrary, there is no such evidence. The Employer cited the testimony of the Plant manager, who
3 merely stated that drivers may punch out at the Plant, without any specification about its frequency.
4 Instead, the drivers testified that they rarely do so. (*E.g.*, Tr. 652). Similarly, the Employer claims
5 that: “Numerous drivers have become plant workers and vice-versa” As the Regional Director
6 concluded, “[t]he record indicates about six instances of persons moving from plant worker jobs to
7 drivers jobs or vice-versa” (Direction 37)—hardly “numerous” times. In any case, as the Regional
8 Director pointed out, “there is substantially less evidence of temporary interchange,” which is more
9 relevant to a community of interest determination. (Direction 37-38)

10 Third, the Employer claims in its Brief that the Hearing Officer “behaved inappropriately at
11 the hearing” The Employer first renews its claim, made at the hearing, that a conversation
12 between the Hearing Officer and the Union’s counsel, out of the Employer’s counsel’s presence,
13 necessitated that the Hearing Officer recuse himself from the hearing. For the reasons set out in the
14 Regional Director’s denial of the Employer’s motion made during the hearing, a copy of which is
15 attached as Exhibit B, as well as the Union’s response to the motion, attached hereto as Exhibit C, the
16 Employer’s charge is baseless and demonstrates a misunderstanding of Board law and procedure.
17 The Employer further claims that the Hearing Officer “badger[ed] a witness in an apparent attempt to
18 obtain an answer more favorable to the Union.” This allegation is simply bizarre. As even a brief
19 review of the transcript makes clear, the witness in question, Victor Jasso, has substantial difficulty
20 speaking and understanding English and, moreover, gave inconsistent and confusing testimony
21 throughout the hearing. Indeed, the witness continually shifted his testimony under the most mild of
22 questioning. The Hearing Officer neither badgered the witness nor attempted to elicit answers one
23 way or the other.

1 For the reasons set out above and in the Union's Brief, the Board should uphold the Regional
2 Director's Direct of Election.

3
4 Dated: January 9, 2008

BEESON, TAYER & BODINE, APC

/s/ Zachary N. Leeds

By: _____

JASON RABINOWITZ
ZACHARY N. LEEDS

Attorneys for the TEAMSTERS LOCAL 70

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF**

3 I declare that I am employed in the County of, State of California. I am over the age of
4 eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer &
5 Bodine, 1404 Franklin Street, 5th Floor, Oakland, CA 94612-3208. On this day, I served the
6 foregoing Document(s):

7 **PETITIONER’S OPPOSITION TO THE EMPLOYER’S REQUEST FOR REVIEW**

8 By Mail to the parties in said action, as addressed below, in accordance with Code of Civil
9 Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area
10 for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that
11 designated area is given the correct amount of postage and is deposited that same day, in the ordinary
12 course of business in a United States mailbox in the City of Oakland, California.

13 By Personal Delivering a true copy thereof, to the parties in said action, as addressed
14 below in accordance with Code of Civil Procedure §1011.

15 By Overnight Delivery to the parties in said action, as addressed below, in accordance
16 with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a
17 sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail.
18 Mail placed in that designated area is picked up that same day, in the ordinary course of business for
19 delivery the following day via United Parcel Service Overnight Delivery.

20 By Facsimile Transmission to the parties in said action, as addressed below, in accordance
21 with Code of Civil Procedure §1013(e).

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26 I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland,
27 California, on this date, January 9, 2009.

28 /s/ Barbara J. Holton
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EXHIBIT A

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

15 Teamsters Local 70,
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Petition,

v.

Stericycle, Inc.,

Employer.

Case No. 32-RC-5603
PETITIONER'S POST HEARING BRIEF

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1 **INTRODUCTION**

2 The petition in this case was filed on November 14, 2008 by Teamsters Local 70 (the
3 “Union”). (Joint Exhibit (“Jt. Exh.”) 1) to represent employees employed by Stericycle, Inc. (the
4 “Employer”). Hearing Officer Christopher Roberts conducted a hearing on November 24 and 25 and
5 December 1, 2, and 3, 2008 to determine whether the Union sought to represent an appropriate unit of
6 employees. The Union seeks to represent the following employees:

7 Included: all route drivers employed at the Employer’s facility at 1366
8 Doolittle Drive, San Leandro, California.

9 Excluded: All other employees, including all clerical employees,
10 dispatchers, Biotrack administrators; employees employed at the
11 Employer’s plant in San Leandro, California, including plant workers,
12 plant supervisors, roll-off, long haul and shuttle drivers; all other
employees employed at any other Stericycle location; employees of
contractors or temporary agencies; and supervisors and guards as
defined by the Act.

13 (Petition; *see also* Tr. at 1035-1037) The Employer seeks a unit as follows:

14 All employees who are not designated as supervisor under Section
15 2(11) of the National Labor Relations Act, employed at the San
16 Leandro, the Fresno, the Rancho Cordova and the Redding facilities,
17 consisting of employees holding positions of drivers, whether they’re
18 known as route drivers, lead route drivers, roll-off drivers, shuttle
19 drivers, long haul drivers, all plant workers, warehouse workers,
Biotrack administrators, dispatchers, as well as those given the
designation of plant supervisor, specifically Victor Jasso, Ken Barnes
and Steve Douglas, and if any plant worker is given, goes by the
designation of maintenance worker or maintenance supervisor, other
than Ramon Rivas.

20 (Tr. 1036-37) As set forth below, the unit proposed by the Union is an appropriate unit and therefore
21 should be approved by the Board. Moreover, the Employer’s proposed unit is not appropriate
22 because the route drivers and other San Leandro employees do not share a community of interest, and
23 because the Employer is unable to overcome the presumption against multi-facility units. Finally, to
24 the extent that the Plant workers are included in any unit, individuals employed as Plant Supervisor
25 should be excluded as statutory supervisors.

1 **STATEMENT OF FACTS**

2 **I. Stericycle Facilities**

3 The Employer operates medical waste facilities throughout the United States, and numerous
4 facilities in California, including one located in San Leandro. The Employer divides its national
5 operations into districts. District 93 covers Northern California, including the San Leandro, Rancho
6 Cordova, Fresno, and Redding facilities. The Regional Director may take administrative notice that
7 the distance from San Leandro to Rancho Cordova, Fresno, and Redding is 100, 168, and 219 miles,
8 respectively. Rancho Cordova to Fresno and Redding is 178 and 173 miles, respectively. Fresno to
9 Redding is 332 miles.

10 The San Leandro location is, as district manager Tom Stalberger explained, “two separate
11 facilities” (Tr. 64-65), the Plant and the Transportation Building, separated by a public street. The
12 Transportation Building houses Transportation Facility employee offices, driver break and locker
13 rooms, showers, and other driver facilities, a driver time clock, with a driver parking lot. (Tr. 141-42)
14 The Plant houses similar facilities used by Plant workers. It also houses an elaborate waste
15 processing plant, and docks for trucks to unload containers with waste from customers and reload
16 clean empty containers. The San Leandro facilities employs two broad classifications of employees,
17 (1) Plant workers, who work out of the Plant, including two drivers (one “long-haul” and one “roll-
18 off driver”), and (2) route drivers, who work out of the Transportation Building. (*See* Employer
19 Exhibit 6)

20 The Employer’s Fresno facility is similar to the San Leandro facilities in that it processes
21 waste. However, it operates out of one facility in one building, with both transportation and plant
22 facilities together. The Rancho Cordova facility is also one building, but is merely a transfer station;
23 waste is not treated or processed there. Redding is a one-driver operation.

24 As the Employer’s witnesses testified, certain waste, such as “sharps,” cannot be processed in
25 San Leandro and so is transferred to Fresno by long haul drivers. (Tr. 29) The different locations
26 also exchange some empty containers. In the past, the San Leandro plant was merely a transfer
27 station as well. At that time, they “were taking all of our waste to Fresno, we were shuttling it every
28 day to Fresno. And we decided in 2001, 2002, that it would be economically more feasible to have a

1 plant operation relocated across the street, so we could take away all this transportation costs that we
2 were spending to Fresno.” (Tr. 85) In other words, San Leandro has severed its dependence, to a
3 large extent, on Fresno. Other waste is partially treated in San Leandro and shipped to Rancho
4 Cordova, ultimately across the nation, to Kansas City or Salt Lake City. (Tr. 29-30; *see also* 175,
5 180-81)

6 The route drivers at each facility service defined geographical regions. District manager
7 Stalberger testified that “the boundaries are the routes being assigned to Rancho Cordova and the
8 routes being assigned to San Leandro and the routes being assigned to Fresno. Q Right. And each of
9 the—the routes are generally fixed, right, each driver drives the same route each day as long as—A
10 Physically, that’s correct. Q Okay. And generally speaking, the routes assigned to each facility are
11 geographically, are delivering in geographical proximity to the facility that the driver is dispatched
12 from, right? A Yes, makes common sense.” (Tr. 119) Under examination, Stalberger was able to
13 define the actual boundaries of each facility, following the map shown in Employer Exhibit 4. The
14 Redding facility services from Red Bluff east to Susanville. (Tr. 115) The Rancho Cordova facility
15 services north to Chico, east almost to Reno, and south to Modesto. (Tr. 118) The San Leandro
16 Transportation Facility services customers in “the extended Bay Area.” (Tr. 120) Finally, the Fresno
17 facility services the southern part of the Central Valley, down to Bakersfield. (*Id.*)

18 The Employer presented one witness, current San Leandro driver Juan Vazquez, a Class A
19 driver who has worked for Stericycle for over four years (Tr. 562-63), who “transferred” between the
20 Fresno and San Leandro facilities for personal reasons. (Tr. 564) When Vazquez left San Leandro to
21 go to Fresno, his salary was reduced to the starting wage rate. And then when he returned to San
22 Leandro, again, he was returned back to the starting wage rate there, as if he were a new hire. (Tr.
23 581-82)

24 The San Leandro drivers, as well as Stalberger, testified that the drivers have never had a
25 business reason to drive to or communicate with Fresno, Rancho Cordova, or Redding. (Tr. 531,
26 664, 789-90, 790, 875) Transportation supervisor Terry Hales also testified that drivers from other
27 locations do not come to Stericycle social events in San Leandro. (Tr. 790) Drivers only
28 communicate with local supervisors about work issues, including complaints, reviews, pay, and time

1 off. (E.g., Tr. 662, 678-81) Each facility has own dispatcher dispatching the drivers, and its own
2 drivers' supervisors who oversee all driver issues. (Tr. 121)

3 Plant manager Henry Gonzalez testified that Plant workers came from another location in
4 2004 when the Employer was performing upgrades on the Plant. He knew of no other time when
5 Plant workers from another location interchanged with San Leandro Plant workers. (Tr. 287) “[F]or
6 regular—but for production work, you haven’t had to have—you haven’t sent anybody out? A And
7 I’ve not had to have any help either.” (Tr. 288) Indeed, Gonzalez stated that “[w]henver a driver is
8 coming from outside our immediate service area, outside the San Leandro area, we try to minimize
9 the time they spend at our facility by helping them get whatever they need get done done.” (Tr. 271)

10 Starting pay is centrally determined by the Employer’s corporate headquarters in Illinois,
11 based on the specific market location: “[I]t’s a market study of the wages of the employees that work
12 for similar type companies in that particular market.” (Tr. 527) Pay is subject to change based on
13 local needs. Stalberger recently asked corporate headquarters to increase the San Leandro rate, which
14 they did. (Tr. 542-43) The pay rate is lower in Fresno and Rancho than San Leandro (Tr. 139-40)
15 Each employee’s yearly increase, if any, is decided locally by the employee’s direct manger, in the
16 case of the San Leandro driver, Sam Escobar, the Transportation manager. (Tr. 536) Stalberger has
17 final say over all increases, but “I would say 90 percent of what’s submitted to me, between 90, 95
18 percent of what is submitted to me remains the same. I tweak a few, yeah.” (Tr. 538) And he has
19 never spoken directly to an employee about his pay. (Tr. 539-40; *see also* 658) The drivers speak
20 directly to their local supervisor regarding any pay increases. If the proposed increase is over four
21 percent, Stalberger is required to obtain approval from the Area Vice President for the Western Area
22 (Tr. 539), who, in Stalberger’s recollection, had never denied the increase requested by Stalberger.
23 (Tr. 540) Incentives and bonuses, described in more detail below, are also determined locally by the
24 employee’s supervisor. (Tr. 485, 493-95) Local managers are required to obtain approval for
25 employee leave, but Stalberger has never turned it down when asked. (Tr. 546)

26 **II. Bargaining History**

27 The only evidence introduced with respect to any bargaining history at the San Leandro
28 facility is that at least from 2000 until 2003, Teamsters Local 70 represented a unit of “all full-time

1 and regular part-time route and shuttle drivers and excluding all other employees” (Petitioner’s
2 Exhibit 6) Up through 2003, the facility consisted only of a the Transportation Building; the Plant
3 did not exist. Accordingly, shuttle drivers were based out of the same building as the route drivers.
4 Currently, they are based out of the Plant.

5 **III. Job Duties**

6 **A. Transportation Facility Job Duties**

7 **1. Route Drivers’ Job Duties**

8 San Leandro route drivers spend the day with their truck, picking up full containers of waste
9 from customers and dropping off empty ones. As driver manager Escobar stated, “[t]hat’s the great
10 thing about being a route driver, you consider the truck your office” (Tr. 366-67) Drivers arrive
11 in the morning at the Transportation Building, where they park in the drivers’ lot. They punch in at
12 the time clock in the Transportation Building, go to the drivers’ locker room to change into their
13 drivers’ uniform, and get coffee. (*E.g.*, Tr. 625) At the Transportation Building, drivers must also
14 pick up their paperwork, including their route manifests, which sets out their stops for the day, and is
15 used for recording their pickups and drop offs on their route. (*Id.*) They must ensure they have
16 enough labels to mark the containers as they collect them from customers throughout the day. If they
17 do not, they need to get more from the clerical employees in the Transportation Building. Drivers
18 also pick up their portable computer (“PDT”), on which they record all of their activities throughout
19 the day, including the stops they make, the containers they pick up, and the time they spend on each
20 activity, such as driving, breaks, and time at the facility. Before leaving the Transportation Building,
21 they must also obtain a portable printer for the PDT, as well as paper for the printer. (Tr. 623-24)

22 After they have completed these tasks in the Transportation Building, drivers go to their
23 trucks. Each driver is assigned a specific truck, which the Employer leases (Tr. 163), for their
24 permanent use. (Tr. 606). Their truck will be parked either at the Transportation Building or at the
25 Plant. Before operating the truck, each day, the drivers must conduct a “pre-trip,” pursuant to
26 Department of Transportation regulations. This process involves inspecting their truck to ensure that
27 it is working properly and that no damage has been done to it in their absence. It takes approximately
28 ten to fifteen minutes. (Tr. 625) The drivers next check the inside of their truck to determine

1 whether they have sufficient empty containers for the customers on their route. They must also
2 ensure that the containers are properly stacked and secured for loading and unloading through the day
3 and to avoid unsafe shifting of containers while driving. The drivers use load bars and straps to
4 secure their load of empty containers at the start of the day, and throughout the day to secure the
5 containers they pick up. (Tr. 22) Before leaving, the drivers must also make sure they have a hand
6 truck, or dolly, for loading and unloading containers. If their hand truck has been removed, they may
7 have to go to the Plant to obtain one. The drivers were told only to take unpainted, silver, hand
8 trucks. Hand trucks painted black are designated for the Plant. (Tr. 650-51)

9 Before their route, Plant workers should already have loaded the drivers' trucks with empty
10 containers. As district transportation manager Eloy Jimenez testified, the "goal" is that drivers never
11 have to load containers. (Tr. 492) However, occasionally, in the process of inspecting their truck,
12 the drivers determine that they need additional containers. In that case, they have several options. As
13 driver Vince Burns, who has worked at Stericycle in San Leandro since 2003, testified, "[t]here's
14 times that I've gotten there and it's not loaded, and I have to call my supervisor, and he'll tell me to
15 just get them off another truck." (Tr. 607) Burns went on that "[u]sually, I try to pick and pull what I
16 can off someone else's truck. I try to, as much as possible, avoid going to the warehouse, because
17 usually it's they're either out of tubs or either it's something else going on. . . . I will try to figure it
18 out, improvise, which could mean anything from me delivering—like cutting some of my customers
19 on the amount of containers I leave them, and bring them back to them the following day. Or else I
20 could go to the warehouse. But it's rare that I go to the warehouse." (Tr. 608, 627-28) Similarly,
21 driver Julio Siguenza, a Class A driver who has worked at Stericycle in San Leandro since 2006, (Tr.
22 589-90), testified that "I go to find [empty containers] myself, but if I don't see them I ask [the Plant
23 workers] if they have some." (Tr. 600)

24 As all of the drivers testified, this is a rare occurrence. Burns testified that he is short
25 containers about four times a month (Tr. 627), and completely empty about twice a month. (Tr. 625)
26 Vazquez testified that he is short containers and must go to the Plant to pick up more about twice a
27 month. (Tr. 571-72) In fact, driver Willy Rivera, a Class A driver who has worked at Stericycle in
28 San Leandro since July 2005 (Tr. 820), testified that he has not been to the Plant, to load empty

1 containers, or otherwise, in about three months. (Tr. 826) Even if the drivers are required to obtain
2 additional empty containers, the amount of time it takes them to do so is small. Approximately twice
3 a month, driver Burns' truck is completely empty of containers when he arrives in the morning.

4 Loading a completely empty truck takes him about twenty to thirty minutes. (Tr. 628)

5 Typically, after inspecting their truck and load of containers, the drivers can leave the facility.
6 They may need to stop and refuel at a gas station. (Tr. 629) From there, they begin their route. The
7 drivers themselves determine the order in which they make their stops. (Tr. 696) As driver manager
8 Escobar stated, "When a driver—when you run a route, you run them in a sequence of a time frame,
9 meaning that you're going to run the route according to what's open and what's the earliest, your
10 major stops, meaning the bigger hospitals. Dialysis and stuff, they're usually open pretty early, so
11 you can go and service them pretty early and get them out of the way, the larger loads. And you leave
12 your smaller stops, like the dental offices, the mortuaries, and stuff like that towards the end of the
13 day, because they're small containers, smaller stops, so you leave them to the end of your day.
14 They're one- or two-container pickups. So you try to knock out your heaviest ones first, because
15 they're the ones that are going to be open earlier. So you kind of want to sequence your stops and
16 your routes according to your timeframe of availability for your customers to service." (Tr. 472-73)

17 At each stop, the driver enters the time and mileage into his PDT. (Tr. 629) He then drops
18 off the empty containers the customer needs and loads full containers into his truck. Drivers must
19 ensure that the containers are properly prepared and packaged by the customer. (Tr. 21) The driver
20 must also complete a manifest for each stop. As district manager Stalberger testified, the manifest
21 has "preprinted information on it but the drivers also put their own information on the manifest,
22 which would include a number of containers, cubic feet and the facility it's going to be treated at the
23 plant facility." (Tr. 21-22) The driver must scan the bar code on each container with the PDT in
24 order to track the containers and for billing purposes. (Tr. 22) The driver prints out a receipt for the
25 customer and staples it to the manifest, which the customer must sign. (Tr. 637-38) Once the full
26 containers are scanned, they are loaded on the truck and secured with load bars and straps. (*Id.*)
27 Drivers typically make fifteen to twenty five stops in a day. (*Id.*)
28

1 In order to ensure that customers receive clean, dry containers, district manager Stalberger
2 testified that on their route, the drivers “have rags or towels that they can dry the container with, and
3 they can also spray some deodorizer in.” He also stated that drivers may dump out any excess liquid,
4 left from the cleaning process, on the street during their route. (Tr. 98) However, he acknowledged
5 that “[n]ot all drivers do this.” (*Id.*) Escobar, the transportation manager, stated that he saw drivers
6 perform this task only once and stated that he does not oversee the task, which would be the Plant’s
7 responsibility. (Tr. 363) Indeed, only one driver, Class B driver Danny Whitney, testified that he
8 ever performs the task. (Tr. 448) And driver Burns testified that he was never told to do anything
9 with respect to cleaning or drying the containers or shaking them out and was never given any cloth
10 to do so. (Tr. 656) Instead, Burns “was always told that [the towel] was for your vehicle, like if you
11 need to wipe the frost or the dew off in the morning.” (Tr. 673) Burns further testified that he may
12 use a deodorant if a customer complains about a smelly container, but also merely switches the
13 container for a cleaner one. (Tr. 673)

14 The exchange of empty for full containers varies from stop to stop. At large hospitals, the
15 drivers typically pull up to a dock. As driver Burns testified, in order to enter the loading area at a
16 hospital, he may need to obtain a key, in which case “I have to track [my customer contact] down,
17 find them, get them to unlock the gate. We talk for a minute or two. They tell me how much they
18 have. I load it up. Unload what I need to unload and go about my way.” (Tr. 630) In some cases, the
19 customer gives the key to the driver on a permanent basis. (Tr. 643)

20 At a smaller facility, such as a doctor’s office, as Burns testified, he is required to enter the
21 facility to collect the full containers. Driver Joel Ochoa, a Class A driver who has worked at
22 Stericycle in San Leandro for four years (Tr. 852-53), testified that he is required to enter the building
23 at almost all of his stops. (Tr. 883) At a lab, the drivers may be required to collect waste throughout
24 the facility. As Burns testified, “I would park the truck, go in through the side door, take a stack of
25 containers with me, which is about six. Drop them off in one central location, and then I would break
26 it down, the stack, and proceed to run throughout the building to pick up the waste from different
27 locations. HEARING OFFICER ROBERTS: So you’re actually going inside the building with the
28 waste containers? THE WITNESS: Yes. Q BY MR. LEEDS: And you’re picking up full

1 containers? A Yeah, it could be full, it could be half full. It could be two, it could be more than two.
2 It could be five in just one location. But I have, like I said, about between four to five different
3 locations within just that one lab, alone.” (Tr. 642)

4 Undisputedly, as part of this process, the drivers interact extensively with customers. As
5 district manager Stalberger explained, “in the medical waste business our drivers go into the various
6 healthcare facilities and offices and interact every day with the customer.” (Tr. 328) He went on that
7 “when they go in, they have to get a manifest signed, so they definitely interact with the person that
8 signs the manifest, and that person typically will let them know if they need extra containers, a
9 different type of container, a different schedule for pickup, what we call product, which would be a
10 sharps container order, so on and so forth. So, there’s a lot of interaction between the customers and
11 our drivers. . . . At 95 percent of our customers, which are the doctors and the clinics and dentists
12 and so on, no, they have to go inside and get their waste and they interact with the customer.” (Tr.
13 329-30)

14 Burns testified that “I make sure that they’re happy. I ask them what do they need, make sure
15 that they’re getting the kind of service that they want, as far as they’re getting their waste’s getting
16 picked up as scheduled. And make sure that there is no waste left.” (Tr. 636) Driver Ochoa
17 described a typical customer interaction where he and customer “would talk about like, you know,
18 sports, and a good place to go fishing and stuff like that. And, basically, how is this job treating
19 you” (Tr. 880-81; *see also* 882-83) Driver Siguenza testified similarly, that “[w]e’re the ones
20 out there, talking to them.” (Tr. 591) When Burns is out, “[w]ell, they’ll call me. They’ll go into
21 their office and call me, or else they’ll call the company and ask where I’m at. I mean, even sitting
22 here for the last couple days [during the Board hearing], I’ve had customers call me [on his
23 Employer-issued cell phone] to ask me where am I at. Q They call you directly? A Yeah. And they
24 said they were missed. So what I can tell them, there was nothing I could do. Q They have your
25 phone number? A Yes.” (Tr. 632) He continued that “[a] lot of [his customers] tell me that they
26 would rather deal with the driver [than calling into the Stericycle office] because they know that I
27 know what to do.” (Tr. 632) Indeed, the drivers are eligible for a bi-weekly “incentive” of \$100,
28

1 described in more detail below, which can be reduced or withheld based on customer complaints.
2 (Tr. 484)

3 Once their route is complete, the drivers return to the facility. The Employer called six
4 drivers as witnesses. Five of them stated that when they return, they leave their truck at the Plant, or
5 if there is no room there, at the Transportation Building, and, after completing their paperwork and
6 conducting the post-trip inspection of their truck, changing out of their uniform in the locker room,
7 and punching out, they leave for the day. (E.g., Tr. 646-48) This process takes from ten to fifteen
8 minutes. The Employer attempted to elicit testimony from the drivers that they also help unload the
9 full containers from their trucks at the end of the day. Only one driver stated that he performs this
10 task, and only in special circumstances. This driver, Whitney, the only driver the Employer brought
11 to the hearing, stated that he only needs to help unload his truck when he makes two routes in a single
12 day (Tr. 445-46). In those cases, in order to return on his route as quickly as possible, he may help
13 unload his truck. On days when he does not return to the facility until the end of his shift, he does not
14 unload his truck, but leaves for the day after dropping off his truck for the Plant workers to unload.
15 (Tr. 454) Plant Supervisor Barnes agreed that only drivers who do more than one route in a day help
16 unload their truck. The vast majority of drivers only do one route in a day, unlike Whitney. (Tr. 727)

17 Driver manager Escobar testified to having seen Whitney unload his truck, but no other
18 drivers. (Tr. 355) He acknowledged that a driver unloading his truck is the exception. (Tr. 383)
19 Driver supervisor Hales agreed. (Tr. 752) Driver Ochoa has never been asked to unload his or any
20 other truck, and has never done so. (Tr. 888) Driver Burns has never unloaded his truck. (Tr. 648)
21 Driver Rivera has not been to the Plant for any reason in about three months. (Tr. 650)

22 **2. Transportation Facility Clericals' Job Duties**

23 The Employer employs two clerical employees in the Transportation Building, a dispatcher
24 named Susan Ollison and the "Biotrack administrator," named Gretchen Bonilla. The dispatcher
25 prints routes for the route drivers. She receives customer calls and addresses their concerns. "So,
26 she's answering phones and reaching out to the supervisor, who then in turn makes the decision who
27 can geographically, within their area, pick up the waste for the customer." (Tr. 348) Ollison does not
28 drive a truck (Tr. 415) and never goes to the Plant. (Tr. 428) Bonilla, the Biotrack administrator,

1 operates the Employer’s “Biotrack” system, that keeps track of the route drivers’ activities, which is
2 downloaded each night from the PDT. She also does not drive a truck (Tr. 415) or go to the Plant.
3 (Tr. 350)

4 **B. Plant Job Duties**

5 **1. Plant Workers’ Job Duties**

6 The Plant employs sixteen Plant workers, including supervisors, and two drivers. Plant
7 workers, as identified on Employer Exhibit 6, spend their entire shift in the Plant, overseeing the
8 processing of waste. They have no customer contact, except for an occasional customer plant tour.
9 (Tr. 330-31) Plant manager Gonzalez testified that there are five principal functions that Plant
10 workers perform, and numerous miscellaneous tasks. He explained that four Plant workers
11 principally perform the following tasks throughout their shift, which are all part of what is called the
12 “autoclave system”: loading and unloading trucks, scanning containers as they arrive, dumping
13 containers into the processing machines, and tub washing. (Tr. 226) An additional worker is
14 dedicated to tasks associated with the so-called “incineration waste stream.” (Tr. 264-265) Waste
15 that must be incinerated cannot be treated in San Leandro Plant. This worker must scan the waste,
16 segregate it, and load it onto a long haul truck to be shipped out of state to Kansas City or Salt Lake
17 City. The incineration waste employee may assist other employees with their tasks during down
18 time, but more frequently other Plant workers help him when possible. (Tr. 269-70)

19 Gonzalez explained that the four autoclave tasks consume approximately seventy percent of
20 the Plant workers’ time throughout the day and the incineration waste stream work about fifteen to
21 twenty percent of their time. (Tr. 275) Specifically, loading and unloading trucks takes about thirty
22 percent of their time altogether. Loading trucks with empty containers about one-quarter of that,
23 meaning that about seven or eight percent of the Plant workers time is spent loading trucks with
24 empty containers. (Tr. 279-81)

25 The Plant workers’ remaining time is spent on other miscellaneous tasks. (Tr. 278-79) After
26 waste is processed, because of local regulations, it cannot be stored outdoors. Instead, it is loaded
27 into bins and then a compactor. Workers must oversee operation, including cleaning up debris that
28 fall out of compactor, and then load the compacted waste onto long-haul trucks. (Tr. 243-44)

1 Gonzalez also explained that the Plant has “a small mini water purification system that separates the
2 solids. So, one time or another probably every one of those guys have cleaned what we call a filter
3 press, where we press out all the solids through a screen filter and purify the water before it gets
4 discharged back to the city.” (Tr. 230) The Plant workers also load the “roll-off” truck, which
5 carries waste to the local landfill. (Tr. 256) They must also load and unload the long-haul trucks that
6 drive to other Stericycle locations. (Tr. 271)

7 Several workers, Rivas, Barnes, and Casillas, perform most preventative and corrective
8 maintenance (Tr. 310), but all Plant workers perform some as needed. (Tr. 226-27; 262-63) Plant
9 workers also perform Plant upkeep. “They do housekeeping, kind of like on a submarine, the guys
10 that are there have to do the housekeeping, so we’re sweeping, scrubbing, they have a floor, a
11 Tennant floor scrubber, they scrub the floors, they clean the drains, they pick up trash. They, you
12 know, basically help keep the place in order.” (Tr. 229-230) Certain Plant workers—supervisors and
13 leads only—also shuttle empty trucks from the Plant to the Transportation Building parking lot to
14 make room for incoming trucks. (Tr. 149)

15 The Plant workers are all “cross-trained” and, except for a few very specialized tasks, like
16 welding, can and have done any of the tasks described above. (Tr. 231) Moreover, although
17 individual Plant workers are assigned to one of the five tasks listed above, they rotate throughout the
18 week (Tr. 234), and at any given time, will work where needed. In all, according to Gonzalez, the
19 Plant is like “a ballet, you know, you just time it based on when it’s the appropriate time to do some
20 of these distractors, because that is, the autoclave bin or the bin—the receiver bin change from the
21 compactor is a distraction to the team flow.” (Tr. 249) And while all Plant workers perform these
22 processing tasks, no one else performs them. (Tr. 151-52, 155, 157)

23 **2. Plant Drivers’ Job Duties**

24 The Plant also employs two drivers, identified on Employer Exhibit 6, one called the
25 shuttle/roll-off driver, named Menfid Albizures, who drives waste to the local landfill, and the other
26 the long-haul driver, named Marvin Tayag, who drives incineration waste to Rancho Cordova on its
27 way out-of-state to Salt Lake City or Kansas City. (Tr. 49, 123-25) Tayag fills in for Albizures as
28 necessary. The Employer owns the roll-off and long trucks. (Tr. 268)

1 Tayag drives a refrigerated truck between San Leandro and Rancho Cordova once or twice a
2 day hauling pathology waste, chemotherapy waste, and pharmaceutical waste. (Tr. 125) As Plant
3 manager Gonzalez testified, “unique to him, I would add, is that he has additional responsibilities that
4 no other driver has, in that I’ve asked him to be a backup for the roll-off driver, which is not,
5 probably not a similar situation in all of California that I know of.” (Tr. 304) “And lastly, he
6 supports the plant in the evenings, in shuttling trucks back and forth and assisting the swing shift with
7 additional manpower to get their job done. So, he’s not—there will be no job description that
8 describes his additional duties as I have so morphed them for him. And he is totally happy, you can
9 call him, with what he does.” (Tr. 305) “Marvin does about 30-60 percent driving and associated
10 tasks.” (Tr. 312) “He’s doing shift support or he’s doing roll-off. For example, he might come in
11 one morning and he’ll do a single bin to the landfill. Then he’ll come back, which takes about three
12 hours, then he’ll do his shuttle to Rancho Cordova and drop off a trailer, and that’s pretty much his
13 day. Another day he’ll come in and he’ll do support for disposal, which is three hours, then he
14 spends another five hours in the plant, supporting plant operations.” (Tr. 312-13) Gonzalez went on
15 that “he’s very—he has flexible hours every day, the next day we decide when we’re going to use
16 him, based on whatever the need happens to be.” (Tr. 174-75)

17 As far as Albizures, the roll-off driver, who delivers waste to the landfill, “driving is probably
18 60 percent, another 30 percent actually dumping the bins or moving the bins, and then the other ten is
19 break and lunch and miscellaneous.” (Tr. 311) His driving consists of typically three or four runs to
20 the dump a day. He loads his own truck. (Tr. 126)

21 **IV. Skills and Training**

22 The drivers and Plant workers are required to possess different skills and undergo different
23 training. The “vast majority” of drivers have a Class A license. (Tr. 127) Three have Class B (Tr.
24 404) one has Class C (Tr. 404) Driver Burns was told he needed to have a Class A when he started
25 work at Stericycle. (Tr. 669) There is no evidence that Plant workers require any pre-hire
26 credentials.

27 Initial and ongoing training is provided by the Employer’s safety manager and by the
28 employee’s direct supervisor, who is different for Plant workers and drivers. (Tr. 130) It is also

1 provided by fellow workers on the job. The substance of the training is also largely distinct. (Tr.
2 131-32, 135 (describing driver training) compare Tr. 133-34, 135, 198 (describing Plant worker
3 training)) Plant drivers are also trained at the Plant, by other Plant workers who perform driving
4 tasks. (Tr. 198, 254)

5 **V. Route Drivers' Contact With Plant Workers**

6 **A. Work Contact**

7 In all, the drivers have few, if any, reason to go to the Plant. When they do, Driver Vazquez
8 testified that he comes in contact with plant workers about twice a month at the Plant. (Tr. 570-71)
9 Aside from if their truck has been parked overnight at the Plant, the only reason he would go to the
10 Plant is to retrieve a hand truck, obtain more containers, or drop off their load sheet at the end of the
11 day on a counter in the Plant. (Tr. 571-72) Drivers Siguenza (Tr. 595-96) and Burns (Tr. 649)
12 testified similarly. Indeed, the drivers testified that they try to avoid the Plant and the Plant workers.
13 (Tr. 608) As set out above, the drivers will try to obtain empty containers from other sources if
14 necessary. When drivers do need to load empty containers, they generally do it themselves. (Tr.
15 597) And in order to keep his hand truck from being taken by Plant workers when he left his truck
16 over night, Burns stated that "I got smarter about mine, I just started hiding it. So I don't even have to
17 deal with looking for the hand truck issue." (Tr. 650) Rivera has had no need to go to the Plant in
18 three months. (Tr. 826) Indeed, district manager Stalberger explained that it would be preferable for
19 the San Leandro facilities to operate out of one building, as in Fresno, because "[w]hen you're all
20 under one roof you certainly all workers work together and communicate more closely and they know
21 exactly what's going on as far as servicing the customer." (Tr. 87) By the same token, Stalberger
22 agreed that "there's less interaction and communication between the employees [in San Leandro]
23 than perhaps at your other facilities." (Tr. 142-43)

24 When they do go to the Plant, the Employer's managers acknowledged that "[t]hey talk very,
25 you know, briefly with the [Plant workers], they make sure everything is okay." (Tr. 360) Ochoa
26 testified that "[r]arely I would see [Plant Supervisor] Ken Barnes out there. He would briefly ask me
27 are you full? And pretty much I was full all the time, to the point where he wouldn't even ask me
28 that question no more, because he knew that I would come in full. And after that, that's it." (Tr. 864)

1 Whitney testified that he talks to Plant workers at the Plant, but mainly socially. (Tr. 459) Similarly,
2 aside from Barnes, Burns talks only to one plant worker whom he knows socially. (Tr. 695-96) He
3 stated “I would have to say I really don’t see them in the morning, the a.m., but when I come in on
4 the p.m. I might see one.” (Tr. 605)

5 The Employer elicited testimony that after drivers return their trucks, Plant workers take
6 pictures of loads that they consider to be unsafely secured. However, this activity requires no
7 interaction between the drivers and the Plant workers, and usually involves none. As district manager
8 Stalberger testified, “those pictures are taken by the plant workers and given to the plant manager
9 who communicates it to the transportation manager, who shares it with the drivers.” (Tr. 57) In other
10 words, the complaints are directed to the top management in the Plant before they are communicated
11 to the Transportation Facility. (*See also* Tr. 361-62) In any case, Stalberger testified that pictures are
12 seldom taken by Plant workers. (Tr. 58) Indeed, for instance, driver Ochoa has never been involved
13 in any such interaction. (Tr. 866)

14 The Employer also elicited testimony that drivers and Plant workers interact when they
15 “exchange” keys to the truck. Driver manager Escobar stated that he asks the drivers to leave their
16 keys hanging in the Transportation Building, but many do not. In fact, for the most part, drivers take
17 their keys with them when they leave for the day. (Tr. 381-82) As Burns testified, “[w]e all have our
18 own keys, so I keep my keys with me.” (Tr. 606)

19 Drivers may call in if they determine throughout the day that they need additional containers.
20 The drivers testified that in that case, they speak to their own supervisor, or to Ken Barnes, the Plant
21 Supervisor. (Tr. 460-61)

22 Drivers may also encounter Plant workers when they drop off their load sheet at the end of the
23 day. The load sheet lists their route for the following day and is used by the Plant workers to guide
24 them in loading the truck. (Tr. 353) However, drivers testified they generally leave the load sheet on
25 a clip board in the front of the Plant and have no need to, and rarely do, interact with Plant workers
26 when doing so. (Tr. 576 (Vazquez); Tr. 594-95 (Siguenza); Tr. 865 (Ochoa)) Instead, there is
27 minimal interaction with Plant workers: “Q And is it your testimony that you’ve never had any
28 contact with any plant people when you put your load sheet in the plant? A Oh, I don’t say never,

1 but maybe, I don't know, once in a long time. I don't know how long. But, yeah, sometimes I told
2 somebody, you know, hi, or that's it." (Tr. 576) Burns said he sometimes gives the load sheet to
3 Plant Supervisor Barnes. (Tr. 649) Driver Rivera testified that "[i]t's pretty rare that I talk to—you
4 know, where I have conversation with the plant people. You know, if I happen to see them, I ask
5 them if they can take my load sheet." (Tr. 829)

6 The evidence also showed that Plant workers and drivers have attended exactly one meeting
7 together in the history of the San Leandro location, namely, the all-employee meeting called in
8 response to the union organizing drive. (Tr. 674, 844) District manager Stalberger could not recall
9 any joint meeting between the Transportation Facility and the Plant. Instead, each department holds
10 separate meetings, led by their own supervisors. As Stalberger testified, the meetings are to "[t]o talk
11 about current issues, to communicate in the company what's going on in the company, safety issues,
12 to hear the drivers issues, that kind of thing." (Tr. 161) Burns testified about separate driver
13 meetings six to eight times a year. (Tr. 659-60) He has never been to a meeting with the plant
14 workers until the meeting to address the union.

15 Finally, there is no evidence that the route drivers and Plant drivers come in contact with each
16 other. Drivers testified that they do not. (*E.g.*, Tr. 665-66)

17 **B. Social Contact**

18 The drivers also generally do not come into contact with Plant workers at social events
19 sponsored by the Employer. Each department, the Plant and the Transportation Facility, throws
20 separate barbecues on a semi-regular basis. Each event is advertised as a separate event for each
21 department and notices are posted in the appropriate building. (Tr. 683-84, 776) Except for
22 Whitney, the drivers testified that they have not been to a Plant barbecue and that they had not seen
23 Plant workers at the drivers' barbecue. (Tr. 666, 875-76) The Employer presented testimony that all
24 employees are permitted to attend both sets of events. However, Plant Supervisor Barnes told driver
25 Burns that the plant workers have their own barbecue. (Tr. 667) Similarly, driver Ochoa invited
26 Barnes to eat at a driver pizza event "[a]nd he told me, oh, don't worry about it. . . . We got our own
27 barbecue today." (Tr. 878) Ochoa took him to mean that the Plant was hosting its own barbecue. In
28 fact, until that day, about two years into his time at Stericycle, Ochoa had not known that the Plant

1 hosted its own barbecue. (Tr. 878) Indeed, Barnes testified that he barbecues on the weekends (Tr.
2 729), when no drivers are working. He went on that “because we’re in three shifts, I mean, our
3 schedule doesn’t lend itself to having one party. We typically break it up. I mean, I try to do three
4 separate things for my guys because they’re in three separate shifts.” (Tr. 799)

5 Plant manager Gonzalez testified that “when we throw a party, or I throw a party, it’s usually
6 I’m throwing the party, I’m the one that goes out and gets everything. So I am not going to—I,
7 realistically, can’t be cooking hamburgers all day long for anybody who decides to walk in.
8 Typically, again, with a staff of five [Plant workers], it’s a very quick barbecue, and we cook extra
9 stuff and put it away for the guys that come in, you know, after shifts. I’ll do extra stuff and throw it
10 in the fridge, and then the guys can warm it up when they come in later, on the two back shifts. So
11 it’s a little different just because logistically, you know, round-the-clock teams are a little different
12 than one-shift teams [like the drivers]. . . . [Y]ou know, [the Plant and the Transportation Facility]
13 have different schedules and we throw our little, separate little things for our own employees.” (Tr.
14 801-02)

15 Similarly, the Employer’s annual Cinco de Mayo party is apparently open to all employees.
16 Driver supervisor Hales stated that he did see Plant workers at the event, but driver Ochoa testified
17 that he has never seen any Plant workers there. (Tr. 884-85) Gonzalez testified also that at times he
18 has ordered pizza for his weekend Plant workers. (Tr. 799) Similarly, in the past, Escobar’s
19 predecessor as Transportation Manager, Mike Alvarez, would provide pizza or sandwiches for
20 drivers on a regular basis, and would take orders from only drivers. (Tr. 876-78) The Employer
21 apparently throws an annual holiday party to which all employees are invited. However, few if any
22 drivers attend the party. (Tr. 681, 886)

23 **VI. Interchange Between Plant and Transportation Facility**

24 There is virtually no temporary interchange between the Plant and the Transportation Facility.
25 (Tr. 782-83) One route driver, George Martinez, who did not testify at the hearing, apparently
26 performs some Plant driver functions. Other than that, no driver performs plant tasks. There is also
27 little permanent interchange. According to Plant manager Gonzalez, only two Plant workers have
28

1 become drivers in the six years he has worked there. (Tr. 196) There is also minimal to non-existent
2 permanent interchange from the Transportation Facility to the Plant.

3 The drivers also have no interchange with the Transportation Facility clericals, the dispatcher
4 and Biotrack administrator. Indeed, drivers are not permitted to use the computer in the office. (Tr.
5 638-39) Instead, the Transportation Facility uses a temporary agency to fill in for them as needed.
6 (Tr. 429-30) To the contrary, the Employer never obtains outside help to fill in for drivers, and only
7 uses other drivers to cover shifts as needed. (Tr. 430, 434)

8 **VII. Working Conditions**

9 **A. Wages**

10 The Plant workers and drivers work under two separate wage scales. Plant workers earn
11 between \$12 and \$17 an hour. (Tr. 283) Drivers earn from \$17 with a Class A license and \$16 with
12 a Class B license (Tr. 395) up to \$25 an hour (Tr. 403). Whether and how much of an increase in
13 salary the employees receive is determined by their own individual manager: “Sam Escobar for the
14 drivers and Henry Gonzalez for the plant workers.” (Tr. 536)

15 **B. Benefits**

16 Some benefits, such as health and retirement, are identical between Plant workers and drivers.
17 These benefits are also the same for all employees throughout the nation. (Tr. 128-29) Some
18 benefits are different. The two sets of employees are eligible for an entirely different bonus/incentive
19 program. Plant workers are entitled to a “safety bonus.” (Tr. 284-85) Drivers, on the other hand, are
20 entitled to an “incentive.” The Employer’s district transportation manger, Jimenez, testified that “I
21 don’t think it’s the same thing [as a bonus], I think it’s an incentive.” (Tr. 484) The full amount of
22 the drivers’ “incentive” is withheld if the driver misses one day of work for any reason, including
23 legitimate sickness, during the two-week period. (Tr. 397) The Plant workers’ safety bonus, on the
24 other hand, is pro rated for each day they miss during the two-week period. (Tr. 284-85) Similarly,
25 the driver’s incentive is reduced or withheld entirely if they perform “excessive” overtime (Tr. 422)
26 or receive customer complaints. (Tr. 484) The Plant workers’ bonus is not subject to these
27 parameters.
28

1 The Plant workers are also entitled to a quarterly bonus of \$100 based on the performance of
2 all the Plant workers. “At the plant it’s the whole team. If the whole team achieves no injuries or
3 accidents, then the whole team receives the bonus, everybody in the plant.” (Tr. 285) The drivers are
4 not entitled to any quarterly, or similar bonus. (Tr. 661)

5 **C. Breaks and Break Rooms**

6 Each department uses separate break and locker rooms. As Stalberger explained, “In San
7 Leandro of course it’s two separate facilities, so the plant workers have their own break room and
8 locker rooms across the street [at the Plant], and the transportation, the drivers and so on, have their
9 own locker room and break room.” (Tr. 64-65) Plant drivers use the Plant break rooms. (Tr. 251-
10 52) Burns has never seen a plant worker in the drivers’ locker room or break room (Tr. 655) and has
11 never used the Plant lockers or break room. (Tr. 672)

12 The two classifications also are subject to entirely different procedures and practices with
13 respect to lunches and breaks. Plant workers take regular, scheduled, common breaks. (Tr. 283)
14 According to Plant manager Gonzalez, “[b]ecause the supervisor tells them when to go on break and
15 monitors when they come back off break. So, it’s a directed break. Their 15 minute breaks are
16 directed and their lunch breaks are directed.” (Tr. 284)

17 Drivers on the other hand, according to driver supervisors and managers, take breaks when
18 they can. “They take them at the opportune time during the day, okay. Meaning, the lunch would
19 come during typically the lunch hour when a lot of offices are closed, especially doing doctors
20 offices. . . . So, I mean every driver varies, I mean some don’t even drink coffee so we won’t go to a
21 Starbucks at 9:00 o clock, but some do, so it varies. But there’s some form of a break in the morning
22 and in the evening.” (Tr. 66-67) Similarly, driver manager Escobar stated “as a route driver, you
23 really dictate, I mean I was a driver myself, you dictate your break, you know, you know when you
24 can take your break, you know when you’ve got ten minutes, when the next customer is going to
25 open in ten minutes, you know when that’s going to happen. You have that, you know, opportunity.”
26 (Tr. 394)

27 In fact, the testimony was virtually uniform that drivers almost never take a rest period or
28 lunch break within their first five hours of work, and often do not throughout the day. Driver

1 Whitney testified that he often doesn't take a break. (Tr. 457) Driver Burns never took a break
2 during his route until eight months ago, when he started taking a break at the end of his shift, which
3 lasts for at least six hours, and up to nine or more hours a day. (Tr. 645-46) Even now, however, he
4 does not actually take a break, but merely enters his time and completes paperwork at the end of his
5 shift and enters his time into the PDT as break time. (Tr. 671) Driver Rivera testified that "[i]t
6 wasn't a requirement for us to take lunch. We've always been told to finish the route, do the route.
7 And like I say, that I, personally, don't take lunches. It's just my body is used to that already, I guess.
8 You know, if I get coffee in the morning, I normally work through my day. . . . Q So you testified
9 that you don't need a lunch because your body's used to it so, basically, it was your decision not to
10 take your lunches? A No, it wasn't my decision. It was based on the meetings that we have on a
11 regular basis, we were told to hurry up and do the route. And like I say, we were never told about
12 getting lunch. Like lunch, to me, it wasn't a priority." (Tr. 841, 848) Similarly, driver Ochoa testified
13 that "every time we had a meeting it was more pressure of to do it quicker, to do the route quicker. . .
14 . I'm pretty sure they already knew that at some point we were sacrificing our lunch and breaks, but
15 they still—that wasn't enough for them." (Tr. 872) Indeed, district transportation manager Jimenez
16 acknowledged that the majority of drivers work through at least five hours before taking a break. (Tr.
17 498)

18 Supervisor Hales testified that he recently heard the drivers weren't taking their breaks and
19 began telling them they should. Before then, he had never told them to take their breaks. And even
20 now, he has done no investigation and has no way of knowing whether they are in fact taking breaks.
21 (Tr. 788) Ochoa testified that although he remembers reading the company policy handbook, he did
22 not remember seeing any statement that working through a lunch break is a violation of company
23 policy, nor that employees are required to inform supervisors if they work through their break. (873-
24 74) The Employer did not introduce any document to refute Ochoa's testimony.

25 **D. Shifts**

26 The Plant workers and drivers also work under an entirely different shift structure. As
27 Gonzalez testified, the Plant is typically open twenty four hours a day from 7 a.m. on Monday until 8
28 a.m. on Saturday morning. The Plant is currently open on Sundays, as well. (Tr. 216) "So, it's a

1 round the clock operation.” (Tr. 178) As a result, the Plant workers work in three shifts, from 7 a.m.
2 to 3:30 p.m., 3 p.m. until 11:30 p.m., and 11 p.m. until 7 a.m. (Tr. 232) During a single shift, the
3 Plant workers are assigned to a particular task, but, as set out above, will work where needed, and
4 rotate on a daily basis from task to task. Gonzalez testified that “[t]hey want to balance the workload
5 and they all flow so that it’s fair between the team. I mean they’re a team. They decide how they
6 want to skin the cat, and I don’t get into it, so long as everybody is comfortable rotating.” (Tr. 237)

7 Drivers on the other hand, only drive their route. And every driver starts within a few hours
8 of each other, and works Monday through Friday only, except on an overtime basis. “[T]hey are
9 standard start times that we have, 3:00 a.m., 4:00 a.m., 5:00 a.m., the majority of my drivers come in
10 at 5:00, 6:00 and then I have my last straggling, Danny, Danny Whitney comes in around 7:00. (Tr.
11 368)

12 E. Uniforms

13 The Employer provides distinct uniforms and safety gear for drivers and Plant workers, which
14 it washes and maintains. (Tr. 164-65) The two uniforms are different colors and materials, and
15 consist of different equipment. (Tr. 165) Bonilla, the Biotrack administrator, wears street clothes,
16 and no uniform. (Tr. 431)

17 VIII. Supervision

18 The lines of supervision between the Plant and Transportation Facility are markedly distinct.
19 Tom Stalberger oversees all of labor relations in California, including District 90 in Southern
20 California, and District 93 in Northern California. However, below him, supervision is entirely
21 distinct. Jimenez oversees drivers in California. (Tr. 76) Escobar manages all drivers in the San
22 Leandro Transportation Facility, and the drivers are split into three teams of eleven and directly
23 supervised by a transportation supervisor, either Hales, [Angel] Diaz, or [Bobby] Taula. (See
24 Employer Exhibit 6; Tr. 78) In fact, “[e]verything that would happen during a days operation, [either
25 Hales, Diaz, and Taula] is responsible for those 11 drivers.” (Tr. 78) The Fresno and Rancho
26 Cordovo facilities operate in the same way with respect to local supervision. When one of the
27 transportation supervisors is absent, another supervisor will fill in. (Tr. 764, 857) Clericals, on the
28 other hand, report directly to Escobar, instead of to transportation supervisors. (Tr. 436)

1 The Plant workers are supervised by Plant Supervisors Victor Jasso and Ken Barnes,
2 Maintenance Supervisor Ramon Rivas, and manager Henry Gonzalez. There is no cross supervision
3 between the Plant and the Transportation Facility.

4 The parties stipulated that the following employees are supervisors within the meaning of the
5 Act: Sam Escobar, Transportation Manager at San Leandro; Henry Gonzales, Plant Manager at San
6 Leandro; Ramon Rivas, Maintenance Supervisor at San Leandro; Tom Stalberger, District Manager
7 of Districts 90 and 93 with an office located in Vernon, California; Eloy Jimenez, District
8 Transportation Manager for Stericycle for the State of California, with an office in Vernon,
9 California; Shawn Askenasy, the position of Area Manager Environmental Safety and Health, with an
10 office in Rancho Cordova; Dave Williams, the Facility Manager at the Employer's Fresno, California
11 operation; Jim Kedwards and Chad Willnoite, who both hold the position of Transportation
12 Supervisors at the Employer's Fresno facility; and Eric Hultman, who holds the position of
13 Transportation Supervisor at the Employer's Rancho Cordova facility. (Tr. 1031-32)

14 The parties further stipulated that Plant Supervisors Ken Barnes, Victor Jasso, and Steve
15 Douglass share similar job duties with respect to their supervisory status. (Tr. 1034) The Employer
16 introduced no evidence with respect to Douglass. Barnes, who has been a Plant Supervisor since
17 2004, was not able to testify completely regarding his supervisory status as he left the hearing after
18 becoming ill. Jasso testified that he has been a supervisor in San Leandro for five years. (Tr. 899)
19 He testified that he supervises everyone in the Plant, including Plant drivers (Tr. 967), except
20 Gonzalez, Rivas, and Barnes. (Tr. 949)

21 Jasso has sat in on interviews for new employees, conducted by Gonzalez, and offered his
22 opinion to Gonzalez. (Tr. 939-40) Jasso testifies that he "trains everybody" (Tr. 910) and advises
23 Gonzalez when they are done with their training. (Tr. 986-87) When on duty, Jasso is in charge of
24 the shift. Each Monday, he directs Plant workers to particular tasks, through which they rotate
25 throughout the week. (Tr. 989-90) Jasso alters shift assignments as necessary. (Tr. 927-28) He
26 settles disputes over who will perform which task. (Tr. 996) As Gonzalez testified, "I mean, there
27 has to be some basic authority involved with directing the shift." (Tr. 807-08) Jasso testified that his
28 workers always come to him first, not to Gonzalez, with shift, as well as other work, concerns. (Tr.

1 1002) Although final work decisions are made by Gonzalez, Jasso testified that Gonzalez allows him
2 to arrange the shifts as necessary, and follows his advice almost without fail. (Tr. 917, 924, 925, 930)
3 Gonzalez explained that he allows the shift supervisor to make overtime decisions before notifying
4 him. “I tell the supervisors, you know, if you need to do it, do it, but I want to know about it. I
5 mean, if it’s after twelve o’clock, I don’t normally want a phone call at night just to say—but in the
6 morning I want a voice mail to my office phone. And that’s what they’ll leave, they’ll me a voice
7 mail on my office phone that, hey, last night we got behind and I asked—you know, two guys had to
8 stick around to make up for it. (Tr. 796) Jasso also directs employees to their rest and meal breaks.
9 (Tr. 639-37; *see also* 283-84 (testimony of Gonzalez))

10 If Plant workers need time off, they submit the vacation request form to Jasso. (Tr. 950; *see*
11 Petitioner’s Exhibit 5; Tr. 1000) Although Gonzalez has final say regarding time off, Jasso testified
12 that he has authority to try to arrange schedules and shifts in order to accommodate his employees. “I
13 receive the petition for the person and I’m thinking, I go and I talk to Henry first, and I say Henry,
14 this person might need the day off tomorrow. So, I check the schedule for the next day and I say,
15 yeah, go ahead or oh, I have another person on vacation so it’s now a problem. Give me the day and
16 I’m going to cover the day tomorrow.” (Tr. 920-21; *see also* 917, 919) He stated “[s]o, always I try
17 make something work, you know, work for him and work for me, and work for the company.” (Tr.
18 921-22; *see also* 926) In sum, Jasso testified that he tries his best to accommodate Plant workers (Tr.
19 966) and “recommends” to Gonzalez whether the employee should have the time off. (Tr. 999)

20 With respect to discipline, Jasso apparently conducts an investigation and tries to solve
21 problems before contacting Gonzalez. “I talk to the person first, my person, and I try, you know,
22 when [he] don’t come to work I say, hey, you know, I need to give me something explain why you no
23 come to work. . . . So, I try to figure out first and then later I pass to Henry.” (Tr. 958; *see also* 995)
24 Gonzalez testified that “typically I do 90, probably, percent of the write-ups. Ken Barnes and Victor
25 have, on occasion, done that but typically it falls upon me.” (Tr. 295-96) He went on that “[t]hey
26 have done verbal counselings but typically I like to do that, or have them do that in my presence, so
27 we will get all three of us together” (*Id.*)
28

1 Jasso and Barnes receive different pay and benefits as the other Plant workers. They do not
2 take breaks with the other workers. (Tr. 994) Jasso earns \$21 an hour (Tr. 900), more than the
3 highest Plant worker salary of \$18 an hour. He has no set shift; it varies depending on the needs of
4 the Plant. (Tr. 900) Barnes testified that he is paid a \$1,200 quarterly safety bonus. (Tr. 739) Plant
5 workers receive a bi-weekly bonus and a quarterly safety bonus of only \$100. Finally, Jasso testified
6 that several months ago, he attended a meeting with only management, who explained to him how he
7 could explain the Employer's benefits to his subordinates. (Tr. 1018)

8 9 ARGUMENT

10 I. Summary of the Argument

11 For the reasons set forth below in Section II, the Board should certify the unit sought by the
12 Petitioner, including all route drivers employed at the Employer's facility at 1366 Doolittle Drive,
13 San Leandro, California, and excluding all other employees. The route drivers share a community of
14 interest with each other, and with no other employees at the San Leandro location. Further, as set
15 forth in Section III, below, the Employer's proposed unit including all Northern California employees
16 is not appropriate because the Employer is unable to overcome the presumption against multi-facility
17 units. Finally, to the extent that the Plant workers are included in any unit, as set forth in Section IV,
18 below, individuals employed as Plant Supervisor should be excluded as statutory supervisors.

19 20 II. The Petitioner's Proposed Unit Is Appropriate and a Wall-to-Wall Unit is Not.

21 The unit that the Union has proposed in the petition, including all route drivers only, is an
22 appropriate unit and therefore should be approved by the Board. As the Board explained in *Virtua*
23 *Health, Inc.*, 344 NLRB No. 76 (2005), "[i]n making unit determinations by adjudication . . . the
24 Board usually affords great weight to the petitioning union's desires. It is well established that there
25 may be more than one appropriate bargaining unit within the confines of a single employing entity
26 and that the Board is free to select any of those appropriate units. In accord with that principle, the
27 Board's policy generally is to accept a petitioned-for unit as long as it is one of the many possible
28 appropriate units. There is nothing in the statute that requires that the unit sought be the only unit, the

1 ultimate unit, or the most appropriate unit. The Act requires only that the unit be appropriate.” *Id.* at
2 *10 (citing *American Hospital Assn. v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation*
3 *Co.*, 322 NLRB 723 (1996)). Since the unit the Union seeks is an appropriate unit, the Board should
4 approve it.

5 In fact, the Employer does not dispute that the employees the Union seeks to represent should
6 be included in a single unit. The Employer merely seeks to include a larger group of employees in
7 the unit. However, because the unit the Union seeks to represent is an appropriate unit, the Board
8 need not consider whether the Employer’s unit is more appropriate. *See Boeing Co.*, 337 NLRB 152,
9 153 (2001) (“The Board’s procedure for determining an appropriate unit under section 9(b) is to
10 examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate
11 unit ends.”) In any event, the Employer’s proposed unit is not appropriate since it seeks to include
12 workers who share little if any community of interest with the employees the Union seeks to
13 represent.

14 The test for “appropriateness” is whether the petitioned-for group of workers share a
15 “community of interest,” that is, “substantial mutual interests in wages, hours, and other conditions of
16 employment.” *Allied Chemical & Alkali Workers*, 404 U.S. 157, 172 (1971). The Board considers
17 several factors, but there are no per se rules. The desires of the petitioner are a relevant
18 consideration. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). As the Board explained in *In’re*
19 *United Operations, Inc.*, 338 NLRB 123 (2002), the Board also considers

20 whether the employees are organized into a separate department; have
21 distinct skills and training; have distinct job functions and perform
22 distinct work, including inquiry into the amount and type of job overlap
23 between classifications; are functionally integrated with the Employer’s
24 other employees; have frequent contact with other employees;
interchange with other employees; have distinct terms and conditions of
employment; and are separately supervised.

25 *Id.* at 123 (citations omitted).

26 In this case, the route drivers share a community of interest and therefore constitute an
27 appropriate unit. As explained below, among other things, these employees share common skills and
28 training, similar job functions, have substantial job overlap, are functionally integrated, have frequent

1 contact and interchange, and similar terms and conditions of employment. Other employees at the
2 San Leandro location are distinct from the route drivers in almost every relevant way.

3 **A. Route Drivers Have A Distinct Work Situs From Other Employees.**

4 The Plant workers and drivers work out of different buildings from the route drivers,
5 separated by a public street. The Transportation Building houses Transportation Facility employee
6 offices, driver break and locker rooms, showers, and other driver facilities, a driver time clock, with a
7 driver parking lot. (Tr. 141-42) The Plant, where the Plant workers work exclusively, houses similar
8 facilities used by Plant workers, as well as the docks and processing facilities, operated exclusively
9 by Plant workers. Although not dispositive, work situs is a relevant factor in determining community
10 of interest. *E.g., R-N Market, Inc.*, 190 NLRB 292, 292 (1971) (holding that employees did not share
11 a community of interest in part because they worked in a different area in the same building).

12 **B. Route Drivers Have Distinct Supervision From All Other Employees.**

13 Route drivers and Plant workers are separately supervised, further underscoring their distinct
14 community of interest. *Cf. United Rentals, Inc.*, 341 NLRB No. 72 (2004). Escobar manages all
15 drivers at the San Leandro Transportation Facility, and the drivers are split into three teams of eleven,
16 each directly supervised by a Transportation supervisor, either Hales, Diaz, or Tauala. (*See*
17 Employer Exhibit 6; Tr. 78) “Everything that would happen during a days operation, [either Hales,
18 Diaz, and Tauala] is responsible for those 11 drivers.” (Tr. 78) When one of the transportation
19 supervisors is absent, another supervisor will fill in. (Tr. 764, 857) Clericals in the Transportation
20 Facility, on the other hand, report directly to Escobar, instead of to transportation supervisors. (Tr.
21 436)

22 The Plant workers are supervised by Plant Supervisors Victor Jasso and Ken Barnes,
23 Maintenance Supervisor Ramon Rivas, and manager Henry Gonzalez. There is no cross supervision
24 between the Plant and the Transportation Facility. Only Stalberger, who oversees all of California,
25 including the Southern California district, is a common supervisor. In any case, Stalberger has little
26 if any involvement in the day-to-day operations of the Transportation Facility or the Plant. In sum,
27 day-to-day supervisory lines are distinct and firm.

1 **C. Route Drivers Have Distinct Skills and Training as Other Employees.**

2 The drivers and Plant workers are required to possess different skills and undergo different
3 training, also weighing in favor of a route driver unit. *See Omni Intern. Hotel*, 283 NLRB 475, 475
4 (1987) (holding that difference in skills, as well as lack of interchange, outweighs other factors, such
5 as some employee contact). The “vast majority” of drivers have a Class A license. (Tr. 127) There
6 is no evidence that Plant workers require any pre-hire credentials. Initial and ongoing training is
7 provided by the Employer’s safety manager and by the employee’s direct supervisor, who is different
8 for Plant workers and drivers. (Tr. 130) It is also provided by fellow workers on the job; Plant
9 workers train Plant workers and drivers, route drivers train route drivers. The substance of the
10 training is also largely distinct. (Tr. 131-32, 135 (describing driver training) compare Tr. 133-34,
11 135, 198 (describing Plant worker training)) Plant drivers are also trained at the Plant, by other Plant
12 workers who perform driving tasks. (Tr. 198, 254)

13 **D. Route Drivers Have Distinct Job Duties And No Temporary Interchange With
14 Other Employees.**

15 **1. Route Drivers Have Distinct Job Duties And No Temporary Interchange
16 With Plant Workers.**

17 Route drivers and Plant workers also have almost entirely distinct job duties, with minimal or
18 no overlap. As the Board has found, “sporadic assistance between the two sets of employees of this
19 kind reflects ‘a spirit of cooperation or civility’ rather than an overlap in job functions.” *Maxim’s De
20 Paris Suite Hotel*, 285 NLRB 377, 378 (1987); *see also Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1019
21 (1994) (holding that maintenance workers were a separate unit from production workers; production
22 workers assisted maintenance workers “by moving parts out of his way or handing him tools as he
works”).

23 As more fully set out above in the Facts section, San Leandro drivers spend the day with their
24 truck, picking up full containers of waste from customers and dropping off empty ones. They
25 perform tasks at the Transportation Building at the start and end of their shift, as well as on their
26 route, including paperwork and ensuring their load is safe. At large hospitals, the drivers typically
27 pull up to a dock. At smaller facilities, such as a doctor’s office, as Burns testified, he is required to
28 enter the facility to collect the full containers. Driver Ochoa testified that he is required to enter the

1 building at almost all of his stops. (Tr. 883) At a lab, the drivers may be required to collect waste in
2 separate containers throughout the facility. This process often requires substantial customer
3 interaction. As district manager Stalberger explained, “in the medical waste business our drivers go
4 into the various healthcare facilities and offices and interact every day with the customer.” (Tr. 328)
5 He went on that “[a]t 95 percent of our customers, which are the doctors and the clinics and dentists
6 and so on, no, they have to go inside and get their waste and they interact with the customer.” (Tr.
7 329-30) Once their route is complete, the drivers return to the facility, drop off their truck, complete
8 additional paperwork, change in the drivers’ locker room, and punch out at the Transportation
9 Building.

10 Of the foregoing duties, set out in more detail in the Facts section, above, not a single one is
11 performed by Plant workers. Instead, as is also set out more fully above, Plant workers spend their
12 entire day in the Plant, overseeing the processing of waste, maintaining the facility, cleaning, and
13 loading and unloading trucks. They have no customer contact, except for an occasional customer
14 plant tour, which is entirely distinct from the drivers’ customer contact. (Tr. 330-31) The Plant
15 workers are all “cross-trained” and generally can and have done any of the Plant jobs. (Tr. 231)
16 Moreover, although individual Plant workers are assigned to one of the five tasks listed above, they
17 rotate throughout the week (Tr. 234), and at any given time, will work where needed. In all,
18 according to Gonzalez, the Plant is like “a ballet, you know, you just time it based on when it’s the
19 appropriate time to do some of these distractors, because that is, the autoclave bin or the bin—the
20 receiver bin change from the compactor is a distraction to the team flow.” (Tr. 249) Aside from
21 sporadic loading of empty containers, and even more sporadic unloading of full containers, route
22 drivers perform none of these tasks.

23 At the hearing, the Employer sought to highlight the few duties that it will claim the route
24 drivers and Plant workers have in common. These include loading trucks with empty containers at
25 the start of the route, unloading full containers from trucks at the end of the route, drying or
26 deodorizing wet containers, and shuttling trucks between the Plant and the Transportation Building.
27 To the extent route drivers perform any of these duties, the time they spend doing them is irregular
28 and brief. At the same time, these tasks constitute a small subset of the Plant workers’ duties. First,

1 the drivers testified uniformly that they rarely load their trucks, and if they do, rarely do so by
2 retrieving them from the Plant. Instead, they try to obtain containers from other trucks or short their
3 customers. In any case, all drivers testified that they are rarely short containers, at most several times
4 a month. (Tr. 571-72, 625, 627, 826) Even if the drivers are required to obtain additional empty
5 containers, the amount of time it takes them to do so is small. Even loading a completely empty
6 truck—which is required extremely infrequently—takes Burns about twenty to thirty minutes. (Tr.
7 628) The Plant workers also spend very little time loading trucks with empty containers, which
8 Gonzalez estimated to be about seven or eight percent of their work time. (Tr. 279-81)

9 Second, the Employer attempted to elicit testimony from the drivers that they help unload the
10 full containers from their trucks at the end of the day. Only one driver, Employer witness Whitney,
11 stated that he has ever performed this task, and only in special circumstances, when he returns to the
12 Plant in between routes. (Tr. 445-46) Most drivers, who make only one route a day, unlike Whitney,
13 would have no need to do so. Indeed, every other driver the Employer called and who was
14 questioned denied ever having unloaded his truck. (*E.g.*, 648, 888) Driver manager Escobar
15 testified to having seen Whitney unload his truck, but no other drivers. (Tr. 355) He acknowledged
16 that a driver unloading his truck is the exception. (Tr. 383) Driver supervisor Hales agreed. (Tr.
17 752)

18 Third, the Employer’s management witnesses and driver Whitney testified that they dry out or
19 deodorize wet or smelly containers before delivering them to customers. No other driver testified to
20 having ever performed this task or being instructed to do so. Burns further testified that he may use a
21 deodorant if a customer complains about a smelly container, but also merely switches the container
22 for a cleaner one. (Tr. 673) In any event, there is no testimony that Plant workers spray the
23 containers or wipe them with rags.

24 In sum, the tasks of the two classes of workers could hardly be more distinct—route drivers
25 spend their entire day on the road, serving customers, while Plant workers spend their entire day in
26 the Plant, processing waste.

1 **2. Route Drivers Have Distinct Job Duties And No Temporary Interchange**
2 **With Plant Drivers.**

3 The route drivers also have distinct job functions and little or no interchange with the Plant
4 drivers (roll-off and long-haul drivers). The route drivers deliver empty containers to customers and
5 pick up full containers from the customers on a set route throughout the day, and spend little if any
6 time at the Plant. The shuttle/roll-off driver, Albizures, drives waste from the Plant to the local
7 landfill, and performs many other distinct tasks throughout the day. According to Plant manager
8 Gonzalez, “driving is probably 60 percent, another 30 percent actually dumping the bins or moving
9 the bins [at the Plant or dump], and then the other ten is break and lunch and miscellaneous.” (Tr.
10 311) His driving consists of typically three or four runs to the dump a day. He loads his own truck.
11 (Tr. 126) The long-haul driver, Tayag, drives incineration waste to Rancho Cordova on its way out-
12 of-state to Salt Lake City or Kansas City. (Tr. 49, 123-25) He also performs numerous other Plant
13 tasks, including covering for the roll-off driver. One route driver, George Martinez, who did not
14 testify at the hearing, apparently performs some Plant driver functions. No other route driver does.
15 The Employer leases the route trucks (Tr. 163) but owns the long haul and roll off trucks. (Tr. 250).
16 The long haul trucks are refrigerated, unlike route trucks, which are not. (Tr. 268) The Board has
17 regularly ruled that drivers with distinct tasks and supervision may be placed in separate units. *E.g.*,
18 *Georgia Highway Express*, 150 NLRB 1649, 1650-1651 (1965) (holding that the “Board has long
19 held that local drivers and over-the-road drivers constitute separate appropriate units where they are
20 shown to be clearly defined, homogeneous, and functionally distinct groups with separate interests
21 which can effectively be represented separately for bargaining purposes.”)

22 **3. Route Drivers Have Distinct Job Duties And No Temporary Interchange**
23 **With Transportation Clericals.**

24 The Employer employs two clerical employees in the Transportation Building, a dispatcher
25 named Susan Ollison and the “Biotrack administrator,” named Gretchen Bonilla. The dispatcher
26 prints routes for the route drivers. She receives customer calls and addresses their concerns. “So,
27 she’s answering phones and reaching out to the supervisor, who then in turn makes the decision who
28 can geographically, within their area, pick up the waste for the customer.” (Tr. 348) Ollison does not
drive a truck (Tr. 415) and never goes to the Plant. (Tr. 428) Bonilla, the Biotrack administrator,

1 operates the Employer’s “Biotrack” system, that keeps track of the route drivers’ activities, which is
2 downloaded each night from the PDT. She also does not drive a truck (Tr. 415) or go to the Plant.
3 (Tr. 350)

4 Based on their purely office duties, the Transportation clericals are office clericals, whom the
5 Board routinely excludes from production or driver units. The ruling in *Cook Composites &*
6 *Polymers Co.*, 313 NLRB 1105 (1994) is on point. There, the Board upheld a judge’s decision that
7 employees were office clericals even though their position required them to maintain regular contact
8 with production employees to pick up batch tickets several times a day and make other trips to the
9 shipping area. The employer asserted that “there is some common ground between the conditions of
10 employment of the operators and the other employees. Thus, the operators get the same starting pay
11 as other employees and receive the identical benefits package. They are required to take the same
12 safety training.” *Id.* at 1108. Further:

13 The essential job duty of the operators is to enter data, mostly from the
14 batch tickets, into the computer system. . . . The Employer claims that
15 the data entry operation is integral to the production process because
16 the batch tickets cannot be closed out and the product shipped until the
17 operators perform their duties. Thus, for example, the operators would
18 be responsible for clearing up any discrepancies that exist between the
19 data on the batch tickets and the plant inventory. The record also
20 indicates that the operators are responsible for generating address labels
21 for shipping, assigning freight carriers, and filing pick tickets, packing
22 slips, and bills of lading. Additionally, testimony establishes that the
23 operators record and transmit the production hours worked by other
24 employees to the corporate office, answer questions regarding
25 insurance benefits, and deal with mistakes on paychecks or pay stubs.

26 *Id.* The Board nevertheless upheld the judge’s ruling that “[c]lericals whose principal functions and
27 duties relate to the general office operations and are performed within the general office itself, are
28 office clericals who do not have a close community of interest with a production unit.” *Id.* See also
Virginia Mfg. Co., 311 NLRB 992 (1993) (where disputed employee spent forty percent of his time
on the floor monitoring the production process, he was nonetheless an office clerical); *Kinney Drugs,*
Inc., 234 NLRB 783 (1978) (employee who spent two to two and a half hours a day in production
area, but who’s regular work station was located in the office, was an office clerical); *The Boeing*
Vertol Company, 233 NLRB 866, 868 (1977) (“[A]ll of the assembly records clerks other than
Doohan spend a majority of their time at their desks checking the planning papers. Panel maintenance

1 usually consumes no more than 25 to 35 percent of a clerk's working time. Panel maintenance in fact
2 requires no functional interaction with production employees, despite the fact that the panels are on
3 the shop floor.”).

4 **E. There Is Virtually No Permanent Interchange Between Drivers And Other**
5 **Employees.**

6 There is virtually no permanent interchange between the Plant and the Transportation Facility.
7 (Tr. 782-83) *See Red Lobster*, 300 NLRB 908, 911 (1990) (holding that eleven permanent transfers
8 among 185 employees within a 1-year period did not create a community of interest); *see also*
9 *Lipman’s*, 227 NLRB 1436, 1437 (1977) (holding that two groups of employees at two separate retail
10 locations should be in separate units despite 141 permanent transfers).

11 According to Plant manager Gonzalez, only two Plant workers have become drivers in the six
12 years he has worked there. (Tr. 196) There is also minimal to non-existent permanent interchange
13 from the Transportation Facility to the Plant. The drivers also have no interchange with the
14 Transportation Facility clericals, the dispatcher and Biotrack administrator. Indeed, drivers are not
15 permitted to use the computer in the office. (Tr. 638-39) Instead, the Transportation Facility uses a
16 temporary agency to fill in for them as needed. (Tr. 429-30) To the contrary, the Employer never
17 obtains outside help to fill in for drivers, and only uses other drivers to cover shifts as needed. (Tr.
18 430, 434)

19 **F. Route Drivers’ Do Not Have Sufficient Contact With Other Workers To Require**
20 **Their Inclusion In The Same Unit.**

21 In all, the drivers have few, if any, reason to go to the Plant, and accordingly little if any
22 contact with the Plant workers. Aside from if their truck has been parked overnight at the Plant, the
23 only reason they would go there would be to retrieve a hand truck, obtain more containers, or drop
24 off their load sheet at the end of the day on the counter in the front of the Plant. None of these
25 activities require any contact with the Plant workers, and, as set out in detail in the Facts section, the
26 drivers testified that such contact is rare. Under Board law, incidental contact such as this is not
27 sufficient to create a community of interest. In *Home Depot USA, Inc.*, 331 NLRB 1289 (2000), the
28 Board ruled that “[t]he contact that drivers have with [other employees] while the drivers are [at the
facility] . . . occurs randomly and is incidental to their primary job function of operating the delivery

1 trucks, preparing for deliveries and making deliveries.” *Id.* at 1291; *see also Ore-Ida Foods*, 313
2 NLRB at 1016-1019 (1994) (holding that despite some interaction between production and
3 maintenance employees, “maintenance employees normally perform highly skilled tasks which the
4 production operators do not and cannot perform”); *In’re Bartlett Collins Co.* 334 NLRB 484 (2001).

5 Indeed, when route drivers do go to the Plant, the Employer’s managers acknowledged that
6 “[t]hey talk very, you know, briefly with the [Plant workers], they make sure everything is okay.”
7 (Tr. 360) The evidence also showed that the Employer holds regular department-specific meetings
8 and that Plant workers and drivers have attended exactly one meeting together—the all-employee
9 meeting called in response to the union organizing drive. (Tr. 674, 844) Similarly, there is no
10 evidence that the route drivers and Plant drivers come in contact with each other. Drivers testified
11 that they do not. (*E.g.*, Tr. 665-66)

12 The Employer elicited testimony regarding four activities that it will allege require contact
13 between Plant workers and drivers. First, after drivers return their trucks, Plant workers may take
14 pictures of loads that they consider to be unsafely secured. However, this activity, which the
15 Employer acknowledged is rare, requires no interaction between the drivers and the Plant workers,
16 and usually involves none. Instead, the pictures are generally passed through supervisory channels.
17 (Tr. 57) Second, the Employer also elicited testimony that drivers and Plant workers interact when
18 they “exchange” keys to the truck. This interaction is also rare. Third, Drivers may call in if they
19 determine throughout the day that they need additional containers. The drivers testified that in such
20 situations, they speak to their own supervisor, or to Ken Barnes, the Plant Supervisor. (Tr. 460-61)
21 Fourth, drivers may encounter Plant workers when they drop off their load sheet at the end of the day.
22 However, much more frequently, the drivers merely post the load sheet on a clipboard in the Plant.
23 In any case, any contact at that point would be particularly fleeting.

24 The drivers also generally do not come into contact with Plant workers at social events
25 sponsored by the Employer. Each department, the Plant and the Transportation Facility, throw
26 separate barbecues on a semi-regular basis. Although employees apparently are not technically
27 excluded from the other department’s event, as more fully set out in the Fact section above, they are
28 viewed as separate events and they rarely if ever attend the other’s event. (Tr. 666, 875-76) As Plant

1 manager Gonzalez testified that “when we throw a party, or I throw a party, it’s usually I’m throwing
2 the party, I’m the one that goes out and gets everything. So I am not going to—I, realistically, can’t
3 be cooking hamburgers all day long for anybody who decides to walk in. Typically, again, with a
4 staff of five [Plant workers], it’s a very quick barbecue, and we cook extra stuff and put it away for
5 the guys that come in, you know, after shifts. I’ll do extra stuff and throw it in the fridge, and then
6 the guys can warm it up when they come in later, on the two back shifts. So it’s a little different just
7 because logistically, you know, round-the-clock teams are a little different than one-shift teams [like
8 the drivers]. . . . [Y]ou know, [the Plant and the Transportation Facility] have different schedules and
9 we throw our little, separate little things for our own employees.” (Tr. 801-02)

10 Similarly, the Employer’s annual Cinco de Mayo party is apparently open to all employees.
11 But while driver supervisor Hales stated that he did see Plant workers at the event, driver Ochoa
12 testified that he sat with Hales at the event and did not see any Plant workers there. (Tr. 884-85)
13 Gonzalez testified also that at times he has ordered pizza for his weekend Plant workers. (Tr. 799)
14 Similarly, in the past, Escobar’s predecessor as Transportation Manager, Mike Alvarez, would
15 provide pizza or sandwiches for drivers on a regular basis, and would take orders from only drivers.
16 (Tr. 876-78) The Employer apparently throws an annual holiday party to which all employees are
17 invited. However, few if any drivers have ever attended the party. (Tr. 681, 886)

18 In sum, there is little contact, either social or business, between the route drivers and Plant
19 workers, further underscoring the lack of community of interest between them.

20 **G. The Route Drivers Have Almost Uniformly Distinct Working Conditions From**
21 **Other Employees.**

22 The Plant workers and drivers work under two separate wage scales. Plant workers earn
23 between \$12 and \$17 an hour. (Tr. 283) Drivers earn from \$17 with a Class A license and \$16 with
24 a Class B license (Tr. 395) up to \$25 an hour (Tr. 403). Whether and how much of a yearly increase
25 employees receive is determined by their own individual manager. (Tr. 536) Moreover, the two sets
26 of employees are eligible for an entirely different bonus/incentive program. Plant workers are
27 entitled to a “safety bonus.” (Tr. 284-85) Drivers, on the other hand, are entitled to an “incentive,”
28 with different criteria, as set out above, in the Fact section. The Plant workers are also entitled to a

1 quarterly bonus of \$100. (Tr. 285) The drivers are not entitled to any quarterly, or any additional
2 bonus. (Tr. 661) Further, the Employer provides distinct uniforms and safety gear for drivers and
3 Plant workers, which it washes and maintains. (Tr. 164-65) The two uniforms are different colors
4 and materials. (Tr. 165) Bonilla, the Biotrack administrator, wears street clothes, and no uniform.
5 (Tr. 431)

6 Although some benefits, such as health and retirement, are identical between Plant workers
7 and drivers, these benefits are the same for all employees throughout the nation. (Tr. 128-29)
8 Moreover, although Stalberger offered an extensive list of other identical benefits, many of them are
9 not in fact the same. For instance, Stalberger testified that the two sets of employees receive the
10 same personal protective equipment, attend the same safety meetings, and enjoy the same lunch and
11 break policy. In fact, they do not, as set out elsewhere. In any case, as the Board has held, even
12 where drivers “share a number of common benefits, terms, and conditions of employment with the
13 Employer’s other employees, share common supervision with other employees, and have some
14 degree of interaction and integration with other employees, we find that these similarities are
15 substantially outweighed by the factors supporting a conclusion that the drivers as a group share a
16 distinct community of interest, and therefore constitute an appropriate unit.” *Home Depot*, 331
17 NLRB at 1291.

18 Each department uses separate break and locker rooms. Moreover, the two classifications
19 also are subject to entirely different procedures and practices with respect to lunches and breaks.
20 Plant workers take regular, scheduled, common breaks. (Tr. 283) Drivers on the other hand, take
21 breaks when they can, and many take late breaks at the end of their shift, or not at all. The Plant
22 workers and drivers also work under an entirely different shift structure. Plant workers work in three
23 shifts, over 24 hours in a day, currently seven days a week. (Tr. 232) During a single shift, the Plant
24 workers are assigned to a particular task, but, as set out above, will work where needed, and rotate on
25 a daily basis from task to task. (Tr. 237) Drivers on the other hand, only drive their route. And
26 every driver starts in the morning, within a few hours of each other, and works Monday through
27 Friday only, except on an overtime basis. (Tr. 368)

1 **H. Bargaining History Militates In Favor Of A Driver Unit.**

2 The only evidence introduced with respect to any bargaining history at the San Leandro
3 facility is that at least from 2000 until 2003, Teamsters Local 70 represented a unit of “all full-time
4 and regular part-time route and shuttle drivers and excluding all other employees” (Petitioner’s
5 Exhibit 6) Up through 2003, the facility consisted only of a the Transportation Building; the Plant
6 did not exist. Accordingly, shuttle drivers were based out of the same building as the route drivers.
7 Currently, they are based out of the Plant. This further demonstrates that the unit the Union seeks to
8 represent is appropriate, when the Employer has a history of bargaining with the same Union with
9 respect to the same employees.

10 **III. The Employer Cannot Demonstrate That A Multi-Facility Unit Is Required.**

11 The Employer seeks to include in the bargaining unit employees working out of four separate
12 facilities. As the Board has long held, “[i]t is well established that a single-facility unit is
13 presumptively appropriate and that therefore unless it has been effectively merged into a more
14 comprehensive unit, or is so functionally integrated with another unit that it has lost its separate
15 identity, it is an appropriate unit.” *R&D Trucking, Inc.*, 327 NLRB 531, 531 (1999). In this case,
16 although there is some minimal integration between the various facilities, there is overwhelming local
17 control and autonomy.

18 As the Employer’s witnesses testified, certain waste, such as “sharps,” cannot be processed in
19 San Leandro and so is transferred to Fresno by long haul drivers. (Tr. 29) The different locations
20 also exchange some empty containers. However, the San Leandro Transportation Facility function
21 entirely separately from the other facilities, and the Plant almost entirely independently. Indeed,
22 starting in 2002, the Employer augmented the San Leandro Plant specifically to reduce its reliance on
23 the Fresno facility. (Tr. 85) And to the extent that there is interdependence, it stretches across the
24 nation, as much of the waste that is shipped to the other facilities continues to Salt Lake City or
25 Kansas City for further processing.

26 In any case, “[w]here substantial autonomy is vested in local supervisors to handle the day-to-
27 day supervision of their employees, we find this fact more significant in determining the
28

1 appropriateness of the unit sought than the existence of other factors such as central recordkeeping or
2 functional integration.” *Hegins Corporation*, 255 NLRB 1236, 1236 (1981). Here, Plant and driver
3 employees communicate with local, department-specific supervisors about work issues, including
4 complaints, reviews, pay, and time off. (E.g., Tr. 662, 678-81) Each facility has its own dispatcher
5 dispatching the drivers, and its own drivers’ supervisors who oversee all driver issues. (Tr. 121) *See*
6 *Hilander Foods*, 348 NLRB No. 82 (2006) (employer did not overcome single facility presumption
7 where store managers handled the early steps in the grievance procedure, discipline and transfer
8 issues, and deal with merit increases); *Renzetti’s Market*, 238 NLRB 174,175 (1978) (holding that
9 despite centralization and similarity of employee skills, functions and pay, a single facility unit was
10 appropriate where immediate supervisors handled warnings and leave requests and “participated” in
11 hiring and discharge decisions).

12 As is also set out above in more detail, while starting pay is determined by the Employer’s
13 corporate headquarters in Illinois, it is based on the specific market, and subject to change based on
14 local needs. (Tr. 527, 542-43) The pay rate is lower in Fresno and Rancho than San Leandro (Tr.
15 139-40) Each employee’s yearly increase, if any, is decided locally by the employee’s direct manger,
16 in the case of the San Leandro driver, Escobar. (Tr. 536) Stalberger has final say over all increases,
17 but he approves almost all locally requested increases. (Tr. 538) And Stalberger has never spoken
18 directly to an employee about his pay. (Tr. 539-40; *see also* 658) Instead, the drivers speak directly
19 to their local supervisor regarding any pay increases. If the proposed increase is over four percent,
20 Stalberger is required to obtain approval from the Area Vice President for the Western Area (Tr.
21 539), who also always approves any requests. Incentives and bonuses, described in more detail
22 above, are also determined locally by the employee’s supervisor. (Tr. 485, 493-95) Local managers
23 are required to obtain approval for employee leave, but Stalberger has never turned it down when
24 asked. (Tr. 546) Hiring and firing decisions are also made by each individual department manager.
25 In any case, even where there is much greater centralized labor control than here, the Board does not
26 require a multi-facility unit. *See, e.g., New Britain Transportation*, 330 NLRB 397 (1999); *Mercy*
27 *Medical Center San Juan*, 344 NLRB 790 (2005).

1 There is also little or no employee interchange between the San Leandro Plant and other
2 facilities. “The frequency of employee interchange is a critical factor in determining whether
3 employees who work in different plants share a ‘community of interest’ sufficient to justify their
4 inclusion in a single bargaining unit. We have in past cases cited a relatively low degree of actual
5 employee interchange among different plants as a strong indication that there is no collective
6 ‘community of interests’ among a proposed multi-plant bargaining unit” *Spring City Knitting Co. v.*
7 *N.L.R.B.*, 647 F.2d 1011, 1015 (9th Cir, 1981); *see also Victoria Station, Inc. v. N.L.R.B.* 586 F.2d
8 672 (9th Cir., 1978) (holding that 8% yearly transfer rate was too low for a multi-plant bargaining
9 unit); *N.L.R.B. v. Lerner Stores Corp.*, 506 F.2d 706 (9th Cir. 1974) (holding a 10% interchange in
10 employees was not enough to overcome the presumption of a single facility unit).

11 Here, as set out above, the route drivers at each facility service defined separate geographical
12 regions. (Tr. 115-20) The Employer presented one witness, current San Leandro driver Vazquez,
13 who “transferred” between the Fresno and San Leandro facilities. However, when Vazquez left San
14 Leandro to go to Fresno, his salary was reduced to the starting wage rate. And when he returned to
15 San Leandro, again, he was returned back to the starting wage rate there, as if he were a new hire.
16 (Tr. 581-82) Moreover, he moved locations for personal reasons. (Tr. 564) Further, the San
17 Leandro drivers, as well as Stalberger, testified that the drivers have never had a business reason to
18 drive to or communicate with Fresno, Rancho Cordova, or Redding. (Tr. 531, 664, 789-90, 790, 875)
19 Transportation supervisor Hales also testified that drivers from other locations do not come to
20 Stericycle social events in San Leandro. (Tr. 790)

21 Finally, each of the four facilities are at least one hundred miles from each other, and some
22 over three hundred miles apart. “The geographic separation, while not determinative, gains
23 significance where, as here, there are other persuasive factors supporting the single-facility unit. *New*
24 *Britain Transportation*, 330 NLRB at 398 (holding that a distances of six and twelve miles militated
25 against a multi-facility unit); *see also Massachusetts Society for Prevention of Cruelty to Children v.*
26 *N.L.R.B.*, 297 F.3d 41, 46 (1st Cir. 2002) (holding that distances of 20 to 95 miles between facilities
27 fit comfortably with case law where the Board has found geography to favor single-facility units).

1 In sum, there are no grounds for requiring a multi-facility unit where there is such substantial
2 local control and autonomy.

3
4 **IV. Plant Supervisors Are Supervisors Within The Meaning Of The Act.**

5 The Employer also seeks to include three statutory supervisors, the Plant Supervisors, in the
6 unit. The parties stipulated that Plant Supervisors Ken Barnes, Victor Jasso, and Steve Douglass
7 share similar job duties with respect to their supervisory status. (Tr. 1034) The Act defines
8 supervisor as

9 any individual having authority, in the interest of the employer, to hire,
10 transfer, suspend, lay off, recall, promote, discharge, assign, reward, or
11 discipline other employees, or responsibly to direct them, or to adjust
12 their grievances, or effectively to recommend such action, if in
13 connection with the foregoing the exercise of such authority is not of a
14 merely routine or clerical nature, but requires the use of independent
15 judgment.

16 29 U.S.C. §152(11). “The Board has held that the possession of any one of the indicia specified in
17 Section 2(11) is sufficient to confer supervisory status on an individual if the statutory authority is
18 exercised with independent judgment and not in a routine manner.” *In’re American Commercial*
19 *Barge Line Co.*, 337 NLRB 1070, 1072 (2002).

20 Barnes has been a Plant Supervisor for four years. Jasso testified that he has been a
21 supervisor in San Leandro for five years and that he supervises everyone in the Plant, including Plant
22 drivers (Tr. 967), except Plant manager Gonzalez and maintenance manager Rivas (both stipulated
23 supervisors) and Barnes. (Tr. 949) The Plant managers exercise substantial and regular independent
24 judgment over the work of the Plant workers. In *American Commercial Barge*, the Board held that
25 boat pilots were supervisors where they “have authority to responsibly direct the towboat crew in
26 their work and to assign work. They use independent judgment in exercising that authority, and they
27 do so in the interest of the employer.” 337 NLRB at 1072. When on duty, Jasso is in charge of the
28 shift. Each Monday, he directs Plant workers to particular tasks, through which they rotate
throughout the week. (Tr. 989-90) Jasso alters shift assignments as necessary. (Tr. 927-28) He
settles disputes over who will perform which task. (Tr. 996) As Gonzalez testified, “I mean, there
has to be some basic authority involved with directing the shift.” (Tr. 807-08)

1 Although final work decisions are made by Gonzalez, Jasso testified that Gonzalez allows
2 him to arrange the shifts as necessary, and follows his advice almost without fail. (Tr. 917, 924, 925,
3 930) Gonzalez explained that he allows the shift supervisor to make overtime decisions before
4 notifying him. “I tell the supervisors, you know, if you need to do it, do it, but I want to know about
5 it. I mean, if it’s after twelve o’clock, I don’t normally want a phone call at night just to say—but in
6 the morning I want a voice mail to my office phone. And that’s what they’ll leave, they’ll me a voice
7 mail on my office phone that, hey, last night we got behind and I asked—you know, two guys had to
8 stick around to make up for it. (Tr. 796) Jasso also directs employees to their rest and meal breaks.
9 (Tr. 639-37; *see also* 283-84 (testimony of Gonzalez))

10 Further, if Plant workers need time off, they submit the vacation request form to Jasso. (Tr.
11 950; *see* Petitioner’s Exhibit 5; Tr. 1000) Again, although Gonzalez has final say regarding time off,
12 Jasso testified that he has authority to try to arrange schedules and shifts in order to accommodate his
13 employees. “I receive the petition for the person and I’m thinking, I go and I talk to Henry first, and I
14 say Henry, this person might need the day off tomorrow. So, I check the schedule for the next day
15 and I say, yeah, go ahead or oh, I have another person on vacation so it’s now a problem. Give me
16 the day and I’m going to cover the day tomorrow.” (Tr. 920-21; *see also* 917, 919) He stated “[s]o,
17 always I try make something work, you know, work for him and work for me, and work for the
18 company.” (Tr. 921-22; *see also* 926) In sum, Jasso testified that he tries his best to accommodate
19 Plant workers (Tr. 966) and “recommends” to Gonzalez whether the employee should have the time
20 off. (Tr. 999)

21 With respect to discipline, Jasso apparently conducts an investigation and tries to solve
22 problems before contacting Gonzalez. (Tr. 958; *see also* 995) Gonzalez testified that he also does
23 write-ups. “typically I do 90, probably, percent of the write-ups. Ken Barnes and Victor [Jasso]
24 have, on occasion, done that but typically it falls upon me.” (Tr. 295-96) In other words, the Plant
25 Supervisors conduct write-ups of employees.

26 Secondary indicia also weighs in favor of their supervisory status. Jasso and Barnes receive
27 different pay and benefits as the other Plant workers. Jasso earns \$21 an hour (Tr. 900), more than
28 the highest Plant worker salary of \$18 an hour. He has no set shift; it varies depending on the needs

1 of the Plant. (Tr. 900) Barnes testified that he is paid a \$1,200 quarterly safety bonus. (Tr. 739)
2 Plant workers receive a bi-weekly bonus and a quarterly safety bonus of only \$100. They also do not
3 take breaks with the other workers. (Tr. 994) Finally, Jasso testified that several months ago, he
4 attended a meeting with only management, who explained to him how he could explain the
5 Employer's benefits to his subordinates. (Tr. 1018)

6
7 **CONCLUSION**

8 For the reasons set out above, the Board should certify the unit sought by the Petitioner,
9 including all route drivers employed at the Employer's facility at 1366 Doolittle Drive, San Leandro,
10 California, and excluding all other employees. Further, the Employer's proposed unit including all
11 Northern California employees is not appropriate because the Employer is unable to overcome the
12 presumption against multi-facility units. Finally, to the extent that the Plant workers are included in
13 any unit, individuals employed as Plant Supervisor should be excluded as statutory supervisors.

14 Dated: December 16, 2008

BEESON, TAYER & BODINE, APC

15
16 By: _____

JASON RABINOWITZ
ZACHARY N. LEEDS

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18 Attorneys for the TEAMSTERS LOCAL 70
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF**

3 I declare that I am employed in the County of, State of California. I am over the age of
4 eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer &
5 Bodine, 1404 Franklin Street, 5th Floor, Oakland, CA 94612-3208. On this day, I served the
6 foregoing Document(s):

6 **Petitioner’s Post-Hearing Brief**

7 By Mail to the parties in said action, as addressed below, in accordance with Code of Civil
8 Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area
9 for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that
10 designated area is given the correct amount of postage and is deposited that same day, in the ordinary
11 course of business in a United States mailbox in the City of Oakland, California.

12 By Personal Delivering a true copy thereof, to the parties in said action, as addressed
13 below in accordance with Code of Civil Procedure §1011.

14 By Overnight Delivery to the parties in said action, as addressed below, in accordance
15 with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a
16 sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail.
17 Mail placed in that designated area is picked up that same day, in the ordinary course of business for
18 delivery the following day via United Parcel Service Overnight Delivery.

19 By Facsimile Transmission to the parties in said action, as addressed below, in accordance
20 with Code of Civil Procedure §1013(e).

21 Arch Stokes, Esq.
22 Shea Stokes Roberts & Wagner
23 3593 Hemphill Street
24 College Park, GA 30337

Bruno Katz
Shea Stokes Roberts & Wagner
510 Market Street, Third Floor
San Diego, CA 92101-7025

25 I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland,
26 California, on this date, December 16, 2008.

27 _____
28 Barbara J. Holton
BEESON, TAYER & BODINE, APC
Beeson, Tayer & Bodine
1404 Franklin Street, 5th Floor
Oakland, CA 94612-3208

EXHIBIT B

**BEFORE THE NATIONAL LABOR RELATIONS
BOARD
Region 32**

**Stericycle, Inc.
Employer**

and

**Teamsters Local Union No. 70
Petitioner**

Case 32-RC-5603

DECISION ON INTERIM APPEAL

I have carefully considered the interim appeal filed in this case by the Employer concerning the hearing officer's *ex parte* communication with the Petitioner. Based on that consideration, I have determined that the interim appeal lacks merit, and I am denying it for the reasons that follow. First, the hearing officer is not a Board agent who will be participating in the decision, and, thus, as provided in Section 102.128 of the Board's Rules and Regulations, he is not subject to the restrictions set forth in Rule 102.126 of the Board's Rules and Regulations. Moreover, it appears that the *ex parte* communication at issue here was for purposes, as discussed in Section 102.130 of the Board's Rules and Regulations, that are not prohibited by Section 102.126 of those Rules and Regulations. Thus, that communication was in part for the purpose of proposing an agreement regarding an issue in this proceeding, namely, the Employer's request that a witness appearing pursuant to a Union subpoena remain to appear as a witness for the Employer. *Ex parte* communications for such a purpose are allowed under Section 102.130(d) of the Board's Rules and Regulations. Another purpose of the communication appears to have been to determine the Petitioner's need for a translator, which, as provided in Section 102.130(d) of the Board's Rules and Regulations, may be done on an *ex parte* basis. Accordingly, based on the foregoing, the communication at issue here did not constitute an unauthorized communication under Section 102.126 of the Board's Rules and Regulations.



Alan B. Reichard
Regional Director
Region 32

Bd. 6

EXHIBIT C

Jason Rabinowitz

From: Jason Rabinowitz
Sent: Monday, December 01, 2008 3:18 PM
To: 'region32@nrlb.gov'
Subject: Union's Opposition to Motion to Recuse Hearing Officer, Stericycle, Inc., 32-RC-5603

Dear Mr. Regional Director:

I write in opposition to the employer's motion to recuse the hearing officer in the above-referenced case. The employer objects to the fact that, during a lunch break today, the hearing officer and Union counsel had a brief conversation outside the presence of employer's counsel regarding the order of presentation of witnesses, the possible need for a translator, and related scheduling matters. The employer objects that such discussions create the "appearance of impropriety."

As the hearing officer noted in his ruling denying the motion, nothing improper occurred during the conversation in question. The conversation involved discussion of ministerial issues regarding the order of presentation of witnesses. When employer's counsel, walked by the conversation, which took place in the hallway of the Regional Offices, the hearing officer invited counsel to join the conversation.

Additionally, as I stated on the record regarding this issue, the hearing officer in a representation case is not a judge or decision-maker subject to the rules barring *ex parte* communications. Rather, the proceeding is investigative, not adversarial, in nature. Sec. 11181, R Casehandling Manual. Further, the role of the hearing officer is not decision-making in nature, but rather investigatory: to gather the evidence and ensure a complete record. Section 11185, R Casehandling Manual. While the hearing officer is required to be impartial, nothing in the NLRB Casehandling Manual prohibits him from, in the course of the investigation, discussing matters *ex parte* with counsel or others. See, generally, Sec 11180, *et seq.*, R Casehandling Manual. This is particularly so where the matters discussed are ministerial in nature.

For these reasons, the Union submits that recusal of the hearing officer is inappropriate here, and would further delay the proceedings that have already gone for three days, with the hearing officer (as conceded by employer's counsel) conducting himself in an admirable fashion.

Therefore, the Union respectfully requests that the Regional Director deny the motion to recuse the hearing officer.

Sincerely,

Jason Rabinowitz
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Fifth Floor
Oakland CA 94612
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jrabinowitz@beesontayer.com

12/1/2008

*** TX REPORT ***

TRANSMISSION OK

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FROM: Zachary N. Leeds

FAXED BY: Esther Aviva

DATE: December 1, 2008

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(INCL COVERSHEET):

RE: Stericycle, Inc. - NLRB Case No. 32-RC-5603

Please see the attached email message.