International Brotherhood of Teamsters (Petitioner) seeks to represent a unit of full-time and regular part-time ready-mix truck drivers and driver trainers employed by CEMEX Construction Materials Pacific, LLC (Employer) at two plants in Southern Nevada and twenty-three plants in Southern California.

The Employer asserts that the petitioned-for unit is not appropriate because: (1) a unit including ready-mix truck drivers and driver trainers must also include yardmen, senior driver trainers/safety champions, plant operators II, fleet mechanics, mechanic foremen, and plant maintenance/plant mechanics; and (2) a multilocation unit including employees at the Southern Nevada and the Southern California plants is not appropriate.

A hearing officer of the National Labor Relations Board (the Board) held a hearing in this matter, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant legal precedent, I find that a unit of ready-mix drivers, plant operators II who regularly operate ready-mix trucks, and driver trainers at the Employer’s facilities in Southern Nevada and Southern California is appropriate.

1 As explained in more detail below, at its Southern Nevada plants, the Employer classifies both ready-mix drivers who primarily transport and deliver cement in ready-mix trucks and individuals who operate loaders at the plant and sometimes transport and deliver cement in ready-mix trucks as plant operator II. Herein, when the term ready-mix driver is used, it refers both to individuals classified as ready-mix drivers and plant operators II who regularly operate ready-mix trucks.
I. FACTS

The Employer manufactures and distributes materials used in construction. The Employer has aggregate mines and processing plants, block and building materials plants, cement manufacturing plants, and ready-mix plants.

At its ready-mix plants, the Employer mixes raw materials and binder cement to make flowable ready-mix cement, which the Employer’s ready-mix drivers transport to customers’ jobsites in ready-mix trucks.

Below, I will first set forth facts relevant to the question of whether a unit including ready-mix drivers and driver trainers, but not the other classifications the Employer contends must be included, is appropriate, and then set forth facts relevant to the appropriateness of a multilocation unit including ready-mix drivers and driver trainers at the Employer’s Southern Nevada and Southern California plants.

A. Facts Relevant to the Appropriateness of a Unit of Ready-Mix Drivers and Driver Trainers

At the Employer’s ready-mix plants, a batch man and secondary batch men operate a loader to load raw materials into plant hoppers. At the Employer’s Southern Nevada plants, the primary batch man is classified as a plant operator I. The record does not reflect whether secondary batch men at the Employer’s Southern Nevada plants are classified as plant operator I or plant operator II. In any event, these individuals were referenced by multiple witnesses, including the Employer’s witnesses, as batch men and secondary batch men, so those terms will be used in this decision.

When customer orders are received, dispatchers input them into the Employer’s Command system. The person serving as batch man at the plant then drags the orders to a loading screen, which pulls up the recipe for the customer’s order, and generates the appropriate mix, which is then loaded into the Employer’s ready-mix trucks. The cement either is mixed onsite and then loaded into a ready-mix truck or is loaded into the truck and mixed by the truck on the way to the jobsite.

Once the cement is loaded into the Employer’s ready-mix cement trucks, ready-mix drivers deliver the cement to the Employer’s jobsites. Ready-mix drivers call into a designated telephone line or log into a website to access the Employer’s ScheduleCom system in the evening to find out when they are scheduled to work the next day. Once they arrive at the plant, ready-mix drivers have tablets that tell them where to deliver their loads and where to pick up their next load throughout the day. Ready-mix drivers are sometimes sent to another plant to pick up their first load after they arrive at their home plant, a process called deadheading. They are also sometimes told to return to a plant other than their own plant to pick up their next load, a process called repeating. Typically, ready-mix drivers deliver about four or five loads per day. When drivers return from delivering a load, they dump any excess material in the yard. They typically ask the batch man or a yardman where and how to dump the excess material. Ready-mix drivers spend most of their time in transit and at jobsites, so their contact with employees in
other classifications is limited. Ready-mix drivers often see other ready-mix drivers from their own plants or nearby plants at jobsites.

Batch men and secondary batch men also sometimes transport cement to customers’ jobsites. A driver from the Sloan plant estimated that this happens a couple times a week.

The Employer presented evidence that, when it opened its Southern Nevada plants, which it calls the Losee and Sloan plants, in 2015, it created plant operator I and II job descriptions with the intent to cross-train certain employees, so that they could operate ready-mix trucks and loaders and perform plant maintenance work. However, in fact, the Employer does not have a classification of ready-mix driver at the Losee and Sloan plants and, instead, classifies all of the ready-mix drivers at those plants as plant operator II and also classifies a handful of additional employees who regularly operate loaders as plant operator II. Of the approximately forty-three employees classified as plant operator II at the Employer’s Southern Nevada and Bullhead City, Arizona plants, only about seven have been trained to operate at least one style of loader, and only about five operate some style of loader. Of those five, some spend most of the day on their loader, and others spend only 2 or 3 hours per day on a loader. At the Losee plant, there is one individual who is primarily responsible for operating the loader. At the Sloan plant, there are several employees classified as plant operators II who generally drive ready-mix trucks but may also operate loaders.  

Some of the Employer’s ready-mix drivers receive a $1 premium to work as driver trainers. In addition to working as ready-mix drivers and delivering cement in ready-mix trucks, driver trainers train new ready-mix drivers by having new ready-mix drivers ride along with them when they deliver cement or by riding along with new ready-mix drivers when they deliver cement. The driver trainers decide when the new ready-mix drivers are prepared to operate ready-mix trucks independently. When they do not have trainees, they just function as ready-mix drivers and deliver cement. A driver trainer from the Losee plant testified that he usually trains new ready-mix drivers for 3 to 4 weeks. One driver from the Sloan plant, who had prior experience, testified that he was trained for only 3 days. The driver trainer from the Losee plant testified that the frequency with which he trains new ready-mix drivers varies: he had not trained any recently, but a couple months before the hearing, he had been training a new ready-mix driver every month. There was testimony that driver trainers have at times conducted a kind of defensive driving training called Smith training and annual recertification training.

Fleet mechanics maintain and repair the Employer’s ready-mix trucks. When ready-mix drivers have mechanical issues with their ready-mix trucks, they will call either their plant’s batch man or a dispatcher for assistance. The plant mechanics will then come to assist the ready-mix drivers. In Southern Nevada, the Employer’s four fleet mechanics are based out of the Sloan plant and have their main repair shop at that plant, but they have trucks that they use to travel to

---

2 The testimony of the Employer’s Area Operations Manager for the Southern Nevada and Bullhead City plants about whether there was one person with primary responsibility for operating the loader at the Sloan plant was as follows: “Sloan we have several different plant operator II’s that are competent operators that are generally driving a truck, and then they’re utilized within -- that plant’s a little different on the requirements for a load.” Tr. 384. A driver from the Sloan plant said there are three people at the Sloan plant who do batching, and they operate the loader and the water truck.
wherever ready-mix trucks need repair or maintenance work to be done. No party presented evidence concerning how many fleet mechanics are employed by the Employer at the Southern California facilities or where those fleet mechanics are based. One driver trainer from the Losee plant testified that, on occasion, he has given a fleet mechanic an extra hand after signing a release form.

Plant mechanics maintain and repair the Employer’s plant and plant equipment. Plant mechanics are generally based in a plant but have trucks and travel between plants to assist with plant maintenance work. In Southern Nevada, the Employer has two plant mechanics, one based out of the Losee plant, and one based out of the Sloan plant. No party presented evidence concerning how many plant mechanics are employed by the Employer at the Southern California facilities or where those plant mechanics are based. Plant mechanics occasionally operate loaders.

There is limited evidence of contact between ready-mix drivers and plant mechanics. Ready-mix drivers sometimes make suggestions to plant mechanics about necessary maintenance or repairs. Occasionally, when work is slow, less senior ready-mix drivers may assist with plant maintenance work, such as painting or cleanup, on a voluntary basis to work more hours when there is no cement for them to transport. A ready-mix driver trainer from the Losee plant testified that he has, on occasion, assisted with plant maintenance work, such maintenance of a chiller or shoveling sand and rocks, on a voluntary basis to get more hours, after signing a release form. A ready-mix driver from the Employer’s Walnut plant in Southern California testified that he did painting work while on light duty for a day or two after an injury. A ready-mix driver from the Employer’s Los Angeles plant in Southern California testified that he has never been offered the opportunity to perform plant maintenance work to get more hours.

The Employer did not present any evidence concerning the mechanic foremen whom it contends in its Statement of Position must be included in the unit, although the list of employees to be added to the petitioned-for unit appended to the Employer’s Statement of Position includes several individuals classified as foremen mechanic, fleet mechanic foreman, and plant maintenance foreman at Southern California plants.

Yardmen are responsible for cleaning the yard at the plant. Yardmen also sometimes assist with plant maintenance and operate loaders. When ready-mix drivers return to the plant with excess cement, they will ask the batch man where to dump the excess material. The batch man may tell them where to dump it or may tell them to ask the yardman. If the batch man is not available, ready-mix drivers may ask the yardman where to dump the excess material. The yardman may then tell them how to dump the material, for example in a mound or a row, to keep the yard in order. There was testimony about ready-mix drivers working together with yardmen to make blocks of excess cement, but there is no evidence that this has happened in recent years. Ready-mix drivers may on occasion work alongside yardmen cleaning up emergency spills.

Safety champions are responsible for making sure the Employer’s operations are safe. If a ready-mix driver notices an unsafe condition at a jobsite, the ready-mix driver will call the batch man, who will send a safety champion to the site. The safety champion will drive to the jobsite in a company vehicle (a Ford F150) and will try to help resolve the unsafe condition,
interacting with the customer when necessary. Safety champions also conduct defensive driving training called Smith training for ready-mix drivers. It is uncommon for safety champions to drive ready-mix trucks.

Aside from the above-described evidence concerning ready-mix drivers occasionally performing maintenance work or operating loaders and batch men and secondary batch men occasionally delivering cement, there is limited evidence of temporary or permanent interchange between ready-mix drivers and driver trainers and employees in other classifications. There is no evidence that employees in the different classifications ever cover shifts for each other. Further, aside from evidence that one employee, a ready-mix driver at the Employer’s Fontana plant in Southern California, moving permanently from a secondary batch man position to a ready-mix driver position, there is no evidence of permanent transfers between classifications.

The employees at the Employer’s Southern Nevada and Bullhead City plants are governed by a common set of written policies. However, no party presented evidence concerning the relative pay rates and work schedules of employees across the job classifications the Employer contended must be included in the unit.

There is evidence that the Employer maintains plant seniority lists and a combined seniority list for the Southern Nevada facilities and that these lists are used for determining ready-mix drivers’ start times and vacations, but the record does not reflect whether these seniority lists only include ready-mix drivers or also include employees in other classifications or how the seniority lists are used for employees in other classifications. Ready-mix drivers at the Employer’s Southern Nevada plants all wear the same uniform: blue pants and a gray shirt, with high visibility stripes. Those at the Southern California plants also all wear the same uniform: blue pants and a high visibility yellow shirt with no high visibility stripes. The record does not reflect what, if any, uniforms are worn by employees in other classifications.

Each of the Employer’s plants is overseen by a Plant Foreman. Operations at the Employer’s Southern Nevada and Bullhead City plants are overseen by an Area Operations Manager. The Area Operations Manager reports to a District Manager, who is responsible for sales, operations, and administration at the Employer’s Southern Nevada and Bullhead City plants. The District Manager reports to a Vice President and General Manager who oversees the Southern California and Las Vegas district.

**B. Facts Relevant to the Appropriateness of the Petitioned-For Multifacility Unit**

The parties stipulated that the Employer has “offices and places of business in including but not limited to the States of California and Nevada.” No party presented evidence establishing the total number of ready-mix plants the Employer operates in the States of California and Nevada or elsewhere.

However, the record reflects that the Employer has three ready-mix plants in Southern Nevada; twenty-three ready-mix plants in Southern California; an unspecified number of ready-mix plants in the Bay Area in California; an unspecified number of ready-mix plants in the
Central Valley of California, including plants in Sacramento and Modesto, California; and a ready-mix plant in Reno, Nevada. In addition, according to the Employer’s position statement, another entity called CEMEX Construction Materials South, LLC (CEMEX South) operates a plant in Bullhead City, Arizona. The record does not reflect how many other facilities the Employer, CEMEX South, or other affiliated entities operate in Arizona.\(^3\)

The Employer’s two main plants in Southern Nevada, the Losee plant on Losee Road in North Las Vegas, and the Sloan plant in Sloan, to the south of Las Vegas, are about 20 miles apart. The third plant, called the Kyle Canyon plant, is located in a remote area to the northwest of the Losee plant and is operated infrequently, last operating about two-and-a-half months before the hearing. When operating, it is staffed with ready-mix drivers from the Losee plant. The Sloan plant is about 200 miles from the nearest plant in Southern California. While some of the Southern California plants are relatively close to each other, some are over 200 miles apart.

Administratively, the operations of the Employer, and apparently of other affiliated entities, are organized into regions, including the West Region, the West Central Region, the Texas and New Mexico Region, and the mid-South Region. The Regions all report up to a corporate headquarters in Houston, Texas. There was also testimony that ready-mix operations are run out of West Palm Beach, Florida and that there is a human resources group based in West Palm Beach.

\(^3\) Petitioner initially also sought to represent ready-mix drivers at the Bullhead City plant as part of the petitioned-for unit, but then agreed to exclude them based on the Employer’s representation that they were employed by CEMEX South. After the Employer’s District Manager for the Employer’s two Southern Nevada facilities testified that he oversees both the Southern Nevada facilities and the Bullhead City facility, Petitioner’s Counsel questioned him about whether the Bullhead City facility is operated by the Employer. The Employer’s Counsel objected, made a representation about what entity operates the Bullhead City plant, and stated that he was giving Petitioner’s Counsel a commerce questionnaire for CEMEX South. Tr. 65-66. Then, when asked by Petitioner’s Counsel if he worked for CEMEX South, the District Manager, who had, at the outset of his testimony, said he was employed by the Employer (Tr. 21), said, “I work for CEMEX. I don’t work within the LLCs. I don’t understand how LLCs are set up and what they do. I work for the parent company CEMEX at the directive that they ask me to.” Tr. 66. Immediately after, when asked who was the highest-ranking person who works for the Employer in Las Vegas, the District Manager said it was he. Id. When Petitioner’s Counsel pointed out the inconsistency of the testimony about working for CEMEX and working for the Employer, the District Manager said, “I’m sorry. I don’t know the difference between the LLCs and how they’re drawn up. I don’t know any of that.” Id. Later, on the third day of hearing, the District Manager testified that: all the Southern Nevada and Southern California facilities are operated by the Employer (Tr. 443); the Employer also operates aggregate mines and processing plants, block and building materials plants, and cement manufacturing plants (Tr. 457-458); and the Employer has plants in the Bay Area, the Central Valley, and Reno Nevada (Tr. 463-465). When questioned by Petitioner’s Counsel how he could testify about the scope of the Employer’s operations despite his claimed lack of knowledge of how CEMEX-affiliated limited liability companies are set up or what they do on the first day of hearing, the District Manager said, “I have a general knowledge of how the LLC works. I don’t know the specifics. I’ve never seen the paperwork, nor did I design it. But I do understand what the Pacific LLC encompasses.” Tr. 467. When, in a line of questioning about whether he did anything between the first and third day of hearing to attain greater knowledge of the scope of the Employer’s operations, Petitioner’s Counsel asked if he did anything over the weekend, he said, “I had waffles, and I watched football,” and then, in response to the more specific question of whether he did anything to familiarize himself with CEMEX’s corporate structures, he said no. Tr. 467-468. Despite the District Manager’s initial claimed lack of knowledge of the scope of operations of CEMEX-affiliated limited liability companies, in the absence of any other evidence on the subject, I have relied on the District Manager’s testimony in the above findings about the scope of the Employer’s operations.
The West Region encompasses operations in Arizona, California, and Nevada. Thus, it appears that the West Region includes facilities operated by both the Employer and one or more facilities operated by CEMEX South. The West Region has an office in Ontario, California. Within the West Region, there is a Vice President and General Manager who oversees the Southern California and Las Vegas plants. The Employer’s District Manager for the Southern Nevada and Bullhead City plants reports to the Vice President and General Manager for the Southern California and Southern Nevada and Bullhead City plants. Other Area Operations Managers for Southern California plants also report to the Vice President and General Manager for the Southern California and Southern Nevada and Bullhead City plants. Plant Foremen in both Southern Nevada and Southern California report to Area Managers who oversee the plants in their areas or markets. The record does not reflect the supervisory or managerial hierarchy for the Employer’s plants outside Southern Nevada and Southern California.

The Employer conducts quarterly United States level management meetings. The Employer also conducts monthly West Region management meetings. The record does not reflect what transpires in the United States and West Region meetings.

The Vice President and General Manager for the Southern California and Las Vegas plants conducts monthly management meetings for managers for plants in Southern California and Las Vegas. Those meetings are attended by the District Manager for the Southern Nevada and Bullhead City plants, other Area Managers for various locations in Southern California, and human resources representatives based out of the West Region office in Ontario. When asked if these meetings were focused on operations, the District Manager for the Southern Nevada and Bullhead City plants responded, “Both. All-encompassing management meetings, typically based around financials.”

There is also a daily call for managers in Southern California and the Las Vegas market in which the managers from those locations report their Key Performance Indicators (KPIs). There are no markets other than the Southern California and Las Vegas markets on the call. The parties did not present evidence concerning what KPIs are reported; what, if any, standards areas or plants are required to meet with respect to their KPIs; what happens if an area or plant fails to meet any such standards; who determined what KPIs would be tracked and reported, what standards must be met with respect to KPIs, or what consequences will flow from a failure to meet these standards; or whether the KPIs and any related standards and rules apply outside Southern California and the Southern Nevada and Bullhead City plants. The Area Operations Manager for the Southern Nevada and Bullhead City plants or the Plant Foreman for the Losee plant and Area Managers for San Diego, Orange, Ventura, Santa Barbara, and Los Angeles Counties and “plant people, operations people for that group” (possibly meaning Plant Foremen) attend and report on their respective KPIs. After the Southern Nevada and Bullhead City and Southern California managers have reported their respective KPI’s, there is a portion of the call where operations, sales, and quality control staff for the Southern Nevada and Bullhead City plants get on the call and discuss their

---

4 Presumably, these meetings involve managers employed by CEMEX-affiliated entities other than the Employer.
KPIs, customer issues, and opportunities to improve. For example, a change to where dispatching would be done, discussed in more detail below, was discussed during such a call.

The District Manager for the Southern Nevada and Bullhead City plants testified that he also conducts weekly meetings with the Area Operations Manager, quality control group, and sales group for the Southern Nevada and Bullhead City plants, and sometimes also operations managers.\(^5\)

The District Manager for the Southern Nevada and Bullhead City plants testified that he and the Area Operations Manager for that area develop a budget, which is submitted to the Employer’s corporate office in Houston and the Ontario office. The record does not reflect who reviews the budget and whether the budget is ever altered after it has been submitted. The Area Operations Manager for the Southern Nevada and Bullhead City plants testified that he approves purchases, including purchases of ready-mix trucks, for his area. However, when testifying about approving purchases of ready-mix trucks, he explained that this was part of the budget process, and, “like any other corporation, the budget would be submitted, and we’d see.” Tr. 362. The District Manager for the Southern Nevada and Bullhead City plants testified that he and the Area Operations Manager for that area determined pricing and pay rates in that area based on a market study when the Losee and Sloan plants opened in 2015. There was no testimony about how budgeting is done or how wage rates are determined at the Employer’s plants in Southern California or elsewhere.

The District Manager for the Southern Nevada and Bullhead City plants testified that he oversees sales, operation, and administration for the Southern Nevada and Bullhead City plants and that the Area Operations Manager is responsible for overseeing operations in those locations.

The Area Operations Manager for the Southern Nevada and Bullhead City plants testified that, when he needs to hire employees, he contacts a recruiter based in Ontario and asks her to post openings at the plants in his area. The Area Operations Manager communicates to the recruiter about any specific skillsets or experience he is seeking. The recruiter then schedules interviews for the Area Operations Manager. The Area Operations Manager then selects applicants for hire. The parties did not present evidence about who is involved in the hiring and recruiting process for the plants in Southern California or whether the recruiter used by the Area Operations Manager for the Southern Nevada and Bullhead City plants also serves as a recruiter for other locations.

The Area Operations Manager for the Southern Nevada and Bullhead City plants testified that he conducts onboarding for new employees by collecting the appropriate forms and documentation, giving them benefits information, entering their information in a computer system, and creating and maintaining a Department of Transportation qualification file and personnel file for them.

At the Southern Nevada plants, ordinary employee misconduct investigations are conducted by managers within the Southern Nevada area, but there are Human Resources Managers assigned to larger geographic areas who are sometimes assigned to conduct

---

\(^5\) The term Operations Manager is not used elsewhere in the record but may refer to plant foremen.
investigations in that market. For example, in 2016, a Human Resources Manager based out of Phoenix, Arizona conducted an investigation for the Las Vegas market. No party presented evidence concerning who conducts employee misconduct investigations for the Employer’s ready-mix drivers at plants in Southern California or elsewhere.

At the Southern Nevada plants, Plant Foremen have the authority to discipline employees, but they notify the Area Operations Manager before issuing discipline. Several ready-mix drivers from Southern California testified that they had been disciplined by Plant Foremen or batch men. However, no party presented evidence concerning who makes decisions to issue discipline at the plants in Southern California, or whether disciplinary decisions there are subject to any review. At the Southern Nevada plants, the Area Operations Manager makes termination decisions. However, he consults with the human resources group and sometimes his District Manager when making termination decisions and also sends the human resources group documentation of the termination. No party presented evidence concerning who makes termination decisions for ready-mix drivers at the Southern California plants or elsewhere.

There is evidence that the Southern Nevada and Southern California plants have differing policies with respect to discipline for cell phone use. In Southern Nevada, ready-mix drivers have been told they can be discharged for one instance of using a cell phone while driving, while, in Southern California, drivers have been told they will be disciplined for the first and second instance and discharged for the third.

The District Manager for the Southern Nevada and Bullhead City plants testified that he and the Area Operations Manager for the area set policies for things such as interviewing, hiring, discharging, promoting, transferring, laying off, and recalling in their area. However, he stated that they have general guidelines that are used throughout the company but change them based on market needs. He testified that at times the Human Resources Manager for the area (discussed below) will help guide them through those policies based on his knowledge of corporate policies and potential liabilities. He did not describe any specific changes he and the Area Operations Manager have made to corporate policies. There was no testimony about how such policies are set in Southern California or elsewhere within the Employer’s operations.

The Area Operations Manager for the Southern Nevada and Bullhead City plants testified that his area has its own handbook. However, he also testified that many of the policies consist of or are based on corporate policies. For example, he stated:

So the conduct rules -- so there’s a lot of rules that are corporate rules that are part of the onboarding process, your, you know, some of our benefits stuff that’s applicable across the group, and then there’s the stuff that’s specifically for the area. What I can say is those rules were a culmination of rules, whether they came out of the south or whether they came out of the Pacific. I can’t -- I mean -- not 100 percent sure of where all the rules -- I can’t -- I mean I would think there’s a lot of folks that were involved in that, whether myself, it was Chris Hill. Part of it could have been the safety supervisor out of Arizona, the safety folks out of the Southern California.
Tr. 365. He further testified that, although he cannot recall ever being directed to administer training to employees, he did not believe he had the right to create his own anti-harassment policy for Las Vegas and that the corporate human resources department, either in Houston or wherever training packets are made, would have that authority.

The District Manager for the Southern Nevada and Bullhead City plants testified that there is an ethics code applicable to his area that is provided by the corporate office in Houston. When asked what other policies may be provided by the office in Houston, he stated:

Safety documentation. It’s made in conjunction with corporate level documentation. So we kind of localize it but use their format and their standard things. So if there’s things more applicable to the local market that maybe aren’t in Texas, then we add that language into it.

Tr. 76. He testified that he would not be able to say which policies were in effect at the Losee and Sloan plants and which were not. Further, although he stated that it was his responsibility to ensure that any new policies are implemented “in our new hire,” he stated that he had not, in fact done that for the Losee and Sloan plants. Tr. 489.

Thus, the testimony about specifically which rules and policies were modified or developed locally and which rules or policies are and are not shared between the Losee and Sloan plants and the Southern California plants and other plants within the Employer’s operations is very vague.

The Area Operations Manager for the Southern Nevada and Bullhead City plants testified that about 8 months before the hearing, the Employer distributed to some ready-mix driver trainers at the Southern Nevada plants a compilation of documents that included a CEMEX Concrete Southern California Employee Handbook dated 2007. The documents were compiled by the recruiter for the area, based out of Ontario. The Area Operations Manager testified that the Southern California handbook was appended in error and that the Employer removed it about 6 or 7 months before the hearing. However, the Area Operations Manager stated that the Employer did not notify any employees who may have received the Southern California handbook that it does not apply to them after realizing this error. With the Southern California Employee Handbook removed, the compilation of documents that the Employer identified as the handbook for the Southern Nevada plants does not address a number of subjects about which the Employer admittedly has established policies at the Losee and Sloan plants, such as jury duty, bereavement leave, annual reserve training leave, requirements to receive holiday pay, and the requirement that ready-mix drivers complete driver vehicle inspection reports.

The District Manager for the Southern Nevada and Bullhead City plants testified that a Human Resources Manager based in Ontario “does our HR work whenever it gets to the higher technical HR kind of responsibility.” Tr. 61. When asked what “higher technical HR kind of responsibility” meant, he said, “We have HR systems that manage pay and benefits and things of that nature that we don’t input into the systems.” Tr. 62. That Human Resources Manager also manages the Employer’s aggregate business in Southern California, but only has responsibility for the Employer’s ready-mix operations at the plants in the Las Vegas area.
A different Human Resources Manager, also based in Ontario, handles human resources for the Employer’s ready-mix operations in Southern California. That Human Resources Manager also handled human resources for ready-mix operations for the Southern Nevada and Bullhead City plants until about 3 months before the hearing. A ready-mix driver from the Employer’s Los Angeles plant in Southern California testified that his plant foreman told him he would consult with that Human Resources Manager about a concern he raised about lost vacation time. A ready-mix driver from the Sloan plant testified that he interacted with that Human Resources Manager about an issue related to employment references.

The parties did not present evidence concerning who supervises the Human Resources Managers or whether there is any set of policies and procedures they follow in performing their work. The parties also did not present evidence concerning who performs human resources functions for the Employer’s ready-mix drivers outside Southern Nevada and Southern California, or what, if any, policies and procedures govern the performance of their work.

The paychecks ready-mix drivers in Southern Nevada and Southern California receive are mailed from the Employer’s office in Ontario, though the District Manager for the Southern Nevada and Bullhead City plants testified that employees’ paychecks are generated from the Employer’s ready-mix operations office in West Palm Beach. The vacation requests of ready-mix drivers in Southern Nevada and Southern California are sent to the Employer’s office in Ontario at the start of each year. The record does not reflect who handles payroll or vacation requests at the Employer’s plants outside Southern Nevada and Southern California.

Turning to ready-mix drivers’ job functions, functionally, there is no difference between the job function of the ready-mix drivers in Southern Nevada and those in Southern California. Fundamentally, they are all responsible for delivering cement from the Employer’s plants to its jobsites in ready-mix trucks. Like the ready-mix drivers in Southern Nevada, the ready-mix drivers in Southern California call or log into the Employer’s ScheduleCom system to find out when they are scheduled to work the next day, receive direction from dispatchers about where to pick up and deliver loads through tablets, sometimes deadhead or repeat to plants other than their own plants, deliver about four or five loads per day, and dump excess material in the yard in coordination with the batch man or yardman.

One difference in the job functions of ready-mix drivers is that ready-mix drivers in the State of California are not permitted to operate 11-yard cement trucks because their weight exceeds state standards. However, ready-mix drivers in both Southern Nevada and Southern California drive 10-yard and 9¾-yard trucks.

Although the District Manager for the Southern Nevada and Bullhead City plants testified that he intended to cross-train ready-mix drivers to perform other types of work, as reflected in the plant operator II job description he developed when the Southern Nevada plants opened, as noted above, the record shows that almost all employees classified as plant operator II only operate ready-mix trucks. Only five of them actually operate loaders, and they only rarely perform maintenance and cleanup work at the plant. The parties did not present a job description for ready-mix drivers in Southern California.
The drivers in Southern California all receive training from a driver trainer when hired and are required to undergo Smith defensive driver training and annual recertification training. The District Manager for the Southern Nevada and Bullhead City plants testified that the Area Operations Manager for that area oversees the implementation of training in the area, but the evidence does not reflect that there is any difference in the training administered to ready-mix drivers in Southern Nevada and those in Southern California. In fact, the record reflects that when the Losee and Sloan facilities opened in 2015, some ready-mix drivers underwent their orientation in Southern California, and others underwent orientation in Phoenix.

The job functions of driver trainers in Southern Nevada and those in Southern California are also the same. They are primarily responsible for having new ready-mix drivers ride with them while delivering cement or riding along with new ready-mix drivers delivering cement for training purposes and, when not conducting training, for delivering cement.

The parties did not adduce evidence concerning the job functions or training of ready-mix drivers or driver trainers based out of the Employer’s plants outside Southern Nevada and Southern California.

Operationally, customer orders are entered into the Employer’s Command system. That system can be accessed by the Employer’s dispatchers at a corporate office in Henderson, Nevada and the Ontario office, the Area Manager, and batch men and secondary batch men. Using the order information, the dispatchers create ready-mix drivers’ schedules. Because about 20 percent of orders are received the day of requested delivery or are changed on the day of requested delivery and because of operational challenges, such as traffic or plants going down, dispatchers adjust ready-mix drivers’ assignments throughout the day. Ready-mix drivers receive direction from dispatchers about where to pick up and deliver their next load on tablets throughout the day. Dispatchers also communicate with ready-mix drivers by radio throughout the day. Dispatchers can monitor the location of ready-mix trucks. The dispatcher in Henderson sometimes reports ready-mix truck drivers’ activities to the Area Operations Manager for the Southern Nevada and Bullhead City plants.

At the time of the hearing, dispatching for ready-mix drivers in Southern Nevada was being done both by the dispatcher in Henderson and two dispatchers in Ontario, and dispatching for ready-mix drivers in Southern California was being done by the dispatchers in Ontario. The record does not reflect whether the dispatchers in Ontario dispatch for ready-mix drivers based out of any plants outside Southern Nevada and Southern California. The Employer’s District Manager for the Southern Nevada and Bullhead City plants testified that the Employer began to have the dispatchers in Ontario take orders and schedule deliveries for the Southern Nevada facilities in September 2018. According to the District Manager, the dispatcher in Henderson retained the authority to approve the schedule for the Southern Nevada facilities and to make any necessary changes. The District Manager stated that around late October 2018, he decided to stop having the dispatchers in Ontario take and enter orders and schedule deliveries for the Southern Nevada plants because phone calls were not being handled and answered in the time expected in the market, and there were technical issues with the phones that had not been resolved. Ready-mix drivers testified that currently, when they call for a dispatcher on the radio,
the dispatchers in Ontario field their calls. The record does not reflect whether the Employer intends to change this practice when it returns the ordering and scheduling function for the Southern Nevada plants to the dispatcher in Henderson.

Each of the Employer’s plants has a limited service area, because cement begins to harden after about 90 minutes, unless a chemical retardant is added. Thus, the Losee plant services the northern part of the Las Vegas area, and the Sloan plant services the southern part of the Las Vegas area. Ready-mix drivers in both Southern Nevada and Southern California regularly deadhead and repeat at plants with nearby service areas. Ready-mix drivers with nearby service areas sometimes deliver cement to the same jobsite and thus see each other at the jobsite. Also, ready-mix drivers from plants belonging to the same area or market communicate on the same designated radio frequency. The District Manager for the Southern Nevada and Bullhead City plants testified that the radio system for the Southern Nevada plants is in the closet of the corporate office in Henderson but is remotely controlled by computer in Southern California.

Because of the distance between the Southern Nevada plants and the Southern California plants, there is no evidence of ready-mix drivers from Southern Nevada deadheading or repeating at plants in Southern California or vice versa, and there is no evidence of ready-mix drivers from Southern Nevada and Southern California plants delivering cement to the same jobsite. However, the northernmost plant in Southern California and the southernmost plant in Southern California are divided by a distance similar to the distance between Southern Nevada and the nearest plant in Southern California. Thus, across the entire petitioned-for unit, and even within Southern California, ready-mix drivers tend to deadhead and repeat to plants with nearby service areas, but not to more distant ones. There is evidence that one driver from the Losee plant volunteered to work out of a Southern California plant for a short time when work was slow. There is also evidence that one driver from the Fontana plant delivered trucks to a Southern Nevada plant on one occasion. In addition, drivers from Southern Nevada and Southern California competed with each other in a safety rodeo event held by the Employer.

The record does not reflect that ready-mix drivers from any of the Southern California plants deadhead or repeat at any plants outside Southern California or deliver cement to the same jobsites as ready-mix drivers based out of any plants outside Southern California. Nor does the record reflect that ready-mix drivers from the Southern Nevada plant deadhead or repeat at any plants outside Southern Nevada and Bullhead City or deliver cement to the same jobsites as ready-mix drivers based out of any plants outside Southern Nevada and Bullhead City.

Although the Southern California plants are distant from the nearest Southern California plant, the service area of the Losee plant extends across the state line of California, which is about 45 to 60 minutes’ drive time from the Losee plant in a ready-mix truck. Ready-mix drivers from the Losee plant deliver cement in California about six times per year. Some of the work done by Southern Nevada ready-mix drivers in California has been for California prevailing wage jobs, so that the ready-mix drivers were paid at the California prevailing wage rate for the work. However, there is no evidence that the ready-mix drivers from any of the Southern California plants have delivered cement to the same jobsites serviced by ready-mix drivers from the Losee plant across the California border.
Several ready-mix drivers based out of Southern California plants testified that they have permanently transferred from one Southern California plant to another, either voluntarily or involuntarily. One driver trainer testified that he permanently transferred from the Sloan facility to the Losee facility. One ready-mix driver testified that he voluntarily transferred from the Employer’s Azusa plant in Southern California (now closed) to the Sloan plant then back to the Employer’s Inglewood plant in Southern California. He retained his seniority when he transferred, and his pay rate changed by only a few cents per hour, but his health benefits changed because the same health benefits were not available in Southern Nevada. The record does not reflect the frequency of transfers to and from locations outside Southern Nevada and Southern California or contain examples of such transfers.

Ready-mix drivers in Southern Nevada and Southern California have similar work schedules. They all find out their shift starting time through the ScheduleCom system the evening before their shift. The shifts of the ready-mix drivers from Southern Nevada and Southern California who testified usually start between 4:00 and 7:00 a.m., with more senior drivers having earlier start times and therefore getting more hours. The number of hours they work per shift varies, based on the amount of work available, and ranges from 4 to 15 hours per day. They all work 5 or 6 days per week. Their pay ranges between $23.00 and $25.00 per hour, with driver trainers in both locations receiving an additional dollar per hour. One distinction in their pay and hours was that Nevada ready-mix drivers tend to be assigned more night pours due to heat, and, although Southern California drivers receive a $1.50 premium for night pours, the Southern Nevada ready-mix drivers do not.

The record does not reflect whether the Employer’s ready-mix drivers at plants outside Southern Nevada and Southern California have similar wages, hours, or other terms and conditions of employment.

There are plant seniority lists for the Losee and Sloan plants, and there is a combined seniority list for the two plants. The plant lists are used to determine ready-mix drivers’ start times, and the Area Operations Manager for the area testified that the combined seniority list is used to determine vacations and would be used if a new plant were opened. Drivers who transfer to those plants from other CEMEX facilities retain their seniority based on their hire date with a CEMEX company. The record does not reflect how seniority lists are compiled at the Southern California facilities. However, as in Southern Nevada, Southern California ready-mix drivers’ start times are determined based on seniority. Further, ready-mix drivers have retained their seniority based on their date of hire when transferring between Southern California facilities or between Southern Nevada and Southern California facilities. The record does not reflect how seniority is tracked and used outside Southern Nevada and Southern California.

As explained above, ready-mix drivers at the Employer’s Southern Nevada plants and those at the Southern California plants wear different uniforms, but both have high visibility elements. The District Manager for the Southern Nevada and Bullhead City plants explained that the Southern Nevada employees have different uniforms because, when the Losee and Sloan plants were opened in 2015, the Employer signed a minimum contract that locked it into certain uniforms, and he did not want to pay to change the uniforms. The record does not reflect what, if
any, uniforms ready-mix drivers wear at the Employer’s plants outside Southern Nevada and Southern California.

There is some limited bargaining history at some of the facilities in the petitioned-for unit. The Losee and Sloan plants were previously operated by Rinker Materials West, LLC (Rinker), which had 14 plants in and around the Las Vegas area. International Brotherhood of Teamsters, Local 631 had a collective-bargaining agreement with Rinker covering transport drivers (bulk), transport drivers (S&G), transit mix drivers, water truck drivers, off road equipment employees, laborers, truck inspectors, oiler and greaser/fuelers, sweeper drivers, and mechanics in a geographic area encompassing the Losee and Sloan plants. CEMEX acquired Rinker in 2007. However, due to an economic downturn, it sold or disposed of many of its assets and ceased operating the Losee and Sloan plants. The Losee and Sloan plants were leased and operated by a company called American Eagle from 2011 to 2015. The Employer reopened the Losee and Sloan plants in 2015. The ready-mix drivers at those locations have been unrepresented since the reopening. In addition, there is evidence that in 2016, Teamsters, Chauffers, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters was decertified as the collective-bargaining representative of a unit of mixer drivers and mechanics at the Employer’s Mission Valley facility in San Diego in Southern California.

Outside the petitioned-for unit, employees at the Employer’s ready-mix plants in the Bay Area in California are represented by several local unions affiliated with Petitioner and are covered by a multi-local collective-bargaining agreement. Employees at the ready-mix plant in Reno are represented by International Brotherhood of Teamsters, Local 533. The record does not reflect whether employees at the Employer’s ready-mix plants in the Central Valley or at ready-mix plants operated by the Employer, CEMEX South, or some other entity in Arizona are represented by any union.6 Thus, it is unclear which, if any, ready-mix drivers within the Employer’s operations, other than those in the petitioned-for unit, are unrepresented.

II. ANALYSIS

A. A Unit Including Ready-Mix Drivers and Driver Trainers, But Not the Employees in Other Classifications the Employer Contends Must Be Included, Is Appropriate

1. Relevant Legal Standards

Section 9(a) of the Act gives employees a right to be represented by a union “designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes.” The unit need not be the only appropriate unit, or even the most appropriate unit. *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 3 (2017), citing

---

6 When questioned by Petitioner’s Counsel about whether the employees at the Central Valley are all represented, the District Manager who oversees the Employer’s Southern Nevada and Bullhead City plants said, “I believe some are and some aren’t,” and then, “Throughout our entire region, there’s some that are and some that aren’t. I can’t tell you specifically which ones are and which ones aren’t.” Tr. 468.

In determining whether a unit is appropriate, the Board applies the traditional community-of-interest test, in which it assesses “whether the employees in the petitioned-for group share a community of interest sufficiently distinct from the employees excluded from the petitioned-for group to warrant a finding that the proposed group constitutes a separate appropriate unit.” PCC Structurals, Inc., 365 NLRB No. 160 at slip op. at 5. In making this determination, the Board considers the following factors:

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


In considering whether a group of employees shares “a community of interest sufficiently distinct” from the interests of excluded employees, the Board determines whether “[excluded employees] have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members.” PCC Structurals, Inc., 365 NLRB No. 160 at slip op. at 11 (emphasis added), citing Constellation Brands, U.S. Operations, Inc. v. NLRB, 842 F.3d 784 (2d Cir. 2016). This “analysis must consider guidelines that the Board has established for specific industries with regard to appropriate unit configurations.” PCC Structurals, Inc., 365 NLRB No. 160 at slip op. at 11.

The Board has established guidelines for determining whether drivers can appropriately be represented separately from other employees. In particular, the Board has held:

- [I]n a given plant, depending upon the community of interest of the employees involved and the desires of the petitioning labor organization, truckdrivers may be represented either separately or as part of a more comprehensive unit. In any event, it is not the Board’s function to compel all employees to be represented or unrepresented at the same time or to require that a labor organization represent employees it does not wish to represent, unless an appropriate unit does not otherwise exist.

Mc-Mor-Han Trucking Co., 166 NLRB 700, 701 (1967).

When an employee sometimes performs the same function as employees in a bargaining unit, but also performs other functions, such a dual-function employee can only be included in the unit if the employee performs the unit employees’ function with sufficient regularity to demonstrate that the employee has a substantial interest in the unit’s wages, hours, and conditions of employment. Id. at 702. The Board generally finds that dual function employees
should be included in a unit if they spend 25 percent or more of their time performing unit work. *WLVI Inc.*, 349 NLRB 683, 686 n. 5 (2007).

2. Application

Applying the above standards, I find that a unit including ready-mix drivers and driver trainers, but not including the other classifications the Employer contends must be included, is appropriate.

Ready-mix drivers and driver trainers are not organized into a separate department and do not have separate supervision. However, all other community of interest factors support a finding that a unit of ready-mix drivers and driver trainers is appropriate.

Ready-mix drivers and driver trainers have distinct skills and training, in that they must be able to drive and pour from ready-mix trucks, but are generally not trained to operate loaders or perform maintenance work.

Ready-mix drivers and driver trainers also have distinct job functions and perform distinct work. They comprise the only classification of employees primarily responsible for transporting and delivering ready-mix cement. Although they sometimes may assist with minor maintenance and cleanup work, this is only done occasionally. On occasion, some of them operate loaders but only a very small number of them do so. And, conversely, batch men and secondary batch men only occasionally drive ready-mix trucks to deliver ready-mix cement. Although driver trainers perform a training function, they spend a significant portion of their time driving ready-mix trucks and delivering cement, both when they are training new ready-mix drivers and when they are not.

With respect to functional integration, all classifications of employees at ready-mix cement plants play some role in the overall process of mixing and delivering ready-mix cement. However, it is true in most workplaces that the whole cannot function without each of its parts. More importantly, here, ready-mix drivers and driver trainers play a distinct role in the overall process in that they are almost exclusively responsible for the transport and delivery of cement.

Since ready-mix drivers and driver trainers spend most of their time in transit or at jobsites, they do not have frequent contact with employees in other job classifications, and, in contrast, frequently encounter other ready-mix drivers at jobsites. The classifications of employees based at the plant, such as the batch men, secondary batch men, and plant maintenance employees would tend to have more in-plant contact with each other.

There is only evidence of one instance in which there has been permanent interchange between the ready-mix driver, plant operator II, or driver trainer job classification and the other classifications the Employer contends must be included. And, aside from evidence of ready-mix drivers occasionally assisting with maintenance and cleanup and batch men and secondary batch men sometimes delivering ready-mix cement, there is no evidence of temporary interchange.
Ready-mix drivers and driver trainers all share similar terms and conditions of employment. There is a lack of evidence concerning the terms and conditions of employment of employees in other job classifications the Employer contends must be included. However, the working conditions of employees in other classification are distinct in that working at a plant or in work vehicles to travel to assist with vehicle repairs or safety conditions at a jobsite is quite different from operating a ready-mix truck and delivering material at a jobsite. Furthermore, the almost on-demand system governing the work schedules and assignments of ready-mix drivers and driver trainers set them apart from other classifications of employees.

On balance, and in view of the record as a whole, I find that ready-mix drivers and driver trainers share a community of interest with each other and that their community of interest is distinct from the interests of the classifications the Employer contends must be included. Specifically, I find that the employees in the classifications the Employer contends must be included have meaningfully distinct interests in the context of collective bargaining that outweigh their similarities with ready-mix drivers and driver trainers.

Although some plant operators II operate loaders some or even most of the time, I find that those who regularly operate ready-mix trucks have a substantial interest in the unit’s wages, hours, and conditions of employment and are appropriately included in the unit as dual-function employees. Accordingly, I find that those plant operators II who regularly spend 25 percent or more of their time driving ready-mix trucks and delivering cement are included in the unit.

**B. The Petitioned-For Multifacility Unit Is Appropriate**

1. **Relevant Legal Standards**

The Board considers the following factors in determining whether a petitioned-for multifacility unit is appropriate:

- employees’ skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history.

*Laboratory Corp. of America*, 341 NLRB 1079, 1081 (2004). Even if employees in a petitioned-for multifacility unit share a community of interest with each other, their interests must be separate and distinct from the interests they share with employees at other facilities for the petitioned-for unit to be appropriate. *Id.* at 1082-1083.

The Employer argues that a different standard applies. Specifically, it argues that a single-facility unit is presumptively appropriate and that the propriety of a multifacility unit depends on whether the facilities involved have been so merged into a more comprehensive unit that they have lost their separate identity. The Employer argues that the Union therefore carries the burden of demonstrating that a multifacility unit is appropriate. However, the single-facility presumption does not apply when a union has petitioned to represent a multifacility unit. *Capitol Coors Co.*, 309 NLRB 322 (1992), citing *NLRB v. Carson Cable TV*, 795 F.2d 879, 886-887 (9th Cir. 1986).
All but one of the cases the Employer cites in support of its argument involved union petitions to represent employees at a single facility. See *Massachusetts Society for Prevention of Cruelty to Children v. NLRB*, 297 F.3d 41 (1st Cir. 2002) (union petitioned to represent employees at a single facility and employer failed to rebut single-facility presumption); *Cargill Inc. and Bakery*, 336 NLRB 1114 (2001) (same); *New Britain Transportation Co.*, 330 NLRB 397 (1999) (same); *Rental Uniform Service, Inc.*, 330 NLRB 334 (1999) (same, but with the Board specifically noting, based on central control of aspects of labor relations and administrative, operational integration between facilities, and similar job functions, skill, and pay, “we have little doubt that the combined unit would, if sought, constitute an appropriate unit”); *D&L Transportation*, 324 NLRB 160 (1997) (same); *Dixie Belle Mills*, 139 NLRB 629 (1962) (same); *Miller & Miller Motor Freight Lines*, 101 NLRB 581 (1952) (same).

The only other case cited by the Employer, *Alamo Rent-a-Car*, 330 NLRB 897 (2000), is cited for the proposition that the fact that employees retain seniority when transferring enterprise-wide does not demonstrate a community of interest between drivers in two particular geographic areas, but a community of interest among all employees throughout the enterprise. However, in *Alamo Rent-a-Car*, the employer identified two specific facilities it contended must be included in the petitioned-for two-facility unit and the record contained evidence concerning the multifacility unit factors for both the two facilities in the petitioned-for unit and the two facilities the employer contended must be included. Thus, an employer contending that facilities outside a petitioned-for multifacility unit share interests that are not separate and distinct must identify the facilities lacking separate and distinct interest, so that the multifacility unit factors can be examined with respect to those additional facilities.

2. Application

Preliminarily, it is noted that, in its Statement of Position, and in argument at the hearing, the Employer did not identify any facility or facilities outside Southern Nevada and Southern California whose ready-mix drivers share interests with the ready-mix drivers in Southern Nevada or Southern California that are not separate and distinct.

The Employer also did not present evidence concerning any of the multifacility unit factors for ready-mix drivers at plants outside Southern Nevada and Southern California or call witnesses with direct and detailed knowledge of its operations outside Southern Nevada. Notably, the Employer filed a motion to reschedule the pre-election hearing in this matter based, in part, on its representation that “[t]he vast majority of the CEMEX’s witnesses hearing will be traveling from Southern California to Las Vegas for the hearing [sic],” and that motion was granted. And, yet, the Employer called only two witnesses, both from Southern Nevada, and did not call any witness from Southern California or any witness with knowledge of operations in Southern California or elsewhere in its West Region. For instance, it did not call the Vice President and General Manager who oversees the Southern Nevada and Bullhead City plants; it did not call either of the Human Resources Managers based in Ontario who perform human resources functions for the Southern Nevada or Southern California ready-mix drivers; and it did
not call any District Managers or Area Operations Managers from Southern California or from anywhere else where it may contend ready-mix drivers lack separate and distinct interests.

Although Petitioner called ready-mix drivers from the Employer’s Southern Nevada and Southern California plants, those witnesses, by virtue of their positions, would generally only have knowledge of operations and conditions at plants where they had worked and of their personal interface with their immediate supervisors and their limited interface with first-line human resources personnel. Thus, they could not testify as to the multifacility unit factors with respect to any plants outside Southern Nevada and Southern California whose ready-mix drivers the Employer may contend lack separate and distinct interests.

In fact, the Employer has exclusive control of the kind of witnesses who could give testimony about its overall management structure, the formulation of its labor relations policies outside Southern Nevada, and the application of labor relations policies at plants outside Southern Nevada, and it chose not to call any such witnesses. It also has exclusive control of documents relating to those subjects, and it chose not to present them. The Employer argued in closing that the record is sparse with respect to policies in effect in California and commonalities between policies in effect in California and Southern Nevada. However, the Employer has exclusive control of witnesses with knowledge of this subject and documents relevant to this subject and chose not to present them.

Similarly, the Employer argues that one ready-mix driver’s testimony about a permanent transfer from Southern California to Southern Nevada and back and one Southern Nevada ready-mix driver’s testimony about a temporary assignment in Southern California does not establish permanent or temporary interchange. However, the Employer has exclusive control of evidence about the overall number of permanent transfers and instances of temporary interchange between Southern California and Southern Nevada, as compared to overall number of permanent transfers and instances of temporary interchange between the plants in the petitioned-for unit and any other plants whose ready-mix drivers the Employer may contend lack separate and distinct interests. The Employer chose not to present that evidence.

In sum, the Employer did not identify any groups that lack separate and distinct interests from the interests shared by the ready-mix drivers and driver trainers in the petitioned-for unit and did not present evidence showing that there were any such groups.

As explained below, based on an application of the multifacility unit factors, I find that the Employer’s ready-mix drivers in Southern California and Southern Nevada share a community of interest with each other. I also find, based on the record evidence concerning the Employer’s management structure and operations and the Employer’s failure to identify or present any evidence concerning any group that it may contend lacks separate and distinct interests, that the petitioned-for multifacility unit is appropriate.

Turning to an application of the multifacility unit factors, there is no appreciable difference between the skills and duties of ready-mix drivers and driver trainers in Southern Nevada and those in Southern California. All of them must have the appropriate skills and licensing to operate ready-mix trucks, and all of them are responsible for transporting and
delivering ready-mix cement. They operate the same kind of equipment, with the limited exception of the Southern California drivers not being permitted by law to operate 11-yard ready-mix trucks; they receive their work schedules and assignments in the same way; and they interface with the Employer’s plants in the same manner (reporting to a home plant but deadheading and repeating at other plants as needed). Although the Employer contends that ready-mix drivers in Southern Nevada have distinct skills because the plant operator II job description reflects that they perform cross-functions, as explained above, the vast majority of plant operators II in fact only operate ready-mix trucks and do not operate loaders and rarely, if ever, perform maintenance or cleanup work. I therefore find that the potential cross-functions mentioned in the plant operator II job description do not show any meaningful distinction in skill sets.

There is no evidence concerning the skills and duties of any ready-mix drivers at the Employer’s plants outside Southern Nevada and Southern California whom the Employer may contend lack separate and distinct interests.

Ready-mix drivers in Southern Nevada and Southern California have similar terms and conditions of employment. They have similar rates of pay, with pay ranging between $23 and $25 for ready-mix drivers who testified. They receive their checks from the Ontario offices. Driver trainers in Southern Nevada and Southern California receive the same additional $1 per hour for being driver trainers. Ready-mix drivers in Southern Nevada and Southern California have similar work schedules and receive assignments in the same manner throughout the work day. They also have similar working conditions in that they primarily perform their work in ready-mix trucks and at jobsites. The Employer argues that there is little evidence about the policies applicable to Southern California ready-mix drivers, but it did not present any evidence concerning what policies apply to those employees.

There is evidence that some policies or terms of employment, such as the differing policies concerning discipline for cell phone use while driving, a greater number of night pours in Southern Nevada, and the night pour premium in Southern California, are not shared by ready-mix drivers in Southern Nevada and Southern California. There is also evidence that the Southern Nevada and Southern California ready-mix drivers wear different types of high visibility uniforms, because of the timing of the Employer’s entry into a uniform contract in Southern Nevada. However, these distinctions are limited, and, overall, the evidence reflects largely common terms and conditions of employment.

There is no evidence concerning the terms and conditions of employment of any ready-mix drivers at the Employer’s plants outside Southern Nevada and Southern California whom the Employer may contend lack separate and distinct interests, except for evidence that the ready-mix drivers in the Bay Area and Reno, and perhaps others, are represented by unions and presumably covered by collective-bargaining agreements.

With respect to employee interchange, ready-mix drivers testified about one instance in which a ready-mix driver transferred permanently from Southern California to Southern Nevada and back and one instance in which a Southern Nevada ready-mix driver volunteered for a week-long assignment in Southern California. Moreover, there was evidence of frequent temporary
interchange (in the form of deadheading and repeating) between nearby facilities across the unit, though not between Southern Nevada and Southern California due to their distance from each other. The Employer argues that the ready-mix drivers’ testimony about examples of permanent and temporary interchange between Southern Nevada and Southern California is insufficient to establish interchange. However, the Employer did not present evidence concerning the overall number or relative rate of permanent transfers or temporary interchange between Southern Nevada and Southern California plants or between those plants and any plants outside the petitioned-for unit where the Employer may contend its ready-mix drivers lack separate and distinct interests.

With respect to functional integration, the Southern Nevada and Southern California ready-mix plants have separate service areas, and the Employer’s ready-mix drivers generally only cross into nearby service areas across the unit. However, all of the plants perform the function of mixing and delivering ready-mix cement produced by the Employer. The record does not reflect whether the Southern Nevada and Southern California ready-mix plants receive raw materials produced at the same facilities. At the time of the hearing, there was a shared dispatching system, which currently is used for entering orders, scheduling deliveries and thereby scheduling drivers’ assignments, and communicating with drivers.

The Employer did not present any evidence concerning any functional integration with any plants outside the petitioned-for unit where the Employer may contend its ready-mix drivers lack separate and distinct interests.

With respect to geographic proximity, the Southern Nevada plants are over 200 miles from the nearest Southern California plant, but the northernmost plant in Southern California is a similar distance from the southernmost Southern California plant. Further, the Employer did not present any evidence concerning the geographic proximity of any plants outside the petitioned-for unit where the Employer may contend its ready-mix drivers lack separate and distinct interests.

With respect to centralized control of management and supervision, although each plant has its own Plant Foremen and there are different District Managers and Area Operations Managers in Southern Nevada and Southern California, the Southern California ready-mix plants share a common Vice President and General Manager. There is no evidence that the Vice President and General Manager oversees any plants outside the petitioned-for unit where the Employers may contend its ready-mix drivers lack separate and distinct interests. The Vice President and General Manager conducts monthly meetings with managers in Southern Nevada and Southern California. Although the Vice President and General Manager for Southern California and Southern Nevada did not testify, and the testimony about what is discussed in these calls is vague, the calls were described as all-encompassing management meetings where financials are discussed. There is also a daily call for Southern Nevada and Southern California managers where KPI’s are discussed. Although the Employer did not present evidence on what KPI’s are tracked, how they are used, and who makes decisions about what to track and how to use this information, the record, at a minimum, shows that performance of plants across the petitioned-for unit is monitored in a joint or collaborative manner.
Although the District Manager and Area Operations Manager responsible for the Losee and Sloan plants testified that they compiled a set of policies and set wage rates and pricing for their area and that they develop a budget for their area, their testimony indicates that many of their policies are borrowed from other parts of CEMEX’s operations and that there budget is submitted to the Employer’s Ontario office and its Houston headquarters, “and we’d see.” Tr. 362. There was also testimony that the Area Operations Manager over the Losee and Sloan plants did not have authority to create an anti-harassment policy for those plants, and that such a policy would have to be created by someone at a higher level. Thus, the Employer’s adoption of policies was not entirely independent, and there is some degree of review of budgeting by someone based in the Ontario office and/or the Employer’s headquarters.

Further, Human Resources Managers at the Ontario office perform human resources functions for Southern California and Southern Nevada ready-mix drivers. The record does not reflect to whom they report, what policies and procedures apply to them, or who established those policies and procedures. Although currently the Human Resources Manager responsible for human resources functions for the Southern Nevada plants does not perform such functions for ready-mix operations in Southern California, a common Human Resources Manager oversaw ready-mix operations in Southern Nevada and Southern California until about 3 months before the hearing. Thus, although day-to-day hiring and disciplinary matters may be handled locally, there are policies and some overall terms and conditions of employment that are determined at a higher level.

The Employer did not present evidence concerning who controls labor relations for ready-mix drivers at any plants outside the petitioned-for unit where the Employer may contend its ready-mix drivers lack separate and distinct interests.

Finally, with respect to bargaining history, although the Losee and Sloan plants were once covered by the same collective-bargaining agreement, which did not cover Southern California ready-mix drivers, I find that fact carries little weight, since the agreement was with a predecessor employer; it covered a large group of facilities, many of which are no longer operated by the Employer; and there was a 4 year hiatus in operations at the Losee and Sloan plants. The fact that one of the Southern California plants was represented on a single-facility basis for some unknown amount of time before the union’s decertification in 2016, and that some other plants in the Bay Area, Reno, and possibly elsewhere are represented, also do not weigh heavily against finding the petitioned-for multifacility unit to be appropriate.7

On balance, and in view of the record as a whole, I find that ready-mix drivers and driver trainers at the Employer’s plants in Southern Nevada and Southern California are an appropriate unit based on an application of the multifacility unit factors. I find that the ready-mix drivers in the petitioned-for unit share a community of interest with each other and that the evidence does

---

7 In fact, if the record evidence had established that, with the exception of the ready-mix drivers in Southern Nevada and Southern California, all of the Employer’s ready-mix drivers were already represented by some union or group of unions, then it might have been appropriate for me to direct an election in the petitioned-for unit as a residual unit to a presumptively relevant overall companywide unit. However, such an analysis was not possible, in view of the uncertain and vague evidence about the Employer’s collective-bargaining relationships in the Central Valley.
not establish that there is any other group of employees that lacks separate and distinct interests from those shared by the employees in the petitioned-for unit.

III. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.\(^8\)

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.\(^9\)

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   All full-time and regular part-time ready-mix drivers, plant operators II who regularly operate ready-mix trucks, and driver trainers employed by the Employer at its ready-mix facilities in Southern Nevada and Southern California, including its plants in Las Vegas, North Las Vegas, and Sloan, Nevada, and Compton, Corona, Escondido, Fontana, Highland, Hollywood, Irvine, Los Angeles, Moorpark, Oceanside, Orange, Oxnard, Perris, Rialto, San Diego, San Juan Capistrano, Santa Barbara, Santa Paula, Simi Valley, Temecula, and Walnut, California, excluding all other employees, batch men, yardmen, yardmen/laborers, plant maintenance employees, plant maintenance employees II, plant maintenance foremen, fleet mechanics, fleet mechanic foremen, mechanic foremen, senior driver trainers/safety champions, plant foremen, dispatchers,

\(^8\) I find, based on the stipulations of the parties and the record evidence, that the Employer, CEMEX Construction Materials Pacific, LLC, a Delaware limited liability company with offices and places of business in, including but not limited to, the States of California and Nevada, including but not limited to an office and place of business in Las Vegas, Nevada, is in the business of producing cement and transporting building materials and supplies. During the 12-month period ending in December 3, 2018, CEMEX Construction Materials Pacific, LLC, in conducting its business operations described above, sold and shipped from its Las Vegas, Nevada, facility goods valued in excess of $50,000 directly to points outside the State of Nevada.

\(^9\) The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
quality control representatives, office clerical employees, professional employees, guards and supervisors as defined in the Act.  

Plant operators II who regularly operate ready-mix trucks during 25 percent or more of their working time are eligible to vote.

There are approximately 400 employees in the unit found appropriate.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for the purposes of collective bargaining by International Brotherhood of Teamsters.

A. Election Details

The election will be held on Thursday, March 7, 2019, from 4:00 a.m. to 6:15 a.m.; 6:30 a.m. to 8:00 a.m.; 1:00 p.m. to 2:45 p.m.; and 3:00 p.m. to 4:00 p.m. at the following locations. All polls will be closed for break from 6:15 a.m. to 6:30 a.m. and 2:45 p.m. to 3:00 p.m.

The Fleet Maintenance Shop  
at the Los Angeles Plant  
625 Lamar Street  
Los Angeles, CA 90031

The Plant Office  
at the Inglewood Plant  
505 Railroad Place  
Inglewood, CA 90301

The Quality Control Lab  
at the Orange Plant  
1730 N Main Street  
Orange, CA 92865

The Break Room  
at the Walnut Plant  
20903 Currier Road  
Walnut, CA 91789

10 The unit found appropriate conforms substantially with the unit sought by Petitioner.
The Main Office Building
at the Oxnard Plant
548 Diaz Ave
Oxnard, CA  93030

The Break Room
at the Santa Paula Plant
1430 Santa Clara
Santa Paula, CA  93060

The Training Room
at the Lytle Creek Plant
3221 N. Riverside Drive
Rialto, CA  92377

The Driver Room
at the Corona Plant
24980 Maitri Road
Corona, CA  92883

The Office Conference Room
at the Mission Valley Plant
2499 Qualcomm Way
San Diego, CA  92883

The Sales Office
at the Escondido Plant
849 W. Washington Avenue
Escondido, CA  92054

The Quality Control Building next to the drivers’ room
at the Sloan Plant
14998 South Las Vegas Boulevard
Las Vegas, NV  89124

The Vacant Dispatch Room
at the Losee Plant
4001 Losee Road
Las Vegas, NV  89030

Ballots will be comsingled and counted at the National Labor Relations Board Las Vegas
Resident office located at 300 S. Las Vegas Blvd Suite 2-901 on Wednesday, March 13, 2019,
at 10:00 a.m.
B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **February 16, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

C. Voter List

As required by Section 102.67(l) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. **Note:** The Employer should furnish a separate polling site list for each of the 12 polling locations; eligible voters’ names may not appear on more than one polling site list.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **February 22, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties name in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at [www.nlrb.gov](http://www.nlrb.gov). Once the
website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily **posted at all facilities where it employs employees in the unit found appropriate**. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**V. RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.
Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Phoenix, Arizona, this 20\textsuperscript{th} day of February, 2019.

\textit{\textit{/s/ Cornele A. Overstreet}}

Cornele A. Overstreet, Regional Director