REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

International Brotherhood of Teamsters, Local Union No. 769 (the Petitioner) seeks to represent a unit of all full-time and regular part time drivers employed by Sysco South Florida, Inc. (the Employer) at its facilities in Medley, Auburndale and Key West, Florida, excluding all other employees, warehouse employees, checkers, forklift operators, loaders, receivers, selectors, slot coordinators, short chasers, short runners, mechanics, clerical employees, inventory control employees, guards and supervisors as defined by the Act. There are 128 employees in the unit sought by the Petitioner, including 93 delivery drivers, 6 fresh drivers, 18 export/cruise drivers, 7 shuttle drivers and 4 hot shot drivers.

The Employer contends that the smallest appropriate unit consists of all drivers plus all other personnel involved in the distribution process. The Employer seeks to add the following employees and positions to the unit: 3 cycle counters, 3 driver check in associates, 1 facility tech

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1 At all material times, the Employer has been a Delaware corporation with an office and place of business located at 12500 NW 112th Avenue, Medley, Florida, where it is engaged in the nonretail business of food warehousing and distribution in South Florida. During the past 12 months, in the course and conduct of its business, the Employer purchased and received at its place of business in the State of Florida, goods and materials valued in excess of $50,000 directly from points located outside the State of Florida. The parties stipulated, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act and is subject to the jurisdiction of the Board. The parties also stipulated and I find that the Petitioner is a labor organization with the meaning of Section 2(5) of the National Labor Relations Act.

2 Of the 93 delivery drivers, 84 are assigned to Medley, 7 are assigned to Key West, and 2 are assigned to Auburndale. All of the other drivers are assigned to Medley.
I, 6 fleet technicians II — journeymen, 1 fleet technician III — master, 13 forklift operators - let down, 15 forklift operators – putaway, 1 inbound (will call) selector, 6 inbound receivers, 2 MHE techs II, 3 O-OB selectors, 27 outbound loaders, 64 outbound selectors, 3 outbound short runners, 1 QA inspector, 1 returns putaway employee, 1 safety coordinator, 1 sanitation technician, 1 slotting coordinator, 1 will call associate, 5 yard spotters, 2 dispatchers, 2 routers, 2 outbound warehouse clerks, transportation clerk (the position is currently vacant), 1 maintenance coordinator, and 1 maintenance utility worker technician. There are a total of 169 employees in these additional job classifications that the Employer contends must be included in the unit. Thus, the Employer contends that the unit must include a total of 297 employees.

On January 7 and 8, 2019, a hearing officer of the Board held a hearing in this matter. At the hearing, the parties argued their respective positions. After the hearing, the parties filed briefs with the undersigned. I have carefully considered the evidence and arguments presented by the parties on the issues before me.

For the reasons discussed below, I find that the petitioned-for unit is an appropriate unit. Accordingly, I have directed an election in the petitioned-for unit.

I. FACTS

A. The Employer’s Business, Organizational and Supervisory Structure

The Employer sells and delivers food and supplies to customers in the State of Florida from the Keys to Naples and Sarasota. The Employer’s main facility is in Medley, Florida where it has a large warehouse. It also has two satellite facilities located in Auburndale, Florida and Key West, Florida which are used as staging areas to make local deliveries in those markets.
President John Abreu is in charge of the Employer’s organization. His direct reports include a vacant Chief Financial Officer (CFO) position and seven directors and vice presidents, including Operations Vice President Leonard Bibb. A vacant compliance manager position, which reports to the CFO position, supervises the cycle counters, quality assurance (QA) inspectors, driver check-in associates and will call associate. Fleet and Facility Maintenance Director Kerck Jadotte and a currently vacant operations director position report directly to Bibb. A vacant fleet manager position reports to Jadotte. The fleet manager is responsible for the fleet technicians, maintenance utility technicians, material handling technicians, and maintenance coordinator.

Transportation Director Randy Miller, Warehouse Director Jason Maldonado and Slotting Coordinator Will Vazquez report to the operations director position. Transportation Manager Leonardo Napoles, the routers, transportation clerk position (currently vacant) and dispatchers report to Transportation Director Miller. Six transportation supervisors report to Napoles. The drivers in the petitioned-for unit report to the transportation supervisors.

Inbound Warehouse Manager Hai Pham, Outbound Warehouse Manager Lyndon Valerie and Outbound Warehouse Manager (Cruise) Willie Albino directly report to Warehouse Director Maldonado. Two inbound warehouse supervisors, who directly supervise the inbound receivers and forklift operators/put-away employees, report directly to Inbound Warehouse Manager Pham. The outbound warehouse supervisors, forklift operators, outbound loaders, yard spotters, and outbound warehouse clerks report to Warehouse Manager Valerie. The outbound warehouse supervisors directly supervise the outbound selectors. Outbound Warehouse Manager Albino directly supervises the outbound warehouse clerk (cruise) and additional outbound loaders.
When in the warehouse, supervisory personnel wear green vests that distinguish them from non-supervisory personnel, who wear yellow vests. Although the Employer’s supervisors are empowered to direct and coach employees across departmental lines, it appears that this occurs only occasionally. Maintenance Manager Jadotte testified that he once gave a driver a “coach card” for being unsafe by walking in a forklift area, but that issuance of a coach card is not reported as discipline, and he has never disciplined a driver.\textsuperscript{3} Additionally, once or twice a week a warehouse supervisor might give some direction to one or more drivers or a transportation supervisor might give some direction to one or more warehouse employees, such as telling them to bring assets to a given location.\textsuperscript{4}

B. Drivers

All of the Employer’s drivers use vehicles to transport and deliver product. The delivery drivers and fresh drivers drive trucks to make numerous deliveries to customers in the course of a typical work day. The only distinction between the delivery drivers and fresh drivers is that the fresh drivers use smaller trucks called straight trucks to deliver fresh proteins and produce to customers. The cruise drivers, also called export drivers, operate tractor trailers and drive from the Medley warehouse to the dock of a third party facility for product to be offloaded. The shuttle drivers use tractor trailers to transport products from one of the Employer’s facilities to another, for instance delivering from the Medley facility to the Auburndale facility. The hotshot drivers drive mini-vans and make urgent deliveries throughout the day. All drivers except the hotshot drivers are required to have commercial drivers’ licenses (CDLs) in order to operate their

\textsuperscript{3} The record does not reflect how long ago Jadotte issued the coach card to a driver.

\textsuperscript{4} These occasional directions appear to be routine in nature, and I find that there is insufficient record evidence to establish that there has been any exercise of supervisory authority through responsible direction or assignment of work within the meaning of Section 2(11) of the Act either by warehouse supervisors over drivers, or by transportation supervisors over warehouse employees.
vehicles, and are subject to Department of Transportation regulations. With the exception of the hotshot drivers, drivers typically work 10 hour shifts, spend less than one hour per day in the warehouse, and spend the rest of their work day making deliveries.

1. Delivery Drivers and Fresh Drivers

The 93 delivery drivers and 6 fresh drivers typically start their work days between 3:00 a.m. and 5:00 a.m. After arriving at work, they log in at the dispatch area and get the invoices for their stops for the day from the dispatcher. They may then go to the break room to review their paperwork and retrieve handheld STS scanners from their lockers. The drivers then hook their tractors into their trailers. They may help with any final loading of their trailers and may re-arrange their loads for the day based on any last minute changes to the delivery schedules. The Employer has trailers of different sizes. Due to last minute changes in the size of the load, mechanical problems with the trailer or other reasons, a driver may need to use a different trailer than the trailer to which the driver was originally assigned. When this occurs, the driver transfers his daily delivery load to a new trailer, possibly with the assistance of warehouse loaders or selectors if they are available. Drivers who are not pleased with the way their vehicle was loaded by the warehouse personnel might inform the warehouse director or warehouse supervisors. The drivers then go to the maintenance area to retrieve the electric jacks and hand carts that they load onto their trucks for use during the day when offloading product for customers. The drivers conduct a pre-trip inspection of their vehicle, including checking the temperature of the trailer’s freezer, and notify maintenance if there are any mechanical issues. The drivers then leave the facility to make their deliveries. A computer system called Telogis tells the driver which deliveries to make and in which order.
When the driver arrives at a customer's facility, he uses a handheld device called an STS scanner to scan the cases of product to be delivered, loads the cases onto a handcart, and uses the handcart to deliver the cases to the customer. Although various employees use scanners, drivers are the only classification of employee that uses the STS scanner. The information from the scanner feeds into the Employer’s Sysco Account Management System (SAMS) and the Sysco Warehouse Management System (SWMS) which are used to track the Employer’s products. Drivers use the Telogis computer system to communicate with dispatchers as necessary. If product to be delivered is discovered to be defective, the driver notifies dispatch of this situation. Dispatch, in turn, notifies the sales representative who is responsible for the customer. If possible, a hotshot driver will attempt a “recovery,” i.e. delivering replacement product to the customer.

When a driver returns to the Employer’s facility at the end of the day, he turns in his signed manifests at warehouse check-in with the warehouse clerk. The driver then unloads any undelivered product, possibly with the assistance of warehouse personnel if they are available. If there were problems with any product, the driver will debrief with quality assurance. A yard spotter (yard jockey) washes the trailer and the driver unloads his electric jack and hand carts and returns them to the maintenance building. Drivers perform a post trip inspection by scanning barcodes on various parts of their trucks to show that they inspected the area. If the driver had any mechanical problems with the truck, he will note this in his post trip report and may inform a mechanic directly. The truck is then taken by a driver performing the “valet” function to be fueled and parked. Drivers sometimes interact with the routers to suggest more efficient delivery
routes or to inform them of issues such as a customer being closed when they were scheduled to make a delivery, construction on certain roads, etc.

2. Export/Cruise Drivers and Shuttle Drivers

The 18 export/cruise drivers follow a similar process to the delivery (street) and fresh drivers, but make significantly fewer stops because they service a small number of large customers rather than a larger number of smaller customers. Cruise drivers frequently must wait several hours at a single location for unloading. In some cases, the customer unloads the vehicle rather than the driver. Cruise drivers do not palletize or scan their products like the street drivers and fresh drivers. Like the cruise drivers, the 6 shuttle drivers who travel between the Employer's facilities are not typically involved in the scanning or unloading of product, and they do not routinely interact with customers. Documentary evidence shows that the shuttle drivers start work at 10:00 p.m.

3. Hotshot Drivers

The 4 hotshot drivers make quick trips to customers to correct delivery errors or to make other urgent deliveries. Like most of the other drivers, they work during the day. As noted above, they drive mini-vans rather than trucks, and are not required to have CDLs. Hotshot drivers do not perform pre-trip inspections. The hotshot drivers stage in the Employer's "will call" area. This area is primarily used for supplying product to customers who wish to pick up onsite, rather than have the Employer deliver product. Unlike the other drivers, hotshot drivers have the primary responsibility for doing the selection and loading for their own vans, although they may be assisted by warehouse personnel at times. Some of the hotshot drivers are certified as selectors. Hotshot drivers load their vehicles by hand rather than using pallet jacks. Unlike the
other drivers who typically spend at least 90 percent of their work day on the road, hotshot drivers spend about 60 percent of their work day on the road.

4. **Extent of Interchange among Drivers and between Drivers and other Distribution Employees**

Based on need, schedule and volume, all of the various classifications of drivers may and regularly do substitute for one another, with the exception that hotshot drivers cannot perform the other driving roles because they lack the required CDLs. The other drivers do, however, sometimes substitute for hotshot drivers. Drivers do not substitute for non-driver employees in the distribution process and non-drivers do not substitute for drivers. The Employer has a program to assist warehouse personnel who wish to permanently become drivers by paying for the $4,000 to $5,000 that it takes for them to train for and earn their CDLs.

C. **Routers, Transportation Clerks and Dispatchers**

Like the drivers, the routers, transportation clerk and dispatcher primarily work during the day. The routers take the customers’ orders and use a computer program called “roadnet” to create the routes for the drivers to use as they make their deliveries. The dispatchers give the delivery manifests to the drivers, ensure that the drivers understand any special instructions for the deliveries and make any adjustments to the delivery routes necessary if, for instance, some drivers call off work sick for the day. Drivers communicate with dispatchers for issues such as customers rejecting a delivery due to quality issues. The transportation clerk does paperwork pertaining to the drivers, such as tracking their vacation time and paid time off.

D. **Warehouse Employees**

The warehouse is divided by the Employer into outbound, inbound and cruise departments. The largest group of warehouse employees are outbound selectors, all of whom
work during the night. All of the forklift operators – let down also work nights. Most of the inbound and cruise warehouse employees, including most of the forklift operators – putaway and all of the inbound receivers, work days.

The outbound selectors work in the Employer’s freezer, cooler and dry warehouse where they select product and insure that products are zoned properly on the Employer’s pallets. This enables drivers to efficiently find the products loaded on their trucks, and to efficiently unload and deliver the products to customers. The outbound selectors use the SWMS system which tells them how to select and palletize the product. Like the drivers, they use pallet jacks in the performance of their duties. They also insure that the product is in good condition for delivery to the customers. The outbound selectors then stage the product in the loading area. The inbound (will call) selector works during the daytime hours and selects orders for customers who come to the Employer’s Medley facility to pick up purchased product, rather than having it delivered. Inbound selectors also gather orders to be delivered by the hotshot drivers.

After the outbound selectors deliver the product to the loading area, the loaders wrap the product in plastic, load it into the trailers, scan barcodes on the products and use straps to secure the load. Cruise loaders start their shifts at 4 p.m. and night loaders start their shifts at 8 p.m. To the extent that loaders have any interaction with drivers, it is most likely to be the shuttle drivers who start their shifts at around midnight.

Only certified personnel are permitted to operate forklifts. The letdown forklift operators are part of the outbound warehouse department and replenish pick slots for night selection and take pallet sized orders directly to the dock for the loaders. The putaway forklift drivers work during the days and return empty pallets and undelivered product to their proper places. The
outbound short runners work nights. They are forklift drivers who go the warehouse to retrieve any product that was missed or unavailable. They then give the product to the loaders, who load the product on the trailers before the drivers start their routes. The drivers sometimes ask forklift operators when their loads will be ready so that the drivers can determine when they can leave the Medley facility to perform their deliveries.

The inbound receivers inspect incoming product to insure that it is at the proper temperature and undamaged. When drivers pick up product, they inform the receivers when they arrive at the facility and show them the paperwork associated with the product. The Employer's warehouse clerk generates the manifests that the drivers use when making deliveries to customers and takes these to dispatch.

Yard spotters are also known as yard jockeys and are responsible for moving trucks and trailers around at the Employer's facility. They back the trailers into the dock to be loaded. The yard spotters tell the drivers where they can find their trailers. Unlike the vast majority of the drivers in the petitioned-for unit, the yard spotters do not have CDLs and do not drive the trucks off premises to make deliveries. The Employer classifies yard spotters as outbound warehouse personnel.

E. Maintenance Personnel

The Employer has maintenance personnel on duty 24 hours a day. Fleet maintenance personnel are responsible for repairing and maintaining the Employer's trucks, trailers and related equipment. Facility maintenance personnel are responsible for repairing and maintaining the Employer's physical facility, including the lifts and bay doors used for trailer loading and material handling equipment. The maintenance coordinator is responsible for maintaining the
maintenance area and insuring that necessary parts are ordered. The technicians earn various certifications in their areas of mechanical expertise. The Employer uses a system called "SPROCKET" for tracking and monitoring vehicle maintenance. Drivers who have mechanical issues with their trucks, trailers or carts typically report these issues by scanning the equipment that is having issues and making entries into Sprocket, or by reporting the issues to their supervisors who, in turn, report them to fleet maintenance personnel. Drivers may also report these concerns directly to maintenance personnel. If a driver believes that there is an issue that his rendered his vehicle unsafe, he will use a red tag to alert other personnel of the issue. After maintenance personnel make the repair, they remove the red tag.

F. Inventory Control Personnel

Inventory control personnel have various responsibilities related to inventory control and quality. They mostly work during the day. The cycle counters count the inventory in the building and research any discrepancies. For instance, if a driver realizes that he is missing cases for delivery, the cycle counter will attempt to determine the reason. The quality assurance (QA) personnel are responsible for insuring that product is of appropriate quality, e.g. that it is maintained until the appropriate date and at the appropriate temperature. If customers reject product due to quality concerns, the QA personnel will investigate. QA personnel inspect any returned items to determine whether they are still usable. The driver check-in (DCI) associates make sure all undelivered product from returning trucks are accounted for and returned to the warehouse building. These personnel debrief drivers on undelivered product to determine the reason the product is returning to the facility and interact with the QA personnel with respect to the returned product. DCI associates use scanners to scan products being returned to the
Employer’s inventory. The will call associate handles product for customers who come to the facility to pick up their own products and also develops the routes for the hotshot drivers.

**G. Wages, Working Conditions and other Terms and Conditions of Employment**

Delivery drivers and cruise drivers are paid $23.80 per hour, fresh drivers are paid $21.00 per hour, hot shot drivers are paid between $17.00 and $23.80 per hour, and shuttle drivers are paid between $23.50 and $23.80 per hour. The delivery drivers also receive an incentive based on the distance and difficulty of delivering their cases of product to the customers.

Among the other personnel under the transportation manager, the dispatchers earn between $23.07 and $24.37 per hour and the routers earn between $27.92 and $31.78 per hour. The transportation clerk position was vacant at the time of the hearing of this matter and the record does not contain any wage rate for that position.

Among the warehouse personnel, the forklift operators (let down) earn between $20.50 and $22.60 per hour, the forklift operators (putaway) earn between $20.75 and $28.25 per hour, the inbound (will call) selector earns $17.57 per hour, the inbound receivers earn between $20.15 and $25.50 per hour, the outbound loaders earn between $17.01 and $23.01 per hour, the outbound selectors earn between $17.35 and $20.65 per hour, the outbound short runners earn between $21.00 and $21.25 per hour, the outbound warehouse clerks earn between $16.00 and $16.56 per hour, and the yard spotters earn between $17.00 and $17.85 per hour. The letdown and putaway forklift operators, outbound selectors and outbound loaders are all paid incentives based on the volume, speed and accuracy of their performance.
Among the maintenance personnel, the facility techs earn $19.00 per hour, fleet tech IIs earn between $21.53 and $26.90 per hour, fleet tech IIIIs earn $36.00 per hour, material handling equipment (MHE) tech IIs earn between $19.93 and $24.00 per hour, the maintenance coordinator earns $16.81 per hour, and the maintenance utility worker technician earns $18.71 per hour.

Among the inventory control personnel, the cycle counters earn between $17.30 and $17.70 per hour, the QA inspectors earn $17.27 per hour, the driver check-in personnel earn between $16.58 and $22.19 per hour, and the will call associate earns $15.76 per hour.

All of the personnel involved in the Employer’s distribution process have access to the same benefits, such as insurance, vacation, sick leave, holidays, and a 401(k) plan.

Whereas the vast majority of drivers have daytime schedules, only about 40 of the 169 employees the Employer seeks to add to the unit have daytime schedules and the remaining group of approximately 129 employees work at night.

All distribution employees attend the same orientation and a number of the same training programs, including food safety training, for which all employees are responsible, and all employees in the Employer’s distribution process, including drivers, are governed by the same employee handbook, work rules list, and code of conduct. However, the Employer has a number of additional work rules that only apply to drivers, including a drive cam policy, a commercial motor vehicle and special delivery vehicle operations distracted driving and electronics policy, a safety cone policy, and a seatbelt policy. In addition, there is a separate list of 18 drivers’ safety rules on topics including required notice to the Employer of traffic ticket convictions and all tickets resulting from accidents, uniform and appearance, pre-trip, post-trip and during trip
vehicle inspections, and the need to follow all Department of Transportation regulations. Certain policies also uniquely pertain to certain warehouse employees, such as safety rules for forklift operators.

All employees park their personal vehicles in the same parking lot. Employees attend Employer sponsored holiday gatherings together. Drivers have access to the same break room that the other distribution personnel have access to, but are unlikely to take their break or meal times in the break room because, as noted above, they spend the majority of their time on the road. The Employer invites 2 or 3 drivers, 2 or 2 inbound warehouse employees and 2 or 3 outbound warehouse employees to attend monthly associate engagement meetings where they may provide information to management about activities on the job. The record does not reflect which employees actually attend these meetings, or whether attendance is voluntary or mandatory. The record reflects that the Employer also sometimes holds drivers meetings.

The drivers and warehouse personnel all wear boots and the Employer provides vouchers for the drivers and warehouse personnel to purchase work boots. All non-supervisory personnel wear yellow safety vests when they are at the warehouse, but drivers are not required to wear these when they are on the road. Drivers and other employees wear blue collared shirts and gray cargo shorts. Drivers also have the option of wearing cargo slacks. Technicians wear navy blue uniforms that are unique to employees in the maintenance department.

II. ANALYSIS

A. The legal standard for unit determination

Section 9(a) of the Act has been interpreted to require the Board to determine whether the petitioned-for unit is "an appropriate unit." The petitioned-for unit need not be the only appropriate unit, or even the most appropriate unit. Wheeling Island Gaming, 355 NLRB 637,
In *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), the Board overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), and reinstated the traditional community of interest standard, as articulated in *United Operations, Inc.*, 338 NLRB 123 (2002), for determining whether a proposed bargaining unit constitutes an appropriate unit when the employer contends that the petitioned-for unit must include additional employees.

The traditional community of interest standard requires the Board to determine: 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.

*United Operations*, supra, 338 NLRB at 123.

In *PCC Structural*, the Board further held:

...applying the Board's traditional community of interest factors, the Board will determine whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit; and the Board may find that the exclusion of certain employees renders the petitioned-for unit inappropriate even when the excluded employees do not share an "overwhelming" community of interest with employees in the petitioned-for unit.

365 NLRB No. 160, slip op. at 7. Finally, in weighing the shared and distinct interests of petitioned-for and excluded employees:

The Board must determine whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members."

365 NLRB No. 160, slip op. at 11 (emphasis in original), quoting *Constellation Brands US Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016).
B. The drivers in the petitioned-for unit have a separate community of interest, and they do not share a sufficient community of interest with the other employees in the Employer’s distribution process to warrant the inclusion of the other employees in the unit.

The Employer has a labor relations policies with many common benefits and rules applicable to both the petitioned-for unit of drivers and the employees the Employer seeks to add to the unit, who I will refer to collectively as the inside employees. In addition, the hourly wages of drivers are similar to those of the inside employees. The Employer’s drivers are functionally integrated with the other employees in the distribution process inasmuch as all of these employees are needed to achieve the Employer’s goal of delivering products to customers. The Employer’s common labor relations policies and the functional integration of the Employer’s operations favor a finding that the unit must include the inside employees. However, the other community of interest factors outweigh these similarities, and establish that the drivers do not share a sufficient community of interest with the inside employees to require the inclusion of the inside employees in the unit.

Significantly, the Employer has organized its departments and supervisory structure so the drivers are under separate day-to-day supervision. Although the drivers, warehouse personnel and maintenance personnel are all ultimately fall under the management of Operations Vice President Bibb, there are three layers of supervision between Operations Vice President Bibb and the drivers - the director of transportation, the transportation manager, and the 6 transportation supervisors. Although the 2 routers, the vacant transportation clerk position, and the 2 dispatchers also report to the transportation manager, it appears that they are not supervised by the 6 transportation supervisors to whom the drivers directly report. The warehouse personnel, including the yard spotters, are separately supervised by a warehouse director, 3
subordinate warehouse managers and a number of warehouse supervisors. Similarly, the maintenance personnel are under a fleet and facility maintenance director and fleet maintenance manager. The cycle counters, QA inspectors, driver check in personnel and will call associate are not the responsibility of the operations vice president. Rather, they are responsible to the CFO and a compliance manager. Although supervisors are empowered to direct and coach or discipline employees from other departments, as noted above there is insufficient evidence to show that they have exercised statutory supervisory authority over employees outside their departments.

Also of great significance is the fact that the job skills and duties of the drivers in the petitioned-for unit are distinct from those of the other distribution employees. Put simply, unlike the other employees involved in distribution, the drivers' primary duty is to drive. All of the drivers but the hotshot drivers possess CDLs, a unique qualification that enables them to perform this duty. Unlike the other employees in the distribution process, all of the drivers in the petitioned-for unit spend a majority of their work day on the road, with the vast majority of the drivers in the petitioned for unit spending over 90 percent of their day away from the facility. Thus, the drivers obviously work in a different environment than the inside employees, uniquely dealing with varying daily traffic conditions and routes, dealing with vehicle problems, and unloading at customers' premises. Although yard spotters move trailers around the Employer's facility, unlike the drivers the yard spotters do not have CDLs and they do not leave the Medley premises of the Employer. In contrast to the drivers, the inside employees spend their work days at the Employer's facility. Likewise, although drivers perform some minor assistance with

5 Certain other personnel in the distribution process have their own unique certifications, e.g. specialized maintenance certifications for the technicians and forklift certifications for certain warehouse personnel.
loading and unloading of their own vehicles, it is not their primary job function as it is for the outbound loaders.

The sharp distinction in job skills and functions between the drivers and the inside employees is evident from the total absence of day-to-day interchange between the drivers and the inside employees, and the fact that drivers regularly substitute for other drivers. Similarly, there is no record evidence that drivers substitute for inside employees. The lack of day-to-day interchange between drivers and inside employees weighs heavily in favor of finding that drivers share a separate community of interest from the inside employees. The lack of interchange in the instant case stands in stark contrast to the situation presented in Ohio Valley Wine Co., 09-RC-223292, July 25, 2018, cited by the Employer, where the warehouse personnel frequently substituted for drivers and most drivers were not required to have CDLs.

Although the Employer has a program to sponsor warehouse employees who wish to train in order to earn their CDLs and become drivers, such transfers are permanent and entirely voluntary. There is some contact between drivers and employees in various inside positions, primarily dispatchers, routers and outbound loaders, but the record as a whole shows that the contact is brief and sporadic.

Although the drivers are entitled to the same package of benefits and are governed by the same rules and policies as the other distribution personnel, as detailed above there are a number of rules that only apply to the drivers. In addition, drivers have pay rates that are unique to their positions. Although the hourly pay rates for drivers are similar to the hourly pay rates of some inside employees, drivers do not share the same pay scale as any other distribution employees. Further, although various personnel receive incentives in addition to their hourly pay, only the 93
delivery drivers receive incentive pay based on the number of cases they deliver to customers and the difficulty of making the deliveries. Further, although there are exceptions, the hours of work of drivers are significantly different from those of the inside employees. The vast majority of the drivers work during the day, whereas approximately 76 percent of the inside employees work at night.

Cases cited by the Employer in which the Board included drivers in the same unit as other employees are inapposite. In Standard Oil Co., 147 NLRB 1226 (1964), the drivers regularly spent a substantial amount of their time performing clerical jobs and loading work during the employer's 6-month slack period, and some plant clerks drove trucks. The Board also relied on the fact that the unit consisting of the drivers, plant clerks, mechanics, a maintenance employee and a laborer were commonly supervised by a superintendent and an assistant superintendent who were the only supervisors at the facility. In Calco Plating, Inc., 242 NLRB 1364 (1979), where the Board included 5 truck drivers in a petitioned-for unit of production and maintenance employees, four of the five drivers drove pickup trucks, and four production and maintenance employees also drove trucks for the employer. In addition, one of the drivers occasionally performed production work. In Atchison Lumber and Logging Co., 215 NLRB 572 (1974), where the Board found that the petitioned-for unit of drivers was not appropriate, most of the drivers had previously worked for the employer in other job classifications, some of the production and maintenance employees had previously worked for the employer as drivers, and the drivers worked on crews with employees in other job classifications, headed by the same foreman. In addition, the drivers regularly performed certain duties of the other crew members,
and senior drivers were offered jobs in other classifications during a portion of the year when roads were not usable.

In the following cases, which present similar fact patterns to the instant case, the Board has determined both that drivers should be excluded from petitioned-for units of other employees because the drivers had a separate community of interest, and that petitioned-for units of drivers excluding other employees were appropriate. In *E.H. Koester Bakery Co.*, 136 NLRB 1006, 1011 (1962), in considering whether a petitioned-for unit of production and maintenance employees must include truckdrivers, the Board decided that this issue must be determined on a case-by-case basis, and that it would consider the following factors in making that determination:

(1) Whether [the truckdrivers] and the plant employees have related or diverse duties, the mode of compensation, hours, supervision, and other conditions of employment; and (2) Whether they are engaged in the same or related production processes or operations, or spend a substantial portion of their time in such production or adjunct activities. If the interests shared with other employees are sufficient to warrant their inclusion, we shall include the truckdrivers in the more comprehensive unit. If, on the other hand, truckdrivers are shown to have such a diversity of interests from those of other employees as to negate any mutuality of interest between the two groups, we shall exclude them.

The *E.H. Koester* Board excluded the truck drivers from the petitioned-for unit of production and maintenance employees, relying on the fact that they were engaged in the transportation of the Employer's product rather than in the production process, had different hours and working conditions than plant employees, spent practically all of their time away from the plant, had little contact with plant employees, and had no interchange with plant employees. 136 NLRB at 1011-1012.
In *Home Depot USA*, 331 NLRB 1289 (2000), the Board found that the petitioned-for unit of drivers shared a sufficiently distinct community of interest from the employees working inside the employer's warehouse-style stores and constituted a separate appropriate unit, notwithstanding functional integration, common supervision, and a number of shared benefits and working conditions with the store employees. The Board noted that the drivers were required to have special driving qualifications and licensing, spent the majority of their work time on the road making deliveries, performed some product pulling but had little to no contact with the pulling employees, and that there was not substantial evidence of interchange. *Id.* at 1291.

The *E.H. Koester* and *Home Depot USA* cases support the conclusion that the Employer’s drivers constitute a separate appropriate unit. Based on the above application of the criteria of the traditional community of interest standard, I find that the drivers share a community of interest that is sufficiently distinct from the inside employees to find that the petitioned-for unit is an appropriate unit.

**III. CONCLUSIONS**

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

A. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

B. The Employer is engaged in commerce with the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction therein.

C. The Petitioner is a labor organization with the meaning of Section 2(5) of the Act.
D. No collective-bargaining agreement covers any of the employees in the petitioned-for unit and there is no contract bar or other bar to an election in this matter.

E. 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.

F. 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 drivers, including delivery drivers, export/cruise drivers, fresh drivers, hot shot drivers, and shuttle drivers, employed by the Employer at its facilities in Medley, Auburndale and Key West, Florida; excluding all other employees, cycle counters, driver check in associates, facility techs I, fleet technicians II – journeymen, fleet technicians III – master, forklift operators - let down, forklift operators – putaway, inbound (will call) selectors, inbound receivers, MHE techs II, O-OB selectors, outbound loaders, outbound selectors, outbound short runners, QA inspectors, returns putaway employees, safety coordinators, sanitation technicians, slotting coordinators, will call associates, yard spotters, dispatchers, routers, outbound warehouse clerks, transportation clerks, maintenance coordinators, maintenance utility worker technicians, office clerical employees, professional employees, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local Union No. 769.

A. Election Details

The election will be conducted by manual ballot on February 13, 2019, from 2:30 a.m. to 4:30 a.m. at the Employer’s premises, Warehouse #5, Pallet Jack Charging Room, 119 Overseas Hwy., U.S. 1, Key West, Florida (Poll 1) and from 3:00 a.m. to 9:00 a.m. and from 3:00 p.m. to
6:00 p.m. at the Employer's premises, Dolphin Conference Room, 12500 NW 112th Street, Medley, Florida (Poll 2). Ballots will be commingled and counted immediately after the second voting session at Poll 2. Ballots will be written in English, Spanish and Creole.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending January 26, 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. 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.

To be timely filed and served, the list must be received by the Regional Director and the parties by February 1, 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 named 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. 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. 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, 1015 Half Street SE, 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.


David Cohen, Regional Director
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