

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, BIRMINGHAM RESIDENT OFFICE**

SYSCO CENTRAL ALABAMA, INC.

Employer

and

Case 10–RC–238289

TEAMSTERS LOCAL 612

Petitioner

REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION

Petitioner, Teamsters Local 612, filed this petition under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all warehouse employees employed by the Employer, Sysco Central Alabama, Inc.¹ The warehouse employees Petitioner seeks to represent are Inbound Receivers; Forklift Operators, Putaway; Inbound (Will Call) Selectors; Inbound Schedulers; Returns Put Away; Outbound Selectors; Forklift Operators, Let Down; Outbound Loaders; Yard Spotters; and Outbound Warehouse Clerks.² Petitioner argues that the petitioned-for unit is an appropriate unit for bargaining. There are approximately 73 employees in the petitioned-for unit.

The Employer maintains that the unit Petitioner seeks is not appropriate and that the only appropriate unit must include the entirety of its Operations Department, an umbrella department, which includes the Warehouse Department, a Transportation Department, a Fleet and Facility Maintenance Department, a standalone Operations Systems Analyst, and a standalone Slotting

¹ The Petition identifies the Employer as Sysco Foods of Central Alabama. At the hearing, the Employer moved to amend the caption to correspond with what it says is its correct corporate name, Sysco Central Alabama, Inc. Petitioner did not object to the motion, but the hearing officer did not rule on it. I grant the motion and I have amended the caption to reflect the Employer’s corrected name.

² The parties stipulated that Petitioner claims to represent the employees in the proposed unit, and the Employer declines to recognize Petitioner. The parties also stipulated there is no contract bar.

Coordinator, because all of these employees share a close community of interest that requires their inclusion in the Operations Department unit. There are approximately 181 employees in the unit the Employer contends is the smallest appropriate unit. Petitioner contends that unit it seeks is appropriate.

In its Transportation Department, the Employer employs drivers, including drivers who work out of nine Employer domicile yards, discussed in more detail below; Shuttle Drivers; Special Delivery Drivers; Routers; and Clerks.

In its Fleet and Facility Maintenance Department, the Employer employs Fleet Technicians, Maintenance Utility Worker Technicians (Fuelers/Washers), Material Handling Technicians, Sanitation Technicians, Refrigeration Technicians, and Maintenance Coordinators.³

A hearing officer of the Board held a hearing in this matter, and the parties were offered the opportunity to file briefs. The Employer timely filed a brief with me on April 10, 2019, which I have duly considered. Petitioner did not file a post-hearing brief.⁴

I have considered the evidence and the arguments the parties presented on the issues. As described below, based on the record and relevant Board law, including the Board's decision in

³ While many of the positions are staffed by a single person, I will use the plural when discussing positions generally.

⁴ Petitioner neither filed a brief nor presented witnesses or exhibits at the hearing. The Employer argued that I should dismiss the petition on that basis. Section 102.64(b) of the Board's Rules and Regulations provide that, "[I]t shall be the duty of the Hearing Officer to inquire fully into all matters and issues necessary to obtain a full and complete record upon which the Board or the Regional Director may discharge their duties under Section 9(c) of the Act." Consequently, under Section 102.66(a) of the Board's Rules, the Board empowered hearing officers to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Further, preelection hearings are investigatory, intended to make a full record, and are not adversarial. NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11181. The hearing officer in this case fulfilled his obligation, even without Petitioner providing witnesses or exhibits. As I have a sufficient record upon which I may decide the question concerning representation placed before me, I have no basis or reason to dismiss the petition as the Employer proposes.

PCC Structurals, 365 NLRB No. 160 (2017), I find that the petitioned-for unit limited to the Employer’s warehouse employees is an appropriate unit.

To provide a context for my discussion of the issue, I will first provide an overview of the Employer’s operations. I will then provide my legal analysis of the issue presented, including why the petitioned-for unit of warehouse employees is an appropriate unit.

I. The Employer’s Operations and Organizational and Supervisory Structure

The Employer sells, markets, and distributes food products to restaurants, healthcare and educational facilities, lodging establishments, and other customers who prepare meals outside of the home. The Employer receives, warehouses, and delivers food to and from its Calera, Alabama warehouse. In addition to the Calera warehouse, the Employer has nine domicile yards, located in Florence, Athens, Gadsden, Cullman, Oxford, Tuscaloosa, Montgomery, and Auburn, Alabama and Pensacola, Florida. The domicile yards allow the Employer to reach customers who are a significant distance from the Calera facility. The Employer finds it impractical, especially with Department of Transportation regulations limiting the hours a driver may work, for a driver to leave from Calera and drive to Pensacola, Florida, make deliveries in that area, and return to the Calera facility. As a result, the Employer has Calera-based Shuttle Drivers transport loaded trailers to the domicile yards. From there, local drivers pick up the loaded trailers and deliver product to customers in areas around the domicile yards while the Shuttle Drivers return to Calera. Drivers based in the various domiciles are included in the Transportation Department and in the Employer’s proposed unit.

Operations Vice President Douglas Vertein oversees the Operations Department. Five people report directly to Vertein: Transportation Director Daniel Harpst, a Warehouse Director,⁵ Fleet and Facility Maintenance Manager Ricky Chambless, Operations System Analyst Gary Moore, and a Slotting Coordinator.⁶

A. Work Flow

In the morning, food is delivered to the Employer’s Calera warehouse at either its dry dock or cold dock. The record is not clear regarding who delivers the food. Food products that must be refrigerated or kept in a freezer are delivered to the cold dock; other foods arrive at the dry dock. Employees of a third-party service company unload the delivered food. Day-shift Inbound Receivers in the Warehouse Department receive the delivered product. Those the Employer classifies as “Forklift Operators, Putaway” in the Warehouse Department then take the food and place it in reserved storage. Sanitation Technicians who work out of the Fleet and Facility Maintenance Department then clean the docks. The day shift is from about 6:00 a.m. until about 2:30 p.m.

The Router in the Transportation Department, David Starling, routes the trucks. He does this by downloading orders from customers into software called Roadnet, which populates routes based on set routes for that day that Starling preplanned. As Starling is routing, he uploads the routes into a system called Sysco Warehouse Management System, or SWMS.

⁵ This position is currently vacant.

⁶ The Employer promoted the individual who held this position to supervisor of a new program called Delivery Service Center. The promotion was to take effect a week after the representation hearing.

Beginning about 5:30 p.m., the night shift starts to arrive at staggered times. SWMS tells those the Employer classifies as “Forklift Operators, Let Down” in the Warehouse Department which products should be moved, using reach forklifts, from higher shelves to pick slots on the bottom of the shelving.⁷ The orders then move to a system called Sysco Order Selection, or SOS, which tells, through small computers attached to employees’ arms, Outbound Selectors in the Warehouse Department which products to pull, using triple-pallet jacks, from pick slots, where to arrange the products on pallets, and where to stage the pallets on the appropriate cold or dry dock.

The Yard Spotter in the Warehouse Department backs trailers up to the docks and stages them. The orders then move to a system called Sysco Loaders System, or SLS, which tells, through small computers attached to employees’ arms, Outbound Loaders in the Warehouse Department where to place, using single pallet jacks, loaded pallets on the truck. The night shift ends when employees have selected and loaded all groceries for the night, no later than 6:00 a.m.

After the trucks have been loaded, Drivers and Special Delivery Drivers in the Transportation Department deliver the products to customers or Shuttle Drivers in the Transportation Department deliver the trailers to the domicile yards.

B. The Employer’s Warehouse Department

The Employer has a Warehouse Department at its Calera location headed by a Warehouse Director, a position which is currently vacant. Under the Warehouse Director are Inbound Warehouse Supervisor Mike Payne and Outbound Warehouse Manager Antoine Ensley. Supervisor Payne supervises the day shift employees, including Inbound Receivers; Forklift

⁷ The record is not clear how SWMS tells the Forklift Operators, Let Down which products to move, whether it be by handheld computers, centralized terminals, tablets, or smartphones.

Operators, Putaway; Inbound (Will Call) Selectors; Inbound Schedulers; and Returns Put Away. Manager Ensley manages the night-shift employees and directly supervises Outbound Warehouse Supervisors Joshua Lett and Donte Oden and Outbound Warehouse Clerks Jessica Hayes and Jonathon Magnus. Supervisors Lett and Oden supervise Outbound Selectors; Forklift Operators, Let Down; Outbound Loaders; and Yard Spotters.

The warehouse is where food is stored, staged, and loaded for delivery. As discussed above, the Employer uses an intricate system of various software and handheld computers to alert its employees which product to pull from which shelf in which order, where to place that product on the pallets, where to place the pallets for staging, and where to place the pallets on the trucks. The software employees use varies by department and position, but it is interconnected in the sense that one piece of software can upload pertinent information to a different piece of software so that all the parts work together. Some of the handheld computers print labels with a bar code for product cases. Others check the bar codes with handheld computers in what the Employer described as a system of checks and balances.

C. The Employer's Transportation Department

The Employer's Transportation Director is Daniel Harpst. Under him are four Transportation Supervisors (one of which is currently vacant), a Router, and a Clerk. Under the Transportation Supervisors are drivers, Shuttle Drivers, and Special Delivery Drivers, who drive refrigerated vans.

D. The Employer's Fleet and Facility Maintenance Department

The Employer's Fleet and Facility Maintenance Manager is Ricky Chambless. Under him is a Maintenance Supervisor, Fleet Technicians, Maintenance Utility Worker Technicians (Fueler/Washer), Material Handling Technicians, Sanitation Technicians, Refrigeration

Technicians, and Maintenance Coordinators. Employees in the Fleet and Facility Maintenance Department perform preventative maintenance and repairs on the tractors and trailers and on warehouse equipment such as such as forklifts and pallet jacks, oversee the general building maintenance and the refrigeration system for the freezers and coolers, clean the warehouse and office space at the Calera location, order parts, and clean and fuel the tractors and trailers.

E. Wages, Working Conditions, and Other Terms and Conditions of Employment

The wages for employees in the Warehouse Department are from \$17.00 to \$24.00 per hour. Several of the classifications in the Warehouse Department are eligible for the Warehouse Incentive Plan for doing things like working on a forklift after doing receiving work. The record does not show amount of that incentive.

The pay for the various drivers in the Transpiration Department ranges from \$16.50 to \$22.85 per hour. Drivers who deliver products to customers are eligible for Driver Incentive Pay. The record again does not show the amount of that incentive and, in this case, how drivers may earn it.

The wages for employees in the Fleet and Facility Maintenance Department range from \$12.63 to \$25.41 per hour. Within that Department, Sanitation Technicians receive pay from \$12.63 to \$22.68 per hour; Fleet Technicians' pay ranges from \$16.00 to \$25.41 per hour.

All employees have the same benefits package choices, personnel policies, vacation policy, attendance policy, handbook, eligibility for a 401(k) plan, orientation, and access to an Employer intranet site and Sysco Interactive University with online courses. All employees are invited to engagement meetings, which include events such as cookouts, birthday celebrations, or safety-record celebrations.

All employees park their personal vehicles in the same parking lot and use the same entrance. All employees except for drivers clock in at the same place (drivers based in Calera log into a computer in the Employer's office to receive their invoices or manifests for the days; drivers based out of the domicile yards use a system on their tractors, called Telogis, to clock in and out). Employees attend Employer-sponsored holiday gatherings together. All employees have access to the same break room and locker rooms.

Employees in the Fleet and Facility Maintenance Department have standard uniforms that are a traditional dark gray. These uniforms are not taken home and are provided by and serviced by Aramark. Driver uniforms are standardized and designated for customer-facing associates. Employees in the Warehouse Department do not have required uniforms. Warehouse employees may wear an Employer-provided uniform; if they choose not to, they are eligible for a uniform allowance. The driver uniforms and Warehouse Department uniform allowance are coordinated through Transportation Clerk Kali Smith.

There was some evidence at the hearing that supervisors and managers can and should alert employees from other departments about rule violations, but there was no evidence of this having occurred. Fleet and Facility Maintenance Manager Ricky Chambless testified that he recommended discipline for an employee from another department by going to the employee's supervisor or manager and reporting the violation he had witnessed. He recommended that the supervisor or manager give the employee a verbal warning. Chambless testified that it was up to the employee's supervisor or manager to determine whether to discipline the employee and that he did not know what discipline, if any, the Employer imposed on that employee.

The Employer has a warehouse-to-driver program under which the Employer trains selected employees to obtain their commercial driver's license. After employees complete that

training, they work under the Transportation Department and are taken to the Department of Motor Vehicles to take the test for their commercial driver’s license. Once the employee passes the test, he or she goes out with a trainer on three trucks to learn how to drive. The hearing provided evidence of four employees, three from the Warehouse Department and one from the Fleet and Facility Maintenance Department, who completed, or are in the process of completing, the warehouse-to-driver program. At the time of the hearing, there was an additional position open for someone to join the warehouse-to-driver program. The evidence thus showed a total of five employees who have completed, are in the process of completing, or may complete the program. There are 73 employees in the petitioned-for unit of warehouse employees.

Employees in the Warehouse Department occasionally go on trucks to see how their jobs affect drivers’ jobs. When someone from the Warehouse Department is assigned light duty, he or she often works with the Sanitation Technicians from the Fleet and Facility Maintenance Department. The warehouse employee on light duty keeps his or her regular rate of pay during this time. Drivers who had been Outbound Selectors sometimes work extra time as Outbound Selectors.

II. Analysis

A. The Legal Standard

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). If the unit the petitioner seeks is an appropriate unit, the Board will not impose an alternative appropriate unit. *Dezcon*, 295 NLRB 109 (1989).

In *PCC Structurals*, 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*, 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 Board in *United Operations* said:

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.

338 NLRB at 123.

In *PCC Structurals*, the Board further held:

[A]pplying 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, “[t]he Board must determine whether ‘excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.’” *PCC Structurals*, 365 NLRB No. 160, slip op. at 11, quoting *Constellation Brands US Operations, v. NLRB*, 842 F.3d 784,794 (2d Cir. 2016) (emphasis in original).

B. The Petitioned-For Unit of Warehouse Employees is an Appropriate Unit

Analyzing the factors the Board uses to make these determinations, I find that the employees in the petitioned-for unit of warehouse employees share a community of interest

sufficiently distinct from the remainder of the Employer’s Operations Department and that employees in the remainder of the Operations Department have meaningfully distinct interests that outweigh similarities with the petitioned-for warehouse unit. While the hearing showed evidence of functional integration and interaction among the employees in the Employer’s suggested unit of all Operations Department employees, the remainder of the community of interest factors outweigh these elements.

1. Separate Departments

The Employer has organized its departments and supervisory structure so that the warehouse employees are under separate day-to-day supervision from the remainder of the Operations Department. Although the Transportation Department, Warehouse Department, and Fleet and Facility Maintenance Department all ultimately fall under the management of Operations Vice President Vertein, there are two or three layers of supervision, depending on the position, between Operations Vice President Vertein and warehouse employees.⁸ There are one or two layers between transportation employees and Operations Vice President Vertein,⁹ and there is one layer between fleet and facility maintenance employees and Operations Vice President Vertein.¹⁰ Although supervisors and managers are permitted to coach employees from other departments,

⁸ Inbound Warehouse Supervisor Mike Payne and Outbound Warehouse Manager Antoine Ensley report to a Warehouse Director, a position which is currently vacant. The Warehouse Director in turn reports to Operations Vice President Vertein. Under Supervisor Payne are the day shift Warehouse Department employees. Under Manager Ensley are Outbound Warehouse Supervisors Joshua Lee and Donte Oden and an Outbound Warehouse Clerk. Under the Outbound Warehouse Supervisors are the remainder of the night shift Warehouse Department employees.

⁹ Four Transportation Supervisors (one of which is vacant) supervise the Transportation Department employees. The Transportation Supervisors report to Transportation Director Daniel Harpst, who reports to Operations Vice President Vertein.

¹⁰ Maintenance Supervisor John Lunsford supervises the employees. Lunsford reports to Fleet and Facility Maintenance Manager Ricky Chambless, who reports to Operations Vice President Vertein.

there is insufficient evidence to show that they have exercised statutory supervisory authority over employees outside their department.

2. Distinct Skills and Training

The hearing provided some evidence showing that employees in the various departments have distinct skills and training and some evidence showing that all employees shared some training. Drivers in the Transportation Department who drive single axle or tandem axle trailers outside the Employer's property must have a commercial driver's license. Other vehicles that Transportation Department employees drive, such as refrigerated vans and short, straight trucks, do not require any special driver's license.

All employees who drive any vehicles for the Employer more than six times per year must attend a driver training program called the Smith System. Vice President Vertein testified he was not aware of any employees in the Warehouse Department who had gone through the Smith System. He testified that some employees in the Fleet and Facility Maintenance Department had gone through that training, including fleet shop mechanics and the fleet shop clerk.¹¹

All employees go through the same onboarding process, consisting of being added to the Employer's payroll system and attending a series of trainings related to the Employer's code of conduct, work rules, expectations, and safety. This onboarding process does not discriminate based on classification or department, so a manager, a driver, and a warehouse employee could be, and often are, in the same onboarding classes.

¹¹ The record is not clear on what a fleet shop clerk does or who the fleet shop clerk is. This reference is the only reference to such a title in the record, and the Employer's organization charge, Exhibit E-1, does not identify such a position.

3. Distinct Job Functions

While the employees in the Operations Department all work for the singular goal of providing accurate and timely deliveries to customers, each department is responsible for independent parts of that goal and each department has distinct job functions in pursuit of that goal. The Warehouse Department is responsible for receiving products that are delivered to the warehouse, selecting products to go onto trucks, and loading trucks. The Transportation Department is responsible for delivering the product to the Employer's customers. The Fleet and Facility Maintenance Department is responsible for maintaining and repairing equipment Transportation and Warehouse Department employees use, and cleaning the facility.

4. Functional Integration

The employees in the Employer's overall Operations Department are functionally integrated with one another in the distribution process in the sense that the Employer needs all these employees to achieve the Employer's goal of delivering products to customers. The Warehouse Department and Transportation Department rely on the Fleet and Facility Maintenance Department to ensure their equipment is functioning properly and is properly fueled. The drivers in the Transportation Department rely on Outbound Selectors and Outbound Loaders in the Warehouse Department selecting the correct product for customers and loading pallets and products correctly to facilitate delivery to the Employer's customers. Each of the computer systems used by the various departments are distinct, but they can receive information from each other.

5. Frequent Contact

The employees in the overall Operations Department, the Employer's suggested unit, interact. All employees, except those who work out of the domicile yards, park in the same parking

lot at the Calera facility and use the same entrance. Employees except for the drivers use the same time clock, and all employees have access to the same break room and locker rooms.

Drivers in the Transportation Department and Spotters in the Warehouse Department communicate with one another about where to park trailers. Employees in the Warehouse Department talk to Material Handling Technicians in the Fleet and Facility Maintenance Department about issues with forklifts or pallet jacks. Drivers talk to the Fleet Technicians in the Fleet and Facility Maintenance Department daily about any issues with tractors, trailers, or other delivery vehicles. Shuttle Drivers talk to the Warehouse Clerk daily to find out where their bills are¹² and what trailers they are taking to different locations.

Material Technicians in the Fleet and Facility Maintenance Department work in the facility maintenance area located near the dry warehouse.

The proximity of some of the employees, coupled with the shared parking lot, entrance, break room, and locker room, likely results in some incidental interaction between employees. However, half of the employees in the Fleet and Facility Maintenance Department work in the fleet shop, which is a separate building from the warehouse located some distance away with a tractor-trailer parking lot between the two buildings. Drivers are out of the warehouse most of the day delivering products. There was no evidence that drivers based out of the domicile yards are ever at the Calera facility, except possibly for the onboarding process.

The Employer holds group meetings, called town halls, to disseminate information to employees. Drivers are not invited to those meetings but instead get the same information through their supervisors or morning briefings. Employees in the Warehouse Department and Fleet and

¹² The record is not clear as to what a “bill” is or where they might be.

Facility Maintenance Department can, and often do, attend the same meetings about policy changes. The drivers attend if they are physically in the building. All employees are invited to engagement meetings such as cookouts and celebrations. The Employer’s annual safety meetings are mostly for the Transportation Department, but employees of the Fleet and Facility Maintenance Department are included. The Warehouse Department employees are not required to attend.

6. Interchange

The hearing provided a few isolated examples of employee interchange. For example, a driver may load a trailer when necessary after Outbound Loaders have left the facility or a warehouse employee may be asked to volunteer as a driver helper during the busy season or a Shuttle Driver may wash his or her own truck, but for the most part, employees do not interchange with one another. When they do, they are kept on their same pay and job code while acting in the other capacity.¹³

There was quite a bit of testimony about the warehouse-to-driver program, but that program is a way for the Employer to obtain more drivers by promoting employees from other areas of the Operations Department. An Inbound Receiver, for example, would apply for the warehouse-to-driver program and, if accepted, leave his or her position as an Inbound Receiver to enter the training program. At that point, the employee would no longer be an Inbound Receiver and

¹³ In its brief, the Employer cited the Regional Director’s decision in *Ohio Valley Wine Co.*, Case 09–RC–223292 (July 25, 2018), for the proposition that the integrations of operations and employee interchange in this case warrants an overall Operations Department unit. Another Regional Director’s decision is not binding on me. The citation is, in any event, inapt. The Regional Director in that case found that warehouse personnel substituted for drivers weekly, that drivers not assigned to routes must work in the warehouse on Mondays, and those on special routes must do so as well. Nearly half of the employees in one classification came from the other. That degree of interchange is lacking in this case and thus, applying the same legal standard as the Regional Director for Region 9 to the facts here, I have reached a different result.

therefore would not be a warehouse employee. He or she would be a transportation employee, not a warehouse employee interchanging with the Transportation Department.

7. Terms and Conditions of Employment

All employees of the Employer have the same benefits options, are subject to the same policies, are serviced by the same Human Resources department, and are subject to the same discipline system. The Employer has policies with many common benefits and rules applicable to both the petitioned-for unit of warehouse employees and the employees the Employer seeks to add to the unit. In addition, the hourly wages of both groups of employees are similar.

However, some classifications of the Warehouse Department are eligible for the Warehouse Incentive Plan, and some classifications of the Transportation Department are eligible for the Driver Incentive Pay. There is no similar incentive plan for the Fleet and Facility Maintenance Department.

The employees in the three different departments have different uniforms.

8. Separate Supervision

As discussed above, the Employer has divided the Operations Department, its suggested unit, into three separate departments, each with its own supervisory structure. No employee in the Warehouse Department, the petitioned-for unit, reports directly to Operations Vice President Vertein. Not even their supervisors report to the Operations Vice President; a Warehouse Director is between the Warehouse supervisors and managers and Vertein.

9. Case Authority

In the following cases, which present similar fact patterns to the instant case, the Board concluded that drivers should be excluded from petitioned-for units of other employees because the drivers had a separate community of interest. In *E.H. Koester Bakery Co.*, 136 NLRB 1006

(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 is 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 interest from those of other employees as to negate any mutuality of interest between the two groups, we shall exclude them.

Id. at 1011.

The *E.H. Koester* Board excluded truckdrivers 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. Id. 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 licenses, spent most 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 employees in the Employer’s Warehouse Department constitute a separate appropriate unit.

The Employer cited several cases where the Board included drivers and warehouse workers in the same unit. However, the Employer’s reliance on these cases is misplaced. In *Ozburn-Abston and Co.*, 112 NLRB 936 (1955), the drivers were part of the warehouse payroll and were under the immediate supervision of the warehouse foreman. This is not the case here.

The drivers added to the unit in *Matinelli & Co.*, 99 NLRB 43 (1952), were driver-salesmen who solicited orders for the Employer, occasionally worked in the plant during their regular hours after completing deliveries and worked in the plant during the Employer’s busy season after their regular hours. While there is some evidence in this case of warehouse workers occasionally acting as driver helpers (not drivers) during the busy season, there is no evidence that drivers regularly act as warehouse employees or that warehouse employees act as drivers.

The Board found in *Birdsall Inc.*, 268 NLRB 186, 190 (1983), that the Regional Director had “artificially characterized” employees into warehouse and non-warehouse functions. Here, the Employer characterized its employees as warehouse, transportation, or fleet and facility maintenance. Additionally, the employer in *Birdsall* operated with “a high degree of functional integration, including substantial interchangeability and contact among employees.” *Id.* Employees were frequently shifted around on an ad hoc basis. *Id.* This is not the case here.

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 six-month slack period. Additionally, some plant clerks drove trucks. The Board also relied on the fact that the unit consisting of 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. Here, there are distinct supervisors and managers for each department.

In *Calco Plating*, 242 NLRB 1364 (1979), where the Board included five 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. Here, only the employees in the Transportation Department drive delivery vehicles, except for the incidental driving by Fleet and Facility Maintenance Department and Warehouse Department employees for spotting or fueling and washing purposes.

In *Atchison Lumber*, 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. Here, drivers have far less interchange with warehouse and fleet and facility maintenance employees.

In *Donald Carroll Metals*, 185 NLRB 409 (1970), the Board added drivers to a unit of warehouse employees because the drivers spent approximately 35 to 40 percent of their working hours in the plant. Eighty percent of the time in the plant was spent working along with production employees scaling, loading, and unloading trailers. Here, there is scant evidence of drivers working in the warehouse.

In *Boyden Logging*, 164 NLRB 1069 (1967), the Board found a community of interest between five drivers and a unit of two hook tenders, a rigging slinger, a chockersetter, a chaser operator, a track loader, a triple drum operator, a shovel operator, and a shop employee because the drivers, like the other employees, performed multiple jobs and had the same supervision. The drivers spent between five and 25 percent of their time performing the job duties of other employees. Also, when a driver was sick or had an emergency, another employee would drive the truck. The Board distinguished this case from others where drivers are in separate, appropriate units because the drivers in *Boyden Logging* were not involved in “functionally distinct and homogeneous groups whose duties and interests were different from those of [] other employees.” Id. Here, the drivers can be distinguished from the warehouse employees, who can, in turn, be distinguished from the fleet and facility maintenance employees.

10. Conclusion

The functional integration of and interaction between the Employer’s overall Operations Department, including the Warehouse Department within the Operations Department, favor a finding that the unit must include the additional employees suggested by the Employer. The other community of interest factors, however, outweigh these similarities and establish that the warehouse employees do not share a sufficient community of interest with the employees in the remainder of the Operations Department such that they must be included in the larger unit. Accordingly, I find that a unit consisting of employees who work in the Employer’s Warehouse Department constitute an appropriate unit for the purposes of collective bargaining and shall order an election within that unit.

III. Conclusions

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.¹⁴
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.
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.
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 Inbound Receivers; Forklift Operators, Putaway; Inbound (Will Call) Selectors; Inbound Schedulers; Returns Put Away; Outbound Selectors; Forklift Operators, Let Down; Outbound Loaders; Yard Spotters; and Outbound Warehouse Clerks employed by Sysco Central Alabama, Inc. at its warehouse located in Calera, Alabama, excluding Drivers, Shuttle Drivers, Special Delivery Drivers, Routers, Clerks, Operations Systems Analysts, Slotting Coordinators, Fleet Technicians, Maintenance Utility Workers Technicians (Fuelers/Washers), Material Handling Technicians, Sanitation Technicians, Refrigeration Technicians, and Maintenance Coordinators, and all office clerical employees, professional employees, guards and supervisors as defined in the Act.

¹⁴ The Employer objected to presenting its evidence first, and that objection remains outstanding. I overrule the objection. The Guide for Hearing Officers in NLRB Representation and Section 10(k) Proceedings states, at p. 18, "Generally the employer should begin, but the hearing officer can use his/her own judgment and have the parties present their evidence in whatever order makes the most sense. Ordinarily, a witness should be presented to testify about the overall structure of the Employer's operations and organization." The hearing officer properly exercised his judgment in having the Employer present its evidence first.

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 they wish to be represented for purposes of collective bargaining by Teamsters Local 612.

A. Election Details

The election will be held on Thursday, **May 23, 2019**, from 6:00 a.m. to 8:00 a.m. and from 6:00 p.m. to 8:00 p.m. in multi-purpose rooms 2 and 3 at the Employer's facility at 1000 Sycamore Drive, Calera, Alabama.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **May 4, 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.

To be timely filed and served, the list must be *received* by the regional director and the parties by Wednesday, May 8, 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.nlr.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.nlr.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 these 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 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 three 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.

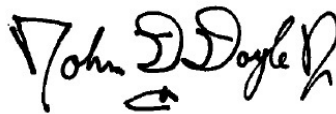
V. Right to Request Review

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.nlr.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.

Dated: May 6, 2019



John D. Doyle Jr., Regional Director
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National Labor Relations Board
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