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UNITED STATES AND CANADA, AFL-CIO

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 32

AUDIO VISUAL SERVICES GROUP, INC.
DBA PSAV PRESENTATION SERVICES,

Employer,

and

IATSE LOCAL 611, INTERNATIONAL
ALLIANCE OF THEATRICAL STAGE
EMPLOYEES & MOVING PICTURE
MACHINE OPERATORS OF THE UNITED
STATES AND CANADA, AFL-CIO,

Petitioner.

No. 32-RC-257578

**UNION'S REQUEST FOR REVIEW OF
REGIONAL DIRECTOR'S DECISION
DISMISSING PETITION**

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I. PROCEDURAL BACKGROUND

The Union petitioned-for a unit of “full-time and regular part-time riggers, lead riggers, technicians, technical specialists, technical leads, and technical supervisors,” employed by Audio Visual Services Group, Inc., d/b/a PSAV (“Employer” or “PSAV”), excluding “[a]ll other employees, including guard office clericals, and supervisors under the Act.” (Bd. Ex. 1(a)). The petitioned-for unit included employees whose home properties are located on the Monterey Peninsula at the Monterey Conference Center (“MCC”), InterContinental the Clement Monterey (“Clement”), and the Hyatt Regency Monterey Hotel and Spa (“Monterey Hyatt”), all located in Monterey, California, as well as employees whose home property is Asilomar Hotel and Conference Grounds (“Asilomar”), located in the neighboring town of Pacific Grove, California (all four properties are hereinafter referred to as the “Monterey Properties”) (*Id.* at Attachment 1).

Employer’s statement of position contends that:

The appropriate bargaining unit would include all PSAV employees working as part of the employer’s audio-visual operations. This includes employees working in the following job classifications:

Included: All full-time and part-time Concierges; Technicians; Technical Leads; Technical Supervisors; and Technical Specialists.

Excluded: All other employees, office and clerical employees, guards, managers, and supervisors as defined by the Act.

Locations

The appropriate geographic area for the bargaining unit should include all locations where PSAV employees are performing work within the cities of Half Moon Bay, Monterey, Santa Clara, and San Jose.

(Bd. Ex. 2).

A telephonic¹ hearing was held on April 20, 21, and 22, 2020, and the parties were given the opportunity to submit post-hearing briefs. In sum, the Union contended in its brief that

¹ After the Board’s decision in *Morrison Healthcare*, 369 NLRB No. 76 (2020), the Region gave both parties the opportunity to examine witnesses via videoconference. Both parties executed a Waiver of Right to Videoconference Hearing, agreeing to waive their right to a videoconference hearing. (Decision at 10, n.4).

because of the tight geographic area where the Monterey Properties lie when compared with the San Jose, Santa Clara, and Half Moon Bay properties (“Bay Area Properties”), the distinct effects of certain terms and conditions of employment on the employees of the Monterey Properties (“Monterey Employees”), greater functional integration and amongst the Monterey Employees than the employees of the Bay Area Properties² (“Bay Area Employees”), greater interchange among the Monterey Employees than between Monterey Employees and Bay Area Employees, and a history of the Union bargaining one-off agreements with the Monterey Properties, there is a community of interest shared by the Monterey Employees that is distinct from that shared among the Monterey Employees with the Bay Area Employees (Union’s Post-Hearing Brief at 13-18).

The Employer contended in its post-hearing brief that “the PSAV employees with home locations in Half-Moon Bay, San Jose, and Santa Clara, share a community of interest with the petitioned-for PSAV employees with a home location in Monterey” because they all work within the same operations department, share similar skills and work in the same job classifications, work together to provide services to PSAV’s clients, have frequent interchange, have the same terms and conditions of employment, work within the same geographic area, and because there is no bargaining history between the Employer and the Union with respect to the petitioned-for unit (at 8-17).³

The Regional Director’s Decision (“Decision”) found that “the petitioned-for unit limited to the Employer’s four Monterey jobsites, or alternatively, the Employer’s Monterey and Half Moon Bay jobsites, is inappropriate, as the employees employed at the Employer’s Monterey and Half Moon Bay jobsites do not are a community of interest distinct from that shared with

² The Union’s post-hearing brief labeled these properties “Northern Properties.” This Request for Review labels these same properties as “Bay Area Properties.”

³ The issue is not whether the Monterey Employees share a community of interest with the Bay Area Employees; it is whether the Monterey Employees share a community of interest among each other that is distinct from any community of interest shared with the Bay Area Employees.

Employees at the Employer’s San Jose and Santa Clara jobsites.” (at 6-10).⁴

II. SUMMARY OF ARGUMENT

The issue in this RC petition is whether the petitioned-for unit—comprised of the technicians who work at four venues within about a five mile radius on the Monterey Peninsula—shares a community of interest that is distinct from any that is shared with the employees at the excluded locations in San Jose (approximately 72 miles from Monterey), Santa Clara (71-77 miles from Monterey), and Half Moon Bay (91-110 miles from Monterey). The Union brings this Request for Review on the grounds that the Decision (1) was clearly erroneous on the record as to substantial factual issues and such issues prejudicially affect the rights of the Union, and (2) raises a substantial question of law or policy because of a departure from Board precedent. 29 CFR 102.67(d)(1),(2).

The Decision was clearly erroneous on the factual finding that limited the Employer’s Human Resources manager’s responsibility to the 20 properties because the evidence showed the Human Resources manager also was responsible for employees outside of those properties. The Decision was also clearly erroneous in failing to make factual findings that: (1) the Employer’s Human Resources manager who is responsible for the 20 properties is also responsible for other properties; (2) the Monterey Hyatt was the hub for part-time employees to be distributed as needed to other Monterey Properties; (3) that the Employer has communicated its expectations and guidelines to property directors that they be prepared during the Wednesday meeting with tentative schedules for the following week; (4) that each week the Monterey property directors make sure all Monterey Employees receive the schedules for all Monterey Properties, even if they are not working at a given Monterey Property; and (5) that Monterey Employees get travel

⁴ The Union did argue alternatively that an appropriate unit would include the Monterey Properties and the Half Moon Bay property (*See generally* Union’s Post-Hearing Brief and Hearing Transcript). But the Union did indicate that it would be willing to go to an election if the Region concluded that the Half Moon Bay employees had to be included in the unit. The evidence at the hearing revealed that at least one manager considered the “Monterey subregion” to include Half Moon Bay and there was greater interchange between the Monterey and Half Moon Bay properties than between the Monterey Properties and the San Jose or Santa Clara properties. But the Union did not contend that an appropriate unit would include the Monterey Properties and the Half Moon Bay property.

time more often than Bay Area Employees because they travel more than 60 miles more often than do Bay Area Employees. These first four facts relate to the Decision's findings regarding the Employer's departmental organization and the extent of centralized control of management and supervision and help illustrate how and why the Monterey Properties are more integrated than are the 20 properties in general. The last fact relates to the factor of whether the Monterey Employees share conditions of employment distinct from those of Bay Area Employees. These errors prejudice the Union's right for a decision to reflect all relevant evidence when the Region determines whether the petitioned-for unit is "appropriate for the purpose of collective bargaining." 29 U.S.C. § 153(b); *see also* § 159(b), (c).

The Decision departed from reported Board precedent in its analysis of each of the community of interest factors, as well as its ultimate finding that the Monterey Employees do not share a community of interest distinct from that shared with the Bay Area Employees. The Decision was wrong because: the Monterey Employees consistently work with each other within a tight geographic range of about five miles; have extensive interchange and interaction amongst each other at the Monterey Properties that far exceeds the interchange between them and Bay Area Employees; the interchange that does occur is almost exclusively one-way interchange of the Monterey Employees temporarily working at the Bay Area Properties; the Monterey Employees primarily report to the Directors of the four Monterey properties which are more functionally integrated among each other than they are with the Bay Area Properties; and have certain terms and conditions of employment that in practice only applies to them. As such, contrary to the conclusions in the Decision, the Monterey Employees share a clear community of interest with each other that is distinct from any community of interest shared with the Bay Area Employees.

III. SUMMARY OF EVIDENCE

A. THE MONTEREY PROPERTIES ARE LOCATED WITHIN A FIVE-MILE RADIUS, WHILE THE BAY AREA PROPERTIES RANGE 71 TO 110 MILES FROM MONTEREY

Each of the Monterey Properties are within about a five mile radius (Union Ex. 7). San Jose is located approximately 72 miles north from Monterey (Union Ex. 3). Santa Clara is located 71-77 miles from Monterey, depending on the route (Union Ex. 4). Half Moon Bay is 91-110 miles from Monterey (Compare Union Ex. 3 with Union Ex. 6).

B. EMPLOYEE SKILLS AND DUTIES HAVE NO DISCERNIBLE DIFFERENCE BETWEEN THE MONTEREY PROPERTIES AND BAY AREA PROPERTIES

Respondent provides technical services, such as lighting, internet, audio, and sound, to hospitality venues, hotels, and convention centers (Tr. 27). Technicians are entry level hourly employees, who complete more basic tasks and help other employees (*Id.*). Duties include, setting up rooms, making sure batteries are charged, conducting walkthroughs throughout the day, engaging in some client interface, taking down sets, putting up heat lamps, and other tasks as directed (Tr. 119).

Technical leads handle more complicated setups and may monitor or operate equipment during an event such as soundboards, lighting boards, and video equipment (Tr. 27-28). This includes running shows that requires more technically advanced knowledge; operating soundboards, video switching, special sound equipment, special projection equipment; increased client interaction; taking care of last minute changes; obtaining equipment; and ensuring the space is neat and tidy (Tr. 120-21).

Technical supervisors have more experience and more responsibility than a lead (Tr. 28). They have higher knowledge and “supervisory” duties to run a crew (*Id.*).⁵ Technical specialists are highly skilled technical workers with at least one very high end skill in video, lighting, or sound (Tr. 29). They lead more complicated setups and are the highest level technician on a show (*Id.*). They can serve as the lead for audio, visual, or another role (*Id.*). For all of the

⁵ There is no contention made by any party that they are section 2(11) supervisors.

properties involved in this petition there is only one concierge at the Half Moon Bay property (Bd. Ex. 2). The concierge interfaces with customers, hotel partners, and Respondent's technicians on site (Tr. 29). Regardless of job title, it is common to have people of multiple job descriptions performing work on a given show (Tr. 30).

The evidence at the hearing did not establish any notable difference regarding the duties performed by technicians⁶ at one venue versus another.

C. WHILE EMPLOYER POLICIES BROADLY APPLY TO ALMOST ALL EMPLOYEES, ONLY THE MONTEREY EMPLOYEES ARE PERIODICALLY ELIGIBLE FOR TRAVEL PAY AND TRAVEL LONGER DISTANCES

Many terms and conditions of employment are uniform for PSAV's employees, including their managers. The Employee Guidebook (Employer Ex. 1) applies to all employees throughout the approximately 45-47 states in which they operate (Tr. 54). The Guidebook applies not only to the technicians, but also to property directors, regional vice presidents, regional directors of venues, divisional vice presidents, senior vice presidents, and executive vice presidents (together "Company Managers") (Tr. 54-56). The Company offers the same employee benefit plan to its full-time and part-time employees, including Company Managers (Employer Exs. 2 & 3; Tr. 57). The Company offers a 401k plan to all employees, including Company Managers, who qualify (Employer Ex. 4; Tr. 57).

Certain terms and conditions apply only to Northern California employees. Employer Exhibit 5 is the Northern California Parking & Transportation Reimbursement policy, which applies to both managers and hourly employees (Employer Ex. 5 at 1). The policy provides for reimbursement for public transportation, parking, cab/Uber/Lyft, and mileage, as well as travel time for employees who drive more than 60 miles to a show.

There is one significant portion of this policy that practically only applies to the Monterey Employees. This is the travel time policy, which entitles employees to be paid for travel time for working "at a location more than 60 miles from your home location" (*Id.* at

⁶ When referring to technicians, the term will be used generically to any technician position, not only the entry-level technicians.

2). In practice, this policy does not apply to the Bay Area Employees, except on exceedingly rare occasions. This is because the distance between San Jose and San Francisco⁷ is either 48 or 55 miles depending on the route (Union Ex. 5). The distance between Half Moon Bay and San Jose is 40.3 miles (Union Ex. 6). And the cities of San Jose and Santa Clara are adjacent to each other. Therefore, employees driving from their home area in San Jose, Santa Clara, or Half Moon Bay to properties in either of the other two cities have significantly shorter drives, all of which are less than 60 miles. And since the Bay Area Employees only work an average of .17% of their hours in Monterey it is exceedingly rare that they make the long trip to Monterey and are eligible for travel pay (Demonstrative Ex., Table 1).⁸ Therefore, while Bay Area Employees may work away from their home properties at other Bay Area Properties on a frequent basis (*See* Employer Ex. 6), they almost never travel to Monterey or are eligible for travel pay.

In contrast, Monterey Employees spend an average of 4.4% of their hours in Bay Area Properties (Demonstrative Ex., Table 2). And since the minimum distance between Monterey and the cities where the Bay Area Properties are located is 71 miles (Union Exs. 3, 4, & 6), whenever Monterey Employees drive away from their home properties, they drive longer distances and are eligible for travel time. For Monterey Employees, occasional travel up north is part of the job; For the employees of the Bay Area Properties, occasional travel down to Monterey is not.

D. THERE IS GREATER FUNCTIONAL INTEGRATION OF BUSINESS OPERATIONS AMONG THE MONTEREY PROPERTIES THAN BETWEEN THE MONTEREY PROPERTIES AND THE BAY AREA PROPERTIES

Respondent's business is to provide staffing for its clients' various events. It has integrated its operations in part by utilizing an application called Lighthouse, an app developed

⁷ The maximum distance driven by the employees in of the Bay Area Properties would be from San Jose to San Francisco.

⁸ The Union's Demonstrative Ex. was filed along with the Union's closing brief and is based on the data contained in Employer Exhibit 6, as well as the data contained in Unions Exhibits 1 and 2. The Exhibit is also created based on the testimony of Ross Gimpel and Andrew Hurchalla.

by the Employer so that technicians can access schedules and get event, location, and other information (Tr. 260-62).

Respondent is tasked with making sure it can serve its customers throughout the Region. In order to accomplish that, it conducts weekly calls each Wednesday (Tr. 59). One of these calls is dedicated to the San Mateo County, South Bay, and Monterey areas, including Half Moon Bay, Monterey, Santa Clara, and San Jose (Tr. 38).⁹ This call is run by the Regional Workforce Manager and sometimes attended by Gimpel (*Id.*). Also on the call is each location manager in charge of scheduling, which is generally the Director of the property called the Director of Event Technology (“Property Director”) (Tr. 39, 52-53). The purpose of the call is to make sure each property’s scheduling needs are met. The calls are scheduled for a half hour but can finish in as fast as five minutes (Tr. 63). Property directors, and others in charge of scheduling, are expected to be prepared to discuss their scheduling needs, as well as when they have employees available to work at other locations (Tr. 271-272). This includes having tentative schedules prepared (*Id.*). During this Wednesday call, most of the property directors and others in charge of scheduling remain silent (Tr. 279). Participants only speak up when they have scheduling needs at their property or employees with open availability to work at other properties (Tr. 279-280). The Wednesday call is a “higher-level, broader discussion about the region as a whole” (Tr. 279).

Separate and apart from the Wednesday workforce meetings, the four Monterey property directors hold weekly calls every Tuesday (Tr. 168-170, 179, 180, 190-192, 216, 278, 279). This call is the Monterey property directors’ “opportunity to focus solely on Monterey and share the resources we have locally before coming to the wider Wednesday call.” (Tr. 281). Regional Director of Venues Jeff Hendricks sometimes participates in these calls, mostly in an advisory role (Tr. 287). During these Tuesday calls, the four Monterey property directors are usually able to take care of their scheduling needs by utilizing the Monterey Employees (*Compare* Employer

⁹ There is also a separate Wednesday call for the Sacramento, Sonoma, and Tahoe areas (Tr. 88-89, 101, 105).

Ex. 6 *with* Demonstrative Ex., Table 5). In fact, the Monterey property directors are able to cover 94.9 % of their staffing needs with Monterey Employees who work either at the director's own property or one of the other three Monterey Properties (*Id.*). The Monterey Properties have only needed to utilize Bay Area Employees .57% of the time over the 24 months prior to the hearing (Demonstrative Ex., Table 5). That means that the Monterey Directors are able to cover 99.43% of their shifts with Monterey Employees, including employees dispatched by Local 611 (Tr. 79, 80, 233-242; Union Exs. 1 & 2; Demonstrative Ex., Table 5).

By Thursday, the Monterey property directors are expected to have their final schedule completed. Once the schedule is complete each of the four property directors sends an email to all of the Monterey Employees containing a PDF of that property's schedule for the upcoming week (Tr. 33, 59, 128-129, 131, 144, 149, 168, 170, 183, 190, 192-193). The Monterey Employees receive this email for all Monterey Properties even if they are not going to work at another Monterey Property that week (Tr. 129-130, 192-193). The Monterey Employees do not similarly receive schedules for the Bay Area Properties on a weekly basis (Tr. 129-130, 193). The only time they do receive a schedule from a Bay Area Property is if they are scheduled to work at that Bay Area Property (Tr. 130).¹⁰

Additionally, for the Monterey Properties, the Monterey Property directors structure its scheduling so that the Monterey Hyatt is the "hub" for part-time employees to be distributed to other Monterey Properties as needed (Tr. 141). As such, Ricardo "Ricky" Bejar, a part time employee (Tr. 120), has worked 72.5% of his hours at Monterey Properties away from his home location (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 2). This is another unique feature of the Monterey Properties that shows greater functional integration among them than between them and the Bay Area Properties.

¹⁰ None of the facts contained in this paragraph was rebutted by Miles Wade, one of Employer's rebuttal witnesses.

E. INTERCHANGE OF MONTEREY EMPLOYEES TO OTHER MONTEREY PROPERTIES IS REGULAR; WHILE INTERCHANGE OF MONTEREY EMPLOYEES TO BAY AREA PROPERTIES IS IRREGULAR

The Monterey Employees regularly work away from their home property at other Monterey Properties. On average, Monterey Employees work 22% of their hours at other Monterey Properties, away from their home property (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2). In particular, Ches Moore sees other Monterey Employees working at MCC “fairly regularly. . . .” (Tr. 197). This is because MCC holds larger events and there is too much work to be done for only Moore and one other person work the entire show (Tr. 197-98). Besides MCC, Monterey Employees regularly see each other at other Monterey Properties. As testified by Moore, “we’ll see each other because . . . Hyatt [employees] come over here. Every now and again I do go to Asilomar and then I’ll talk with Alex over there. We see each other so regularly . . . we’re all work partners, so we’ll just talk and hang out, do stuff” (Tr. 200).

This familiarity helps directors cover open shifts. Monterey Property director Miles Wade has asked Moore’s opinion on who should take a shift from a list of technicians (Tr. 224). Wade has asked technicians, for example, whether to select one employee or another to cover an open shift, and Ches Moore has responded, “well, Stephen works camera so we should put him with the video guys, and [then Wade will assign] Stephen in the video slot. And we’re like, Cullen like[s] lighting so put him in the lighting position help, too.” (*Id.*). Moore has then suggested particular technicians based on their specialty (*Id.*).

On occasion, Monterey Employees work at Bay Area Properties. They work at San Jose or Santa Clara properties 1.3% of the time and in Half Moon Bay 3.3% of the time. The following discusses how often each Monterey Employee for whom data was provided by Employer Exhibit 6 works at different types of properties.

1. Colton Beck (Monterey Hyatt)

Beck has worked 75.4% of his hours at his home location (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 6). He has worked at Asilomar 6.2% of the time, at MCC 8.8% of the time, and Clement 4.7% of the time (*Id.*). In total, he has worked nearly 20% of his hours at other

Monterey Properties outside of his home hotel (*Id.*). He estimates that he works at Asilomar an average of 2-3 times per month, at Clement 1-2 times per month, and at MCC between 2 to 4 times per month (Tr. 171-72).

In contrast, Beck has worked only 1.5% of his hours at San Jose or Santa Clara properties, and 1.9% of his hours at the Half Moon Bay property (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2). He last worked in Half Moon Bay around September 2019 (Tr. 170-71) and in San Jose and Santa Clara in around May or June of last year (Tr. 171).

2. Ricardo Bejar (Monterey Hyatt)

Bejar has worked only 26.3 % of his hours at his home location (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 6). Half of his hours have been at Asilomar, 18.7% of his hours have been at MCC, and 3.8% of his hours have been at Clement (*Id.*). In sum, he has worked 72.5% of his hours at Monterey Properties away from his home location. This is not surprising given that the Hyatt is the “hub” for part-time employees to be sent to other Monterey Properties (Tr. 141).

In contrast, Bejar has worked only 1.19% of his hours at a San Jose or Santa Clara property and 0% of his hours in Half Moon Bay ((*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2).

3. Christopher Casuga (Clement)

Casuga has worked 92.5% of his hours at his home property. (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 6). He has worked .85% of his hours at Asilomar and 4.6% of his hours at MCC (*Id.*). In sum, he has worked 5.45% of his hours at other Monterey Properties away from his home location.

By contrast, Casuga has worked .77% of his hours at Santa Clara or San Jose properties, and .69% at Half Moon Bay (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2).

4. Alexander Gonzales (Asilomar)

Gonzales has worked 86.6% of his hours at his home property (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 6). He has worked 1.9% of his hours at Monterey Hyatt, 8.7% of

his hours at MCC, and 1.7% of his hours at Clement, for a total of 12.3% of his hours worked at other Monterey Properties away from his home location.

By contrast, Gonzales worked .58% of his hours at Santa Clara or San Jose properties and 0% of his hours at Half Moon Bay properties. (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 2)

5. Greg Johns (MCC)

Greg Johns has the fewest hours listed. He worked 33.18 hours at his home property and has not worked at any other Monterey Property (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 6) or Bay Area Property (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 2).

6. Robert Lindall (Monterey Hyatt)

Lindall has worked 58.6% of his hours at his home property. (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 6). He has worked 7.3% of his hours at Asilomar, 12.5% of his hours at MCC, and 11.7% of his hours at Clement, for a total of 31.5% of his hours at other Monterey Properties away from his home location.

By contrast, Lindall has worked only 1.16% of his hours at San Jose or Santa Clara properties and 5.3% of his hours in Half Moon Bay (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 2).

7. Joseph Meeker (Monterey Hyatt)

When Meeker was coded to the Monterey Hyatt,¹¹ Meeker worked 47.2% of his hours at his home location (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 6). He worked 11.1% of his hours at Asilomar, 10.3% of his hours at MCC, and 14.4% of his hours at Clement, for a total of 35.8% of his hours worked at other Monterey Properties away from his home location. (*Id.*)

By contrast, he worked 3.5% of his hours at San Jose and Santa Clara (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 2). Meeker did work a significant 10.8% of his

¹¹ It is unclear whether he is currently coded to the Monterey Hyatt or the Fairmont San Jose. *See* Bd. Ex. 2 (Statement of Position Attachment 2 listing him as a Monterey Hyatt employee and Attachment 3 listing him as a Fairmont San Jose employee).

hours at Half Moon Bay, which is the largest percentage worked at Half Moon Bay by a Monterey Employee (*Id.*).

8. Ches Moore (MCC)

Moore worked 83.3% of his hours at his home property. (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 6). He worked 2.5% of his hours at the Monterey Hyatt, 3.9% of his hours at Asilomar, and 1.8% of his hours at Clement, for a total of 8.2% of his hours worked at other Monterey Properties away from his home location (*Id.*).

Moore worked 1.1% of his hours at San Jose or Santa Clara hotels and 6.8% of his hours in Half Moon Bay (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2).

9. Stephen Terry (Monterey Hyatt)

Stephen Terry, whose home property is Hyatt Monterey estimates that he works at Asilomar about 3-4 times per month; Clement 1-2 times per month, and MCC 4-5 times per month (Direct). Employer Exhibit 6 shows that Terry worked 59.2% of his hours at his home property, 17.1% at Asilomar, 9.3% at MCC, and 7.9% at Clement, for a total of 34.3% of his hours worked at other Monterey Properties away from his home location (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 6).

By contrast, Terry worked only 1.5% of his hours at San Jose or Santa Clara hotels and 1.6% of his hours in Half Moon Bay (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2).

10. Zoe Zepp (Asilomar)

Zoe Sepp is a part-time employee (Terry Direct). She has worked 76.4% percent of her hours at her home location (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 6). She has worked the remaining 23.6% of hours at Monterey Hyatt (*Id.*). She has not worked at any of the Bay Area Properties (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2).

F. MONTEREY EMPLOYEES REGULARLY INTERACT WITH EACH OTHER WHILE WORKING IN MONTEREY AND WORK WITH EACH OTHER TO SWAP SHIFTS TO HELP ENSURE COVERAGE

When technicians work on a set, there is “quite a bit” of interaction and coordination among each other (Tr. 174). With larger events, such as those at MCC, there is a lot of coordination (*Id.*). For those shows, there is a project manager who coordinates the various technicians (Tr. 174-75). Even after the project coordinator has directed the technicians, there is still “quite a bit” of coordination among the technicians (Tr. 175). For example, technicians coordinate who will run the mic to the stage and otherwise coordinate (*Id.*).

As a result of the significant amount of interchange that occurs among the Monterey Employees (*Supra* Part III.E), they work side by side other Monterey Employees on a regular basis, either when the technician works away from their home property at another Monterey Property or when an employee from a different property works at the technician’s home property (*Id.*). Consequently, the Monterey Employees are a “closely knit” group (Tr. 200). As such, when Monterey Employees are unable to work a scheduled shifts, they assist the property director by contacting other Monterey Employees to swap shifts (Tr. 183-86; 194-95).

G. BAY AREA PROPERTY EMPLOYEES RARELY WORK AT MONTEREY PROPERTIES, WHICH INSTEAD UTILIZE WORKERS DISPATCHED BY LOCAL 611 MORE THAN SEVEN TIMES MORE OFTEN THAN EMPLOYEES OF BAY AREA PROPERTIES

It is exceedingly rare that employees from Bay Area Properties work at Monterey Properties. This is because, according to property director Miles Wade, there is more volume in the South Bay Area, which has “a lot more open shifts than we do.” (Tr. 294). Monterey is, after all, a relatively small town when compared with the South Bay (Tr. 184-85). Over the past 24 months, the Monterey Properties have only needed to utilize Bay Area Employees .57% of the time (Demonstrative Ex., Table 1). This is because the Directors are able to cover 99.43% of their shifts with Monterey Employees, including employees dispatched by Local 611 (*Compare* Union Exs. 1 & 2 *and* Employer Ex. 6 *with* Demonstrative Ex., Table 5).

Beck (Tr. 175) and Moore (Tr. 199) testified that it is rare to see employees from Bay Area Properties, which was confirmed with Employer Exhibit 6. It is more often that Local 611-

dispatched employees work at Monterey Properties (*Compare* Union Exs. 1 & 2 with Demonstrative Ex., Table 5). As described by Moore, “I work, [with an army]¹² of [Local] 611 guys for these big shows all the time. And I rarely see one or two guys from San Jose, or you know, wherever like once in a blue moon.” (Tr. 226). Union-dispatched employees work about 4.4%—conservatively—of the Monterey Properties’ hours (Union Exs. 1 & 2; Tr. 249 – shifts are a minimum of six hours, but can last upwards of 14 hours depending on the event).

When Local 611-dispatched employees work at Monterey Properties, they have constant interaction with Monterey Employees (Tr. 246). The Local 611 crew has a job steward that works with the crew lead or production lead from Employer (Tr. 235). After getting instructions, the Local 611 crew works “side by side” any of the Monterey Employees doing their job (Tr. 246.). The Local 611 crew performs the same duties as the Monterey Employees (Tr. 246-47).

H. THE MONTEREY EMPLOYEES ARE OVERWHELMINGLY MANAGED AND CONTROLLED BY THE FOUR DIRECTORS OF THE MONTEREY PROPERTIES

Labor relations are largely de-centralized and fall under the responsibilities of each property director, along with the assistance of a human resources “partner” who also works with Southern California locations (Tr. 274, 276). There is some degree of coordination of scheduling that occurs during the Wednesday meetings among all 20 properties. However, for the Monterey property directors, that degree of coordination pales in comparison to the coordination that occurs when they meet each Tuesday to discuss scheduling needs at the Monterey Properties. Over the past twenty-four months, they have only needed coverage from Bay Area Employees approximately .57% of the time (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 5). Other than that, they are able to get their shifts covered approximately 99.43% of the time from Monterey Employees, including employees dispatched by Local 611.

Discipline is largely de-centralized and up to the discretion of the property director where the alleged misconduct occurred, along with the assistance of a human resources “partner.” (Tr.

¹² The audio file should confirm that Moore stated that he works with “an army of 611 guys,” not “our needs of 611 guys” as stated in the transcript.

274, 276). Since the Monterey Employees work, collectively, 90% of their hours at Monterey properties (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2), they are primarily directed by, and subject to the control of, the Monterey Directors.

I. THERE IS AN EXTENSIVE HISTORY OF LOCAL 611 BARGAINING ONE-OFF AGREEMENTS WITH PSAV IN MONTEREY

There is no long term agreement or collective bargaining history between Employer and Local 611 (Tr. 252). Instead, Employer and Local 611 negotiate “one-off” agreements for shows (*Id.*). There is a show contract good only for that show. (*Id.*). That means there have been approximately 24 of these agreements negotiated over the past two years at Monterey Properties (*See* Union Ex. 1). Local 611 has had no one-off agreements with Employer at its Half Moon Bay, San Jose, or Santa Clara properties in the past two years (*Id.*).

For the Half Moon May property, Employer has negotiated a long term agreement with IATSE Local 16, the San Francisco-based local (Tr. 255). Local 16 has a standing agreement that requires the Employer to contact Local 16 once the Employer hits a certain number of its own employees at an event (*Id.*).

IV. ARGUMENT

A. THE DECISION AND ORDER WAS CLEARLY ERRONEOUS ON SUBSTANTIAL FACTUAL ISSUES AND SUCH ISSUES PREJUDICIALLY AFFECT THE RIGHTS OF THE UNION

1. The Decision Erroneously Concluded—or Implied—that the HR Personnel was Designated Solely to the 20 Properties when the Evidence Showed that the HR Personnel Also Supports other Properties

The Decision found that “there is . . . one human resources manager responsible for providing human resources assistance for all of the Employer’s jobsites located in Monterey, Pacific Grove, Half Moon Bay, Santa Clara, and San Jose.” (at 5). This finding leads to the mistaken impression that the Employer has dedicated one HR manager to only these 20 properties. The evidence does not support this finding. Ross Gimpel was asked whether the HR partner who assists in discipline is the “same HR partner assisting in Monterrey [sic], San Jose, Santa Clara, and Half Moon Bay?” (Tr. 275). Gimpel responded, “Yes. In fact, even larger than

that, but yes.” (Tr. 276). Union Counsel asked what geographic region that HR person covers and Gimpel responded, “I do know it’s more than just my region. I believe there is some responsibility in southern California too, but I’d be speaking out of turn if I said I knew exactly.” (Tr. 276).

This is a substantial factual issue because it is relevant to the issue of Employer’s departmental organization and the extent of centralized control of management and supervision. The Decision relies in part on the supposed fact that an HR person is dedicated to the 20 properties as support for the erroneous conclusion that the factor of centralized control of management and supervision weighs in favor of the larger unit (at 9). That the Employer has organized itself such that one HR person is dedicated to the 20 properties, so the Decision assumes, supports the Employer’s position that an appropriate unit must include the 20 properties (*Id.*). While certainly not determinative of the broader issue of whether the petitioned-for unit shares a distinct community of interest, this rationale was relied upon in the Decision and therefore should be clarified that one HR person is responsible for a larger area that is beyond the 20 properties. The Decision concluded that this factor weighed against the Union’s petitioned-for unit without considering that the Employer’s organization is not so delineated by the 20 locations that make up the Bay Area and Monterey Properties.¹³

2. The Decision Failed to Make a Factual Finding that the Monterey Properties Designate the Hyatt as the Hub for Monterey Part-Time Employees

Property Director Cullen informed technician Stephen Terry that the Monterey Hyatt was “a hub for part-timers to be distributed out for properties as needed because our property is one of the higher-earning properties in the area so we can afford to have the part-timers on book.” (Tr. 141). This is so because “the Hyatt gets a lot of higher-end corporate events. . . . So we do get a very large amount of higher-end venues that come through.” (Tr. 142-43). Cullen’s statement to Terry is supported by the Employer’s records showing that Ricardo “Ricky” Bejar, a

¹³ The Decision seems to acknowledge this point as the Decision states that discipline “is coordinated with the same human resources manager who is responsible for providing guidance to [property directors] at multiple Employer jobsites, *including* its 20 jobsites located in Monterey, Pacific Grove, San Jose, Santa Clara and Half Moon Bay.” (at 7 – emphasis added).

part time employee (Tr. 145), has worked 72.5% of his hours at Monterey Properties away from his home location (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 2). Cullen's statement is also supported by the fact that Colton Beck was hired as a part-time employee in 2017 at the Hyatt (Tr. 167). Despite the Employer did not rebut this evidence, despite calling rebuttal witnesses (Tr. 228, 266, 277).¹⁴ It is therefore undisputed that the Hyatt Property is the main launching point for part-time employees out of the Monterey Properties.

This is a substantial factual issue because it relates to how the Employer organizes its operations. It is specifically relevant to whether there is greater functional integration and operational integration amongst the Monterey Properties than between the Monterey Properties and Bay Area Properties. The Decision concluded that this factor weighed against the Union's petitioned-for unit without considering that there is yet another unique feature of the Monterey Properties demonstrating greater functional and organizational integration among them than between them and the Bay Area Properties. The failure to make this finding is clearly erroneous based on the undisputed record.

3. The Decision Failed to Make a Factual Finding that the Monterey Employees Get Travel Time More Often than Bay Area Employees

The Decision correctly notes that Monterey Employees get travel reimbursements more often than the Bay Area Employees (at 6). However, there is no factual finding that Monterey Employees get travel time paid more often than Bay Area Employees (*See generally*, Decision). Yet, the Northern California Parking & Transportation Reimbursement Policy provides for travel time for employees who drive more than 60 miles to a show (Employer Ex. 5 at 2). Since Monterey Employees spend an average of 4.4% of their hours at Bay Area Properties (Demonstrative Ex., Table 2), and since the minimum distance between Monterey and the Bay Area Properties is 71 miles (Union Exs. 3, 4, & 6), whenever Monterey Employees travel north, they get travel pay. In contrast, Bay Area Employees travel to Monterey Properties for an

¹⁴ Ross Gimpel testified that he did not know whether part-time employees tended to come from a particular Monterey Property (Tr. 78).

average of .17% of their hours (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 1).

Therefore, Monterey Employees get travel pay more than 25 times more often than the others.

This is a significant factual issue because it shows a difference in the Monterey Employees' conditions of employment when compared with those of Bay Area Employees. The Decision concluded that the similarities of the terms and conditions of employment favored the larger unit without considering the fact that this policy applies to Monterey Employees far more often than the Bay Area Employees. The failure to make this finding is clearly erroneous based on the undisputed record.

4. **The Decision Failed to Make Factual Findings that the Employer Has Expectations and Guidelines for the Wednesday Meetings that Require Property Directors to be Prepared with Tentative Schedules**

While the Decision correctly notes that the Employer conducts Tuesday meetings among its Monterey Directors, it fails to note that these meetings are necessitated by the Employer's expectations and guidelines for Wednesday meetings. The property directors of all 20 properties are expected to be prepared on the Wednesday call "with tentative schedules, needs, and availability." (Tr. 272). These expectations and guidelines were communicated by at least one other Employer representative (*Id.*). As a result of needing to be prepared on Wednesday, the Monterey directors meet on Tuesdays to cover shifts and establish weekly schedules for the Monterey Area Employees for the following week.

This is a substantial factual issue because it is relevant to the issue of whether the Employer has greater organization of its operations among the Monterey Properties than the 20 properties in general. The Decision concluded that this factor weighed against the Union's petitioned-for unit without considering this important fact. The failure to make this finding is clearly erroneous based on the undisputed record.

5. **The Decision Failed to Make the Factual Finding that the Monterey Directors Emails the Monterey Properties' Schedules to Each Monterey Employee Even if They are Not Working at another Monterey Property during the Upcoming Week**

The Decision failed to make findings regarding an important aspect of the scheduling process for the Monterey Properties. Every week, each of the four property directors sends an email to all of the Monterey Employees containing a PDF of that director's schedule for the upcoming week (Tr. 33, 59, 128-129, 131, 144, 149, 168, 170, 183, 190, 192-193). The Monterey Employees receive this email from each of the four Monterey directors even if they are not going to work at a director's property that week (Tr. 129-130, 192-193). But they do not receive weekly schedules for Bay Area Properties unless they are scheduled to work at a Bay Area Property that upcoming week (Tr. 130, 193).

This is a substantial factual issue because it is relevant to the nature of the Employer's organization in general and the operational integration of the four Monterey Properties. This is relevant to determine whether there is a distinct community of interest. The Decision concluded that this factor weighed against the Union's petitioned-for unit without considering this additional operational integration among the Monterey Properties. The failure to make this finding is clearly erroneous based on the undisputed record.

6. **Since These Facts Support the Union's Position that the Monterey Employees Share a Distinct Community of Interest, the Errors on these Factual Findings Prejudices the Union's Rights**

The facts that were omitted from the Decision are relevant to whether the petitioned-for unit shares a distinct community of interest. Their omission therefore prejudices the Union's rights. The manner that the Employer assigns worksites to HR personnel, the organization of one of the Monterey Properties as a hub for part-time employees for the other Monterey Properties, the requirement that property directors come to the Wednesday calls prepared with tentative schedules, and the weekly transmission of all Monterey Properties' schedules to Monterey Employees present facts that support the Union's position on whether the Employer's functional integration and operational integration supports the Union's petition. That Monterey Employees get travel time considerably more often than Bay Area Employees support the Union's position

on the issue of whether there are differences in the terms and conditions of employment that warrant a separate Monterey unit. The failure of the Decision to make these factual findings—fully supported by the evidence—prejudices the Union’s right for a decision to reflect all relevant evidence when the Region determines whether the petitioned-for unit is “appropriate for the purpose of collective bargaining.” 29 U.S.C. § 153(b); *see also* § 159(b), (c). It therefore raises a substantial issue and this Request should be granted on this basis.

B. THE DECISION AND ORDER DEPARTED FROM REPORTED BOARD PRECEDENT IN ITS ULTIMATE FINDING THAT THE MONTEREY EMPLOYEES DO NOT SHARE A COMMUNITY OF INTEREST DISTINCT FROM THAT SHARED WITH THE BAY AREA EMPLOYEES, AS WELL AS IN ITS ANALYSIS OF EACH OF THE COMMUNITY OF INTEREST FACTORS.

1. The Decision Should Have Applied *Verizon Wireless* and *Weis Markets* to Find that the Monterey Employees Share a Community of Interest that is Distinct From That Shared with the Bay Area Properties

A petitioned-for multi-location unit must share a community of interest distinct from that shared with employees in excluded locations. *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1082 (2004). Even in a multi-location analysis, the Act does not require the petitioned-for unit be “the most appropriate unit, only that it be an appropriate unit.” *Cellco Partnership d/b/a Verizon Wireless*, 341 NLRB 483, 485 (2004) (“*Verizon Wireless*”).¹⁵ “When examining a petitioned-for multifacility unit, the Board considers (1) similarity in skills, duties, and working conditions, (2) functional integration, (3) employee contact and interchange, (4) centralized control of management and supervision, (5) geographic proximity, and (6) bargaining history.” *Id.*

The Decision fails to cite *Verizon Wireless*—relied on by the Union in its post-hearing brief (at pp. 13, 14, and 17)—even though the facts of that case are far more similar to this case than the cases cited by the Decision.¹⁶ There, the Board agreed with the Regional Director’s

¹⁵ The Decision and Order failed to mention this important principle in a multilocation analysis.

¹⁶ While a portion of *Verizon Wireless* addressed the applicability of the system-wide public utility presumption, it decided that the public utility presumption did not apply and ultimately applied the Board’s “general community-of-interest standards to determine the appropriateness of the petitioned for unit.” 341 NLRB at 485.

decision finding a smaller multi-location unit appropriate “based on the geographic proximity of the stores, the substantial autonomy invested in each store manager, the regular contact between the employees at the Bakersfield facilities, the common terms and conditions of employment, the shared overflow inventory, and the evidence of permanent transfers.” 341 NLRB at 485 (citing *Weis Markets, Inc.*, 142 NLRB 708, 710 (1963) (finding petitioned-for two retail store unit appropriate). The Board agreed with the Regional Director’s reliance on the following facts in finding the petitioned-for smaller multi-location unit appropriate:

The employees in the petitioned-for unit work in a defined geographic area The manager of the Bakersfield stores have substantial autonomy in controlling the day-to-day activities of the employees sought. They . . . schedule the hours of employees, . . . and they discipline employees subject to approval from the area human resources department with respect to written warnings and terminations. Moreover, the employees at the different Bakersfield stores have contact with each other and they do not have any significant contact with other employees in the West area. There is evidence of permanent transfers of employees between the Bakersfield stores and to the extent temporary transfers may be necessary they would occur between employees at those three Bakersfield locations. I also note the great distance between the Bakersfield stores and the other stores in the West area. In addition, I note the lack of a bargaining history for the requested employees.

Id. at 490-91. Those facts are very similar to the PSAV employees. The Board should have also applied *Weis Markets, Inc.*, 142 NLRB 708 (cited in *Verizon Wireless*, 341 NLRB at 485) since the facts of that case are far more similar to our case than any of the cases cited in the Decision.

The similarities in *Weis Markets, Inc.* with the present case are self-evident:

within each of the citywide units sought . . . the stores are separated from each other by short distances of 2 to 5 miles, whereas the Employer’s other stores are located at substantial distances therefrom. Temporary transfers among stores within each of the requested units are more frequent than transfers between such stores and stores outside. In addition, there is no bargaining history and no labor organization is seeking to represent the employees in a broader unit. Under these circumstances, the fact that the wages, fringe benefits, and personnel policies are uniform for all employees throughout the chain, including those in the York and Lancaster stores, does not militate against a finding of an appropriate geographical unit in each instance.

142 NLRB at 710. Here, as in *Verizon Wireless* and *Weis Markets*, Monterey Employees work in a defined geographic area, separated from each other by a short distance within an approximately 5-mile radius. The Monterey property directors have substantial autonomy in directing their respective Monterey Property, as each of them directs employees working at their properties,

which 94.9% of the time is Monterey Employees.¹⁷ Property directors are responsible for disciplining their employees along with the assistance of HR personnel. Just as in *Verizon*, the Monterey Employees have ongoing, significant interaction and contact with other Monterey Employees and they do not have significant contact with Bay Area Employees. The temporary transfers that frequently occur are predominantly among the Monterey Employees at other Monterey Properties, while temporary transfers between Monterey and Bay Area Properties, when they occur, are primarily Monterey Employees traveling north and almost never involves Bay Area Employees traveling to Monterey Properties. Here, the distances between the Monterey Properties and the Bay Area Properties are great when compared with the tight geographic area within which the Monterey Properties lie. The Region should have applied *Verizon* and *Weis Markets* to this case—it was a departure from Board precedent to not do so.

2. The Decision and Order Failed to Follow Precedent on Several of the Community of Interest Factors when it Erroneously Concluded that Each Factor Weighed Against Finding a Distinct Community of Interest Among the Monterey Employees

a. The Region Failed to Follow Precedent by Concluding that the Tight Geographic Area Shared by the Monterey Employees when Compared with Bay Area Employees Weighed Against the Union’s Petitioned-for Unit

The Decision’s main error when evaluating this factor was finding that it weighed against the Union and not in the Union’s favor. The Union concedes that this one factor—alone—is not determinative on whether the Monterey Employees share a distinct community of interest. *NLRB v. Klocko Equipment Rental Co.*, 657 Fed. Appx. 441 (6th Cir. 2016) (cited by the Decision at 8). But by concluding that this factor does not weigh in the Union’s favor, the Decision flatly ignores the objective fact that the Monterey Properties exist in a tight geographic area of an approximately a five-mile radius, while the Bay Area Properties are between 71 and 110 miles away from Monterey, depending on the location. *See Verizon Wireless*, 341 NLRB at 490-91; *Weis Markets*, 142 NLRB at 710. Even if this factor is not going to carry the day for the Union, it

¹⁷ Either Monterey Employees or employees dispatched by the Union cover 99.43% of the hours at Monterey Properties.

was plainly an error to find that this factor “weighs against finding a bargaining unit limited to the Monterey jobsites” (at 8). Because of the relative proximity of these four properties when compared with the Bay Area Properties, this factor weighs heavily toward finding a separate community of interest.

The Decision’s reliance on *Barber-Colman Co.*, 130 NLRB 478, 479 (1961) is misplaced. In *Barber-Colman*, there was common supervision over all four properties. But here, the Monterey Properties each have a Director that manages their own property. Here there is not common supervision over all of 20 properties as there was over all four properties in *Barber-Colman*.¹⁸ Additionally, in *Barber-Colman*, there was no finding that there was greater coordination among the three petitioned-for Rockford, Illinois plants, *id.* at 479, whereas here, there is greater coordination among the Monterey Properties because the Monterey Directors work together to ensure the Monterey Properties are fully staffed, the Monterey Employees receive the Monterey Properties’ schedules each week even if they are not going to work at them, and the Hyatt is the hub for part-time employees who can be directed to work and cover at other Monterey Properties (Tr. 141-43). And here, unlike in *Barber-Colman*, the interchange and temporary transfers among the Monterey Employees is much stronger and more frequent than any interchange with the employees of the Bay Area Properties. By comparison, *Barber-Colman* simply concluded that “[t]here is some interchange between the various locations.” *Id.* In sum, *Barber-Colman* is distinguished from our case in meaningful ways and does not change the fact that geographic proximity weighs in the Union’s favor.

The Decision’s reliance on *Stormont-Vail Healthcare, Inc.*, 340 NLRB 1205 (2003) is also misplaced. There, the Stormont West facility was only *two miles* from the location advocated by the union. *Id.* at 1205. The facts from *Stormont Vail* are also distinguished in

¹⁸ While the Decision observed that the Regional Vice President Ross Gimpel oversees all operations at the 20 properties, he clearly does not supervise all 20 properties. Gimpel did not even know about the Tuesday calls among the Monterey property directors (Tr. 62 – “I’m not aware if [the Monterey directors have a weekly call]”) and could not say whether any one of the Monterey Properties was the main location from where part-time employees are sent to work at other Monterey Properties (Tr. 78 – “I don’t know off the top of my head.”).

important ways. The nurses from Stormont West and a sought-to-be excluded facility regularly used the same cafeteria and fitness center, there was regular managerial/supervisory interchange, and there was no evidence referenced in the decision showing that the interchange in the petitioned-for multi-location unit was considerably more frequent than the interchange found to exist between the nurses at the Stormont West facility and the main complex. *Id.* at 1205, 1207. There was no separate community of interest between the petitioned-for unit and the outlying clinics because those clinics were within a similar geographic proximity as other included locations,¹⁹ the unit included nurses who worked at included clinics, some of the included clinics are part of the same administrative grouping as the outlying clinics and share common oversight, and the excluded clinics are “well integrated with the rest of the Employer’s centralized system.” *Id.* at 1208. There, the community nursing centers were ordered included into the unit because they were located within the same geographic area (within the suburb of the city where the included unit was located), shared a common administrative grouping with other included clinics as part of the health services division, and were well-integrated with the rest of the Employer’s centralized system. *Id.* at 1209.

Here, unlike at *Stormont-Vail*, the Monterey Directors remain at their properties and only have Bay Area Employees at their properties .57% of the time. Here, the Monterey Employees do not routinely share common facilities with Bay Area Employees. Here, unlike with the *Stormont-Vail* outlying clinics, the Union does not seek employees working at locations that are in the same area as excluded locations.²⁰ The Monterey Properties have their own distinct administrative grouping even if there is common organization at higher levels. And here, there is

¹⁹ While the Decision stated that the Union’s “willingness to agree to add the employees employed at the . . . Half Moon Bay jobsite, the farthest facility away from its petitioned-for unit,” diminished the weight of this factor, the Union has never contended—and still does not contend—that the Half Moon Bay jobsite should be an included location. This is in contrast to *Stormont-Vail* where an excluded location was within the same geographic proximity as included locations. 340 NLRB at 1208.

²⁰ While the Union was reluctantly willing to proceed to an election involving only the addition of the Half Moon Bay employees if the Region found such a unit the smallest appropriate unit, it has never advocated that it would be appropriate to do so (*See* Tr. at 317-318).

distinct coordination amongst the Monterey Properties which is separate from the general coordination more broadly among the 20 properties. And here, unlike the *Stormont-Vail* community nursing centers, the Bay Area Properties are no less than 71 miles away from the Monterey Properties and are not in the same geographic area. Furthermore, unlike in *Stormont-Vail*, here, there is considerable interchange and interaction amongst the Monterey Employees which far exceeds the limited mostly one-way interchange that occurs between the Monterey and Bay Area Properties. For all these reasons, the Monterey Employees share a distinct community of interest that was lacking in *Stormont-Vail*. More importantly, the geographic separation in *Stormont-Vail* is not even comparable to the present case.

The Decision's reliance on *Trane*, 339 NLRB 866, 868 (2003) (Decision at 8) is also misplaced. There, the Board found the significance of the geographic distance between facilities "reduced by the fact that the employees are dispatched from their homes, only occasionally go into their respective offices, and the two areas are only loosely defined by fluid lines of demarcation. Second, the Employer's evidence of regular interchange between the two sites, while general in nature, stands unchallenged in this case." *Trane*, 339 NLRB at 868. *Trane* also concluded that "the centralized control over daily operations and labor relations; lack of local autonomy; common supervision; identical skills, duties, and other terms and conditions of employment; and contact between the Fenton and Cape HVAC technicians outweigh the geographic distance and the lack of specificity as to the level of interchange." *Id.* Here, by contrast, there was no evidence of regular interchange between the Monterey Properties and Bay Area Properties. More importantly, while *Trane* only had general evidence of regular interchange among the properties, the specific evidence in this case revealed conclusively that the interchange among the Monterey Properties is far more frequent than the one-way interchange of the Monterey Employees traveling to Bay Area Properties, and exceedingly more frequent than the remote occasions when Bay Area Employees travel to Monterey. The nature of interchange meaningfully distinguishes the Monterey Employees from the Bay Area Employees. Furthermore, unlike the *Trane* HVAC technicians, the PSAV technicians here all report

primarily to their home property, instead of being disconnected from a home location as in *Trane*. 339 NLRB at 868. And while *Trane* concluded that there was a “complete absence of any separate supervision or other oversight at the Cape site . . . [such that] the Cape location has no local autonomy apart from Fenton,” *id.*, here, each Monterey Property is supervised by its own property director, and the four property directors meet each week to fulfill their staffing needs and prepare for the upcoming Wednesday region-wide call, which they are able to accomplish with Monterey Employees 94.9% of the time,²¹ send weekly emails to all Monterey Employees, and reserve the Monterey Hyatt as the Monterey Properties’ hub for part-time employees—showing substantial local autonomy that is separate and apart from the other 16 Bay Area properties. *Trane* does not change the fact that the factor of geographic separation weighs in the Union’s favor.

Novato Disposal Services, 328 NLRB 820 (1999), relied on in part by the Decision at 8, supports the Union’s position that geographic separation weighs in the Union’s favor. There, the Board acknowledged that geographical distance supported the Union’s position, even though the facilities were only 19 and between 40 to 50 miles apart. *Id.* at 823. In finding that the employer did not carry its burden to rebut the single-facility presumption,²² the Board did find that the common supervision, centralized control of labor relations, employees skills, functions, and working conditions, weighed in favor of the employer. *Id.* at 823-24. The difference is that here, the Monterey Properties have their own supervisors who oversee their own properties, but who regularly work together to make sure their properties are staffed by 94.9% of the time relying on Monterey Employees. The property directors of the 16 Bay Area Properties do not regularly supervise the Monterey Employees, and only supervises them when they occasionally work at their Bay Area Property. In *Novato Disposal*, two supervisors oversaw all employees regardless of location. *Id.* at 823. While in *Novato Disposal*, the Board found that “the level of employee

²¹ 99.43% of the time if you include labor dispatched by the Union.

²² The Union recognizes that the single facility presumption does not apply to the present case. However, the factors are still the same. The factors that weighed in favor of a larger unit in *Novato Disposal* do not weigh in favor of the Employer’s larger unit here.

interchange and contact appears to be significant,” here there is considerably more interchange and contact among the Monterey Employees than between the Monterey Employees and the Bay Area Employees.

Macy’s West, Inc., 327 NLRB 1222, 1223 (1999) also does not support the Decision’s conclusions. The Board there found that a unit of three to four maintenance engineers working in Tucson and Phoenix was inappropriate and had to include the employees from Las Vegas and Albuquerque because they all worked under the same manager, there was no separate supervision of employees in the excluded locations, and one-third to one-fourth of the unit regularly traveled to Albuquerque and Las Vegas and thus have “significant interaction with the other employees whose terms and conditions of employment are otherwise identical with those enjoyed by employees in Phoenix and Tucson.” Our case is distinguished because there is separate supervision and the Monterey Employees are primarily managed by the Monterey Directors. Here, unlike in *Macy’s West*, the Monterey Directors regularly meet as their own standalone organizational unit, separate from the excluded locations, to ensure their staffing needs are met, which they are able to do with Monterey Employees 94.9% of the time. The Monterey Hyatt is reserved as the hub for part-time employees to be utilized at other Monterey Properties, and the Monterey Directors send schedules weekly to Monterey Employees while Bay Area property directors do not send such weekly emails to Monterey Employees. On interchange, here, unlike in *Macy’s West*, there is a showing that the interchange among the petitioned-for properties is significantly more common than the interchange with excluded properties, leading to the conclusion that the Monterey Employees share a *distinct* community of interest from any shared with the employees of the Bay Area Properties. *Macy’s West* does not change that the factor of geographic separation weighs in the Union’s favor.

In sum, even though this factor is not determinative on the overall analysis, it cannot be denied that geographic separation weighs in the Union’s favor. It was a departure of Board precedent to find otherwise.

b. The Decision Erred by Concluding that the Fact that Monterey Employees are 26 Times More Likely to Drive Longer Distances than are Bay Area Employees Weighed Against the Union’s Petitioned-for Unit

The Decision acknowledged that the Monterey Employees “more frequently obtain mileage reimbursements than the employees employed at the Employer’s 16 jobsites in San Jose, Santa Clara, and Half Moon Bay, because the Monterey employees more often travel more than 60 miles from their home jobsite.” (at 6). Despite this objective difference in the conditions of employment, the Decision concluded “that the factor of employees’ skills, duties, and working conditions weighs against finding that a bargaining unit limited to the Monterey jobsites, or alternatively, limited to the Monterey and Half Moon Bay jobsites, is appropriate.” (*Id.*). In addition to mileage reimbursements, as found by the Decision, Monterey Employees more often—by a factor of nearly 26—get travel time than do the Bay Area Employees. This is because the distance between Half Moon Bay and San Jose is 40.3 miles (Union Ex. 6). And the cities of San Jose and Santa Clara are adjacent to each other. Therefore, employees driving from their home area in San Jose, Santa Clara, or Half Moon Bay to properties in either of the two other cities where the Bay Area Properties have significantly shorter drives, all of which are less than 60 miles. This shows another significant difference in the conditions of employment.

These differences could differentiate bargaining priorities for the Monterey Employees versus the Bay Area Employees. Monterey Employees could prioritize premium pay for long distance travel, higher rates for travel pay, the calculation of travel time into overtime hours, per diems for hotel stays overnight for jobs that are further away, or other proposals that employees of the Bay Area Properties might emphasize less.

There were no such noted differences in conditions of employment in several of the cases cited by the Decision (at 6). *See Cheney Bigelow Wire Works, Inc.* 197 NLRB 1279 (1972) (finding terms and conditions identical at two plants 700 feet apart from each other); *Dattco, Inc.*, 338 NLRB 49, 51-52 (2002) (noting no differences in the terms and conditions of employment); *Waste Mgmt of Wash., Inc.*, 331 NLRB 309, 309 (finding “identical skills, duties, and other terms and conditions of employment . . .”). *R&D Trucking*, 327 NLRB 531, 532

(1999) did involve a difference in terms and conditions of employment in that “the employees stationed at the Interstate facility deliver freight to other customers while those stationed at Textron remain on Textron’s premises” The Board there concluded that this difference did not outweigh “the similarity of their interchangeable skills and functions.” *Id.* The difference here is that the record shows an employer policy that applies to Monterey Employees that almost never applies to Bay Area Employees. *R&D Trucking* did not involve an employer policy that affected the Interstate facility employees differently than those stationed at Textron’s premises. *See generally id.* As discussed, this difference would be relevant during collective bargaining in that the Monterey Employees could value travel pay more than Bay Area Employees. Even if this factor weighed in favor of the Employer because the difference in frequency of driving long distances is deemed unimportant, “[u]nder these circumstances, the fact that the wages, fringe benefits, and personnel policies are uniform for all employees . . . does not militate against a finding of an appropriate geographical unit in each instance.” *Weis Market*, 142 NLRB at 710.

Greenhorne & O’Mara, Inc., 326 NLRB 514, 516 (1998) found that the differences in terms and conditions for crew chiefs who regularly work additional hours doing paperwork and are paid more to be insignificant, in part because the union petitioned for an employer-wide unit that enjoyed its own presumption of appropriateness. *Id.* There is no presumption here that a broader multi-facility unit is appropriate that the Union is required to rebut. Given that the other terms and conditions of employment among PSAV’s employees are similar, the difference in how often Monterey Employees drive long distances weighs in favor of the appropriateness of the petitioned-for unit.

The \$.40 per hour pay difference and slightly different security requirements in *Exemplar, Inc.*, 363 NLRB No. 157 (2016), slip op. at 3-4 were considered insignificant when compared with “the shared community of interest among the janitors.” *Id.* at 3. Those factors include only a short geographic difference of 2.1 miles between facilities, having no onsite supervisors thus both locations being supervised by the same person, and all falling under a distinct administrative grouping. *Id.* at 2-5. Here, by contrast, there are far greater geographic

differences, onsite supervision by property directors who together make up their own distinct administrative grouping, and involve significant interchange among the Monterey Properties and only occasional one-way interchange where Monterey Employees travel north. This case, therefore, is not applicable in the same way that *Verizon Wireless* and *Weis Market* is.

While collectively, the terms and conditions of employment are otherwise very similar for both the Monterey Employees and the Bay Area Employees, the notable difference is that the Monterey Employees travel long distances (more than 60 miles under the Employer's own policy) more often than Bay Area employees resulting in greater travel reimbursements and travel pay. While this difference is not determinative on the overall analysis and while this difference is admittedly not extreme—given the relative infrequency that Monterey Employees travel to the Bay Area—it is notable and significant. It was therefore a departure from Board precedent to find that this difference tipped the scales in favor of the Employer. Instead, this factor weighs in favor of finding the Monterey Employees share a distinct community of interest.

c. There is Greater Functional Integration of Business Operations and Control of Labor Relations Among the Monterey Properties than Between the Monterey Properties and the Bay Area Properties

There is no doubt that there is a certain degree of integration among all 20 properties. The question is whether there is more integration at the Monterey Properties than among the 20 properties in general. The Decision failed to apply precedent in finding that the Monterey property directors' local autonomy and their regular, weekly coordination that results in 94.9% of Monterey Properties' hours being filed by Monterey Employees weighed against finding a distinct community of interest.

The Wednesday call reflects a general level of operational integration that serves as a backstop to make sure all property directors have their scheduling needs met. According to one of the property directors, the Wednesday call is a “higher-level, broader discussion about the region as a whole” (Tr. 279). Directors for all 20 properties are present on this call. Monterey property directors only have sought assistance from directors of Bay Area Properties to schedule .43% of their hours.

On the other hand, the Tuesday call for the Monterey directors is a necessary consequence of how the Employer has structured its company by requiring all property directors to be prepared for the Wednesday call (Tr. 272). According to one of the property directors, the Tuesday call is the Monterey property directors' "opportunity to focus solely on Monterey and share the resources we have locally before coming to the wider Wednesday call." (Tr. 281). The Tuesday call is the first line of defense for Monterey Directors to make sure their shifts are covered. There is much greater integration of business operations among the four Monterey Properties, as clearly evidenced by the fact that Monterey Directors get 94.9% of their hours covered by Monterey Employees (*Compare* Employer Ex. 6 *with* Demonstrative Ex., Table 5). It is evident that every single week, Monterey Directors seek coverage from other Monterey Directors to have Monterey Employees cover open shifts "in the Monterey Region" (Tr. 285), whereas there are obviously weeks where Monterey Directors do not need any assistance from Bay Area employees to cover shifts. This conclusively shows the greater functional integration and centralization of management and control among the Monterey Properties.²³

The Monterey directors' weekly coordination is not merely rogue actions done independently of the Employer. The Employer has expectations and guidelines that property directors, including the Monterey directors, be prepared on the weekly Wednesday call so that they "come with tentative schedules, needs, and availability." (Tr. 113). The Area Director of Venues has also attended these calls (Tr. 287). This shows that the Employer's own company structure dictates and requires greater functional integration amongst the Monterey Properties.

While the Regional Vice President testified that any weekly call that the Monterey property directors hold was "nothing that I've mandated them to do" (Tr. 62), the Employer effectively requires the Monterey Directors to hold that call. As Gimpel later testified, there are

²³ This shows that Employer's position that the petitioned-for Monterey unit will "restrict the Employer's current operations," is bogus. The Employer already organizes itself in a way that provides for greater organization and localized control among the Monterey Directors. And given the flexibility of collective bargaining, the Union and Employer would be able to negotiate over what happens on the exceedingly rare occasion that a Bay Area Employee works in Monterey and what happens when a Monterey Employee works in the Bay Area.

expectations and guidelines for the Wednesday calls that the property directors “come with tentative schedules, needs, and availability . . . or that they at least have them roughed out so they understand what they may have available and what they need . . .” (Tr. 272). The inherent structure of the Employer, coupled with the geographic separation of the Monterey Properties, dictates that the Monterey directors have greater coordination among their properties.

This greater coordination include the weekly email sent to all of the Monterey Employees containing a PDF of the Monterey Properties’ schedules for the upcoming week (Tr. 33, 59, 128-129, 131, 144, 149, 168, 170, 183, 190, 192-193). The Monterey Employees receive these schedules even if they are not going to work at another Monterey Property that week (Tr. 129-130, 192-193). This is so because the Monterey Employees are a part of the same operational sub-unit. Monterey Employees do not receive weekly schedules from Bay Area property directors unless they are scheduled to work at a Bay Area Property that week (Tr. 130, 193).

There is more functional integration of business operations and centralization of control among the Monterey Properties, than was present in *Massachusetts Society for the Prevention of Cruelty to Children v. NLRB*, 297 F.3d 41, 47 (1st Cir. 2002), which found this factor weighing in favor of the Union’s petitioned-for single facility unit. There, while “final employment decisions . . . were approved by MSPCC’s central office, the Regional Director found that local managers also had a significant role in these decisions. The Regional director also found that the local managers controlled most aspects of the day-to-day operation of the facility and supervision of employees.” *Id.* Similarly, here, each Property Director has authority “to discipline employees assigned to work at their particular jobsites . . . coordinated with the same human resources manager . . .” (Decision at 7). Each Property Director “supervises all of the employees working at that particular jobsite” (*Id.* at 2) and therefore “management and supervision of employees . . . is generally localized, with the authority given to each [property director] assigned to each facility.” (*Id.* at 5). For the Monterey Employees, they are directed by the Monterey directors 90% of the time (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2). Additionally, the Monterey directors meet weekly to ensure their scheduling needs are

covered, which they are able to do 94.9% of the time with Monterey Employees (Decision at 4)—showing an additional layer of functional integration among the Monterey Properties.

To find that the local autonomy of the Monterey Properties, together with the greater organization, functioning, and interdependence among the Monterey Properties weighs against finding that the Monterey Employees share a community of interest distinct from that shared with the Bay Area Properties departs from Board precedent. “[F]actors such as local supervisory autonomy and relative substantiality of employee interchange are accorded considerable weight.” *Angelus Furniture Mfg Co.*, 192 NLRB 992, 993 (1971). Just as in *Verizon*, the property directors here “have substantial autonomy in controlling the day-to-day activities of the employees sought.” 341 NLRB at 485, 490. And just as in *Weis Markets*, 142 NLRB at 710, “[t]emporary transfers among [the Monterey Properties] are more frequent than transfers between such [Properties] and [Properties] outside.” The Decision’s conclusion that this factor weighed against the Union departed from Board precedent.

d. Interchange and Interaction Among Monterey Employees is Frequent and Regular, While Interchange between Monterey and Bay Area Properties is Occasional and Primarily One-Way from Monterey to Bay Area Properties

The Decision was correct that interchange must be evaluated “in the total context” (at 8). Yet, the Decision does not explain how the significantly greater interchange among Monterey Employees at Monterey Properties does not result in a greater community of interest. The Decision does not analyze or even attempt to distinguish this case from *Verizon Wireless* or *Weis Markets*. It ignores Board precedent finding that interchange that is more frequent among work locations in a particular geographic area than interchange with work locations outside of that area weighs in favor of finding the smaller multilocation unit appropriate. See *Verizon Wireless*, 341 NLRB at 485 and 489-90; *Weis Markets*, 142 NLRB at 710. One-way interchange does not establish the kind of interchange that two-way interchange does in finding a shared community of interest. *Armco, Inc.*, 279 NLRB 1184, 1218 (1986); *MGM Mirage*, 338 NLRB 529, 533-534 (2002) (citing *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987)).

Here, interchange among Monterey Employees at Monterey Properties is consistent and regular, as Monterey Employees collectively work 22% of their hours at other Monterey Properties, away from their home property (*Supra* Part III.E.; Demonstrative Ex., Table 2). This means that any given employee not only interacts with Monterey Employees of other properties when they go to another property, but also when another Monterey Employee goes to the property of that given employee. Monterey Employees work side by side each other to coordinate work on a regular basis and contact each other to swap shifts (*Supra* Part III.F.). Consequently, they are a “closely knit” group that knows each other (*Id.*).

In contrast, Monterey Employees only occasionally work at Bay Area Properties (*Id.*). While the fact that Monterey Employees occasionally work in Bay Area Properties weighs in favor of finding that there is a community of interest between these employees, the significantly higher frequency of interchange among the Monterey Employees at the Monterey Employees than the temporary transfer of Monterey Employees to Bay Area Properties weighs heavily in favor of finding the existence of a separate community of interest shared among the Monterey Employees. *Verizon Wireless*, 341 NLRB at 490-91; *Weis Markets*, 142 NLRB at 710.

The Decision’s reliance on *Alamo Rent-A-Car*, 330 NLRB 897 (2000) is misguided. That case involved employees working in downtown San Francisco from a unit of employees working in Burlingame and SFO facilities. The Board found that there was no interchange between the employees at the Burlingame and SFO facilities that set them apart from the downtown San Francisco employees. *Id.* at 898. The Board also found that there was no significant geographic difference between the excluded and included locations and “no supervisory link between the SFO and Burlingame facilities that is not also shared by the downtown locations.” *Id.* In contrast, here, there is a supervisory link that sets the Monterey Employees apart from the Bay Area Properties, represented by the weekly Tuesday call that occurs between the Monterey Directors, the weekly email of the Monterey property directors to each of the Monterey Employees, and the reservation of the Hyatt as the hub for part-time employees to be utilized as needed by other Monterey Properties. There is considerably more of a geographic difference in our case, than was

present there. And here, unlike *Alamo Rent-A-Car*, there is extensive interaction and interchange between the Monterey Properties that far exceeds the mostly one-way interchange between the Monterey and Bay Area Properties.

The Decision's reliance on *RB Associates*, 324 NLRB 874, 878 (1997) is appropriate, but supports the Union's position. *RB Associates*, which found the degree of interchange necessary to find for the larger unit wanting, *id.* at 874, involved interchange that is similar to that between Monterey Employees and Bay Area Employees. In so finding, the Board agreed with the Regional Director's findings that:

the interaction between the petitioned-for employees and those the Employer would seek to include is irregular and sporadic. Pooled employees are assigned to work on special projects that only occasionally and for limited periods involve employees assigned to a particular hotel. And while there is evidence of some interchange among employees at the various hotels, the interchange appears to be quite limited. Indeed, it appears that employees regularly assigned to one hotel very infrequently work at another hotel.

Id. at 878. Just like in *RB Associates*, here, the interchange between Monterey Employees and Bay Area Employees is sporadic (*Compare* Employer Ex. 6 with Demonstrative Ex., Table 2). Bay Area Employees almost never work in Monterey Properties (*Compare* Employer Ex. 6 with Demonstrative Ex. Table 1). All in all, interchange between Monterey Employees and Bay Area Employees is "quite limited," *see RB Associates*, 324 NLRB at 878, while interchange among Monterey Employees and Monterey Properties is regular.

This factor weighs heavily in finding that the Monterey Employees share a distinct community of interest. The Decision departed from Board precedent by finding otherwise.

e. There is a Consistent History of the Union Bargaining One-Off Agreements with the Employer at the Monterey Properties

While there is no evidence of a collective bargaining history between the Union and the Employer at the Monterey Properties, the parties have negotiated approximately 24 one-off agreements on a per show basis over the past 24 months (*Supra* Part III.I). Local 611 has no such one-off per show agreements with the Employer in the Bay Area Properties over the past two years (*Id.*). This factor weighs in favor of finding that the Monterey Employees have a distinct community of interest.

If the Board is inclined to find this type of bargaining history less relevant because it is not collective bargaining history regarding the employees in the petitioned-for unit, this factor is neutral as there is no collective bargaining history of bargaining amongst the Monterey and Bay Area Properties.

V. CONCLUSION

For the foregoing reasons, the Union respectfully requests that the Board grant this Request for Review and either issue a Decision and Direction of Election in the petitioned-for unit, or remand the proceedings with an order for the Region to issue an appropriate Decision and Direction of Election consistent with its findings and conclusions.

Dated: June 16, 2020

WEINBERG, ROGER & ROSENFELD
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**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On June 16, 2020, I served the following documents in the manner described below:

UNION'S REQUEST FOR REVIEW

- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from lhull@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 16, 2020, at Alameda, California.

/s/ Rhonda Fortier-Bourne
Rhonda Fortier-Bourne