

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESHPOINT SOUTHERN CALIFORNIA, INC.
Employer

and

Case 28-RC-252613

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630
Petitioner

DECISION ON REVIEW AND ORDER REMANDING

The Employer's request for review of the Regional Director's Decision and Direction of Election is granted as it raises substantial issues warranting review.

The Petitioner sought, and the Regional Director directed, an election to determine whether the drivers employed by the Employer at its facility in Las Vegas, Nevada wished to be represented by the Petitioner and, if so, whether they wished to join the existing bargaining unit consisting of drivers and other employees employed at the Employer's seven Southern California facilities. The question of whether the Las Vegas drivers wished to join the existing unit therefore constituted an *Armour-Globe* self-determination election.¹ A self-determination election is the proper method by which an incumbent union may add to its existing bargaining-unit a group of unrepresented employees who (1) are an identifiable, distinct segment of employees that constitute an appropriate voting group and (2) share a community of interest with employees in the existing unit. *St. Vincent Charity Medical Center*, 357 NLRB 854, 855 (2011), citing *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

¹ *Armour & Co.*, 40 NLRB 1332 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). The election was held on December 27, 2019 and, by a vote of 8-0, the Las Vegas drivers voted to be represented by the Petitioner and to be included within the existing unit. On January 9, 2020, the Regional Director issued a Certification of Representative.

In his decision, the Regional Director found that the Las Vegas drivers are an identifiable, distinct segment, and that finding is not in dispute.² The Regional Director also found that the Las Vegas drivers share a community of interest with the existing unit employees. More specifically, applying the factors used to determine whether a petitioned-for multi-facility unit is appropriate,³ the Regional Director found that the Las Vegas drivers share a community of interest with the drivers at the other facilities based on shared skills, duties, and working conditions (including similar terms and conditions of employment); functional integration; and centralized control of management and supervision. With respect to the other relevant factors,

² The Regional Director's discussion of this inquiry is phrased in terms of all the Employer's drivers being an identifiable, distinct segment rather than just the Las Vegas drivers, but that was harmless error. Furthermore, the parties' agreement that the Las Vegas drivers would form a separate appropriate unit supports their status as an identifiable, distinct segment.

³ The relevant factors are similarity in employees' skills, duties, and working conditions; centralized control of management and supervision; functional integration of business operations, including employee interchange; geographic proximity; the extent of union organization and employee choice; and whether the petitioned-for unit corresponds to an administrative grouping or division of the employer. *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 3, 6 (2016). In addition to applying the multi-facility variant of the community-of-interest test, the Regional Director also found the unit appropriate under the "traditional" test as articulated in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017). Under the circumstances of this case, that additional analysis was superfluous.

The Regional Director rejected the Employer's further contention that adding the Las Vegas drivers to the existing unit would improperly restrict the Employer's bargaining rights because the Employer would be required to provide them with the pension benefits set forth in the extant collective-bargaining agreement. We agree with the Regional Director's finding that the Board does not automatically require applying the terms of a current agreement to employees added to an existing unit through a self-determination election, and we do not remand that specific issue for the Regional Director's review. *Federal-Mogul Corp.*, 209 NLRB 343 (1974); accord *Wells Fargo Armored Service Corp.*, 300 NLRB 1104, 1104 (1990); *Bay Medical Center, Inc.*, 239 NLRB 731, 732 (1978). On remand, however, the Regional Director should consider the pension benefits under the extant agreement in analyzing whether the addition of the Las Vegas employees to the existing unit is appropriate under the multi-facility community-of-interest test.

the Regional Director stated that there is no evidence of either temporary or permanent interchange between any drivers, set forth the distances between the Las Vegas facility and three of the Southern California facilities, and described the parties' bargaining history, but he did not state whether these factors weighed against the overall unit. The Regional Director also did not address whether the overall unit corresponded to an administrative grouping used by the Employer.

We find that the Regional Director's analysis is insufficient to determine whether a self-determination election was appropriate. Initially, it is unclear whether the addition of the Las Vegas drivers to the existing unit results in a unit that includes all of the Employer's facilities. The Regional Director shall, on remand, determine whether that is the case and, if so, how that fact bears on the appropriateness of a self-determination election (including whether it would result in a presumptively appropriate employer-wide unit).⁴

The Regional Director shall also revisit his prior application of the multi-facility test and make specific findings regarding the extent to which each of the relevant factors (including geographic proximity, bargaining history, and degree to which the resultant unit conforms to the Employer's administrative groupings) does or does not support including the Las Vegas drivers in the existing unit of drivers and warehouse employees, and the weight each factor should be accorded in the circumstances of this case.⁵ In particular, the Regional Director should consider the weight to be accorded to the collectively bargained differences in the employees' terms and conditions of employment (as opposed to similarities based on sharing the same employee

⁴ See, e.g., *Greenhorne & O'Mara, Inc.*, 326 NLRB 514 (1996).

⁵ In the interest of administrative efficiency, the Regional Director should address the multi-facility factors regardless of any other conclusion reached with respect to whether the petitioned-for unit is employer-wide.

handbook), see *Public Service Co. of Colorado*, 365 NLRB No. 104, slip op. at 1 fn. 4 (2017), and the weight to be accorded any differences that are based on state law. See *Motts Shop Rite of Springfield*, 182 NLRB 172, 173 fn. 7 (1970). Finally, in assessing whether the factor of functional integration supports finding the petitioned-for unit appropriate, the Regional Director should consider the extent to which the operations of the Employer's different facilities are interrelated in producing its work product. See *NLRB v. Carson Cable TV*, 795 F.2d 879, 882-883 (9th Cir. 1986).

Accordingly, this case is remanded to the Regional Director for further appropriate action consistent with this Decision, including reopening the record, if necessary, and the issuance of a Supplemental Decision.

ORDER

The case is remanded to the Regional Director for further action consistent with this Decision.

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., June 18, 2020.