

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS
BOARD REGION 12**

ORACLE ELEVATOR HOLDCO, INC.

Employer

and

Case 12-RC-260930

**INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

On May 28, 2020, International Union of Elevator Constructors, AFL-CIO (Petitioner) filed a representation petition in the above case with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of approximately 30 full-time and regular part-time technicians, mechanics, apprentices, helpers, and warehouse employees employed by Oracle Elevator Holdco, Inc. (Employer) at Miami International Airport, Miami, Florida. The petitioned-for unit excludes all other employees, office clerical employees, customer service associates, sales employees, business development managers, account managers, confidential employees, professional employees, managerial employees, guards and supervisors as defined in the Act.¹ A hearing was held from June 8, 2020 through June 15, 2020.

¹ The parties stipulated, and I find, based on the following stipulated facts, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Employer, a Delaware corporation, with facilities located throughout the United States, including facilities located in Miami, Florida and Fort Lauderdale, Florida, is engaged in the business of providing elevator service and repairs. During the past 12-month period, the Employer purchased and received at its facilities in Miami and Fort Lauderdale, Florida goods valued in excess of \$50,000 directly from points located outside of the State of Florida. The parties further stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The main issue is whether the petitioned-for unit, limited to employees at the Employer's Miami International Airport facility, is an appropriate unit. The Employer argues that to be appropriate, the unit must also include approximately 15 field employees assigned to its Doral² location and 32 field employees assigned to its Fort Lauderdale location, including service apprentices, service technicians, modernization technicians, modernization apprentices, service supervisors, and modernization supervisors, and 3 door entrance employees, for a unit of approximately 80 employees in total. The Petitioner argues that the petitioned-for unit is a presumptively appropriate single-facility unit under well-established Board precedent.

The second issue is whether employees Luis M. Aberasturis Huerta, who works out of the Doral facility, and Jose Ochoa, who works out of the Fort Lauderdale facility, are supervisors within the meaning of Section 2(11) the Act. The Employer takes the position that they are not statutory supervisors, whereas the Petitioner contends that they are statutory supervisors.

The parties were permitted to file post-hearing briefs and both parties availed themselves of that opportunity. I have carefully considered the parties' respective positions.

As explained below, based on the record and relevant Board law, I find that the petitioned-for unit sought is an appropriate unit. Accordingly, I have concluded that the appropriate unit includes all full-time and regular part-time technicians, mechanics, apprentices, helpers, and warehouse employees employed by the Employer at Miami International Airport, Miami, Florida, excluding administrative and office clerical employees, professional employees, managerial employees, confidential employees, customer service associates, business

² Doral is a section of Miami, and the Doral branch is referred to as the Miami Doral branch throughout the record. It is referred to simply as the Doral branch herein to more readily distinguish it from the Miami International Airport, or MIA, branch.

development managers, sales employees, account managers, guards and supervisors as defined in the Act.³

In view of my conclusion that the scope of the unit is limited to employees employed at the Employer's Miami International Airport facility, I find it unnecessary to decide the supervisory status of Luis M. Aberasturis Huerta and Jose Ochoa. However, there is no evidence that they are supervisors within the meaning of the Act.

Both parties take the position that a manual election should be conducted. However, in view of very high incidence and spread of the novel coronavirus, COVID-19, in Miami, I have directed a mail ballot election.

I. FACTS

A. The Employer's South Florida Operations - Overview

The Employer is mainly engaged in the business of maintaining, modernizing, repairing, and servicing elevators, escalators and moving walkways for various types of customers. It also works on different types of freight equipment, warehouse lifts, ADA lifts, and home/residential elevators. Recently, the Employer also started working on automated commercial entrance doors from its Doral facility. The Employer's operation has two divisions: (1) modernization, and (2) repair and service/maintenance.

The Employer offers different services or contracts, such as elevator maintenance contracts, repair contracts, modernization agreements, and contracts related to elevator inspection coordination services. Maintenance work, also called service work, includes preventive work to increase the life of an elevator system, reduce shutdowns, and ensure that safety devices are intact. Repair work involves the replacement of parts when equipment is no

³ The parties stipulated to the job classifications excluded from the unit.

longer working. Modernization is work that needs to be performed every 15 to 25 years in which all core components of the equipment are replaced. The Employer services and repairs all brands of elevators and has created an in-house training program for its employees. The Employer employs service technicians, service apprentices, modernization technicians and modernization apprentices.

The Employer maintains facilities in approximately 12 states of the United States, including Florida. In Florida, the Employer has offices in Pensacola, Tampa, Orlando, West Palm Beach, Ft. Lauderdale, Miami, and Naples. It operates throughout the state from these offices. Regional Vice-President for the Florida Region Michael West (Regional VP West) oversees all operations in Florida, which include sales, field operations, financial performance, and profit & loss responsibility. He reports to the Employer's Chief Executive Officer and president. The Employer's branch offices in South Florida are Fort Lauderdale (Branch 51), Doral (Branch 57), Miami International Airport, referred to herein as MIA or the Airport (Branch 58), and Oracle Entrance (Branch 81).

Regional VP West visits the Fort Lauderdale and Doral offices two to three times per month, and visits the MIA office about one-half day per month.⁴ He is not involved in the day-to-day service operations of the branches. Branch Manager Todd Trnka, who reports directly to West, is responsible for operations at the MIA, Doral, and Oracle Entrance branches.⁵ The General Manager of the Fort Lauderdale branch is Robert DeSimone, who also reports directly to

⁴ The Employer's main witness was Regional VP West. Of those in the Employer's managerial and supervisory hierarchy at MIA, Doral and Fort Lauderdale, only Doral supervisor Hector Paz testified. Thus, MIA, Doral and Oracle Entrance Branch Manager Todd Trnka, MIA supervisors Ricardo Fuentes and Juan Aponte Gonzalez, Doral supervisor David Valles, Fort Lauderdale General Manager Robert DeSimone, Fort Lauderdale supervisors Yhamil Aponte and James Miller, and Oracle Entrance Director Justin Duncan, did not testify.

⁵ The parties stipulated, and I find, that Branch Manager Todd Trnka is a supervisor within the meaning of Section 2(11) of the Act.

branch to the MIA branch is about 22.8 miles;⁹ and the driving distance from the Fort Lauderdale branch to the Doral branch is about 33.7 to 36.7 miles, depending on the route.¹⁰

The Employer maintains a dispatch and call center office in Tampa with about 12 dispatch employees. The Tampa office services all Florida branches. Tammy Poole, the dispatch manager, oversees the call center, manages call volume reports and processes work tickets. Total Elevator is a software database that is used by the Employer to house customer accounts and the work history of each account. The program records every work order performed from a job costing standpoint.

B. Miami International Airport - Branch 58

1. The contract between the Employer and MIA

The contract between the Employer and Miami-Dade County covers the “full maintenance and modernization of elevators, escalators, dumbwaiters, manlifts, moving walks, conveyors, cranes, traveling sidewalks, people movers, merchandise movers, wheelchair lifts, and all related equipment” (sometimes referred to as units) located at Miami-Dade County Aviation owned or leased buildings. The contract lists a total of 381 units. For each unit listed, the contract includes a labor rate for standard time and overtime pay for monthly preventive maintenance and repair. The contract also includes rates of labor for standby hours, minor repairs, and major repairs for each of the following job classifications: elevator mechanic helper,

⁹<https://www.google.com/maps/dir/2315+Stirling+Rd,+Fort+Lauderdale,+FL+33312/Miami+International+Airport,+2100+NW+42nd+Ave,+Miami,+FL+33126/@25.9304546,-80.3650167,11z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x88d9aa30ab8612e1:0xbc979ac47cc345fd!2m2!1d-80.1709629!2d26.0479787!1m5!1m1!1s0x88d9b74d4eb94ac1:0x989fdac0cba2f8e1!2m2!1d-80.2870509!2d25.7958723!3e0>

¹⁰<https://www.google.com/maps/dir/Doral,+Florida/Fort+Lauderdale,+Florida/@25.9647097,-80.403081,11z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x88d9bc6ffa603329:0xb1282f675bf065b0!2m2!1d-80.3553302!2d25.8195424!1m5!1m1!1s0x88d9012720facaf5:0x7602be7540bf8ebe!2m2!1d-80.1373174!2d26.1224386!3e0>

elevator mechanic, and elevator/foreman adjuster. These rates depend on whether the services provided are during regular working hours, times other than regular working hours and Saturdays, or Sundays and holidays. The MIA contract includes labor costs for standard time and overtime for interim maintenance of standard escalators, glass escalators, hydraulic passenger elevators, traction passenger elevators, moving walks, and moving ramps. Labor rate is defined in the contract to include labor, equipment, overhead and profit, travel time, and any other cost. The contract requires the Employer to respond to service calls twenty-four hours per day, seven days a week. The service call response time during regular working hours, defined as Monday through Friday from 7:00 a.m. to 5:00 p.m., must be within one hour after notification from the County. During other than regular working hours, the response time must be within two hours of the notification.

The contract defines modernization as the process of conveyance equipment replacement or the upgrading of the controller and other critical parts to integrate new technology, improve performance, and improve safety. Pursuant to the contract, if the County releases a request for bids regarding the modernization of conveyance equipment at the Airport, the Employer is prequalified to participate in the pool of bidders.

2. MIA operations and supervision

The MIA branch office space is about 2,500 square feet. It includes a break room, a conference room, and offices for the use of MIA Service Supervisors Ricardo Fuentes (Fuentes) and Juan Aponte Gonzalez (Aponte). There is also a small warehouse to store parts and equipment for work at MIA.

Supervisors Fuentes and Aponte each report directly to Branch Manager Todd Trnka.¹¹

¹¹ The parties stipulated, and I find, that MIA service supervisors Fuentes and Aponte are supervisors within the meaning of Section 2(11) of the Act.

Fuentes and Aponte oversee the work performed by the 30 or so employees in the petitioned-for unit (collectively referred to herein as technicians) at the Airport, at some of the Airport garages,¹² and at the Miami Intermodal Center (MIC), which is a building adjacent to the Airport that houses the Airport's Tri-Rail station.¹³ They are responsible for planning the day-to-day work of employees at the Airport and do not supervise work and/or employees outside of the Airport. They plan the work of the MIA technicians a day in advance and distribute assignments to the MIA technicians by email. The daily work assignments are known as the service route plan. The plan includes inspections, preventive maintenance repair work, shutdowns, and call backs. These assignments are based on need. The work in the service route plan is divided among different work departments or teams: Services Department, Preventive Maintenance Team, Inspection Team, and Repair Department. The route plan generally does not include service work. Technicians are assigned to five different "zones" of the Airport, in which to perform their service routes, as reflected in the service route plan.

Regional VP West testified that supervisors Aponte and Fuentes may initiate disciplinary actions involving the Employer's MIA technicians and would get Branch Manager Trnka and the Employer's National Director of Safety and Human Resources involved in the situation. He did not explain the level of involvement of each participant in deciding on disciplinary actions. The service supervisors prepare yearly performance evaluations of the MIA employees and discuss

¹² Regional VP West testified that the Employer does not provide services to all parking garages located at the Airport. He did not know how many garages at the Airport are serviced by the Employer, but was aware that the Employer services units Dolphin Garage, which is the main parking garage at the Airport.

¹³ West testified that the Employer has a contract with the South Florida Regional Transportation Authority for services to units in this building and clarified that this is not part of the Airport contract with the Miami-Dade County. However, the Employer's contract with the Miami-Dade County references at least three MIC Station units. There is no evidence as to how many units at MIC are serviced by the Employer, or whether there are more than three units at MIC. West also explained that the MIC account was originally assigned to the Fort Lauderdale branch and may be coded to Fort Lauderdale in the Employer's database, but that the MIC work is currently performed by the MIA branch employees.

them with Branch Manager Trnka.¹⁴ Regional VP West also reviews the performance evaluations and gets involved in discussions regarding wage increases. Supervisors Aponte and Fuentes and Branch Manager Trnka are also involved in decisions regarding the hiring and termination of employment of MIA branch employees, as is the Employer's Human Resources Department. Regional VP West gives final approval for such decisions.

C. Doral – Branch 57 and Oracle Entrance – Branch 81

As noted above, the Employer opened the Doral branch on or about July 1, 2019, to cover jobs in Miami-Dade County (outside of the Airport) and the Florida Keys (Monroe County) that were previously performed from the Fort Lauderdale branch, which is in Broward County, north of Miami-Dade County. The Employer then created a separate branch budget, a separate profit and loss statement, and new contract numbers for customers in the Miami area. Several technicians who had worked in Fort Lauderdale then transferred permanently to the newly created Doral branch. The Doral branch has a warehouse to store equipment. Supervisors Hector Paz and David Valles supervise a total of approximately fifteen technicians who are assigned to the Doral branch. They report directly to Branch Manager Trnka. In addition to technicians, a customer service associate, a collection analyst and specialist, sales employees, supervisors, and field supervisors are assigned to Doral. Luis Aberasturis is the service supervisor at this location. The Employer contends that Aberasturis is a highly skilled field employee but is not a statutory supervisor. Regional VP West testified that Aberasturis has no authority to hire or terminate employees, grant pay increases, or discipline employees. The Petitioner did not present any evidence establishing that Aberasturis is a statutory supervisor. Supervisors David Valles, Hector Paz, Oracle Entrance Director Justin Duncan, Branch Manager

¹⁴ There are no performance appraisals or disciplinary actions in the record.

Trnka and Regional VP West could be involved in the decision to discharge an employee assigned to Doral, along with the Human Resources Department.¹⁵ All Doral technicians have company vehicles.

Doral supervisor Hector Paz¹⁶ testified that he has supervised three teams of Doral technicians: modernization technician Raul De Los Reyes and modernization apprentice Ramon Alejandro Varela; service technicians Elvin Pantoja Torres and Jose Moya; and service technician Michael Quiala and Rafael Diaz, who no longer works for the Employer. Paz also supervises service technician Vicente Valles.

D. Oracle Entrance – Branch 81

The Employer's Oracle Entrance business is headed by Justin Duncan, Director of Entrance Systems, who supervises the three technicians who work on automatic doors. Duncan reports to Branch Manager Trnka. Automatic door technicians are required to have an American Association of Automatic Door Manufacturers (AAADM) certification, which is a different certification from the one required for elevator technicians. Additionally, the industry wage scale for automatic door technicians is lower than the wage scale for elevator and escalator technicians.

The Employer does not provide automatic entrance door repair, service or maintenance at the Airport. The three automatic door technicians keep track of their work hours manually and report them to their supervisor and dispatch for payroll purposes. They do not have an on-call schedule and do not participate in the on-call schedules of the other branches. There is no

¹⁵ The parties stipulated, and I find, that David Valles, Hector Paz and Justin Duncan are supervisors within the meaning of Section 2(11) of the Act

¹⁶ Paz identified himself as modernization supervisor and the Employer's organization chart refers to him as modernization supervisor. However, Paz signed a series of email communications that the Employer submitted in evidence as "Service Manager."

evidence that these employees participate in meetings with employees in any of the other branches. Regional VP West testified that the Employer is working on a program to cross-train door technicians to work in the elevator and escalator industry, but there is no evidence as to when that program is expected to be completed.

E. Fort Lauderdale – Branch 51

General Manager Robert DeSimone oversees the Ft. Lauderdale branch with supervisors Yhamil Aponte (Aponte) and James Miller (Miller). Miller is the Fort Lauderdale modernization supervisor, and there is evidence that he directs and coordinates modernization projects for the Employer throughout its South Florida operations, including jobs at MIA and in the area served by the Doral branch. Aponte is responsible for the service operation in Fort Lauderdale. Aponte, Miller, DeSimone, Regional VP West and Human Resources participate in making discharge decisions regarding Fort Lauderdale branch employees. Modernization Supervisor Jose Ochoa, who the Employer argues is a skilled employee and not a statutory supervisor, works at the Fort Lauderdale branch. West testified that Ochoa does not have authority to hire or fire employees, assign work, approve pay increases or discipline employees. The Petitioner presented no evidence that establishes that Ochoa is a statutory supervisor.

Once a service route is assigned to a technician, the technician is responsible for managing it. Fort Lauderdale service technicians and modernization technicians who travel from building to building, as well as salespersons and supervisors at this branch, are provided with company vehicles. The Fort Lauderdale branch has two warehouse facilities located in Broward County where parts and equipment are stored.

F. Skills, wages, hours of work and other terms of employment

To work on elevators, escalators and other vertical conveyances in the State of Florida, a

person is required to have a certificate of competency issued by the Florida Department of Business and Professional Regulation. Holders of the certificate must complete eight hours of continuing education to be eligible for annual renewal. The Employer generally funds this process for all its employees. An apprentice, with 4 years of field experience, may take the competency exam. All employees are required to attend safety toolbox talks monthly.

Technicians' wages are set based on experience, skill level and years in the industry. The starting wage is determined by the branch manager and supervisor at each location. The starting hourly rate for service technicians that have a certificate of competency, certified elevator technicians and modernization technicians, ranges from \$32 to \$45. The typical starting hourly rate for service or modernization apprentices is between \$20 to \$25. The technicians working at Oracle Door earn between \$20 and \$35 per hour.

Route assignments are permanent for several years. Thus, during the hiring process, applicants are informed of the specific route that will be assigned to them.

Fort Lauderdale and Doral employees work Monday to Friday 8:00 a.m. to 4:30 p.m.¹⁷ Regional VP West testified that on occasion, repair or modernization employees may work four 10-hour days, Monday to Thursday or Tuesday to Friday.

MIA employees work from 7:30 a.m. to 4:00 p.m. In addition, MIA technicians are placed on a monthly on-call calendar that covers the hours of work at MIA from 4:00 p.m. to 7:30 a.m. This monthly MIA on-call schedule is prepared and distributed to MIA branch employees. There are separate on-call schedules for the Doral and Fort Lauderdale locations.

All technicians are required to use company-issued phones. Under certain circumstances the Employer pays per diem if an employee is assigned to work outside of the regularly assigned

¹⁷ Doral employee Christian Gonzalez, who works regularly at the Port of Miami, is an exception. His regular schedule is 7:00 a.m. to 3:30 p.m.

area.

The Employer's employee handbook was last updated in June 2020. It applies to employees at all of the Employer's branches across the United States, as does the Employer's benefits guide. The handbook and benefits guide include information regarding policies, compensation, benefits, and employee responsibilities. The Employer offers all employees the same health insurance benefits and certain other fringe benefits, and maintains certain company-wide workplace policies. The benefits include paid vacation, holidays, and personal days, life insurance, short-term disability insurance, dental and vision benefits, and policies regarding items such as bereavement, military leave of absence, and jury duty.

All employees except the Oracle Entrance employees are required to wear the same uniform. The Oracle Entrance uniform displays a different logo.

Five of the approximately 30 MIA technicians have assigned company vehicles that they may use to commute to and from work daily. These vehicles are kept at the aircraft operating area during the day while the employees are working. The rest of the employees use their own vehicles to commute to work, park at the airport, and take a shuttle to their work location. As noted above, all or almost all technicians and apprentices assigned to Doral and Fort Lauderdale are provided with company vehicles.

Until the outbreak of the Coronavirus (COVID-19) pandemic in March 2020, Branch Manager Trnka and supervisors Fuentes and Aponte led mandatory attendance daily meetings of all MIA branch employees at 7:30 a.m. to discuss daily assignments and issues. After the daily meeting, employees went to their assignments for the day. The morning meetings were stopped to avoid group gatherings and comply with social distancing measures. Technicians instead report directly to the assigned work units (i.e. elevators, escalators, and moving walks) pursuant

to the service route plan that they continue to receive daily by email.

Under the terms of the contract with Miami-Dade County, the Employer's MIA personnel are required to obtain Miami-Dade Aviation Department identification cards with a Customs Seal, and they are subject to background checks, including a Security Threat Assessment (STA) and a fingerprint-based Criminal History Records Check (CHRC). To obtain the Airport identification badge, after passing the STA and CHRC, the MIA employees attend a Security Identification Display Area (SIDA) training. The ID badges must be worn on outer garments and be clearly visible. Additionally, to drive within the aircraft operating area (AOA), or runway, the Employer's Airport technicians must take training and pass an exam to receive an AOA certification. The five Airport employees who have been assigned company vehicles have the AOA certification.

In addition to Regional VP West, one current MIA technician and one former MIA technician testified about the Employer's operations at MIA. Luis Colon has been working for the Employer since October 2018 as a service technician. He was hired to work at MIA, and spent his first week in training at the Ft. Lauderdale office under the supervision of Fort Lauderdale branch service supervisor Yhamil Aponte.¹⁸ After one week of training, Colon began working at the newly opened Airport branch as a service technician responsible for repairs and maintenance of equipment. Like Colon, Christian Gonzalez began working for the Employer in October 2018 as a technician. He was interviewed for the job by supervisors Yhamil Aponte and David Valles at the Fort Lauderdale office. Gonzalez worked out of the Fort Lauderdale office for two or three months, covering for other technicians who were on vacation,

¹⁸ The parties stipulated, and I find, that service supervisor Yhamil Aponte is a supervisor within the meaning of Section 2(11) of the Act.

under the supervision of Aponte,¹⁹ before transferring to MIA shortly after the MIA branch began operating in November 2018.

MIA branch Administrator Majed Abduljabbar assisted both Colon and Gonzalez with the procedure to obtain the security clearance and the security badge needed to work at MIA. Colon worked at the American Airlines Concourse D in MIA and was assigned to repair and maintain about 90 units in that area. He worked there primarily by himself. In about June 2019, Colon was transferred from the maintenance and repair department to the inspection department at MIA, which is tasked with performing annual and five-year inspections of approximately 400 units at MIA, including elevators, escalators and moving walks. Colon has worked in the inspection department at MIA since that time, except for a brief period when he was reassigned to the Doral branch, as discussed infra. As part of the inspection department, Colon works with service apprentice Jose Ortiz and technician Carlos Pinero.

While working on maintenance and repairs, Colon received his assignments from supervisors Aponte or Fuentes in the daily email with the MIA service route plan for the following day. The daily service route plan does not contain details about his inspection assignments because the Miami-Dade County inspector decides the equipment to be inspected daily. However, until the daily morning meetings at MIA were suspended because of the coronavirus pandemic, Colon participated in the morning meetings held at the Airport by Branch Manager Trnka and supervisors Fuentes and Aponte to discuss work assignments. He continues to contact his supervisor every day for ticket numbers for the units that are going to be inspected and for parts, if a unit is going to be repaired.

To request time off, Colon uses the Ultipro app and sends an email to his immediate

¹⁹ The record contains no other reference to a Jamie Aponte. Gonzalez may have been referring to Fort Lauderdale supervisor Yhamil Aponte.

supervisor, service supervisor Aponte.

Technician Christian Gonzalez transferred from Fort Lauderdale to the Airport in approximately late 2018 or early 2019. He worked at the Airport branch until on or about July 22, 2019, when he transferred to the Doral Branch, where he currently works. While working at the Doral branch, Gonzalez he has been assigned to work at the Port of Miami, primarily doing maintenance work, and occasionally performing repairs and clean downs.

Gonzalez did not have a company vehicle while working at the Airport. He drove his own vehicle to the Airport, parked in a designated area, and took a shuttle from the parking lot to the Airport. However, he took and passed the test to drive vehicles within the Airport Operations Area, and obtained the AOA certification. At MIA, Gonzalez worked in the repair department and in vulcanization.²⁰ While assigned to MIA, Gonzalez attended the daily meetings of MIA employees held at the Airport by Branch Manager Trnka and Supervisors Fuentes and Aponte. During these meetings, which were 20 to 30 minutes long, the manager and supervisors discussed safety, regulations, work to be performed, equipment shutdowns and on-call lists. Supervisor Aponte told Gonzalez about his daily work assignments and organized the materials Gonzalez needed on the job for the day. At the end of each workday, before leaving the Airport, Gonzalez updated supervisor Aponte on the status of his (Gonzalez's) most recent work assignment. Gonzalez requested time off from work by notifying Aponte.

While assigned to MIA, Gonzalez was on the MIA on-call list. MIA employees receive an on-call list in an Excel spreadsheet at the beginning of each month. When assigned to perform on-call duties at MIA, Gonzalez received a text message from dispatch with information about the on-call work to be performed, and he would drive to the Airport to fix the unit that

²⁰ Vulcanization is the melting of the ends of two handrails to make one whole piece.

needed repair.

Since Gonzalez transferred to the Doral branch in July 2019, he has reported to Doral service supervisor David Valles, and he has not been assigned any work at the Airport. Gonzalez has been regularly assigned to maintain and repair the 87 units at the Port of Miami.

Upon transferring to the Doral branch, Colon has received all assignments for the month at the beginning of the month, and he receives tickets for the units that he normally serves on his phone, through a company app. In addition, he enters the number of hours worked and closes the ticket on the app. If he forgets to close a ticket or there are any issues with the number of hours of work during a particular week, his supervisor will advise him.

On most workdays, Gonzalez does not report to the Miami Doral office, and instead drives directly to the Port of Miami in a company vehicle. He is in contact with his supervisors regularly, but only sees them about once or twice every three weeks. He visits the Doral office to get supplies or equipment, as needed, or when there is training. The training of Doral technicians at the Doral facility takes place about once a month. MIA employees do not participate in those monthly trainings. Gonzalez testified that since July 2019 he has borrowed a proximity gauge and a power supply for the proximity gauge from the Airport two or three times. The record does not reflect any interaction between Gonzalez and MIA employees in connection with the borrowing or return of that equipment.

G. Extent of day-to-day interchange and other interactions between MIA employees and employees of the Employer's other South Florida branches; extent of functional integration

1. Employee testimony

MIA technician Colon testified about two MIA employees who are sent to work outside of the Airport on occasion. They are Marcos Canales, for welding jobs, and Gabriel Alfonso for

driving. He described Gabriel Alfonso as the person who works in the warehouse and works as a driver who transports things (such as parts) between MIA and Doral. Alfonso drives a company vehicle that is kept at the Airport. Former MIA technician Christian Gonzalez testified that when he worked at the Airport, he went to the Doral location once or twice a week to get equipment, handrails and/or drums of oil to be used for his work at MIA. There is no evidence as to how long this procedure took, or whether he interacted with any Doral employees when he went to Doral to get items. During his tenure at MIA (which appears from the record to have consisted of about seven months), Gonzalez was only assigned to work outside the Airport twice: once at the Port of Miami and once at the Miami “Metromover,” performing vulcanization work for one day on each occasion. Gonzalez explained that not all employees have the ability to perform vulcanization because it is not something that most service technicians are qualified or required to perform. Gonzalez learned vulcanization while working on the Airport repair team.

During a period of approximately three weeks in October 2019, Colon was assigned to work at the Doral branch. Colon’s assignment to Doral was the subject of an unfair labor practice charge filed by the Petitioner against the Employer in Case 12-CA-250176.²¹ During that period he was not assigned work at the Airport. During the rest of his employment with the Employer, other than his first week spent training at Ft. Lauderdale, Colon has worked exclusively at the Airport. Colon participated in two other events held at the Doral office: a barbecue cookout on an unspecified date, and a meeting held by the Employer’s Human Resources Department in around November 2019 regarding the Ultipro application that is used

²¹ A Complaint and Notice of Hearing was issued in Case 12-CA-250176 on February 3, 2020, in which it was alleged that the Employer violated Section 8(a)(1) and (3) of the Act by, among other things, transferring Colon out of MIA from October 9 to October 25, 2019. The parties entered into an informal Settlement Agreement, which I approved on February 24, 2020. The case was closed on May 15, 2020, based on the Employer’s compliance with the terms of the Settlement Agreement.

to record time and employee benefits.

As previously discussed, the daily service route plans show the work assignments of employees per day. The service route plans of the MIA branch for the months of March through May 2020 show several instances in which MIA employees were assigned to work on units outside of the Airport, apparently in jobs normally covered by the Doral branch. These instances of assignments of MIA employees to work outside of the Airport constituted less than two percent of the total MIA work assignments from March to May 2020.

There is evidence that on May 14, 19, 20, 21, 26 and 27, 2020, when the Employer was working on rearranging the Doral modernization teams, MIA service technician Felix Hernandez Perez worked with a Doral service technician on a modernization project in Marathon, Florida, located in the Florida Keys, under the supervision of Doral supervisor Hector Paz. The record does not reflect the process by which Paz made the assignment to Hernandez, and whether he first requested assistance from one of the MIA supervisors, as he did via email on other occasions, discussed below. There is no other evidence that Doral or Fort Lauderdale first line supervisors assigned work to any MIA employee, and no evidence that MIA first line supervisors assigned work to any Doral or Fort Lauderdale employee.

Christian Gonzalez was assisted by an MIA branch employee once or twice during the period of almost 11 months from the time he transferred to the Doral branch in July 2019 until he testified in June 2020. On one occasion, MIA driver Alfonso picked up garbage at a job and delivered some weights to Gonzalez for an inspection test.²² On another occasion, Luis Colon assisted Gonzalez in some fashion, but the record does not reflect the details of Colon's

²² The weights are needed to confirm the weight an elevator can hold by testing the brakes with the weights in the elevator.

assistance, or the amount of time it took for Colon to assist Gonzalez .²³

The record shows that employees from the Fort Lauderdale branch have performed two modernization jobs at MIA – one at the American Express (Amex) Centurion Lounge which involved one or two elevators concluded in about November 2019 after about one and a half months, and a second that started in about March 2020, at the Dolphin Garage. According to Regional VP West, the primary supervisor for these modernization jobs is Fort Lauderdale Modernization Supervisor James Miller, who directly oversees the work by visiting the work site at MIA.²⁴ These modernization projects are not covered by the contract between the Employer and Miami-Dade County, although, as noted above, the contract provides that the Employer is prequalified to bid for modernization work at the Airport. The Employer bid for and obtained a separate contract to perform the modernization work at MIA.

It appears from the record as a whole, including the testimony of employees Colon and Gonzalez, and Doral supervisor Paz, that modernization work entails the updating of an entire unit, which requires replacing all parts necessary to make the unit compliant with current code. Modernization work is more extensive than common repair work, like that typically performed by MIA technicians, which may only involve the repair or replacement of a single part.²⁵

The Fort Lauderdale modernization employees did not participate in the daily meetings held with the MIA branch employees and have not been included in the daily assignment sheets

²³ In addition, the record does not establish whether Colon was an MIA employee when he assisted Gonzalez, or whether this occurred during the period of several weeks in October 2019, when Colon was assigned to the Doral branch, which assignment was the subject of the above-referenced unfair labor practice charge in Case 12-CA-250176.

²⁴ The parties stipulated, and I find, that modernization supervisor James Miller is a supervisor within the meaning of Section 2(11) of the Act

²⁵ Regional VP West testified that sometimes there are gaps between the Employer's modernization projects, during which time modernization technicians are assigned to do other work, such working in the warehouse, on service routes and performing repair work.

or on-call list for MIA. In addition, there is no probative evidence that any MIA employees worked together with the Fort Lauderdale modernization technicians on these two projects. Although Regional VP West testified vaguely that MIA employees were involved in these modernization projects in some fashion, the record does not reflect that he has personal knowledge of such involvement, and he failed to provide any specific evidence regarding the involvement of MIA technicians in the projects. Moreover, the MIA daily service route plans for March through May 2020 (which includes the period of the Dolphin Garage modernization project), do not show the assignment of any MIA technicians to this modernization work.

Although MIA technician Colon performed inspections at the Dolphin Garage and the Centurion Lounge where the two modernization projects occurred, there is no evidence that he interacted with the Fort Lauderdale modernization technicians. Christian Gonzalez recalled that when he was an MIA technician, he saw two employees from the Fort Lauderdale branch, modernization technician Rafael Gonzalez and Kevin,²⁶ performing modernization work at the Centurion Lounge. Christian Gonzalez testified that during the two Fort Lauderdale employees did not participate in the daily MIA branch employee meetings, and were not included on the MIA branch daily service route plan or on-call list. Although Christian Gonzalez briefly greeted and chatted with the two Fort Lauderdale employees if he happened to work on a unit near the Centurion Lounge, he did not otherwise interact with them.

Colon has never seen Doral Supervisor Hector Paz at the Airport. He recalls seeing Fort Lauderdale supervisor Yhamil Aponte at the Airport once, in around 2018. He recalls seeing Doral employee Aberasturis doing troubleshooting at the Airport approximately once every six months. Jose Moya, who transferred from MIA to Doral in January 2020, is still included on the

²⁶ Christian Gonzalez could not recall Kevin's last name but explained that he worked as a helper. Apparently, he was referring to Kevin Marengo, a Fort Lauderdale modernization apprentice.

MIA on-call list.

The MIA on-call calendar from February 2019 to May 2020, except for June 2019 and January 2020, was entered in evidence. It shows that MIA employees are the only employees assigned to work on-call at the Airport except for Jose Moya, who remained on the MIA on-call list after his permanent transfer from MIA to the Doral branch in January 2020. Since transferring from MIA to Miami Doral, Moya has remained on the MIA on-call list one day per month. The other employees who have permanently transferred from MIA to another branch have been removed from the MIA on-call list.

The record shows that technicians Jose Moya and Elvin Pantoja transferred from MIA to Doral on or about January 20, 2020, and that Lochiel Hodgson also transferred from MIA to Doral in late January 2020. Employee Gabriel Ortiz transferred from Doral to MIA on December 30, 2019 and employee Jose Rodriguez transferred from Doral to MIA in March 2020. These were all permanent transfers, as opposed to instances of day-to-day interchange. Although there is not specific evidence as to whether the transfers of Moya, Pantoja, Hodgson, Ortiz, or Rodriguez were voluntary or were mandated, Regional VP West testified that such transfers are “mostly voluntary.”

2. Employer testimony, service tickets and summary reports

Doral Supervisor Hector Paz testified that he made requests to MIA supervisors for the temporary assignment of MIA employees to perform Doral branch work on a number of occasions. There is evidence that on nine occasions between October 2019 and May 2020, a period of eight months, or on average once per month, Paz requested the help of MIA apprentice Gabriel Alfonso to pick up or deliver equipment such as weight, empty oil drums, trash, a step chain at jobs in Miami outside of the Airport. There is no evidence regarding the amount of time

Alfonso spent performing these assignments but it appears that they are all tasks that can be performed in a portion of a single workday. The evidence does not show the extent of any interaction between Alfonso and other employees of the Employer when performing these tasks. This included requests for assistance made between September 3, 2019 and May 28, 2020. Paz requested help from MIA service technician Juan (or Jan) Claudio on five occasions: to remove a gearbox; check an escalator shutdown; perform a repair; adjust guides; and work with two other MIA employees, technician Jose Cuevas and the aforementioned MIA apprentice Gabriel Alfonso, to perform vulcanizing work at Publix store. Paz requested the assistance of MIA service technician Marcos Canals on four occasions, three times to perform welding work because there are no , and once to work with two Doral employees on a step chain replacement. In addition, Paz requested help from MIA technician Jose Cuevas and MIA apprentice Gabriel Alfonso on two occasions to perform handrail repairs. Paz testified that all of the above requests were fulfilled and the jobs were performed.

The Employer introduced in evidence a series of service tickets generated from its software system and summary reports of those tickets. The Employer asserts that these documents show substantial employee interchange and functional integration of its operations. The reports summarize information from about 2,500 tickets in total, and include work performed at each of the Employer's branches and for all the Employer's lines of businesses.

Dispatch Manager Poole described at length the procedure to create and enter information in the Employer's computer database (the Total system) that results in service tickets created by the dispatchers. These tickets are used for payroll and billing purposes. Service for a unit (elevator, escalator or moving walkway) can be requested by a caller, by email, or it can be based on a discussion between a supervisor and a technician. The tickets contain several fields of

information such as the account number assigned to a client, and the line of business under which the client is billed or has contracted with the Employer (e.g. maintenance, modernization, etc.). Poole explained that the ticket contains information such as the date it was dispatched to a technician and completion date. However, the completed day in the system may differ from the actual day of completion because the technician may close the ticket on a day other than the day the work was completed. The ticket also contains a brief explanation of the work expected to be performed, or that was requested by the client, and a brief explanation of the work performed by the technician. Under the “hours” field, the technicians report the number of hours worked. The system automatically assigns the ticket to the employee who is designated to the account in the system, but that can also be manually changed. The tickets can be modified by overnight dispatchers who process the tickets, by general managers and supervisors who review them, or by the Employer’s headquarters personnel after a pay week is closed out. When the tickets are created a message is sent to the technicians’ company mobile phones, which have an app that syncs information from the Total computer system with information about the assignments.

When creating a ticket, the dispatch screen opens on the first open ticket in the system. The system contains the tickets for all of the Employer’s offices. Therefore, if a dispatcher forgets to click on “create a new ticket” for example, a dispatcher from the Indianapolis office may erroneously appear on a MIA service ticket.

Dispatch Manager Poole clarified that each ticket contains a job number that represents the line of business under which the work was contracted, but she was unable to explain the specific work performed by the technicians in the field or some of the descriptions of work performed on the tickets. For example, she could not explain why in the resolution description field of a ticket that stated “HR repair” the work was categorized as modernization in one

instance and as repair work in another. Similarly, she did not explain why “vulcanizing” is designated as maintenance work on some tickets and modernization work on others .

Additionally, there is a “modernization group” working at the Fort Lauderdale location that does not submit its time worked for payroll via the mobile phone app, and that group’s work appears as modernization work in the system but contains no further explanation of the work performed.

In addition, the type of work performed may not be clear from the completed ticket summary listing submitted by the Employer. For example, the summary categorizes work performed by MIA service apprentice Gabriel Alfonso at MIA on March 11, 2020 as modernization, whereas the description of work performed was that Alfonso cleaned the unit and performed regular maintenance per the contract. There was no explanation why this work was classified in the system as modernization, which witnesses described as work that costs over \$25,000 and/or involves an upgrade or major overhaul of a unit.

The summary reports include instances in which the description and resolution areas of the ticket only show the word “MOD,” without any further information or explanation of the work performed. Other examples of the description of work included in these reports are “remove and replace step chain,” “troubleshooting,” “arrived and found tach and/or encoder malfunctioning,” “put steps back,” and “replace step chain, preparing the unit.” These general descriptions do not clearly explain whether it was modernization work, or service or repair work.

Poole explicitly stated that the “type of work” field on these tickets corresponds to the line of business under which the work was booked. i.e. modernization, repair, maintenance or extra service, because the various lines of business are billed differently. Thus, the ticket is automatically generated based on the job number, and cannot be altered by the person entering

the information in the Employer's system. Accordingly, the information on the ticket does not necessarily correlate to the work performed.

Additionally, neither the ticket summary listings nor the service tickets in evidence accurately reflect the employees' supervisor or work location at the time the employee performed the work listed in the document. The reports were generated by Poole, and reflect the names of the employees who worked under each supervisor at the time of the hearing. However, they include all work performed by those employees for a one-year period, from June 1, 2019 to June 2, 2020, even if the employees were working under another supervisor or branch at the time. In other words, the reports reflect all work performed by the employees regardless of the branch and/or supervisor they reported to at the time it was performed. Therefore, the reports are not a reliable indicator of interchange.

The Employer notes that there are limited filters for printing these reports based on the system data, apparently to explain the lack of specificity. The Employer did not present any evidence from witnesses with firsthand knowledge of the alleged employee interchange described in the summary reports or the service tickets. A review of certain service tickets follows.

According to West, two modernization jobs have been performed at the Airport, the aforementioned Amex Centurion Lounge project completed in late 2019, and the Dolphin parking garage which was an active project at the time of the hearing in June 2020. Like Christian Gonzalez, West testified that the Amex Lounge modernization work was performed by Fort Lauderdale employees Kevin Marengo and Jose Ochoa. West recalled that the Dolphin Garage project began around the first of April 2020.

West also testified about a ticket showing that on March 17, 2020, Fort Lauderdale

technician Angel Miranda spent 8 hours working on a modernization project for Stellar Construction, an outside general contractor, at the Airport. He testified, and ticket #3855844 shows, that Miranda, who is supervised by Yhamil Aponte, was likely selected for the job because of his talent and experience. MIA technician Colon recalled what may have been the same job performed by Miranda, which Colon described as a small job adding a rear entrance to an elevator on the third floor at MIA. Colon also recalled that Miranda worked at the Miami Intermodal Center performing repairs and, on one occasion, a “clean-down.”²⁷ The record does not reflect the entire amount of time Miranda spent working at MIA.

Regional VP West testified that the Stellar Construction project was a hydraulic modernization where the elevator had a rear opening and the company added an additional rear opening on another level, and replaced controls, signal fixtures and door equipment. Stellar Construction had a larger project in the Airport and contracted the Employer for the elevator work. Although West described the project as a modernization job, the MIA service route plan shows that MIA repair technicians Felix Hernandez, Javier Rosa and Daniel Sorto also worked on this project, which was designated as a repair project, during the month of March 2020. The MIA repair technicians were not assigned to work on the Stellar Construction project on March 17, the day when Fort Lauderdale technician Miranda worked on the project. As West testified, the description of this project in the route plan was “quoted price repair.”

Regarding another report generated by the Employer, which purported to reflect work performed by Doral branch technicians at MIA from November 1, 2019 to June 2, 2020, West testified that he knew these were Doral employees because at the bottom of the report it said 57, which is the Doral branch number. He stated that from a review of the report it appeared that it

²⁷ A clean-down is annually required for escalators and moving walks. The unit is taken apart, cleaned, and lubricated, and, after an inspector approves the work, the unit is reassembled.

listed modernization repair technicians performing MOD work and performing maintenance work at the Airport. At the top of each page of the detailed ticket listings, the document indicated that the report covered the period from May 27, 2020 to May 27, 2020, in other words, only one day. West could not explain why the report had that information, when it was supposed to reflect work from November 2019 to June 2020, and the report included information prior to May 27, 2020. As noted above, technicians Elvin Pantoja, Jose Moya, and Lochiel Hodgson permanently transferred from MIA to Doral in late January 2020. West read information from documents which do not show the branch of the Employer to which Pantoja was regularly assigned at the time that the work listed was performed. Regarding a clean-down job at MIA performed by Pantoja on November 4, 2019, ticket #3725770, it appears that this was performed when Pantoja was still regularly assigned to MIA, rather than when he was assigned to Doral. Accordingly, this does not show any interchange. West assumed that because this was a relatively big job, others worked with Pantoja. He also speculated that Pantoja would have been instructed to perform this work by MIA supervisors Aponte Gonzalez or Fuentes because of the nature of the work. West testified in the same fashion with respect to work performed by Jose Moya reflected in the document, tickets #3728889, 3728832, 3728810, 3728797, 3728829, dated November 9, 2019. He speculated that Moya received the assignments from dispatch and likely performed the work on his own. He also assumed that MIA supervisor Fuentes assigned Moya to work at Tri-Rail based on tickets #379684 which lists the caller, i.e. the initiator of the work, as “email,” and ticket # 37906175 which lists the caller as “1971419426.” However, Pantoja and Moya were still regular MIA employees as of the dates on these tickets. Accordingly, West’s testimony about Moya and Pantoja working under MIA supervisors fails to establish any interchange between MIA and Doral.

To the same effect, West acknowledged that from looking at the report of MIA work purportedly performed by Doral employees he could not tell if Hodgson was regularly assigned to MIA or a Doral employee when he performed the work detailed in the report that supposedly showed Doral employees working at the Airport between November 1, 2019 to June 2, 2020. West testified that from looking at the document, it appeared that the work performed was purely maintenance work. Luis Aberasturis and Lochiel Hodgson were the only employees listed. However, the 49 work assignments performed by Hodgson that are listed in the report were performed between November 1, 2019 and January 9, 2020, when Hodgson was an MIA branch employee, and before his permanent transfer to Doral in late January 2020. Therefore, contrary to Employer's assertions, this report does not establish any employee interchange involving Hodgson. Another assignment to Hodgson listed in the document, which under the "tag" entry showed Tri-Rail Miami Airport Station (Miami Intermodal Center, or MIC), West explained that this was not an Airport contract. It was a contract with the South Florida Regional Transportation Authority, and it was in a building adjacent to the Airport. West clarified that in the Employer's system Tri-Rail was originally a Fort Lauderdale account, so it was possible that in the company computer system, reports of work on that account are assigned to Fort Lauderdale instead of Doral. However, from the record as a whole it appears that the MIC work at the Airport is regularly performed by the MIA branch, not by the Doral branch.

West also asserted that one could tell from the summary report whether more than one employee worked on an assignment. For example, regarding Doral supervisor Orlando Valle's entries, West testified that he assumed Valle worked with technician Luis Colon because there were teamed during a period. However, he did not provide any details about the period in which

they supposedly worked together.²⁸ When asked whether Valle worked with any employee other than Colon during that assignment, West did not know, but assumed from the description of the work that in some instances Colon must have worked with someone else. The summary report does not show if employees were working in teams. Again, Regional VP West had no firsthand knowledge about the information on the summary reports or tickets.

The Employer also introduced in evidence a list of service tickets that purport to show Fort Lauderdale employees working repair hours at MIA from November 1, 2019 to June 2, 2020. When Regional VP West was asked to explain the type of repair the report reflected, he testified that he was only reading a label on the report, hence the work could be a repair, a large repair, or a modernization project. The report included instances that referred to maintenance as the type of work performed. West testified that “typically” a ticket would have maintenance as the type of work if the work is required under a maintenance contract and is non-billable. With respect to entries classified as modernization, he explained that it would typically refer to a project that was accepted or approved to be paid in a separate agreement. From looking at the document West could not identify the specific work performed for each entry, but concluded that it was fair to say that the report indicated that Fort Lauderdale employees had performed maintenance or modernization work at the Airport. With respect to zones referenced in the summary report of tickets, he explained that the contract with the Miami Dade County Aviation Department is divided into five different zones for billing purposes, hence that is the manner in which the information is loaded into the system. He is not familiar with the zones at MIA and does not know whether the Employer provided services at MIA parking garages other than the

²⁸ As noted above, MIA service technician Colon worked in the Doral branch for a few weeks in October 2019, a reassignment that was the subject of a settled unfair labor practice charge. It may have been during this period that Valle worked with Colon.

Dolphin parking garage. West did not know the individuals who appeared on the tickets as taking the call and speculated that since the tickets were generated by the dispatch group, it would have to be a dispatch employee.

A different version of service tickets, referred to as a completed service tickets that are submitted to clients for billing purposes, were submitted to show work performed by MIA employees for the Doral branch from June 1, 2019 to June 8, 2020. According to these tickets, MIA technicians worked a total of 1,409.5 hours outside of MIA during a 53-week period. This amounts to approximately two percent of the 63,600 total hours that MIA employees worked during that period considering that there are 30 technicians in MIA, and assuming that each works 40 hours a week.

Regional VP West testified that the Employer uses MIA employees for the on-call schedule outside the Airport. He specified that pursuant to the on-call schedule for the Fort Lauderdale office, Rafael Rodriguez, a MIA employee, was on-call for South Dade on December 1, 2019. The on-call list also includes the supervisor that is on-call in the event the technician needs to speak to someone other than a dispatch employee. According to West, until recently, the Employer had a single on-call supervisor covering both the Fort Lauderdale and Doral branches. However, since about March 2020, the Employer has been assigning separate on-call supervisors for their respective branches' on-call work. The on-call list does not reflect that MIA supervisors Aponte Gonzalez or Ricardo Fuentes were assigned as on-call supervisors to Fort Lauderdale employees. West also testified that MIA employees who are on-call may be called to work at the Tri-Rail account at the Airport, and may also be called to work outside the Airport. However, there is no evidence that MIA employees have performed on-call work other than at MIA. He testified that each branch's on-call list is distributed to all supervisors for that

branch, and asserted that the email is copied to some others who are not on the on-call list, in case they are needed for a heavy repair after hours. West pointed out that emails with the MIA on-call list have included Doral service supervisor Luis Aberasturis, Fort Lauderdale modernization apprentice, Yorvin Gomez, Doral modernization technician Raul de los Reyes, and an unidentified person named Kevin Panini in case there is a need for a heavy repair after hours. These individuals are not on the MIA on-call list itself, and there is no evidence that they have been called to MIA after hours.

Some of the evidence introduced by the Employer is intended to show interchange between the Fort Lauderdale and Doral branches. For example, the Employer submitted service ticket #3726712 for the proposition that a Fort Lauderdale modernization technician, Rulin Lopez, was assigned work by Doral supervisor Hector Paz. Regional VP West testified that the ticket showed that Hector Paz made the call and that the work was assigned to Lopez. Similarly, he described ticket #5057-3671, stating that the ticket showed that “dv” was the caller, whom he indicated was Doral supervisor David Valles, and the service was dispatched to Ft. Lauderdale technician Orlando Valle. However, Tammy Poole testified that when dispatchers receive a service call and the service ticket is prepared, once an account number is entered into the system, the system identifies the route mechanic who is assigned that particular client and/or route. A supervisor may also create a ticket and manually change the mechanic, but no evidence was presented to establish how the assignments on the service tickets in evidence were made in the system, automatically or manually. Although the document identifies a caller, the document does not demonstrate what the supervisor told the dispatcher about the assigned technician.

Regional VP West read the information contained in the tickets into the record and appears to have speculated about how those assignments came about, despite the lack of

evidence that he had any firsthand knowledge about them. For instance, with respect to ticket #3800755, technician Jose Moya is the caller and it appears as if he assigned the job to Fort Lauderdale technician R. Lopez. West surmised that probably the call came from dispatch directly to Moya and he rerouted it to Lopez to handle, or maybe Moya did the job in conjunction with Lopez. West testified that sometimes a technician will ask another technician for help, and then they go back to the dispatch department or to a supervisor to reassign the call. Ticket #3800755 does not show what in fact occurred despite the possibilities discussed by West.

Regional VP West also testified regarding ticket #3726712, assigned to R. Lopez, that after finishing the job Lopez would have informed Doral supervisor Hector Paz. When asked why this would occur, West stated that it was because the supervisor would have to make sure that the unit was put back into service. However, West had no first-hand knowledge of communications between Lopez and Paz. Regional VP West testified about other tickets with respect to which he did not appear to have any firsthand knowledge. With respect to ticket #3733145, the “caller” portion says “per tecg,” and the ticket shows it was assigned to Yorvin Gomez. Regional VP West did not know who tecg is, but testified that the ticket showed that Gomez, a Fort Lauderdale employee, performed work at a Doral job. Regarding ticket #3754676, a ticket showing GonzalezG, called by “tech” and assigned to Yorvin Gomez, West could not identify GonzalezG.

3. Airport Security Badges

The Employer submitted into evidence a spreadsheet of the technicians who work at the Fort Lauderdale, Doral and MIA branches, respectively. The spreadsheet contains each employee’s name, job title, date of hire, branch location, and supervisor, and shows whether the employee has a MIA badge to gain access to the Airport. Regional VP West testified about the

information contained in the spreadsheet, although he did not prepare the document and was not certain who prepared it. West was not sure whether the branch location included in the spreadsheet for each employee was the branch that the technician was assigned to at the time of hire, or at the time the spreadsheet was printed in preparation for the hearing. The spreadsheet was submitted to show that certain Doral and Fort Lauderdale employees have the required clearance to work at the Airport, shown on the spreadsheet by an MIA badge number, but the spreadsheet does not show whether badged employees from the Fort Lauderdale or Doral branches actually worked at MIA.

The spreadsheet shows a total of 40 employees who possess badge numbers for the identification needed to work at the Airport. Other than MIA employees or the former MIA employees who permanently transferred to Doral, the following nine employees are on the list: Fort Lauderdale modernization technicians Rafael Gonzalez, Edwin Jarquin, and Jose Sanchez, Fort Lauderdale modernization apprentices Yorvin Gomez and Kevin Marengo, Fort Lauderdale modernization supervisor Jose Ochoa, Doral modernization apprentice Ramon Varela, Doral service technician Moises Garcia, and Doral service supervisor Luis Aberasturis. There is information on the spreadsheet to the effect that other employees have started the process of obtaining the badge needed to work at MIA, but do not yet have a badge number.

4. Sign-in sheets for meetings held at Doral

The Employer submitted a sign-in sheet of a meeting held in January 2019, at the Doral office with a total of 12 employees, showing that MIA technician Jose Rodriguez signed as an attendee. West speculated that Rodriguez participated in the meeting because of “crossover interchange” between MIA and Doral, and that Rodriguez might have been on loan to Doral for the day. However, as noted above, other record evidence shows that Jose Rodriguez was part of

the Doral staff at the time of the meeting and until March 9, 2020, when he permanently transferred to MIA. West further testified that based on a sign-in sheet for a meeting held at Doral on October 22, 2019, it appeared that employees from multiple offices attended the meeting. A comparison of that sign-in sheet to the Employer's organization chart shows that only the names of two employees assigned to MIA, Marcos Garcia and Abdiel Varela, appear on the sign-in sheet, and the rest were Doral employees. There is no evidence as to why the two MIA employees may have attended, or the particular subject of the meeting.

West testified along the same lines with respect to sign-in sheets for meetings held at Doral on November 6, 2019 and November 11, 2019. According to the sign-in sheets these were safety or "toolbox" meetings. West had no recollection of attending the meetings. The sign-in sheets include the "company" and location where it was held. For example, on the November 6, 2019 sign-in sheet, Miami International Airport is listed as the "company" and the Doral office is listed as the location of the training. All but two of the 30 employees who signed the sheet were MIA employees at the time of the meeting. The names of the other two, Abdiel Quintana and Kevin Figueroa, do not appear on the Employer's organization chart for any of the three branch offices. Thus, it appears that the November 6 meeting was only for MIA employees, even though it was held at Doral. The sign-in sheet for the November 11, 2019, meeting shows that of the 18 employees who attended, there were some from all three branches, but there is no evidence about the subject of this meeting.

II. ANALYSIS

A. Board law regarding single facility units

When a union files a petition seeking to represent a unit of employees at a single facility in an employer's multi-facility operation, the Board has long held that the single facility unit is

presumptively appropriate. *J&L Plate, Inc.*, 310 NLRB 429, 429 (1993). The party opposing the single-facility unit carries the “heavy burden” of producing affirmative evidence to rebut the unit’s presumptive appropriateness, and a multi-facility unit will only be required upon a showing that the single facility “has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” *Catholic Healthcare West d/b/a Mercy Sacramento Hospital*, 344 NLRB 790, 790 (2005); *D&L Transportation, Inc.*, 324 NLRB 160 (1997); and *J&L Plate, Inc.*, 310 NLRB at 429, citing *Dixie Belle Mills*, 139 NLRB 629, 631 (1962). The Board considers factors such as: (1) centralized control over daily operations and labor relations, including the extent of local autonomy; (2) the similarity of skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) the parties’ bargaining history, if any. *J&L Plate*, 310 NLRB at 429.

B. Centralized control over daily operations and labor relations and degree of local autonomy

A review of Board decisions reviewing the issue of the appropriateness of single facility units and multi facility units in a larger corporate organizational structure sheds light in analyzing this case.

In *North Hills Office Services*, 342 NLRB 437, 437, fn.3 (2004), the Board found a single unit of 27 service employees appropriate despite the employer’s larger regional administrative unit composed of 366 employees at 59 facilities in the New York/New Jersey area. Despite the similarity of job functions among employees, and the employer’s centralized labor relations and personnel policies, the Board noted that there was local supervision and some degree of labor relations autonomy at the facility at issue, and limited transfer and interchange among the various facilities in the greater New York/New Jersey area. The Board found a single facility unit appropriate. With respect to local autonomy, the Board noted that the supervisors “retained

at least limited local autonomy” by overseeing the work of the staff, releasing employees if they needed to leave work, training employees on the use of equipment, and recommending disciplinary measures. The Board distinguished the facts of that case from its findings in *Trane*, 339 NLRB 866 (2003) and *Waste Management Northwest*, 331 NLRB 309 (2000), stating that in those cases the single facility had no local supervision, and therefore, no level of local autonomy, whereas in *North Hills* there were “two on-site supervisors invested with at least limited local autonomy to oversee the day-to-day operations of the facility.” *Id.*

Similarly, in *New Britain Transportation Co.*, 330 NLRB 397 (1999), the Board held that centralized control over labor relations alone, such as personnel and labor relations policies, including accounting, recordkeeping, payroll, and wage and benefits, and over such matters as formal discipline, new-hire training, and safety training, is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations. In holding that centralized administration and labor relations policies and procedures did not negate the presumption that a single location unit was appropriate, the Board noted that local supervision made decisions regarding employee schedules and assignments, including making temporary transfers, approved time off, vacation and sick leave, and addressed minor disciplinary problems. *Id.* at 398.

In *Rental Uniform Service, Inc.*, 330 NLRB 334 (1999), the Board reversed the Regional Director’s finding that the single-facility presumption had been rebutted. The Regional Director had relied on the employer’s highly integrated operation and centralized control over labor relations, administrative and personnel matters. The Regional Director also determined that the similarity of skills, pay, and job functions of the employees at three facilities demonstrated a shared community of interests that rendered the single-location unit inappropriate. However, the

Board concluded that these factors were sufficient to overcome the single-facility unit presumption, and pointed out that there was evidence of significant local autonomy over labor relations because employees permanently assigned to a facility reported to an immediate supervisor, who along with the local manager, had significant responsibility for the employees' day-to-day work. If the employees had any problems, they would bring it to their immediate supervisors' attention, who also granted time off requests. The immediate supervisors could issue oral warnings, and draft written discipline, and participated in discussion involving terminations. Additionally, the direct supervisor prepared the performance evaluations of the employees. The local supervisor was also involved in the hiring process with the manager. The Board characterized this local supervision involvement in labor and personnel relations as significant and concluded that it demonstrated meaningful local autonomy and participation in matters directly affecting the employees' working conditions. *Id.* at 335-336.

The Employer has organized itself into separate branches, including MIA, Doral, Oracle Entrance, and Fort Lauderdale. The Employer has centralized control over personnel and labor relations including payroll. Local recommendations concerning disciplinary actions and hiring, or termination are done with the involvement of VP West and the human resources department. The facilities in dispute here all subject to the same personnel policies, wage and benefits program and training/orientation policies detailed in the Employer's 2020 Benefits Guide and the Associate Handbook. The wages for all technicians are between \$32 to \$45 per hour, for apprentices between \$20 and \$25, and for technicians working at the door entrance component, between \$20 and \$35 per hour. The Employer also requires monthly safety meetings for technicians and apprentices at all of its branches. The Employer uses the same computerized dispatch system to dispatch work to employees at all of the involved branches. Centralized

control over personnel and labor relations alone, however, is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations. See, e.g. *Carter Hawley Hale Stores*, 273 NLRB 621, 623 (1984). Here, the record shows that supervisors at each location have an important role in performing labor relation functions.

Although Branch Manager Trnka has responsibility for both the Doral and MIA branches, he did not testify, and there is minimal evidence showing the extent of his involvement in the day-to-day supervision of MIA staff other than by leading the pre-pandemic morning meeting of MIA technicians. Supervisors Aponte and Fuentes also conducted these mandatory morning meetings of MIA branch employees lasting about 30-minutes to discuss the daily assignments and any work issues. Aponte and Fuentes prepare and make the MIA route sheet assignments, oversee the daily work of the MIA branch employees, and prepare the on-call schedule for the MIA branch. When the Doral branch has requested assistance from MIA employees, the requests are made through MIA supervisors Aponte and Fuentes. Aponte and Fuentes prepare the performance appraisals of all MIA branch employees, approve their leave requests, and have authority to counsel and initiate disciplinary actions with respect to MIA branch employees. Aponte and Fuentes are also involved in making hiring decisions for the MIA branch, along with Branch Manager Trnka, and the Employer's human resources department. Supervisors from Doral and Fort Lauderdale are not involved in any such actions concerning MIA employees, and Aponte Gonzalez and Fuentes are not involved in any such actions concerning Doral or Fort Lauderdale employees.

In summary, the MIA branch employees perform their daily work under the supervision of Aponte and Fuentes, who are directly involved in supervising their daily work assignments,

handling their problems, evaluating their work performance, disciplinary actions, and overall day-to-day supervision, and there is evidence of significant local autonomy over labor relations matters, such that the evidence of higher level centralized control over labor relations does not meet the burden of overcoming the presumptive appropriateness of a unit limited to MIA branch employees.

C. Similarity of skills, functions, and working conditions

The Board has held that the factor of similarity of skills, functions and working conditions is less important than whether the individual facility management has autonomy and whether there is substantial interchange. See, *Dattco, Inc.*, 338 NLRB 49, 51 (2002). Technicians and apprentices working at the MIA, Doral and Fort Lauderdale branches, but not at Oracle Entrance, are required to possess the same certifications and perform similar functions. Likewise, employees of the MIA, Doral and Fort Lauderdale branches have similar qualifications and training, and, as noted above, are paid industry-wide wage rates, receive the same benefits, and are assigned work through the same dispatch system. Additionally, all record their work time using the same application, except Oracle Entrance employees. They all wear the same uniform, other than Oracle Entrance employees, who have a different uniform logo.

However, there are certain distinctions particular to MIA employees. Contrary to employees at Fort Lauderdale and Doral who have a company vehicle, most of the Airport employees drive to the site in their privately own vehicles and park at the Airport. They must undergo a background check and security clearance to be able to work in the Airport secured area, although a minority of Fort Lauderdale and Doral employees also have this clearance. The five MIA employees who have company vehicles must pass Airport training to drive the vehicles at the Airport. The MIA employees' workday starts and ends 30 minutes earlier than the

workdays of Fort Lauderdale and Doral branch employees, and the Fort Lauderdale and Doral employees may have the option of working four 10 hour days rather than five 8 hour days, an option not available to MIA employees. The MIA branch employees spend the entire day working in units within the Airport, whereas Fort Lauderdale and Doral employees rarely report to the Employer's offices or see their supervisors, because they report directly to their clients' locations at various locations in the geographic areas served by the Fort Lauderdale and Doral branches, respectively. Thus, it appears that the Fort Lauderdale and Doral employees have significantly greater travel time between the performance of their various work assignments, as compared with the relative lack of time for MIA employees to travel on their routes between assignments within specific zones of the Airport. In addition, the MIA branch employees all work pursuant to the contract between the Employer and the Airport, a factor which supports a finding that a single-facility MIA branch unit is appropriate. See *First Security Services Corp.*, 329 NLRB 235 (1999). In this regard, the contract includes rates of labor for standard time and overtime pay and determines whether services are provided during regular working hours or otherwise. These terms appear to have a bearing on the compensation of MIA branch employees alone.

Taken as a whole, the evidence regarding the skills, functions and working conditions of employees is insufficient to overcome the presumptive appropriateness of the petitioned-for single-facility unit.

D. Degree of employee interchange and extent of functional integration

The extent of day-to-day interchange, particularly on a temporary day-to-day basis, is a significant factor in determining whether the petitioned-for unit appropriate. *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988); *Waste Management Northwest*, 331 NLRB 309 (2000); *New*

Britain Transportation Co., 330 NLRB at 398; *J&L Plate*, 310 NLRB at 430. Functional integration refers to the coordination of an employer's operations at two or more facilities. *Budget Rent a Car Systems*, 337 NLRB 884 (2002). This involves the common work of employees at the various facilities engaging in various stages of the employer's operation, such that employees constitute integral and indispensable parts of a single work process. *Id.* An important element of functional integration is that the employees from the various facilities have frequent contact with one another. *Id.* at 885.

In *Rental Uniform Service, Inc.*, 330 NLRB 334 (1999), the Board held that the employer failed to rebut the presumption of single facility for failing to show significant employee interchange. The Board noted that employees were assigned to one facility, and their routes began and ended at their assigned facility. The Board also considered that the instances of common training were offset by the many separate meetings that the employer held at each facility. Although the employees at the three facilities performed the same job, there was no evidence that employees from the facilities interacted with each other to perform their jobs on a regular basis.

In *New Britain Transportation Co.*, 330 NLRB 397 (1999), the employer presented evidence of more than 200 instances of temporary interchange in a 6-month period. However, the Board held that even assuming that there were 200 instances of temporary interchange, the data by itself lacked context and therefore was of little evidentiary value because the employer did not present evidence on the percentage of the total number of routes and charters involving temporary interchange. It concluded that the employer failed to introduce relevant affirmative evidence to rebut the single-facility presumption, and added that the presumption cannot be rebutted when an employer's interchange data is presented in aggregate form rather than as a

percentage of all of the work and as a percentage of the total number of employees. The Board added that interchange is considered when a significant portion of the work force is involved, and the work force is actually supervised by the local branch. Id at 398.

The record in this case reveals only minimal evidence of day-to-day interchange between MIA employees and employees at the other branches. The testimony of technicians at MIA establishes that on a day-to-day basis after participating in their mandatory morning meetings they go to their assigned work zones at MIA and work on their units without the participation or intervention of employees from other branches in their duties. MIA technician Colon indicated that when he worked in American Airlines concourse D, with 90 units in that area, he worked primarily by himself. Since he has been inspecting the elevators in the Airport, he has worked with two other MIA employees. He does not receive assistance from employees from other branches to perform his work. Although Colon has seen Fort Lauderdale modernization technicians working at the Airport, he has not worked with them. Modernization employees from Fort Lauderdale did not participate in the MIA daily meetings, even when working on their temporary projects at the Airport, and they were not included in the MIA daily route assignment email or the MIA on-call list. Similarly, technician Christian Gonzalez testified that during the 8-month period when he was assigned to the Airport he did not work with Fort Lauderdale employees. His only interaction with them was to greet them briefly.

The Employer relied heavily on the testimony of Regional VP West and Dispatch Manager Poole based on documents which were difficult to decipher and about which they had no personal knowledge. The testimony was presented in an attempt to establish substantial interchange, employee contact between the branches, and functional integration through the service tickets, reports and other documents, but this was largely refuted by the record as a

whole. West and Poole are not involved in the day-to-day Employer's operations at the disputed facilities. Poole reports to the Employer's headquarters office in Tampa. West infrequently visits the Ft. Lauderdale and Doral offices branches and does not interact with technicians assigned to those branches because they are in the field and do not report to their offices daily. He only visits the MIA facility for about half a day per month. For the most part, as detailed above, West and Poole merely read into the record information from documents that are used for billing and payroll purposes, but could not explain how work was conducted, who performed the work, or whether the person performing the work was working on jobs for a branch office other than the one to which they were regularly assigned. Furthermore, the Employer's evidence fails to show that interchange affects a significant percentage of the total amount of work performed or involves a significant percentage of the workforce.

Even assuming that the Employer's summary is accurate, the occurrences of interchange involving MIA employees working outside of MIA, as testified to my Doral supervisor Paz, and based on other testimony concerning instances such as Felix Hernandez's work on six days in May 2020 on a job in Marathon, Florida, only amount to two percent of the work performed by the MIA employees. The record as a whole shows that such interchange has been sporadic and infrequent, and does not necessarily involve contact with Doral or Fort Lauderdale employees. For example, the evidence of MIA employee Gabriel Alfonso performing periodic discrete tasks such as transporting parts or equipment to or from a Doral job and former MIA employee Christian Gonzalez occasionally going to Doral for parts, does not reflect any interaction between these MIA employees and employees from the other branches.

Similarly, occurrences of Fort Lauderdale or Doral employees working in MIA have been limited to two modernization projects performed by Fort Lauderdale employees under the

supervision of Fort Lauderdale supervisor Miller on work that is not part of the MIA contract, and infrequent work done by Fort Lauderdale technician Angel Miranda and Doral employee Luis Aberasturis at MIA.

Although there also have been about a half dozen permanent transfers between the MIA and Doral branches, the Board has found that permanent transfers are less significant than day-to-day interchange. See *Red Lobster*, 300 NLRB 908, 911 (1990). Moreover, it appears that these transfers have been voluntary, based on the employees' desires, and did not result from the needs of the Employer's operations.

Although there is some evidence of functional interchange based on the two modernization projects performed at MIA by modernization technicians from the Fort Lauderdale branch, as noted above the record demonstrates that these two discrete modernization projects have been separate from the work performed by MIA branch employees pursuant to the contract between the Employer and Miami Dade County, and it appears there other than brief greetings, there has been no contact between the Fort Lauderdale employees who worked on these projects and the MIA branch employees who work on 381 elevator, escalator, and moving walkway units located throughout the Airport.

In summary, the record fails to establish significant levels of interchange, permanent transfers, or work-related contact between MIA technicians and employees at the two other facilities. In addition, the MIA branch operates largely separately from the other branches, and the degree of functional integration is not enough to meet the heavy burden required to overcome the presumption that a single-facility unit of MIA branch employees is appropriate.

E. Distance between locations

The MIA facility is about one mile from the Doral facility as the crow flies, but one must

drive about six miles to travel between MIA and the Doral facility, so the actual distance between these locations is six miles. The Ft. Lauderdale facility is about 23 miles from the Airport. These geographic separations, while not determinative, gain significance where, as here, there are other persuasive factors supporting the single-facility unit.

F. Bargaining History

The absence of bargaining history is a neutral factor in the analysis of whether a single unit facility is appropriate. *Trane*, 339 NLRB 866, 868 fn. 4. Thus, the fact that there is no bargaining history in this matter does not support or negate the appropriateness of the unit sought by Petitioner.

G. Conclusion

I conclude that the Miami International Airport employees retained a sufficiently separate group identity to establish an appropriate bargaining unit. I do so because a single-facility unit is presumptively appropriate for collective bargaining, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. In determining that the single-facility unit sought by Petitioner is appropriate, I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether a single-facility unit is appropriate. In particular, I rely on the lack of evidence of significant interchange or functional integration between MIA and the other facilities, the extent of local autonomy with regard to day-to-day supervision of the MIA employees by MIA supervisors, and the unique aspects of the working conditions of the MIA employees.

III. CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate purposes of the Act to assert jurisdiction in this case.

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

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

5. I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time technicians, mechanics, apprentices, helpers, and warehouse employees employed by the Employer at Miami International Airport, Miami, Florida, excluding administrative and office clerical employees, professional employees, managerial employees, confidential employees, customer service associates, business development managers, sales employees, account managers, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The parties have proposed a manual election. At the time of the hearing the parties had not identified a suitable polling location at MIA, and the Employer proposed using a conference room that fits about 20 people, a large conference table and about 12 chairs, to conduct an election at Doral, about six miles from the Airport, because of logistical problems holding an election at the Airport. The Employer also proposed to make masks and hand sanitizer available. The Union sought an election at the Airport and the Employer appeared to be amenable to that proposition subject to finding a suitable polling location there.

Notwithstanding the parties' preference for a manual election I have determined that in view of the COVID-19 outbreak and especially because of the number of confirmed COVID-19 cases throughout the State of Florida, and particularly in Miami-Dade County, where the

Employer's Doral facility is located, I am directing a mail ballot election.

Miami-Dade County has by far the highest concentration of confirmed COVID-19 cases and deaths attributed to COVID-19 in the State of Florida. To date, according to the Florida Department of Health, there have been 170,400 confirmed COVID-19 cases and 3,280 deaths attributable to the virus in Miami-Dade County, and there have been 706,516 confirmed COVID-19 cases and 14,448 deaths attributable to the virus in Florida.²⁹ Miami-Dade also has a high rate of positive COVID-19 cases, at 6,234 per 100,000 population.³⁰ According to the Centers for Disease Control and Prevention, Florida has the third highest COVID-19 case total of all states in the United States.³¹ According to the website of Johns Hopkins University School of Medicine, Florida has a COVID-19 positivity rate of 10.6 percent, which is more than double the World Health Organization criteria of five percent positivity or lower. A positivity rate over five percent indicates a state may only be testing the sickest patients who seek out medical care, and are not casting a wide enough net to identify milder cases and track outbreaks.³²

A manual election would bring together approximately 30 unit employees as voters in a single room, together with party representatives, observers, and a Board agent, for a prolonged period of time and create a substantial risk of the spread of COVID-19 among the participants, perhaps through an asymptomatic person, in current conditions in the Miami area. At the time of the hearing the Employer indicated that it preferred that the election did not take place at the Airport because of logistical issues regarding access to secured areas for participants such as the Board agent and Petitioner representatives. It offered instead to hold the office at the Miami-Doral office in a conference room. This proposal would require 30 employees to drive outside of

²⁹ <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

³⁰ <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

³¹ https://covid.cdc.gov/covid-data-tracker/#cases_totalcases

³² <https://coronavirus.jhu.edu/testing/tracker/map/percent-positive>

their regular work facility to vote which will also create additional logistical issues to be able to put in place suggested protocols developed in an effort to determine how best to conduct manual elections safely and efficiently in this unprecedented environment.

The determination of the method of election is within the discretion of the Regional Director, so long as consideration is given to the relevant factors, and it is not an issue that is subject to litigation at a representation hearing. See *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954); see also, NLRB Casehandling Manual (Part Two), Representation Proceedings, Sections 11228, 11301.2, and 11301.4. The Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

The Board has stated:

[w]hen deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are ‘scattered’ because of their job duties over a wide geographic area; (2) where eligible voters are ‘scattered’ in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

San Diego Gas & Electric, 325 NLRB 1143, 1145 (1998). The Board further defined scattered “to apply in any situation where all employees cannot be present at the same place at the same time.” *San Diego Gas & Electric*, 325 NLRB at 1145, fn. 7. A Regional Director’s exercise of the broad discretion afforded by the Board in selecting the appropriate mechanics for an election will not be overturned “unless a clear abuse of discretion is shown.” *Nouveau Elevator*

Industries, 326 NLRB 470, 471 (1998), citing *San Diego Gas & Electric*, 325 NLRB at 1144, fn.

4. Although the Board expects Regional Directors to exercise their discretion within the guidelines outlined above, it recognizes that deviation from those guidelines may occur in extraordinary circumstances. *San Diego Gas & Electric*, 325 NLRB at 1145. The Board has upheld Regional Directors' determinations that mail ballots were warranted based on the guidelines in *San Diego Gas & Electric* because of the extraordinary circumstances created by COVID-19.³³

Given the above-described extraordinary circumstances caused by the spread of COVID-19 cases in the State of Florida and especially in Miami-Dade County, I find it appropriate to exercise my discretion to direct a mail ballot election, the details of which are provided below. Manual election procedures inherently require substantial interaction among voters, observers, party representatives, and the Board agent, all of whom must be present at the Employer's facility, and each interaction increases the risk to the participants. Party representatives, the parties' observers and the Board agent need to gather for a pre-election conference, including the check of the voter list, the showing of the ballot box being assembled, the parties' inspection of the voting area, and the Board agent's instructions to the observers. The Board agent and observers would share a voting area for the duration of the proposed nine-hour manual election. The observers would need to check in voters on the voter list, and the Board agent would provide a ballot to each voter. There is no guarantee that social distancing would be possible. For example, in the case of a challenged ballot the Board agent, observers, and voter must be in reasonably close proximity to each other to make the challenge, obtain information from the

³³ See e.g., *Atlas Pacific Engineering Company*, 27-RC-258742, fn. 1 (May 8, 2020); see also *Touchpoint Support Services, LLC*, 07-RC-258867, fn. 1 (May 18, 2020) (unpublished order); *Pace Southeast Michigan*, 07-RC-257046, fn. 1 (August 7, 2020) (unpublished order).

challenged voter to be entered by the Board agent on the challenged ballot envelope stub, pass the challenged ballot envelope and ballot from the Board agent to the voter, and make sure the voter encloses the ballot in the envelope and seals the envelope before dropping it in the ballot box. See Casehandling Manual Section 11338.3.

Although the Board has a strong general preference of conducting manual elections, it also has a long history of conducting elections by mail. “From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail.” *London Farm Dairy*, 323 NLRB 1057 (1997), and cases cited therein.

Even assuming that the Employer is willing to comply with all of the guidelines set forth in General Counsel’s Memorandum 20-10 on Suggested Manual Election Protocols, issued on July 6, as noted therein, that memorandum is not binding on Regional Directors because the Board, not the General Counsel, has authority over representation cases. Among other measures, the memorandum proposes self-certification that individuals who will be in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, or come into contact with someone who tested positive within the preceding 14 days, and are not awaiting test results. The memorandum also requires the parties to provide information about the number of individuals exhibiting COVID-19 symptoms. However, the CDC’s “current best estimate” is that 50 percent of COVID-19 transmission occurs while people are pre-symptomatic and 40 percent of people with COVID-19 are asymptomatic.³⁴ Asymptomatic persons will not likely have been tested for COVID-19 nor will they be identified as having the virus. Moreover, GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, which would delay the resolution of the question

³⁴ “COVID-19 Pandemic Planning Scenarios” (updated July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.

concerning representation. A mail ballot election avoids these concerns.

In these circumstances a manual election would create an undue risk to the health and safety of all persons involved in the election. In particular, I find that current risk of infection with COVID-19 that would result from a manual election in held in Miami-Dade County constitutes extraordinary circumstances that warrant the direction of a mail ballot election. The election details are set forth below.

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

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. At **9:30 a.m. on October 13, 2020**, ballots will be mailed to voters by the National Labor Relations Board, Region 12, from its office at **201 E. Kennedy Blvd., Suite 530, Tampa, Florida 33602-5824**. Voters must sign the outside of the envelope in which the ballot is returned. Any ballots received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **October 21, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 12 Office at **(813) 228-2644 or (813) 228-2661** or our national toll free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted at the **Region 12 office, 201 E. Kennedy Blvd., Suite 530, Tampa, Florida** on **November 10, 2020**, at **10:00 a.m.** In order to be valid

and counted, the returned ballots must be received in the **Region 12 office in Tampa** prior to the counting of the ballots. Due to the above-described extraordinary circumstances of the COVID-19 pandemic, I further direct that the ballot count will take place remotely by videoconference on an electronic video platform such as Zoom for Government.

The Notices of Election and ballots shall be printed in English and Spanish.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending on **September 27, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the patient dining supervisor classification whose eligibility remains unresolved as specified above and in the Notice of Election.

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

B. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **October 5, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

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

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

C. Posting of Notices of Election

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

RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: October 1, 2020.



David Cohen, Regional Director
National Labor Relations Board, Region 12
201 E Kennedy Blvd Ste 530
Tampa, FL 33602-5824