

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

FreshPoint Southern California, Inc.,

Employer,

and

Case No. 28-RC-252613

Teamsters Local 630,

Petitioner.

**FRESHPOINT SOUTHERN CALIFORNIA, INC.'S
REQUEST FOR REVIEW**

Respectfully submitted,

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Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, FreshPoint Southern California, Inc. ("FreshPoint" or the "Company") requests review of the Regional Director for Region 28's Supplemental Decision ("Decision") dated October 23, 2020 in the above-captioned matter. (*See* Attachment 1.) The following compelling reasons require the National Labor Relations Board ("NLRB" or "Board") to grant this request:

- A substantial question of law or policy is raised because the Decision presents a departure from officially reported Board precedent;
- A substantial question of law or policy is raised because of the apparent absence of officially reported Board precedent to support the Regional Director's finding that the terms of the third-party union pension trust agreement requiring that all employees in the bargaining unit be included in the pension plan do not comprise a substantial difference in terms and conditions of employment that precludes a finding that it is appropriate for the NLRB to order the inclusion of the Las Vegas drivers in the California unit;
- A substantial question of law or policy is raised because of the apparent absence of officially reported Board precedent to support the Regional Director's finding that the Las Vegas drivers should be included in the existing unit of California employees, where such inclusion necessarily results in an effective NLRB order to alter the terms and conditions of employment for Las Vegas drivers relating to their retirement benefits);
- The Decision, as to several substantial factual issues, is clearly erroneous on the record and prejudicially affects FreshPoint's rights; and/or
- To the extent the Decision rests on valid interpretations of existing Board precedent, there are compelling reasons for reconsideration with respect to important Board rules and policy.

I. Statement of the Case

On November 26, 2019, Teamsters Local 630 (“Union”), filed a petition seeking an *Armour-Globe* election to add or include all drivers employed at FreshPoint’s facility located in Las Vegas, Nevada, to an existing bargaining unit of drivers and warehouse workers employed at the Company’s facility located in City of Industry, California.

A hearing was conducted by Hearing Officer Sara Demirok on Monday, December 9 and Tuesday, December 10, 2019, to take evidence on whether the Las Vegas drivers should be included in the bargaining unit with FreshPoint’s California drivers.¹ At the hearing, the Union explicitly affirmed its unwillingness to represent the Company’s Las Vegas drivers in a unit other than the petitioned-for unit, claiming a unit of only Las Vegas drivers would not be appropriate. (Tr. 180.)

On December 19, 2019, the Regional Director issued a Decision and Direction of Election (“DDE”), in which the Regional Director found combining the Las Vegas drivers and the Company’s California employees in the existing unit would comprise an appropriate unit, such that an *Armour-Globe* election was appropriate. An NLRB election was conducted on December 27, 2019. The result of the election was that a majority of eligible voting employees voted in favor of union representation.

The Company subsequently filed a Request for Review of the DDE, which the Board granted. On June 18, 2020, the Board issued its Decision on Review and Order Remanding. Among other things, the Board found “that the Regional Director’s analysis is insufficient to

¹ The hearing transcript is referenced herein as “Tr. ” followed by the appropriate page number(s). The relevant excerpts from the transcript are attached hereto as Attachment 3.

determine whether a self-determination election was appropriate,” and ordered the Regional Director to:

- Consider the pension benefits under the extant agreement in analyzing whether the addition of the Las Vegas employees to the existing unit is appropriate under the multi-facility community-of-interest test;
- Determine whether the addition of the Las Vegas drivers to the existing unit results in a unit that includes all of the Company’s facilities and, if so, how that fact bears on the appropriateness of a self-determination election;
- Revisit his prior application of the multi-facility test and make specific findings regarding the extent to which each of the relevant factors (including geographic proximity, bargaining history, and degree to which the resultant unit conforms to the Company’s administrative groupings) does or does not support inclusion of the Las Vegas drivers in the existing unit, and the weight each factor should be accorded in the circumstances of this case;
- Consider the weight to be accorded to the collectively bargained differences in the employees’ terms and conditions of employment (as opposed to similarities based on sharing the same employee handbook);
- Consider the weight to be accorded any differences that are based on state law; and
- In assessing whether the factor of functional integration supports finding the petitioned-for unit appropriate, consider the extent to which the operations of the Company’s different facilities are interrelated in producing its work product.

(See Attachment 2, pp. 2-4.)

A hearing was conducted by Hearing Officer Sara Demirok on July 30, 2020, to take supplemental evidence on whether the Las Vegas drivers should be included in the bargaining unit with FreshPoint's California drivers.

The Regional Director issued his Supplemental Decision ("Decision") on October 23, 2020, in which he nominally addressed most (but not all) of the issues specified by the Board and summarily reaffirmed his prior conclusion that the Las Vegas drivers should be included in the California unit. (Attachment 1.)

As this brief will demonstrate, the record evidence and relevant legal precedent establish that Las Vegas drivers do not share a sufficient community of interest with California employees to support their inclusion in the existing unit. The Regional Director improperly disregarded the overwhelming evidence to reaffirm his prior conclusion that the Company's Las Vegas drivers should be added to the existing unit of California drivers, notwithstanding indisputable facts such as: these employees are geographically separated by hundreds of miles; they work under significantly different terms and conditions of employment; the two groups do not interact with one another; and there is *zero* employee interchange between the Las Vegas and California drivers. The Regional Director also improperly disregarded a critical difference in terms and conditions of employment for California drivers—*i.e.*, their participation in a union pension plan—that makes it entirely inappropriate for the NLRB to add the Las Vegas drivers to the existing California unit.

The Regional Director's repeated conclusion that the pension plan is insignificant because it is simply a collectively-bargained term of employment willfully ignores the indisputable and critical fact that *by operation of law, employees who are added to the California bargaining unit MUST be added to the pension plan.* As the Union well knows, it does not need to "bargain" with the Company over the inclusion of Las Vegas drivers. The Company will be *required* to add them

pursuant to the terms of the third-party trust agreement, and *will be forced to bargain its way back to the status quo—if it can.*

Because the Company has no leverage to alter the terms of the third-party trust agreement requiring that *all* employees in the bargaining unit *must* participate in the plan, an NLRB order to add the Las Vegas drivers to the California unit is necessarily an NLRB order to add the Las Vegas drivers to the union pension plan.

Therefore, in addition to making an inappropriate unit determination, the Regional Director's Decision represents an erroneous and unjustified departure from applicable NLRB law that unjustifiably forces the Company to alter substantive terms and conditions of employment for its Las Vegas drivers as a direct result of the NLRB's decision.

II. Issues

The principal issue in dispute is whether FreshPoint's Las Vegas drivers and the existing group of employees in California comprise an appropriate unit for the purposes of collective bargaining. As explained herein, the Regional Director's ultimate conclusion that Las Vegas drivers have a community of interest with California employees such that their inclusion in the existing unit would be appropriate is factually and legally erroneous and contrary to NLRB precedent. Accordingly, the NLRB should grant review, reverse the Decision, and dismiss the petition with prejudice.

III. Statement of the Facts

A. Background Information

FreshPoint distributes fresh produce to restaurants, hotel chains, schools, nursing homes and other customers throughout the Southern California basin. (Tr. 34.) Mr. John Collie is the Company's Vice President of Operations. (*Ibid.*)

The Company operates a distribution warehouse located in City of Industry, California. (Tr. 34.) The City of Industry warehouse supplies produce to all of the Company's domicile yards in California and Las Vegas, as well as to numerous other FreshPoint and Sysco companies. (Tr. 242.) City of Industry drivers are represented in a bargaining unit together with drivers at the Company's domicile yards that are located in other California cities: San Diego, Fontana, Costa Mesa, Sylmar and Ventura (Oxnard). (Tr. 230-231.) All of the Company's California drivers are represented by the Union in a single bargaining unit along with FreshPoint's warehouse workers in California. (Tr. 36, 55.) On July 30, 2020, Mr. Collie testified the local yards at Ventura, Fontana, Sylmar and Costa Mesa have only "been in existence for about 18 months." (Tr. 236.) Union representative Felix Chavez testified that as the Company opened each California domicile yard, unit employees were permitted to bid into positions at the California yards by mutual agreement of the Company and the Union, thereby bringing the yards under the CBA that covers the California drivers. (Tr. 275.)

The Company also operates a domicile yard located in Las Vegas, Nevada. (Tr. 36.) The yard supervisor at Las Vegas is Cesar Rosiles. (Tr. 239-240.) Mr. Rosiles is responsible for "the management of the yard, the negotiation of expense, and everything else that occurs physically at the facility." (Tr. 239-240.) He does not manage any other Company facilities. (Tr. 240.) Las Vegas employees report directly to Mr. Edgar Perez, a transportation supervisor at the Fontana facility. (Tr. 240.) Mr. Perez reports to Mr. Rosiles. (Tr. 41.) The Las Vegas drivers have not been represented by a union. (*Ibid.*)

B. The Company's Las Vegas and California Drivers Have No Contact and No Interchange.

The Las Vegas facility is located 253 miles from the City of Industry facility. (Tr. 54.) Las Vegas drivers do not ever handle deliveries in California. (Tr. 46-47.) California drivers do

not ever deliver produce for the Company in Las Vegas. (Tr. 47, 300.) California drivers and Las Vegas drivers service different local customers. (Tr. 50.) The trucks used by Las Vegas drivers are licensed only in Nevada and the trucks used by California drivers are licensed only for use in California. (Tr. 50-51.) Las Vegas drivers do not attend safety meetings or other employee meetings with California drivers. (Tr. 47-48.) California drivers do not bid into any positions at the Las Vegas facility. (Tr. 285.)

C. The Company's Las Vegas and California Drivers Have Significantly Different Terms and Conditions of Employment.

1. Unlike California Drivers, Las Vegas Drivers Report to a Third Party Warehouse.

Unlike the Company's California drivers, the Las Vegas drivers report to a third party ("Cool Storage") warehouse to pick up their loads for delivery to the Company's customers. (Tr. 37.) Produce is transported from the Company's City of Industry facility to the Las Vegas Cool Storage facility by Cool Storage (not FreshPoint) drivers. (Tr. 37-38.)

2. Unlike California Drivers, Las Vegas Drivers Must Load Their Own Trucks.

When they report to work, the Company's Las Vegas drivers must unload the third-party truck, load their own truck and complete a pre-trip inspection. (Tr. 245.) It takes about 2.5 hours for Las Vegas drivers to complete the process of unloading and loading, which they perform without the help of any warehouse personnel. (Tr. 246.) They then deliver the produce to the Company's local customers in the Las Vegas area. (Tr. 242.)

In contrast, "California drivers' loads are preloaded onto the trucks. So they just come in, check their loads, do their pre-trip, and then exit the facility." (Tr. 245.) If any adjustments need to be made to loads for California drivers—for example, if the driver feels a load was not loaded

correctly or is unsafe—there are warehouse personnel who perform that task for the driver. (Tr. 246.)

3. Drivers Have Different Work Hours.

Drivers in Las Vegas and in California have different work hours. Las Vegas drivers average 9 – 9.5 hours per day for their routes, in contrast to FreshPoint’s California drivers, who average 10.5 – 11 hours per day. (Tr. 50.)

4. Las Vegas Drivers Receive Extra Breaks That California Drivers Do Not Receive.

Drivers in Las Vegas are allotted multiple extra minimal breaks during the summer months, to cool down and hydrate in the desert climate where they work. (Tr. 245, 257.) The Company’s California drivers are not entitled to such extra breaks, although they may request them on an ad hoc basis from time to time. (Tr. 245.)

5. Drivers Receive Different Overtime Pay and Average Different Amounts of Overtime.

Las Vegas and California employees receive different overtime pay. California drivers receive overtime pay for anything over 8 hours in a day as well as hours in excess of 40 in a work week. (Tr. 243.) Las Vegas drivers only receive overtime for hours over 40 in a week. (Tr. 243.)

The two groups of employees also incur different amounts of overtime. Las Vegas drivers average 10-14 hours of overtime per week, while California drivers average about 8-12 hours per week. (Tr. 244.)

6. Differences in Sick Leave and Vacation.

Las Vegas drivers receive more sick days per year than California drivers. (Tr. 52-53.) Las Vegas drivers and California drivers are subject to different vacation accrual policies. (Tr. 53.) Las Vegas drivers receive two PTO days that employees in the existing unit do not receive. (Decision, p. 5.)

7. Drivers Have Different Health Insurance and Retirement Plans.

Las Vegas drivers have Company-provided health benefits and access to a 401(k) plan. (Tr. 54.) FreshPoint's California drivers are covered by Teamsters-sponsored health and pension plans. (Tr. 54.)

8. Differences Relating to Wage Increases.

Las Vegas drivers receive wages increases based on the results of their annual performance evaluations. California drivers receive wage increases in accordance with the CBA and do not receive annual performance evaluations. (Tr. 247.)

9. State Law Differences.

In accordance with applicable California law, California drivers receive certain state-mandated benefits that Las Vegas drivers do not receive, such as California medical leave, kin care and school leave. (Tr. 53, 244.)

D. The Union Pension Plan.

As stated above, FreshPoint's California drivers in the existing bargaining unit are covered by a union pension plan. At the hearing, the Company presented expert testimony from an attorney who specializes in employee benefits (Mr. Lorne Dauenhauer), including Taft-Hartley plans such as the union pension plan that applies to the Company's California drivers under the collective bargaining agreement between the Union and FreshPoint. (Tr. 121-123.)

Based on his review of the plan document, the trust agreement and other documents relating to the union pension plan, Mr. Dauenhauer testified that the rules of the trust require that the same contributions must be made on behalf of *all* employees within a job classification covered by a bona fide collective bargaining agreement that has been approved by the trust. (Tr. 124-27, 133-135.) *Therefore, if the Las Vegas drivers are added to the bargaining unit, the parties could not*

agree to allow Las Vegas drivers to remain in the 401(k) plan that currently applies to them while continuing to maintain the California employees in the union trust. (Tr. 135-136.)

Adding the Las Vegas drivers to the union pension plan would further increase the Company's withdrawal liability under the plan. (Tr. 136.) Employers who withdrew from the union plan in 2018 were assessed withdrawal liability in the amount of \$17 million in 2019. (Tr. 130.) Under such circumstances, the Company would effectively be forced to add the Las Vegas drivers to the pension plan—which would *not* be the case if the Las Vegas drivers were represented as a separate unit.

IV. The Regional Director's Findings

On remand from the Board, the Regional Director again found that including the Las Vegas drivers in the existing unit resulted in an appropriate unit. In reaching a determination that these disparate, geographically distant groups of employees share a sufficient community of interest despite having zero interchange or contact with one another, the Regional Director again ignored and/or minimized the many differences between terms and conditions of employment for bargaining unit employees compared to Las Vegas drivers.

V. Legal Argument

A. Applicable Legal Standard

The Board applies its traditional community of interest test to determine whether a group of employees constitutes an appropriate unit for purposes of collective bargaining. *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 5 (2017). The Board considers factors including whether the employees:

- Are organized into a separate department;
- Have distinct skills and training;

- Have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications;
- Are functionally integrated with the Employer’s other employees;
- Have frequent contact with other employees;
- Interchange with other employees;
- Have distinct terms and conditions of employment; and
- Are separately supervised.

Id., slip op. at 11; *see also The Boeing Co.*, 368 NLRB No. 67, slip op. at 3 (2019) (“[W]e clarify that *PCC Structural*s contemplates a three-step process for determining an appropriate bargaining unit under our traditional community-of-interest test. First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.”)

“In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates the following factors: employees’ skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history.” *Bashas, Inc.*, 337 NLRB 710, 711 (2002).

B. The Regional Director Erroneously Found the Las Vegas Drivers Share a Community of Interest With California Employees in the Current Unit.

The Regional Director erroneously concluded the Las Vegas drivers share a community of interest with FreshPoint’s California drivers sufficient to warrant their inclusion in the existing bargaining unit, notwithstanding the fact that the record evidence establishes:

- There is no geographic proximity between the City of Industry and Las Vegas facilities, which are located more than 250 miles apart;
- There is no interchange between Las Vegas drivers and California drivers;
- There is no contact between Las Vegas and California drivers;
- Although Las Vegas drivers are subject to some supervision by management/supervisors from the City of Industry facility, they largely work unsupervised and any supervision they receive from City of Industry supervisors is infrequent at best; and
- Las Vegas drivers and California drivers have different terms and conditions of employment, including but not limited to:
 - Vacation accrual
 - Sick time
 - Medical
 - Pension
 - Wages
 - Hours of work
 - Overtime
 - Breaks
 - Loading/Unloading Trucks
 - Performance Evaluations

Additionally, the Regional Director failed to consider evidence that the Company's California drivers are subject to numerous state laws that regulate their terms and conditions of employment, including but not limited to:

- Medical leave
- Kin care
- School leave

Despite the *many* specific differences established by the record evidence and described herein, the Regional Director summarily found, “With respect to terms and conditions of employment, the wages and other benefits between drivers in the existing bargaining unit and the Las Vegas drivers are similar.” (Decision, p. 4.) The Regional Director applied an extraordinarily broad meaning for the term “similar.” For example, he found that although the two groups accrue different amounts of vacation with different rules applying to the use of such vacation, and Las Vegas drivers receive two PTO days that employees in the existing unit do not receive, the two groups are “similar” based on the *mere fact* that they “accrue vacation” at all. (Decision, p. 5.) Likewise, the Regional Director found the groups “similarly” received bereavement days, even though Las Vegas drivers receive more days than employees in the existing unit. (*Ibid.*) And the Regional Director found the groups “similarly” receive medical and retirement benefits, even though the details of such benefits are completely different for each group. (*Ibid.*) Thus, the Regional Director erroneously found that these “similarities” in terms and conditions of employment weighed in favor of inclusion. (Decision, pp. 9-10.)

The Regional Director found that the Company’s transportation supervisors conduct “driver evaluations for all drivers” in California and Las Vegas, but failed to address the undisputed record evidence establishing that only Las Vegas drivers receive annual *performance evaluations* (which are distinct from ride-along “driver evaluations”) that furthermore determine annual wage increases for Las Vegas drivers. (Decision, p. 7.)

The Regional Director erroneously concluded that the “distant geographic proximity” between Las Vegas drivers and California drivers, the utter “lack of interchange and contact” between the two groups, and the differences in their terms and conditions of employment, were *all* outweighed by the mere fact “that as a result of this self-determination election, the Petitioner represents an employer-wide unit of all drivers employed by the Employer at all of the Employer’s facilities.” (Decision, p. 9.)

The Regional Director improperly found “substantial functional integration” between the Company’s California and Las Vegas facilities based *solely* on his finding that a router (non-unit employee) at the main facility coordinates the loading and delivery of the Company’s product. (Decision, p. 11.) In so finding, the Regional Director inexplicably cited *Public Service Co. of Colorado*, 365 NLRB No. 104 (2017)—a clearly distinguishable *Armour-Globe* case in which the Board found “substantial functional integration” where “planners” (petitioned-for employees) worked closely with unit employees, and the two groups had “frequent communications and contact [...] throughout the affected facilities.” *Id.*, slip op. at fn. 4. On the sole basis of his finding relating to routers, the Regional Director erroneously concluded the factor of “functional integration” weighed in favor of inclusion. (Decision, p. 11.)

Despite the Board’s directive, the Regional Director wholly declined to address the critical difference between the two groups relating to the union pension plan, including the fact that the terms of the union trust fund’s pension plan agreement explicitly require that all employees in the bargaining unit covered by a CBA *must* be included in the plan, at the same contribution rates for all employees in the same classification. Nor did he address the indisputable fact that notwithstanding the mutual bargaining obligations of the Company and the Union, the trust fund

is not a party to the collective bargaining relationship and has no obligation whatsoever to discuss, much less bargain over or agree to, any changes to the trust agreement.

Additionally, the fact that the Las Vegas drivers would necessarily be added to the union pension plan if they are added to the existing bargaining unit also means that even if Las Vegas drivers wished to keep their current 401(k) plan, they would be prohibited from doing so. Such an alteration of the *status quo* retirement benefit effects a non-negotiable change in employees' terms and conditions of employment. Yet, the Act requires that *status quo* terms and conditions of employment must be preserved until changes are negotiated to agreement or impasse. Adding the Las Vegas drivers to the California unit produces a result that is in direct conflict with that statutory mandate.

The Regional Director's ultimate conclusion that it is appropriate to include the Las Vegas drivers in the existing unit is contrary to the Act, NLRB precedent and the record evidence, and should be reversed.

C. The Difference in Retirement Benefits Between the Two Groups Precludes a Finding That Las Vegas Drivers Should Be Added to the Existing Unit.

Critically, the existing bargaining unit employees and those that are the subject of the petition also lack a community of interest since the California group is covered under an extant Taft-Hartley pension plan and the Las Vegas group is not.

Beyond creating a disparity of interest, the terms of the pension plan create a further issue that directly affects the statutory authority of the Board to include the petitioned-for employees in the pre-existing unit. Under the terms of the pension agreement should the petitioned-for employees be added to the existing unit they *must, by operation of law*, become covered under the extant collective-bargaining agreement.

The Regional Director and the Board have incorrectly dismissed this fact as inconsequential citing *Federal-Mogul Corp.*, 209 NLRB 343 (1974) and its progeny for the proposition that employees added by virtue of an *Armour Globe* election are not automatically covered by all provisions of the extant contract, and that the employer is free to negotiate separately for them. The line of cases relied upon, however, is totally inapposite, and the Board has simply missed the point. None of those cases involve a situation where the employer *is compelled* by non-NLRA law to provide a benefit by virtue of the inclusion of employees in a pre-existing unit. In the present case, if the petitioned for employees are included in the unit, they *must* be covered under the pension plan—the Company has no ability to bargain over their inclusion or non-inclusion. Thus, by including the petitioned-for employees the Board would be doing that which the statute expressly forbids—compelling the employer to accept a particular substantive contractual term. The Board simply lacks authority to achieve this result directly, or indirectly. Moreover, any attempt to do so in this context flies in the face of the Board’s obligation to reconcile its administration of the NLRA with other conflicting law.

D. The Las Vegas Drivers Would Comprise a Separate Appropriate Unit.

No adverse effect on employee rights would result from a finding that Las Vegas drivers are not properly added to the existing unit. While the Union based its refusal to proceed to an election in a unit of only Las Vegas drivers on a claim that Las Vegas drivers could not comprise an appropriate separate bargaining unit, such is not the case. As explained above, multiple factors support a finding that there is an insufficient community of interest between drivers in Las Vegas and in California, such as the complete absence of any employee interchange, numerous and significant differences in terms and conditions of employment, and the lack of contact between drivers in Las Vegas and California.

The mere fact of common supervision does not compel a finding that these disparate groups of employees must be combined. In *Capp Express, Inc.*, 220 NLRB 816 (1975), the Board found a separate unit of freight drivers was appropriate notwithstanding the fact that they shared common supervision with the employer's steel division drivers, where the two groups of employees were geographically separated, had no contact or interchange with one another, and had multiple differences in terms and conditions of employment, including with regard to wages, health benefits and pension.

VI. Conclusion

The record evidence, together with the relevant NLRB precedent, establishes that the addition of Las Vegas drivers to the existing bargaining unit of California drivers pursuant to an *Armour-Globe* election would result in an inappropriate unit. The Board should grant review, reverse the Regional Director's Decision, and dismiss the Union's petition with prejudice.

Dated this 6th day of November 2020.

Respectfully submitted,

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ATTACHMENT 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

FRESHPOINT SOUTHERN CALIFORNIA, INC.

Employer

and

Case 28-RC-252613

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630**

Petitioner

SUPPLEMENTAL DECISION

I. INTRODUCTION

On December 19, 2019, a Decision and Direction of Election issued, directing an *Armour-Globe*¹ self-determination election. Specifically, an election was conducted to determine whether the drivers employed by the Employer at its domicile yard in Las Vegas, Nevada (Las Vegas drivers) wished to be represented by the Petitioner and, if so, whether they wished to join the existing unit of drivers and warehouse employees represented by Petitioner (existing unit) employed at the Employer's main facility in the City of Industry, California (main facility) and its currently five California domicile yards located in San Diego, Fontana, Oxnard, Sylmar, and Costa Mesa, California (collectively, the California domicile yards).

On December 27, 2019, the election was held and, by a vote of 8-0, the Las Vegas drivers voted to be represented by the Petitioner and to be included within the existing unit. On January 9, 2020, a Certification of Representative issued. On January 23, 2020, the Employer filed with the National Labor Relations Board (the Board) a Request for Review of the Decision and Direction of Election.

On June 18, 2020, the Board issued a Decision on Review and Order Remanding (Decision). The Board granted the Employer's Request for Review and remanded the matter to the Regional Director "for further appropriate action consistent with this Decision, including reopening the record, if necessary, and the issuance of a Supplemental Decision." *Decision*, at page 4. Specifically, the Board noted that it was unclear "whether the addition of the Las Vegas drivers to the existing unit results in a unit that includes all of the Employer's facilities." *Decision*, at page 3. The Board directed the Regional Director, on remand, to "determine whether that is the case and, if so, how that fact bears on the appropriateness of a self-determination election (including whether it would result in a presumptively appropriate employer-wide unit). [footnote omitted]." *Id.*

¹ *Armour & Co.*, 40 NLRB 1332 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

Furthermore, the Board directed the Regional Director to “revisit his prior application of the multi-facility test and make specific findings regarding the extent to which each of the relevant factors (including geographic proximity, bargaining history, and degree to which the resultant unit conforms to the Employer’s administrative groupings) does or does not support including the Las Vegas drivers in the existing unit of drivers and warehouse employees, and the weight each factor should be accorded in the circumstances of this case.[footnote omitted].” *Id.* The Board specified the following:

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

Decision, at pages 3-4.

Accordingly, on July 13, 2020, the Regional Director issued an Order Directing Hearing on Remand and Notice of Hearing to address the above-enumerated issues on remand, and a hearing was conducted via videoconference on July 30, 2020. Below, this Supplemental Decision will address whether the addition of the Las Vegas drivers to the existing unit results in a unit that includes all of the Employer’s facilities; make specific findings regarding the extent to which the multifacility factors support whether or not to include the Las Vegas drivers in the existing unit and accord weight to each factor; and detail procedures applicable to requests for review of this Supplemental Decision.

II. FACTS

A. The Employer’s General Operations

As detailed in the Decision and Direction of Election, the Employer is engaged in the business of wholesale produce distribution. The Employer currently operates at its main facility and its six domicile yards, including its currently five California domicile yards and its domicile yard in Las Vegas (Las Vegas domicile yard) (collectively, the domicile yards).

The Employer employs approximately 244 employees at its main facility and domicile yards. Approximately 100 of those employees are employed at the main facility and approximately 144 employees are employed at the domicile yards.

Approximately 151 of the Employer's employees are in the existing unit represented by Petitioner, including approximately 127 employees employed at the main facility and approximately 24 employees employed at the California domicile yards.

With respect to the Employer's drivers, there are approximately 120 drivers employed at the main facility and the California domicile yards in the existing unit represented by Petitioner. There are approximately eight Las Vegas drivers employed at the Las Vegas domicile yard. As noted in the Decision and Direction of Election, the Las Vegas drivers are the only drivers employed by the Employer that are not included in the existing unit. Therefore, the addition of the Las Vegas drivers to the existing unit results in an employer-wide unit of all drivers employed by the Employer. Further, the addition of the Las Vegas drivers to the existing unit results in an employer-wide unit that includes all of the Employer's facilities.

B. Departmental Organization

The Employer's operations department is comprised of five separate sub-departments, including transportation, day inbound, night inbound, maintenance, and quality assurance. The Employer's drivers are within the transportation sub-department; the Employer's warehouse employees included in the existing unit are within the day inbound sub-department. The Employer's Vice President of Operations is in charge of the operations department, reporting to the Employer's President, both of whom work at the Employer's main facility.

The Employer's Vice President of Operations has five direct reports who work at the Employer's main facility: a day warehouse manager, a night warehouse manager, two quality assurance specialists, and a transportation manager. Three transportation supervisors report to the transportation manager, including Edgar Perez (Perez), who supervises the Las Vegas drivers remotely from the Employer's main facility.

C. Employee Skills, Duties, and Working Conditions

All of the Employer's drivers have essentially the same duties and perform the same function of transporting and delivering wholesale produce. The Employer's produce typically arrives at or near its main facility and its domicile yards and then its drivers deliver the produce on their local routes. Drivers in the existing unit are not responsible for loading their trucks. At the Employer's main facility, night warehouse selectors employed in the existing unit preload the drivers' trucks. At the Employer's California domicile yards, the Employer's shuttle drivers from its main facility, who are also included in the existing unit, deliver the produce to each of the California domicile yards, by backing up their delivery trucks to the drivers' trucks, and load the produce from the delivery truck onto the drivers' truck in order to keep the produce cool. Drivers in the existing unit check the preloaded loads in their trucks by doing a pre-trip inspection and then depart on their delivery routes in Southern California.

Due to the larger amount of produce that gets shipped to Las Vegas, Nevada for local delivery at a longer distance, the Employer has a third-party company pick up the produce from its main facility and deliver it to its Las Vegas domicile yard located at a third-party cold storage unit in Las Vegas. Las Vegas drivers report to work at the Las Vegas domicile yard, load their trucks themselves, conduct a pre-trip inspection, and depart on their assigned local routes in and around Las Vegas.

Regarding drivers' skills and training, all drivers hold either a Class A or Class B Commercial Driver's License and drive similar trucks. Drivers from the domicile yards mostly drive Class B Bobtail trucks; drivers from the main facility typically drive larger semi-trucks. The Employer's trucks are licensed only in the state where they are based and do not cross state lines.

All drivers are similarly trained. They attend new hire orientation conducted by human resources and the safety manager at the Employer's main facility, and attend other required food safety and driver trainings thereafter, primarily at their assigned domicile yards or remotely online. All drivers are trained using the same driver training manual, including training on what the Employer's warehouse, sales, and customer service employees do, so all drivers are knowledgeable about the Employer's entire wholesale produce distribution process, from beginning to end.

The Vice President of Operations explained that it is important that its drivers receive training on sales because the driver is the face of the Employer to the customer, and the salesperson is the caretaker of that customer. The salesperson needs to have immediate knowledge if there's any issue with the customer's delivery and any good or poor interaction with the driver, as the single point of contact for the customer with the Employer's Operations Department.

With respect to drivers' training about the Employer's warehouse department, the Vice President of Operations indicated that its drivers should have general knowledge of what its night selecting department employees do, so drivers are aware how their orders are selected and have a basic knowledge of customer service, because the customer sometimes contact the Employer's inside sales and customer service departments directly. Further, the Vice President of Operations indicated that drivers need to be familiar with its shipping department, referred to as its night outbound department, comprised of its warehouse workers in the existing unit that select the product, build the pallets, and load the pallets into the trucks for the drivers in the existing unit. It is helpful for the Employer's drivers to be cognizant about what its warehouse employees do so the drivers can communicate intelligently back to the Employer if there are any issues with the Employer's product on their routes throughout the day.

With respect to terms and conditions of employment, the wages and other benefits between drivers in the existing bargaining unit and the Las Vegas drivers are similar. Existing bargaining unit drivers' wages are set forth in the parties' current collective bargaining agreement (CBA) effective from July 1, 2016 through June 30, 2021, including current hourly

wage rates ranging from approximately \$21.80 to approximately \$26.81 per hour, with an average of approximately \$23.21 per hour. The current wage rates for the Las Vegas drivers appear to be slightly less, from around \$19.88 per hour to around \$21.50 per hour, with an average of around \$20.53 per hour. All drivers are paid biweekly through a third-party contractor that conducts payroll for all of its employees.

Federal Department of Transportation regulations apply to all drivers nationwide, mandating certain meal and rest breaks. During the summer, drivers in the existing unit and Las Vegas drivers are entitled to extra hydration breaks due to high temperatures. Typically, during the hot summer months, Las Vegas drivers will get at least one extra hydration break per shift and drivers in the existing unit get around two to three extra hydration breaks per month.

The Las Vegas drivers average around 9 to 9.5 hours of work per day, whereas the drivers in the existing unit average around 10.5 to 11 hours per day. The difference in hours is largely attributable to the density, the traffic, and the number of customers serviced by the drivers in the existing unit assigned to the California domicile yards. All drivers have similar start times, between around 2:15 a.m. and 4:00 a.m.

All drivers are eligible for medical and retirement benefits, although before this petition, Las Vegas drivers were eligible for the company-provided medical and 401(k) benefits, whereas the drivers in the existing bargaining unit are eligible for the medical and pension benefits specified in the parties' current CBA.

Additionally, all drivers have the same holidays off and accrue vacation. Article XI of the parties' CBA controls the vacation eligible to employees in the existing unit. Specifically, employees in the existing unit accrue one week of vacation after their first year of employment; two weeks of vacation after their second year of employment; three weeks of vacation after their sixth year of employment; and four weeks of vacation after their fifteenth year of employment. If the employment of employees in the existing unit is severed, they are entitled to be paid for their unused vacation time.

Similarly, Las Vegas drivers accrue two weeks of vacation in their first six years of employment; between seven and 11 years employment, three weeks of vacation; between 12 and 24 years of employment, four weeks of vacation, and for 25 years and more of employment, five weeks of vacation. This vacation must be used in the calendar year in which it is granted and does not carry over to the next calendar year. Any unused vacation is paid if the employment of Las Vegas drivers ends. Las Vegas drivers are also eligible for two personal days of paid time off, earned on the first day of each calendar year, which must be scheduled in advance and must be taken in eight hour non-consecutive increments, with no carryover to the next calendar year.

The Las Vegas drivers are allotted five sick days per year and employees in the existing unit receive four sick days per year. Las Vegas drivers are entitled to three work days of paid bereavement leave for the death of an immediate family member. Pursuant to Article XVI of the parties' current CBA, employees in the existing unit are entitled to two days of paid funeral leave for the death of an immediate family member.

With respect to differences attributable to differing State laws, with respect to overtime, Las Vegas drivers employed in Nevada earn overtime for all hours worked over 40 hours per week. On average, Las Vegas drivers earn approximately 10-12 hours of overtime per week. The drivers in the existing unit employed in California earn overtime at 1.5 times their hourly wages for all hours worked over eight hours per day and all hours over 40 hours per week. Drivers in the existing unit earn double time for all hours worked over 12 hours per day. On average, drivers in the existing unit earn approximately 8-12 hours of overtime per week.

Additionally, with respect to differences due to State leave laws, drivers in the existing unit are eligible for certain California State leave only available to employees employed in California, such as the California Medical Leave Act, Kin Care Act, School Leave Act, California Family Rights Act, and the New Parent Leave Act. The Las Vegas drivers are not eligible for such California State leave since they are employed in Nevada.

Furthermore, all drivers wear the same uniform and generally drive the same type of Bobtail trucks and semi-trucks. At the hearing on remand, the Employer clarified that it currently has two employee handbooks in effect: one applicable to its employees in the existing unit and one applicable to its unrepresented employees, including its Las Vegas drivers. However, the Employer's two employee handbooks appear virtually identical by comparison, except that the employee handbook applicable to the employees in the existing unit contains the following introductory remarks from an HR Generalist employed by the Employer:

For those associates covered by a Collective Bargaining Agreement (CBA), please be advised that this handbook is not intended to modify any terms or conditions that are specifically spelled out in your CBA. This handbook is also not intended to provide any benefits that are not already provided to you or made available by your CBA.

The Employer has one human resources department located at its main facility that services all of its employees employed at its main facility and its domicile yards.

D. Functional Integration of Business Operations, including Employee Interchange

All of the drivers' routes are assigned by a router who works at the Employer's main facility. The router plans the delivery of the route to be taken by each driver in the delivery of the Employer's goods and products to the Employer's customers and determines the needed stops and the most precise use of the Employer's available trucks to most efficiently meet its delivery demands. Further, the router routes the cubic plan to the Employer's loading supervisor in an effort to enhance the effectiveness of the Employer's loading and delivery activities, prepares loading and driver sheets showing the driver's assigned route, and ensures each driver is provided an accurate and understandable listing of stops for any particular day. The router places the drivers' assigned routes on the Employer's route system accessible to the drivers on company tablets mounted inside each company truck. Generally, these routes are local delivery routes within a relatively short distance from the driver's assigned starting location. Once the drivers' trucks are loaded and the drivers conduct their pre-trip inspections, the drivers log in to

the Employer's tablets on its route system showing their assigned routes, and then the drivers generally depart for their assigned routes independently, without any contact with each other while working on their routes.

E. Geographic Proximity

With respect to geographic proximity, the Las Vegas domicile yard is approximately 253 miles from the Employer's main facility. The Employer's farthest domicile yard from its Las Vegas domicile yard is its San Diego domicile yard, approximately 332 miles away. The nearest domicile yard to the Las Vegas domicile yard is its Fontana domicile yard, approximately 225 miles away.

F. Centralized Control of Management and Supervision

The Employer has centralized control of management and supervision out of its main facility to its domicile yards. The Employer's Las Vegas drivers and drivers in the existing unit have common supervision. The Employer has three transportation supervisors working at its main facility that supervise all of the Employer's drivers, including conducting driver evaluations for all drivers. The Las Vegas drivers do not have a supervisor located at the Employer's Las Vegas domicile yard. The Employer's Las Vegas drivers are supervised remotely by transportation supervisor Perez from the Employer's main facility. While Perez typically does not assign work to these drivers, Perez is responsible for disciplining, evaluating, and training the Las Vegas drivers.

Perez reports to the transportation manager, who also works at the main facility and reports to the Employer's Vice President of Operations. The Employer's Vice President of Operations, who reports to the Employer's President, both also work at the Employer's main facility. The Vice President of Operations oversees all of the Employer's operations, typically visiting the Las Vegas domicile yard around three to five times per year and the California domicile yards as needed. Transportation supervisor Perez typically visits the Las Vegas domicile yard approximately one to two times per month.

G. Bargaining History and Extent of Union Organizing and Employee Choice

Regarding the bargaining history, the parties have had a collective bargaining relationship, including negotiating collective bargaining agreements, since at least 2006. The record contains three collective bargaining agreements negotiated by the parties: 1) the 2006-2011 collective bargaining agreement, effective July 1, 2006, through June 30, 2011; 2) the 2011-2016 collective bargaining agreement, effective July 1, 2011, through June 30, 2016, and 3) the parties' current CBA, effective July 1, 2016, through June 30, 2021.

Except for the petitioned-for unit of Las Vegas drivers, the rest of the Employer's drivers are covered by the parties' current CBA. The Employer's oldest domicile yard is its San Diego domicile yard, which has been in operation for approximately 12 years and its drivers have been covered by the parties' two previous collective bargaining agreements and its current CBA.

According to the testimony of one of Petitioner's representatives, in approximately 2018, during the pendency of the parties' current CBA, the Employer's Vice President of Operations discussed opening up its other California domicile yards with Petitioner. The parties agreed that the bidding procedures set forth at Article XX of the parties' current CBA would be utilized to fill the driver positions at the California domicile yards. However, the parties did not agree to utilize the bidding procedures set forth at Article XX of the parties' current CBA to fill the Employer's Las Vegas driver positions at the Las Vegas domicile yard.

With respect to the employee choice of the Las Vegas drivers, as noted above, on December 27, 2019, the self-determination election was conducted for the Las Vegas drivers, who voted unanimously 8-0 in favor of representation by the Petitioner and inclusion in the existing unit. Further, on January 9, 2020, a Certification of Representative issued, certifying Petitioner as the representative of the existing unit including the Las Vegas drivers.

III. ANALYSIS

A. Presumptively Appropriate Employer-Wide Unit of All Drivers Employed by the Employer at all of the Employer's Facilities

As an initial matter, since this self-determination election sought to add the Employer's Las Vegas drivers to the existing unit Petitioner already represents, to enable the Petitioner to represent all of the Employer's drivers on an employer-wide basis, I find that it is a unit which is, under well-established Board principles, presumptively appropriate under the Act. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514 (1996), citing *Western Electric Co.*, 98 NLRB 1018 (1952); *Montgomery County Opportunity Board, Inc.*, 249 NLRB 880, 881 (1980); *Jackson's Liquors*, 208 NLRB 807, 808 (1974); *Livingstone College*, 290 NLRB 304 (1988). Moreover, the addition of the Las Vegas drivers to the existing unit results in a unit that includes all of the Employer's facilities. Sec. 9(b) of the Act provides, *inter alia*, that: "The Board shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." It is, therefore, the Employer's burden to establish that the petitioned-for self-determination election seeking an employer-wide unit of drivers, further resulting in a unit that includes all of the Employer's facilities, is inappropriate. *Greenhorne & O'Mara, Inc.*, *supra*.

Contrary to Petitioner, who argues that its petitioned-for unit is a presumptively appropriate, the Employer argues that the employer-wide unit of drivers including all of the Employer's facilities is inappropriate, relying upon: 1) the distant geographic proximity of approximately 253 miles between the Employer's main facility and the Employer's Las Vegas domicile yard; 2) the lack of regular contact or interchange between the drivers in the existing unit and the Las Vegas drivers; and 3) the different terms and conditions of employment of the drivers in the existing unit, as set forth in the parties' CBA, from the terms and conditions of employment of the Las Vegas drivers.

I disagree with the Employer. The record evidence in the instant case is insufficient to rebut the presumptive appropriateness of the petitioned-for unit to include all of the

Employer's drivers employed at all of the Employer's facilities. I find that the factors the Employer relies upon, including distant geographic proximity, the lack of interchange and contact, and the fact that before the instant petition, the Las Vegas drivers were not eligible for the terms and conditions of employment set forth in the parties' CBA, are outweighed by the fact that as a result of this self-determination election, the Petitioner represents an employer-wide unit of all drivers employed by the Employer at all of the Employer's facilities. Based on the foregoing and the record as a whole, I find the petitioned-for unit appropriate, and find that the Employer has failed to sustain its burden of establishing that the self-determination election seeking an employer-wide unit of drivers at all of the Employer's facilities is inappropriate.

B. Legal Standard for Multifacility Unit

Furthermore, when presented with a petitioned-for multifacility unit, the Board will determine whether the unit is appropriate based on a variant of the community of interest test, examining the following factors: employees' skills, duties, and working conditions; functional integration of business operations, including employee interchange; geographic proximity; centralized control of management and supervision; bargaining history; and extent of union organizing and employee choice. *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 2 (2016); see also *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1081–1082 (2004); *Bashas', Inc.*, 337 NLRB 710 (2002); *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986). The Board will find a petitioned-for multifacility unit inappropriate if the petitioned-for group does not share a community of interest distinct from that shared with employees at other, excluded locations. *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1082 (2004); see also *Acme Markets, Inc.*, 328 NLRB 1208 (1999). Compare *Panera Bread*, 361 NLRB No. 142, slip op. at 1 fn. 1 (2014).

As explained above, initially, I find that the petitioned-for unit seeking to add the Las Vegas drivers to the existing unit is presumptively appropriate as an employer-wide unit of all drivers employed by the Employer at all of the Employer's facilities. Additionally, based on the parties' arguments and the record as a whole, as detailed below, I find that the factors of employees' skills, duties, and working conditions; the functional integration of business operations; the centralized control of management and supervision; and the bargaining history, and the extent of union organizing and employee choice weigh in favor of finding that the petitioned-for self-determination election seeking a multifacility unit is appropriate.

1. Employees' Skills, Duties, and Working Conditions

The record reflects that all of the Employer's drivers share similar skills and duties regardless of their assigned Employer facility. The similarity or dissimilarity of work skills has some bearing, along with the nature of any work performed, in deciding on whether a multi-plant unit is appropriate. *Cheney Bigelow Wire Works, Inc.*, 197 NLRB 1279 (1972); see also *Dattco, Inc.*, 338 NLRB 49, 51 (2002); *R & D Trucking*, 327 NLRB 531, 532 (1999); *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 516 (1998); *Waste Management Northwest*, 331 NLRB 309 (2000); *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 3–4 (2016). Additionally, the record evidence shows that all drivers have similar working hours, pay rates, and other terms and

conditions of employment. Working hours, pay rates, the nature of the employer's operations, and indeed all terms and conditions of employment are factors in this area of unit determination. *Prince Telecom*, 347 NLRB 789, 793 (2006).

I acknowledge the power of a State to regulate labor relations for employers doing business within its borders and the existence of a separate and distinct statutory framework, albeit the substantive differences between the laws of the States involved may be minor, are factors entitled to some weight in determining whether a grouping of employees at all facilities within a State may be an appropriate unit. See *Motts Shop Rite of Springfield*, 182 NLRB 172, 173 fn. 7 (1970). In this regard, because the Las Vegas drivers are employed in the State of Nevada rather than the State of California, where the employees in the existing unit are employed, the Las Vegas have differing eligibility for overtime and for certain California State leave such as the California Medical Leave Act, Kin Care Act, School Leave Act, California Family Rights Act, and the New Parent Leave Act. However, I find that the differences attributable to eligibility for overtime and such State leave are minor and I accord them little weight in determining, based on the record as a whole, that the petitioned-for unit is appropriate.

I am mindful that before this petition, the Las Vegas drivers were not eligible for the contractual wages, benefits, and terms and conditions of employment set forth in the parties' current CBA. I note that the Las Vegas drivers load their trucks themselves whereas the drivers in the existing unit do not load their trucks. I am aware that the Las Vegas drivers typically have more hydration breaks available to them than the drivers in the existing unit during the hot summer months.

However, although there are certain differences in the terms and conditions of employment of the petitioned-for Las Vegas drivers and existing unit employees, they do not mandate exclusion and may reasonably be expected in the *Armour-Globe* context, where the existing unit employees' terms are the result of collective bargaining. See *Public Service Co. of Colorado*, 365 NLRB No. 104, slip op. at 1 fn. 4 (2017). Based on the foregoing and the record as a whole, I find that the factor of employees' skills, duties, and working conditions weighs in favor of finding that adding the Las Vegas drivers into the existing unit is appropriate.

2. Functional Integration of Business Operations, including Employee Interchange and Contact

The functional integration of two or more plants in substantial respects may weigh heavily in favor of the more comprehensive unit, but it is not a conclusive factor. See *Dixie Belle Mills, Inc.*, 139 NLRB 629, 632 (1962); *J&L Plate*, 310 NLRB 429 (1993). Conversely, a lack of functional integration between two petitioned-for locations may be offset by other factors favoring a unit of employees at both locations. See *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 4–5 (2016). The record in the instant petition shows that there is substantial functional integration of business operations not only for the Las Vegas domicile yard, but also for the Employer's main facility and its California domicile yards.

As noted above, all of the drivers' routes are assigned by a router who works at the Employer's main facility. The router plans the delivery of the route to be taken by each driver in the delivery of the Employer's goods and products to the Employer's customers and determines the needed stops and the most precise use of the Employer's available trucks to most efficiently meet its delivery demands. Further, the router routes the cubic plan to the Employer's loading supervisor in an effort to enhance the effectiveness of the Employer's loading and delivery activities, prepares loading and driver sheets showing the driver's assigned route, and ensures each driver is provided an accurate and understandable listing of stops for any particular day. The router places the drivers' assigned routes on the Employer's route system accessible to the drivers on company tablets mounted inside each company truck. All of the Employer's drivers have essentially the same duties and perform the same function of transporting and delivering the Employer's wholesale produce. The router's role in carefully coordinating the loading and delivery of the Employer's product shows substantial functional integration between the Employer's warehouse employees in the existing unit employed at the Employer's main facility and all drivers employed at all of the Employer's facilities, including its Las Vegas domicile yard. See *Public Service Co. of Colorado*, 365 NLRB No. 104, slip op. at 1 fn. 4 (2017).

Further, as acknowledged by the Employer's Vice President of Operations, all of the Employer's drivers are trained using the same driver training manual, which includes training on the Employer's sales, customer service, and warehouse functions, so the Employer's drivers can understand and communicate effectively about the Employer's entire wholesale produce distribution process, from beginning to end. This driver training given to all of the Employer's drivers covering its entire distribution process shows the drivers how the operations of all of its facilities are interrelated in distributing its wholesale produce, originating at its main facility, then loaded and distributed to its customers and to its domicile yards for local delivery to nearby customers. See *NLRB v. Carson Cable TV*, 795 F.2d 879, 882-883 (9th Cir. 1986).

I am cognizant that local autonomy of operations militates toward a separate unit. *Massachusetts Society for the Prevention of Cruelty to Children v. NLRB*, 297 F.3d 41, 47 (1st Cir. 2002); *Hilander Foods*, 348 NLRB 1200, 1202-1205 (2006); *Angelus Furniture Mfg. Co.*, 192 NLRB 992 (1971); *Bank of America*, 196 NLRB 591 (1972); *Parsons Investment Co.*, 152 NLRB 192 (1965); *J. W. Mays, Inc.*, 147 NLRB 968, 969-970 (1964); *Thompson Ramo Wooldridge, Inc.*, 128 NLRB 236, 238 (1960); *D&L Transportation*, 324 NLRB 160 (1997); *New Britain Transportation Co.*, 330 NLRB 397 (1999). However, the record evidence does not establish local autonomy of operations, as the Employer's Las Vegas drivers are its only employees that work at its Las Vegas domicile yard. As noted above, the Las Vegas drivers are supervised remotely by transportation supervisor Perez, who works at the Employer's main facility. Based on the foregoing and the record as a whole, I find that the factor of functional integration of business operations weighs in favor of finding that the petitioned-for multifacility unit is appropriate.

With respect to employee interchange and contact, I must consider employee interchange and contact in the total context. *Gray Drug Stores, Inc.*, 197 NLRB 924 (1972); *Carter Camera Shops*, 130 NLRB 276, 278 (1961). In *J&L Plate*, 310 NLRB 429 (1993), the Board found that minimal employee interchange and lack of meaningful contact between employees at the two

jobsites diminished the significance of the functional integration and distance between the jobsites. See also *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000); *RB Associates*, 324 NLRB 874, 878 (1997). I acknowledge that the record here does not establish evidence of regular employee interchange or contact. Based on the foregoing and the record as a whole, I find that the factor of employee interchange and contact weighs against finding the petitioned-for self-determination election for a multifacility unit is appropriate.

3. Geographic Proximity

Geography is frequently a matter of significance in resolving geographical scope issues. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 632 (1962); see also *Van Lear Equipment, Inc.*, 336 NLRB 1059, 1063 (2001); *D&L Transportation*, 324 NLRB 160 (1997); *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). Generally, plants which are in close proximity to each other are distinguished from those which are separated by meaningful geographical distances. *Id.* However, as in *Barber-Colman Co.*, where the Board found that a plant 43 miles distant was included in what would otherwise have been a three-plant unit because of the functional integration of operations and centralized management of labor matters, the same result is appropriate here, based on all of the factors weighed as a whole. 130 NLRB 478, 479 (1961). See also *Stormont-Vail Healthcare, Inc.*, 340 NLRB 1205 (2003); *Trane*, 338 NLRB 866, 868 (2003); *Novato Disposal Services*, 328 NLRB 820 (1999); *Macy's West, Inc.*, 327 NLRB 1222, 1223 (1999); *NLRB v. Klochko Equipment Rental Co.*, 657 Fed. Appx. 441 (6th Cir. 2016).

I note that, for example, in *Capital Coors Co.*, the Board denied an employer's request for review of a decision in which the Regional Director found two plants to be a single unit even though they were 90 miles apart. 309 NLRB 322, 325 (1992). I acknowledge that the Employer's main facility is approximately 253 miles from its Las Vegas domicile yard and the nearest California domicile yard to the Las Vegas domicile yard is the Fontana, California domicile yard, located approximately 225 miles away. The Employer's farthest domicile yard from its Las Vegas domicile yard is its San Diego domicile yard, approximately 332 miles away. Based on the foregoing and the record as a whole, I find that the factor of geographic proximity weighs against finding the petitioned-for self-determination for a multifacility unit is appropriate.

4. Centralized Control of Management and Supervision

The fact that several plants or stores are subject to identical personnel and labor relations policies, which are determined at the employer's principal office, has been cited to support a multilocation determination. *Budget Rent A Car Systems*, 337 NLRB 884, 885 (2002); *Dattco, Inc.*, 338 NLRB 49, 50–51 (2002); *Purity Supreme, Inc.*, 197 NLRB 915 (1972); *Dan's Star Market*, 172 NLRB 1393 (1968); *McCulloch Corp.*, 149 NLRB 1020 (1964); *Mid-West Abrasive Co.*, 145 NLRB 1665, 1667–1668 (1964); *Barber-Colman Co.*, 130 NLRB 478, 479 (1961). Similarly, administrative integration of the employer's operations under unified control and centralized control of labor relations are factors given significant weight in favor of a multilocation unit. *Prince Telecom*, 347 NLRB 789, 790 (2006); *Novato Disposal Services*, 328 NLRB 820 (1999); *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *Twenty-First Century Restaurant*, 192 NLRB 881 (1971); *Mary Carter Paint Co.*, 148 NLRB 46, 47 (1964); *Universal*

Metal Products Corp., 128 NLRB 442, 444–445 (1960). Additionally, whether the employees at different plants or stores share common supervision is a consideration where more than one plant, facility, or store is involved. *Purity Food Stores, Inc.*, 150 NLRB 1523, 1527 (1965); see also *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Renzetti's Market*, 238 NLRB 174 (1978); *First Security Services Corp.*, 329 NLRB 235 (1999); *Courier Dispatch Group*, 311 NLRB 728 (1993).

As detailed above, the same transportation manager employed at the Employer's main facility manages all of the Employer's drivers. The Employer has three transportation supervisors employed at its main facility who supervise all of the Employer's drivers. Transportation supervisor Perez supervises all of the Las Vegas drivers remotely from the Employer's main facility. In addition, the Employer's human resources department, located at its main facility, services all of the Employer's employees. Further, the three transportation supervisors and the transportation manager all report to the Employer's Vice President of Operations who works at the Employer's main facility and is responsible for overseeing all of the Employer's operations. Additionally, although the Employer has different employee handbooks for its existing unit employees and its non-represented employees, I note that except for an acknowledgement of the CBA applicable to the existing unit employees in their employee handbook, the employee handbooks appear to contain virtually identical policies. Based on the foregoing and the record as a whole, I find that the factor of centralized control of management and supervision weighs in favor of finding the petitioned-for self-determination election seeking a multifacility unit is appropriate.

5. Bargaining History and Extent of Union Organizing and Employee Choice

The pattern of bargaining, as any study of bargaining unit principles will readily indicate, plays a significant role in all phases of unit determination, including, of course, the resolution of questions pertaining to multilocation unit scope. See *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 5 (2016) (prior bargaining history on two-location basis had little relevance due to intervening 4-year period where petitioner did not represent employees at one location, but voluntary recognition and fledging collective-bargaining relationship at one location was not sufficiently settled or established to significantly affect multifacility analysis).

It is undisputed that prior to this petition, there was no bargaining history between the Employer and Petitioner with respect to the Las Vegas drivers. However, with respect to the existing unit, since 2006, there is a history of bargaining and collective bargaining agreements between the parties including the parties' current CBA. Further, as noted above, there is strong evidence of employee choice in favor of representation, because on December 27, 2019, the Las Vegas drivers voted unanimously, 8-0, in favor of representation by Petitioner and inclusion in the existing unit. Accordingly, on January 9, 2020, a Certification of Representative issued, certifying Petitioner as the representative of the existing unit including the Las Vegas drivers. Based on the foregoing and the record as a whole, I find the factors of bargaining history and extent of union organizing and employee choice weigh in favor of the appropriateness of the petitioned-for self-determination election for a multifacility unit.

IV. CONCLUSION

Based upon the record as a whole and in accordance with the discussion above, I initially find that the petitioned-for self-determination election is presumptively appropriate, as Petitioner seeks to represent an employer-wide unit of all drivers employed by the Employer at all of the Employer's facilities. Additionally, I find that the Petitioner's petitioned-for self-determination election for a multifacility unit is appropriate. As analyzed above, the factors of employees' skills, duties, and working conditions; functional integration of business operations; centralized control of management and supervision; and bargaining history and extent of union organizing and employee choice weigh in favor of my finding. The factors of employee interchange and contact and geographic proximity weigh against my finding. Based on the foregoing and the record as a whole, on balance, I find that the petitioned-for self-determination election for a multifacility unit is appropriate.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **November 6, 2020**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Phoenix, Arizona, this 23rd day of October 2020.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director

ATTACHMENT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESHPOINT SOUTHERN CALIFORNIA, INC.
Employer

and

Case 28-RC-252613

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630
Petitioner

DECISION ON REVIEW AND ORDER REMANDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

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

ATTACHMENT 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

**FRESHPOINT SOUTHERN CALIFORNIA,
INC.,**

Employer,
and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630,**

Petitioner.

Case No. **28-RC-252613**

The above-entitled matter came on for hearing pursuant to notice, before **SARA DEMIROK**, Hearing Officer, at the **National Labor Relations Board, 300 Las Vegas Boulevard South, Suite 2-901, Las Vegas, Nevada**, on **Monday, December 9, 2019**, at **10:00 a.m.**

Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, MD 21409
(410) 974-0947

	<u>I N D E X</u>				<u>VOIR</u>
	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
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2					
3	<u>WITNESSES</u>				
4					
5	John Collie	19	24	--	--
6					
7	John Collie	33	55	98	106
8					
9	Lorne Dauenhauer	121	137	138	139
10					
11	Jose Mota	146	--	--	--
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13	Joe Tisnado	157	--	--	--
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Free State Reporting, Inc.
 1378 Cape St. Claire Road
 Annapolis, MD 21409
 (410) 974-0947

- 1 A. Vice president of operations.
- 2 Q. How long have you held that position?
- 3 A. Three years.
- 4 Q. What's the precise date you started with FreshPoint?
- 5 A. August 4, 2016.
- 6 Q. Were you working for the Company prior to that date?
- 7 A. No.
- 8 Q. Can you tell us what does FreshPoint do? What kind of
- 9 goods or services does it provide?
- 10 A. We distribute fresh produce to restaurants, hotel
- 11 chains, schools, nursing homes, and other customers
- 12 throughout the Southern California basin.
- 13 Q. And the rest of the operating companies, do they provide
- 14 the same services?
- 15 A. Yes.
- 16 Q. What are your primary job responsibilities?
- 17 A. Overall responsibility includes the transportation and
- 18 operations department, and quality assurance departments,
- 19 profit and loss, adherence to company rules, trainings,
- 20 customer delivery standards are met, overall performance
- 21 standards.
- 22 Q. Where is your office located?
- 23 A. Inside the City of Industry facility.
- 24 Q. What type of facility is that?
- 25 A. It's a distribution warehouse.

1 Q. Do you also refer to it as a plant?

2 A. Yes.

3 Q. Can you explain what the operation entails at that -- at
4 the City of Industry location?

5 A. Six days a week we receive in produce from various
6 suppliers, pre-approved suppliers. That produce is
7 inspected, slotted, inventoried, and then selected, put onto
8 trucks, and shipped out to various customers throughout the
9 Southern California area.

10 Q. How many total employees work out of the City of
11 Industry location?

12 A. 347.

13 Q. What kinds of job classifications?

14 A. We have drivers. We have warehousemen. We have QA
15 personnel, repack associates, forklift drivers, selectors,
16 administrative staff, buyers, pricing department, food
17 safety, employee safety, customer service, accounting, and
18 management.

19 Q. With respect to the driver classification at City of
20 Industry, how many drivers do you have?

21 A. 142.

22 Q. Does the Company have any other -- does FreshPoint
23 Southern California have any other locations with employees
24 working there other than the City of Industry plant?

25 A. Yes. We have seven domicile yards.

1 Q. What is a domicile yard?

2 A. A yard is an area where we place delivery vehicles in.
3 The drivers are generally based out of that area, live in
4 that area. We transfer in product to those trucks. The
5 drivers show up, deliver to those areas, drop the trucks off
6 in those areas, and then go home for the day.

7 Q. Can you identify for us where are those or each of those
8 seven domicile yards?

9 A. Sure. Las Vegas, San Diego, Redlands, Fontana, Costa
10 Mesa, Sylmar, and Ventura.

11 Q. Is Las Vegas the only location that's outside
12 California?

13 A. Yes.

14 Q. So with respect to the six other California-based
15 domicile yards, are they just drivers working there or other
16 classifications as well?

17 A. Just drivers.

18 Q. Are they represented by a union?

19 A. Yes. All the ones in California, yes.

20 Q. All in the same unit?

21 A. Yes.

22 Q. And Las Vegas?

23 A. No.

24 Q. How many drivers are at each of those domicile yards?

25 A. Las Vegas, 8; San Diego, 13; Redlands, 4; Fontana, 2;

1 Costa Mesa, 2; Sylmar, 2; and Ventura, 2.

2 Q. With respect to the eight in Las Vegas, where are
3 those -- where do those drivers report for work in the
4 morning?

5 A. They report to a third-party warehouse, Cool Storage
6 facility.

7 Q. Do any of the drivers from the other seven domicile
8 yards report to a Cool Storage facility?

9 A. No.

10 Q. Why are the Las Vegas drivers housed at a Cool Storage?

11 A. For the proper transfer of produce from one truck to
12 another, to follow food safety procedures. And to allow the
13 drivers an area to park the trucks and to safely handle the
14 produce.

15 Q. So where does the produce come from that the Las Vegas
16 drivers are transporting?

17 A. Southern California. Well, the FreshPoint facility in
18 Southern California.

19 Q. Where is it warehoused?

20 A. FreshPoint Southern California.

21 Q. So there is no station in Vegas?

22 A. No.

23 Q. It goes -- can you tell us how the process works?

24 A. Sure. The orders are placed. The transfer trucks show
25 up. We select the orders. They are loaded into the transfer

1 trucks in reverse order in terms of delivery schedule.

2 Q. Excuse me. Who is bringing the produce to Las Vegas?

3 Who is driving it there?

4 A. The drivers from Las Vegas Cool Storage.

5 Q. So not FreshPoint drivers?

6 A. Correct.

7 Q. Okay.

8 A. The product is delivered to the Las Vegas Cool Storage
9 facility. Two of the Las Vegas drivers then conduct the
10 transfer process. We call it horseshoeing, where they
11 horseshoe in the product from the 53-foot trailer into the
12 bobtails for delivery.

13 Q. So it's not stored at that third-party Cool Storage
14 facility?

15 A. No storage, no overnight storage. There is some daily
16 storage in terms of product return for the day. But that
17 product is returned on the transfer trucks that same evening.

18 Q. Back to?

19 A. Well, FreshPoint, Los Angeles facility.

20 Q. Okay.

21 HEARING OFFICER DEMIROK: I'm sorry. Just for clarity
22 of the record, when you say that, the FreshPoint of Southern
23 California facility, is this the City of Industry facility?

24 THE WITNESS: Yes, City of Industry, yes.

25 HEARING OFFICER DEMIROK: Okay. Thank you.

1 Q. Excuse me. The drivers that you mentioned who are
2 domiciled in California, to whom do they report?

3 A. They report to various supervisors within the FreshPoint
4 Southern California facility.

5 Q. How many supervisors?

6 A. We currently have five.

7 Q. Are they transportation supervisors?

8 A. Yes.

9 Q. What about the drivers in Las Vegas?

10 A. They report to a supervisor in the FreshPoint Southern
11 California facility.

12 Q. Who is that?

13 A. Edgar Perez.

14 Q. Does Edgar visit the Vegas hub or the Vegas domicile
15 yard?

16 A. Yes.

17 Q. How often?

18 A. As often as we can allow. Usually, it's one to two
19 times per month.

20 Q. To whom does Edgar report?

21 A. He reports to Cesar Rosiles. He's the transportation
22 manager.

23 Q. Is there anyone actually working at the Las Vegas yard
24 who assigns work to the drivers there?

25 A. Work is assigned by the routing. We do have a lead

1 notified. He orders the missing product through a local
2 provider of produce. Our drivers then are communicated
3 that -- communicated that, too. They pick it up and then
4 deliver it.

5 Q. What's the name of the local produce company?

6 A. Desert Produce.

7 Q. Which one is more often the case, that the drivers would
8 get the product from Desert Produce or the customer ends up
9 with no product?

10 A. More than likely get the product from Desert Produce.

11 Q. Is that how it works in California as well?

12 A. No.

13 Q. How does it work there?

14 A. All of the product is stored within our warehouse
15 facility in Southern California. So if a driver on his route
16 in Southern California is short product, he messages that
17 short product into the dispatch department. The dispatcher
18 then routes that -- I'm sorry, sends that to customer
19 service, who enters it as a second run. And then the
20 dispatch department then routes a second run where we have
21 four dedicated second run drivers who deliver the produce
22 daily.

23 Q. You don't have second run drivers in Las Vegas?

24 A. No.

25 Q. Does the Company ever utilize drivers in Las Vegas to

1 handle deliveries in California?

2 A. No.

3 Q. Does the Company ever utilize drivers in California to
4 handle deliveries in Vegas?

5 A. No.

6 Q. When you're short a driver in Vegas, you don't
7 temporarily transfer someone to California?

8 A. No.

9 Q. Does the Company require drivers to attend safety
10 meetings?

11 A. Yes.

12 Q. How often?

13 A. Depending on the training, it could be quarterly,
14 biannually, or yearly.

15 Q. Where are those held for the Vegas drivers?

16 HEARING OFFICER DEMIROK: Just one moment. Could we
17 have someone close the door? Thank you. I'm sorry, go
18 ahead.

19 MS. ANASTAS: Yeah, no problem.

20 Q. BY MS. ANASTAS: Where are the safety meetings held for
21 the Vegas drivers?

22 A. The safety meetings are held at the third-party
23 logistics facility in Las Vegas.

24 Q. So they don't come to California?

25 A. No.

1 Q. Do your Las Vegas drivers ever come to California for
2 company meetings?

3 A. For company meetings, no.

4 Q. Do your Southern California drivers ever go to Las Vegas
5 for meetings?

6 A. No.

7 Q. Do they go to Las Vegas for anything?

8 A. No.

9 Q. In 2018 did the Company sponsor a holiday party for
10 employees in Southern California?

11 A. Yes.

12 Q. Did you invite the Las Vegas drivers?

13 A. Yes.

14 Q. Did they attend in 2018?

15 A. No.

16 Q. Were they invited?

17 A. Yes.

18 Q. Oh, they didn't attend.

19 A. Right.

20 Q. Okay. Did you do anything for the -- around the
21 holidays for the Las Vegas drivers?

22 A. Yes. About 30 days ago, we -- the management team came
23 out, and we took the Las Vegas drivers and their wives out to
24 dinner.

25 Q. Were the Las Vegas drivers invited to a holiday party in

1 A. Those are corporate managed units. So those are units
2 that are located across the country.

3 Q. But as far as local customers, different customers?

4 A. Local customers, no.

5 Q. Street accounts?

6 A. No.

7 Q. And with respect to the CMUs, they're going to different
8 locations --

9 A. Correct.

10 Q. -- in Las Vegas. Do the drivers in Las Vegas work the
11 same amount of hours as the Southern California drivers?

12 A. No.

13 Q. Can you explain?

14 A. The drivers in Vegas run a daily average anywhere
15 between 9 to 9½ hours a day for their routes. The drivers in
16 Los Angeles average anywhere between 10.56 to 11 hours per
17 day.

18 Q. What accounts for the difference?

19 A. Generally, the density of the area and the traffic and
20 the amount of customers within the area.

21 Q. Do the trucks that the Company utilizes in Las Vegas,
22 can they cross state lines?

23 A. No.

24 Q. Why not?

25 A. They're licensed only for Nevada.

- 1 Q. Is that how it works with the trucks in California as
2 well?
- 3 A. Correct.
- 4 Q. They can't go into Nevada?
- 5 A. Correct.
- 6 Q. What kind of vehicles are used by the drivers? What
7 kind of trucks?
- 8 A. It's a bobtail, Class B. Generally a 38-footer, Class B
9 bobtail.
- 10 Q. Is that the same for all locations --
- 11 A. Yes.
- 12 Q. -- throughout the country?
- 13 A. Throughout the country, yes.
- 14 Q. Do you require drivers to wear uniforms?
- 15 A. Yes.
- 16 Q. Same uniform nationwide?
- 17 A. Yes.
- 18 Q. With respect to holidays, is there -- are there holidays
19 provided to the Southern California drivers?
- 20 A. Yes.
- 21 Q. Is that in the CBA?
- 22 A. Yes.
- 23 Q. Same holidays for the Las Vegas drivers?
- 24 A. Yes.
- 25 Q. They have the same policy as the collective bargaining

1 agreement?

2 A. Just the, just the, just the same holiday schedule as
3 the Los Angeles drivers do.

4 Q. Okay. It's not the same policy, or is it?

5 A. Policy? I'm sorry.

6 Q. It's just the same holiday schedule.

7 A. Yes.

8 Q. They get the exact same number of holidays.

9 A. Yes.

10 Q. Okay.

11 MR. GARCIA: Objection, asked and answered.

12 MS. ANASTAS: Like we're in court. Do you want me to
13 retract the question?

14 HEARING OFFICER DEMIROK: Go ahead.

15 Q. BY MS. ANASTAS: Why are -- what do -- why are the --
16 does everybody in the Company have the same holidays?

17 A. Yes.

18 Q. So it's not just the drivers. Everybody throughout the
19 Company nationwide has the same holidays.

20 A. Correct.

21 Q. What about sick leave?

22 A. Sick leave policy is different between the two
23 locations.

24 Q. Can you explain how it's different?

25 A. Sure. Within the collective bargaining agreement, the

1 sick leave, all the drivers in California are allotted 4 sick
2 days per year. Within the Las Vegas, they're allotted 5 sick
3 days per year.

4 Q. Are there any other benefits that the employees in
5 California receive that the Vegas drivers do not?

6 A. There is a California Medical Leave Act. There is a Kin
7 Care Act. And there is a School Leave Act that the State of
8 California has enacted that the California drivers get that
9 the Las Vegas drivers don't.

10 Q. What about vacation?

11 A. Vacation policy is different between the two locations.

12 Q. Which two locations? Let's make sure the record is
13 accurate.

14 A. Oh, I'm sorry. I apologize. Between the Southern
15 California facility drivers and the Las Vegas drivers.

16 Q. Different vacation?

17 A. Different vacation accrual policies.

18 Q. Does the Company extend all the California legal
19 requirements with respect to leaves and other benefits to
20 employees working outside of California?

21 A. No.

22 Q. Are the wages pertaining to the Southern California
23 drivers in the CBA?

24 A. There are wages, yeah, there are wages set within the
25 CBA for the California drivers.

1 Q. Are there differences in wages between the Vegas drivers
2 and Southern California?

3 A. Yes.

4 Q. How do they differ?

5 A. The Las Vegas drivers' wages are slightly lower. There
6 are two drivers that are about \$2 lower. But beyond that
7 just a few cents if not a dollar more lower.

8 Q. What about health insurance, what kind of health plan do
9 the drivers in Las Vegas have?

10 A. They have a -- the company-provided benefits program
11 where they're able to choose different plans based on their
12 decision.

13 Q. What about the Southern California drivers?

14 A. They are assigned to the, to the Produce Association of
15 America benefits plan.

16 Q. Is that a Teamsters-sponsored plan?

17 A. Teamsters-sponsored, yes.

18 Q. Okay. And what about retirement for Las Vegas drivers?

19 A. Retirement is a 401(k). They have access to the 401(k).

20 Q. And for Southern California?

21 A. It's the Teamsters pension trust.

22 Q. How far, if you know, in miles is the Vegas domicile
23 yard from City of Industry?

24 A. 253 miles.

25 MS. ANASTAS: Can we go off the record for a minute?

1 follows:)

2 HEARING OFFICER DEMIROK: You can go ahead and take a
3 seat.

4 THE WITNESS: Great.

5 HEARING OFFICER DEMIROK: And then if you can state and
6 spell your name for the record?

7 THE WITNESS: Sure. My name is Lorne Dauenhauer,
8 spelled L-o-r-n-e, the last name is D-a-u-e-n-h-a-u-e-r.
9 Feel free to call me Lorne.

10 MR. GARCIA: Could I -- I just want to -- Lorne, can you
11 please re-spell your last name?

12 THE WITNESS: Yeah. D-a-u-e-n-h-a-u-e-r.

13 MR. GARCIA: Thank you, Lorne.

14 THE WITNESS: You're welcome.

15 MR. GARCIA: And that is Lorne as in Ralph Lauren?

16 THE WITNESS: More like as in Lorne Greene or Lorne
17 Michaels. But, yeah, L-o-r-n-e.

18 MR. GARCIA: Thank you.

19 HEARING OFFICER DEMIROK: All right. You can proceed.

20 **DIRECT EXAMINATION**

21 Q. BY MS. ANASTAS: Lorne, for whom do you work?

22 A. Ogletree Deakins.

23 Q. What is your job title?

24 A. Shareholder.

25 Q. How long have you worked for Ogletree?

1 A. Going on 5 years.

2 Q. What's your practice area?

3 A. Employee benefits and executive compensation.

4 Q. Do you have any special expertise within that practice
5 group?

6 A. Yes. I work on Taft-Harley plans and qualified
7 retirement plans.

8 Q. For the laypeople in the room, what is a Taft-Hartley
9 plan?

10 A. A Taft-Hartley plan is a retirement plan that is subject
11 to I think it's Section 302(c) of the LMRA, the Labor
12 Management Relations Act. It's in this case a pension plan
13 that's jointly managed by a group of trustees, half of whom
14 are employer trustees, half of whom are union trustees.

15 Q. Do you represent any union pension plans?

16 A. I do.

17 Q. Where?

18 A. Portland, Oregon.

19 Q. For which unions?

20 A. Teamsters, Sheet Metal Workers, Iron Workers, the GMP,
21 which is like Glass Workers, Molders, Potters.

22 Q. Are you familiar with Taft-Hartley pension plan
23 guidelines in general?

24 A. Yes.

25 Q. Are you specifically familiar with the Western

1 Conference of Teamsters pension trust fund?

2 A. Yes.

3 Q. How so?

4 A. Because I routinely work with other employers that are
5 either bargaining into or withdrawing from the Western
6 Conference of Teamsters pension plan. Or a lot of times they
7 are subject to contribution or payroll audits, and so we've
8 got to review the -- how the plan treats the collective
9 bargaining to understand what the plan thinks the
10 contribution obligations are.

11 Q. Did you speak with me prior to this hearing regarding
12 the Western Conference of Teamsters pension trust fund?

13 A. Yes.

14 Q. When was that?

15 A. Friday.

16 Q. What's your understanding of the purpose of the hearing?

17 A. I understand the purpose of the hearing is that the
18 Union wants to have both groups, both the Las Vegas group
19 basically be joined up with the -- is it City of Industry
20 group, so that they be treated as a single unit.

21 Q. Did you do any research as a result of my request that
22 you testify here today?

23 A. Yes.

24 Q. What type of research?

25 A. I went to the Western Conference of Teamsters pension

1 plan's website. I was pretty familiar with the rules but --
2 and I knew they were there. So once you told me the issue, I
3 was very quickly able to find all the documents I needed on
4 their website.

5 Q. Which documents would you say you reviewed?

6 A. Let's see. I reviewed the plan document, the trust
7 agreement, and these exhibits.

8 Q. I'm going to just stop for a minute.

9 A. Sure.

10 MS. ANASTAS: I'd like to enter just for ease just one,
11 Employer 1, which would include six documents. I've already
12 provided the Hearing Officer and the witness and Union
13 counsel. But we do need to get on the same page because I
14 think I may have jumbled them, so I apologize. So there's --
15 I'd like them to be labeled all as part of Employer Exhibit
16 1, with the 1(a) being the Western Conference of Teamsters
17 pension trust fund, employer-union pension certification. It
18 is a two-page document. The first page is a form, and then
19 the second page are the policy -- is the policy. That would
20 be Exhibit 1(a).

21 Exhibit 1(b) would be the contribution guidelines
22 effective April 1, 1970.

23 Exhibit 1(c) would be the Western Conference of
24 Teamsters pension trust summary plan information for the plan
25 year ending December 31, 2018.

1 Exhibit 1(d), the trustee policy on acceptance of
2 pension agreements providing the program for enhanced early
3 retirement.

4 And then Employer Exhibit 1(e), the agreement and
5 declaration of trust.

6 And then Exhibit 1(f) is the pension plan. And that's
7 the largest of the six documents.

8 **(Employer's Exhibit 1(a) through 1(f) marked for**
9 **identification.)**

10 Q. BY MS. ANASTAS: You have all of those before you?

11 A. I do.

12 Q. Had you reviewed those documents prior to the hearing?

13 A. Yes.

14 Q. I mean prior to me even calling you?

15 A. Yes.

16 Q. You have familiarity with the documents.

17 A. Yes.

18 Q. Have you had a chance to review the collective
19 bargaining agreement in this matter, which has been marked as
20 Joint Exhibit 1?

21 A. Yes.

22 Q. Did you review Article 21, pensions?

23 A. Yes.

24 Q. So let's start with Employer Exhibit 1(f), the pension
25 plan.

1 A. Okay.

2 Q. Are there any sections in this rather large document
3 that would in your expertise impact whether the trustees
4 would accept a pension agreement after parties have been
5 bargaining a CBA?

6 A. Yes. I'm trying to find it. It's in 20.5(2) and
7 20.5(1).

8 Q. And what do those sections in your -- based on your
9 expertise, what do those sections mean?

10 A. They say that to the extent a collective bargaining
11 agreement requires contributions to be made for the employees
12 of an employer, that collective bargaining agreement isn't
13 treated as a, as a pension agreement without the trustees of
14 the plan approving it.

15 Q. Is that all that from your perspective is relevant to
16 this issue?

17 A. Moreover, that the trustees can establish rules that's
18 set forth under what conditions and agreement can be
19 accepted.

20 Q. Are the rules included in Exhibit 1(f), or it's just
21 indicating that?

22 A. They're indicating that they can adopt rules. The rules
23 themselves are not in the pension plan. They're in the trust
24 agreement.

25 Q. Taking a look at Employer Exhibit 1(e), the agreement

1 and declaration of trust.

2 A. Yes.

3 Q. Is there anything in this document that would impact the
4 parties' bargaining if additional drivers were to be added to
5 the existing bargaining unit?

6 A. Yes. So on page 1 -- it's not actually numbered. It's
7 the first page after the title page. It's Notice to Covered
8 Employers, Employees and Local Unions. Again, it says, to be
9 eligible to participate in this plan, there needs to be a
10 bona fide written pension agreement (labor contract). In
11 most cases, this is a collective bargaining agreement. I'm
12 paraphrasing. But the agreement must conform to the trustee
13 policy on acceptance of employer contributions and must be
14 accepted as a pension agreement by the board of trustees.

15 So it's clear that any time you've got a collective
16 bargaining, just because it requires or doesn't require
17 contributions to be made to the Western Conference pension
18 plan trust, it doesn't govern the trust unless and until,
19 one, it complies with the trust rules and the plan's trustees
20 have accepted it as being consistent with the plan's rules.

21 HEARING OFFICER DEMIROK: I'm going to interject just
22 for a moment. I have some questions about this witness
23 testifying as an expert. How is it from the Employer's
24 position, how is it that his testimony here is going to help
25 the trier of fact understand the evidence to determine

1 amounts. If you're all drivers, if the unit is all drivers,
2 then the employer has to contribute the same amount for every
3 driver. It doesn't matter that these guys got added in
4 December of 2018. If they're a driver, the Employer has to
5 contribute on their behalf just as much as they contribute
6 for these drivers who have been represented by the Teamster
7 for decades. So that's one -- that's one principle.

8 And they're not going to be able to bargain out of that.
9 They're not going to be able to bargain and say, no, we want
10 them to stay in our 401(k) plan because we don't want to add
11 to our withdrawal liability, which you'll see from one of the
12 documents was \$17 million for employers who withdraw last
13 year -- withdrew last year. So there are some pretty serious
14 ramifications that result from forcing the Employer to add
15 these drivers to an existing unit of drivers.

16 HEARING OFFICER DEMIROK: But how do those ramifications
17 fall into the analysis of community of interest analysis
18 that's going to be --

19 MS. ANASTAS: Like I said, it's a term and condition of
20 employment. Retirement. That's an essential term of their
21 employment. And they are vastly different. They're in
22 vastly different camps in terms of retirement benefits.

23 HEARING OFFICER DEMIROK: Okay. I'm going to -- I want
24 to hear Petitioner on this, and I'm going to consult with the
25 Region before going forward on more testimony.

1 hopefully within the next 5 to 10 minutes.

2 **Off the record.**

3 **(Off the record from 3:31 p.m. to 3:38 p.m.)**

4 HEARING OFFICER DEMIROK: Okay. So I'm going to allow
5 the testimony to move forward. From what I understand, how
6 long -- you mentioned like 10 minutes.

7 MS. ANASTAS: Yeah.

8 HEARING OFFICER DEMIROK: I mean is that really what you
9 expect the testimony to go for?

10 MS. ANASTAS: Yeah, yeah.

11 HEARING OFFICER DEMIROK: We're going to go forward. I
12 mean I want to state for the record, based on my questioning,
13 I do think there is a limited relevance when it comes to the
14 ramifications for the Employer. But you're free to continue
15 questioning the witness.

16 MS. ANASTAS: Okay.

17 Q. BY MS. ANASTAS: Are there any trust rules that impact
18 whether an employer can pay employees in the same bargaining
19 unit -- can contribute different rates for employees in the
20 same bargaining unit?

21 A. Yes. So where we left off, we were talking about the
22 preamble. And the preamble talks about how the agreement has
23 to conform with the trustee policy on acceptance of employer
24 contributions under the plan rules and has to be accepted as
25 a pension agreement before contributions can be accepted and

1 that treated as a binding agreement. Those rules are
2 actually found in the trust agreement towards the back,
3 page --

4 HEARING OFFICER DEMIROK: And for the record, are you
5 looking at Employer's Exhibit 1(e)?

6 THE WITNESS: I believe so. It's the one that says
7 Agreement and Declaration of Trust.

8 MS. ANASTAS: Yes, that's 1(e).

9 THE WITNESS: So if you turn to page 16, that's where
10 the trustee policies on acceptance of employer contributions
11 are found. I believe those are also duplicated in Employer's
12 Exhibit 1(c) as well as -- or 1(b) rather and 1(a) on the --
13 on the back of the first page. They're duplicates. But I'm
14 just going to refer to the ones in the trust agreement.

15 What these say is that it's the trust policy that we're
16 just not going to accept any collective bargaining agreement.
17 There's certain agreements that are detrimental to the trust.
18 And they will not accept an agreement if they are considered
19 detrimental to the trust.

20 The first agreement, which is the one that's just the
21 general agreement, if you look at item 8, it says here are
22 examples, here are eight examples of types of provisions we
23 will consider detrimental to the trust and therefore will not
24 accept. Number 8 says if the CBA includes different
25 contribution rates within the same job classification, then

1 that would only be -- that would not be permissible. To
2 illustrate this concept, driver, warehouse, office,
3 mechanics, sales, production is considered substantially
4 different descriptions.

5 So, in other words, if you have a driver at City of
6 Industry and a driver at Las Vegas, that's a driver. And you
7 have to -- if the drivers in City of Industry are making
8 contributions for them at say \$1 an hour, then if you add
9 these employees for Las Vegas, you would have to make a
10 contribution for them at \$1 an hour. You couldn't say that,
11 oh, the Las Vegas people we're going to keep in a 401(k)
12 plan, but the other bargaining unit employees, the drivers
13 we're going to have to contribute to the Western Conference
14 of Teamsters. So that's what item 1(a) is getting at.

15 The collective bargaining agreement also calls for
16 contributions to be made at the PEER rate, it's P-E-E-R,
17 which is an early retirement program. It's an extra
18 contribution that the employer makes so that employees can
19 retire early on subsidized retirement. The PEER rules are
20 similar. And that's continued onto page 17. In number 10,
21 the trust will not accept a pension agreement that provides
22 PEER contributions for some but not all job classifications
23 covered by a single agreement. The agreement will not be
24 acceptable if it provides different PEER levels for different
25 job classifications under a single agreement.

1 So, again, the Employer would have to make the same PEER
2 contributions for all these employees whether they worked in
3 Las Vegas or City of Industry; otherwise, the plan wouldn't
4 accept the collective bargaining agreement as binding.

5 Q. BY MS. ANASTAS: With respect to Exhibit 1(c), to your
6 knowledge, and this is the plan year -- the summary plan
7 information.

8 A. Yeah.

9 Q. For the year ending December 31, 2018. Is this the most
10 recent summary plan information available?

11 A. It is.

12 Q. The third to last bullet there.

13 A. Yes. Withdrawal ability?

14 Q. Right. Is there any way to determine the \$17 million?
15 Can you explain was that assessed in 2017 or 2018?

16 A. That was assessed in 2018 for employers that withdrew in
17 2017.

18 Q. Do you know whether there is ongoing withdrawal
19 liability for employers who contribute to this plan?

20 A. Yes, I do.

21 Q. And what is the answer?

22 A. Yes, it is.

23 Q. Would FreshPoint's withdrawal liability increase if it
24 added eight more drivers to the plan?

25 A. Yes, it would.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

**FRESHPOINT SOUTHERN CALIFORNIA,
INC.,**

Employer,

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630,**

Petitioner.

Case No. **28-RC-252613**

The continuation of above-entitled matter came on for hearing pursuant to notice, before **SARA DEMIROK**, Hearing Officer, at the **National Labor Relations Board, 300 Las Vegas Boulevard South, Suite 2-901, Las Vegas, Nevada**, on **Tuesday, December 10, 2019, at 9:30 a.m.**

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
John Collie	174	176	--	--	--
John Collie	190	174	--	--	--

1 MR. GARCIA: Approximately eight.

2 HEARING OFFICER DEMIROK: Okay. And is there any
3 disagreement with that from the Employer?

4 MS. ANASTAS: No.

5 HEARING OFFICER DEMIROK: Okay. And the pre-existing
6 bargaining unit in California, approximately how many are
7 within that bargaining unit?

8 MR. GARCIA: It's the Petitioner's view that it's
9 approximately 200.

10 HEARING OFFICER DEMIROK: Okay. And --

11 MS. ANASTAS: Is that right?

12 MR. COLLIE: It a little over, probably 240.

13 HEARING OFFICER DEMIROK: Okay. Would -- as far as the
14 Petitioner, would the Petitioner wish to proceed to an
15 election in any alternate unit if the unit sought is found
16 to be inappropriate by the Regional Director or the Board?

17 MR. GARCIA: No, the evidence in this case has shown
18 that it's appropriate for an *Armour-Globe* self-determination
19 election.

20 HEARING OFFICER DEMIROK: That's why there are no
21 outstanding rulings that the Regional Director or
22 outstanding motions that have not been referred and ruled on
23 here.

24 Madam Court Reporter, what is the approximate length of
25 the transcript at this point?

1 Mr. Jose Mota, his rate is at \$18.75 an hour. We look to
2 Petitioner's Exhibit 4(h), Joe Tisnado, his wage rate is
3 \$20.80 an hour. This is a \$2.05 difference which matches or
4 corroborates what Mr. Collie testified. Both locations
5 offer vacation pay, which we'll note that differences are
6 accounted, and as was acknowledged by the Respondent, the
7 differences in California and Nevada state laws. Both have
8 stock purchase options, sick pay, the differences are
9 accounted for again, as was conceded by the Respondent,
10 California and Nevada state laws. Paid holidays, such as
11 what's provided and what's in Joint Exhibit Number 1, the
12 collective bargaining agreement. Both have medical or
13 health and welfare plans.

14 Retirement, the only difference in the retirement is
15 City of Industry employees have a pension plan that's been
16 bargained for, and the Las Vegas employees have a 401(k)
17 plan that hasn't been bargained for. The point is, both
18 have a retirement plan for the employees. And as we've saw
19 in the pension plan, through one of the Respondent's
20 witnesses, neither the pension plan or the collective
21 bargaining agreement are precluded from being amended or
22 modified. It happens all the time.

23 We look to *MCI Communication Services, Inc. d/b/a*
24 *Verizon Business*, citation 4-RC-123386. It's a 2014
25 decision, possibly unpublished, for guidance on this issue.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

**FRESHPOINT SOUTHERN CALIFORNIA,
INC.,**

Employer,

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630,**

Petitioner.

Case No. **28-RC-252613**

The continuation of the above-entitled matter came on for hearing pursuant to notice, before **SARA DEMIROK**, Hearing Officer, via videoconference, on **Thursday, July 30, 2020**, at **9:00 a.m.**

	<u>I N D E X</u>				<u>VOIR</u>
	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
1					
2					
3	<u>WITNESSES</u>				
4					
5	John Collie	229	248	264	--
6					
7	Felix Chavez	273	285	286	--
8					
9	Joe Tisnado	289	293	294	300
10					
11	Jose Mota	303	307	--	--
12					
13	John Collie	313	--	--	--
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- 1 Q. How many employees work for the Company?
- 2 A. Currently 244.
- 3 Q. Are any of the 244 represented by a labor organization?
- 4 A. Yes.
- 5 Q. How many?
- 6 A. About 151.
- 7 Q. And to back up, when you mentioned the 244 number,
- 8 number of employees, where are those employees located?
- 9 A. The majority of them, approximately 100 are based out of
- 10 the City of Industry, California facility, and the remaining
- 11 are based out of resident yards.
- 12 Q. How many resident yards?
- 13 A. Seven.
- 14 Q. How many of the seven are in California?
- 15 A. Six.
- 16 Q. And where's the seventh?
- 17 A. Las Vegas.
- 18 Q. Okay.
- 19 A. Nevada.
- 20 Q. Of the 151 represented employees, roughly how many work
- 21 out of the City of Industry?
- 22 A. 127.
- 23 Q. Where do the rest work?
- 24 A. Out of the resident yards.
- 25 Q. Which union represents your represented employees?

1 A. Teamsters Local 630.

2 Q. Is there a collective bargaining agreement in place that
3 covers the terms and conditions of their employment?

4 A. Yes.

5 Q. Are you familiar with the collective bargaining
6 agreement?

7 A. Yes.

8 Q. How?

9 A. As part of my job responsibilities, all of the Union
10 associates indirectly report to me. So it's part of my job
11 duties to be familiar with the collective bargaining
12 agreement and the aspects within it.

13 Q. Has that always been the case during your employment?

14 A. Yes.

15 Q. Does the Company maintain an employee handbook?

16 A. Yes.

17 Q. Are you familiar with the provisions of the employee
18 handbook?

19 A. Yes.

20 Q. Is there one handbook or multiple handbooks?

21 A. There's a handbook for the California associates and a
22 handbook -- I'm sorry -- for the union bargaining
23 associates, and then there's a handbook for non-bargaining
24 associates.

25 Q. Are there differences between those two?

1 those yards been in existence?

2 A. Five of the seven yards have been in existence for about
3 18 months.

4 Q. Five of the seven.

5 A. Five of the seven.

6 Q. Okay. Can you identify for us which five?

7 A. Absolutely. The five include the Oxnard Yard, which is
8 based out of Sysco Ventura, Fontana Yard, the Sylmar Yard,
9 and the Costa Mesa Yard. I'm sorry. Four local yards. We
10 shut the fifth one down recently.

11 Q. Okay. So the four yards are Oxnard, Fontana, Sylmar,
12 and Costa Mesa?

13 A. Correct.

14 Q. And those came into existence when?

15 A. About 18 months ago.

16 Q. How did that happen?

17 A. Just out of business needs, as our business continued to
18 grow pre-COVID, our drivers were working very long hours to
19 go to these locations and customers that were quite a
20 distance away, and based on the traffic congestion in
21 Southern California, it made perfect business sense and gave
22 the truck drivers a better quality of life to open up
23 resident yards so they could live in those areas and deliver
24 to customers within those areas.

25 MS. ANASTAS: I would like to show John Board Exhibit 5.

1 Q. Okay. Who's Frank Barragan?

2 A. He's a transportation supervisor.

3 Q. Okay. I guess I -- is that Francisco?

4 A. Yes, his official name is Francisco.

5 Q. Thank you.

6 A. He likes to be called Frank.

7 Q. Okay. Other than the Las Vegas Yard, which on Exhibit 5
8 is identified as Yard Number 1, are any of these other yards
9 cold storage facilities?

10 A. No.

11 Q. Okay.

12 HEARING OFFICER DEMIROK: While we have this exhibit up
13 there, do you mind if I ask a question?

14 MS. ANASTAS: Of course not.

15 HEARING OFFICER DEMIROK: Okay. Mr. Collie, I recall
16 you testifying, and I may have written it down wrong, but I
17 thought that you testified that the Las Vegas drivers were
18 reporting to Edgar Perez.

19 THE WITNESS: Correct.

20 HEARING OFFICER DEMIROK: And then on Board Exhibit
21 Number 5, it says the yard supervisor is Cesar Rosiles. So
22 could you explain that for me?

23 THE WITNESS: Yes. The drivers report into Edgar, but
24 in terms of the management of the yard, the negotiation of
25 expenses, and everything else that occurs physically at the

1 facility, that goes through Cesar, the manager.

2 HEARING OFFICER DEMIROK: Okay. And then for any of the
3 other facilities, the domicile yards that are listed on
4 Exhibit Number 5, does Cesar Rosiles play any role in
5 managing the facilities aspect of it like as he does with
6 the Las Vegas Yard?

7 THE WITNESS: No, because the Las Vegas cold storage
8 facility is our only cold storage facility.

9 HEARING OFFICER DEMIROK: Okay. Thank you.

10 Q. BY MS. ANASTAS: John, how often does Edgar Perez go to
11 the Fontana domicile yard?

12 A. Pre-COVID approximately two to three times a month.

13 Q. Okay. And do you know what the purpose of his visits
14 was pre-COVID two to three times a month?

15 A. Just to visit with the drivers, get any feedback from
16 them, present them with any new policies or procedures or
17 sign-ons that needed to take place, get any feedback from
18 them, from any HR stuff they need answered and get that
19 communication process going.

20 Q. Okay. With respect to Sylmar, do you know how often
21 Frank visits the Sylmar Yard?

22 A. Same, two to three times per month.

23 Q. San Diego?

24 A. Two to three times per month.

25 Q. Oxnard?

1 A. Same.

2 Q. Costa Mesa?

3 A. Same.

4 Q. And how about the Las Vegas Yard?

5 A. The Las Vegas is approximately one to two times per
6 month.

7 Q. Okay. Are there any other supervisors or managers of
8 the Company that visit these yards other than the
9 supervisors identified on NLRB Exhibit 5?

10 A. The only other person would be myself.

11 Q. And how often do you visit?

12 A. Vegas would be three to five times a year. San Diego
13 would be two to three times a year. The other yards, as
14 needed if any issues arose that needed my intervention.

15 Q. Okay. Have the domicile yards other than Las Vegas
16 always been covered by the collective bargaining agreement
17 between the Company and the Teamsters?

18 A. Yes.

19 Q. Okay.

20 HEARING OFFICER DEMIROK: Just a follow-up question for
21 clarification: Mr. Collie, the question I believe was about
22 covered by the collective bargaining agreement. Would that
23 be -- do you know if those employees at the other domicile
24 yards, the drivers were covered by previous collective
25 bargaining agreements, the ones prior to or I guess -- let's

1 say, for example, San Diego since it's been around for 12
2 years. Do you know if they have been covered by prior
3 collective bargaining agreements?

4 THE WITNESS: Yes, they have.

5 Q. BY MS. ANASTAS: With respect to the Las Vegas Yard, we
6 did already have a fair amount of testimony from you and
7 others regarding that operation, but I want to ask you some
8 follow-up questions which may or may not have been addressed
9 previously. The first one is where do the -- well, first of
10 all, what type of product do the Las Vegas drivers deliver?

11 A. They deliver produce to all the local customers in the
12 Vegas area.

13 Q. Where does the produce they deliver come from?

14 A. The produce they deliver comes from the City of Industry
15 facility.

16 Q. Okay. Does the City of Industry facility provide the
17 produce for other companies as well, not just the Las Vegas
18 operation?

19 A. Yes.

20 Q. Can you tell us about that?

21 A. Sure. We are the product redistribution center for all
22 of FreshPoint. So all nationwide North American FreshPoints
23 and Syscos buy their produce from here, and we ship it to
24 them. Depending on the operation, it could be multiple
25 times per week, but we touch at least every Sysco and

1 FreshPoint once per week.

2 Q. Okay. Are you familiar with the Company's practice with
3 respect to driver overtime pay?

4 A. Yes.

5 Q. Can you tell us how overtime is paid with regard to the
6 Southern California bargaining unit drivers?

7 A. Sure. Overtime is paid -- anything over 8 hours in a
8 single day is paid overtime. Anything over 12 hours is then
9 double time, and then over 40 hours in a week is overtime.

10 Q. What's the practice with regard to the Las Vegas
11 drivers?

12 A. Las Vegas is strictly over 40 hours in a week is then
13 paid overtime.

14 Q. What's the Company's practice with regard to overtime
15 for non-bargaining unit employees based out of Southern
16 California?

17 A. Based out of Southern California, non-bargaining unit
18 employees are paid on 8 hours per day, overtime. Anything
19 over 12 hours, at double time, and then 40 hours in a week.

20 Q. So identical practice as the drivers covered by the
21 collective bargaining agreement?

22 A. Correct.

23 Q. Okay. Are you familiar with the amount of overtime
24 worked among the Las Vegas drivers versus the Southern
25 California drivers?

1 A. Yes.

2 Q. Okay. Can you tell us what you know?

3 A. Sure. Currently the average Southern California driver
4 works approximately 8 to 12 hours of overtime a week. There
5 are variations, but that is the average, and in Las Vegas
6 currently, they're working anywhere between 10 to 14 hours
7 of overtime a week currently.

8 Q. Are you familiar with the California Family Rights Act?

9 A. Yes.

10 Q. Do the drivers in the Southern California bargaining
11 unit, do they receive the benefits of that?

12 A. If they are approved for it, yes.

13 Q. Okay. And how about the drivers based out of Las Vegas?

14 A. No.

15 Q. Why is that?

16 A. Because they're employed in the state of Nevada, not
17 California.

18 Q. How about the New Parent Leave Act? Are you familiar
19 with that?

20 A. Yes.

21 Q. Do the drivers in Southern California, do they receive
22 rights under that statute?

23 A. Yes.

24 Q. How about the Las Vegas drivers?

25 A. For the California New Parent Leave Act, no.

1 Q. Okay. I want to talk a little bit about the duties of
2 the drivers, well, actually the working conditions. Are
3 there any differences, to your knowledge, between the
4 working conditions associated with the drivers in Las Vegas
5 versus those associated with the drivers in Southern
6 California?

7 A. Two of the biggest differences are, in terms of the
8 start of their day, coming to get their loads, the Southern
9 California drivers' loads are preloaded into the trucks. So
10 they just come in, check their loads, do their pre-trip, and
11 then exit the facility. In Las Vegas, the drivers have to
12 unload the 53-foot truck, unload their loads into their
13 trucks, and then do their pre-trip and exit the facility.

14 The other one is the actual weather and working
15 conditions. The drivers in Vegas are clearly allotted
16 multiple extra minimal breaks in order to cool down and
17 hydrate due to the desert weather during the summer.

18 Q. Where are they supposed to take those breaks?

19 A. They take them inside either -- currently, they can't
20 take them at a customer's location any longer. So it's
21 inside the cab of their truck or in a heavily shaded area.

22 Q. Okay. I want to get back to the loading and unloading
23 topic for a minute. So in Las Vegas, how long does it take,
24 if you know, for the drivers to unload their loads?

25 A. To unload a 53-footer, depending on the day of the week,

1 if it's one or two trucks, depending on the volume, the
2 average one truck, it takes approximately 2½ hours to unload
3 the pallets, sort them, make sure they're sorted properly,
4 labeled properly, and then moved, horseshoed into the route
5 trucks properly and then make any adjustments needed for any
6 customer requests.

7 Q. And the drivers in Southern California don't have to do
8 any of that?

9 A. The only time the drivers in Southern California touch
10 their loads before they leave is if they feel their load has
11 been loaded incorrectly or unsafe. And then they would back
12 into a dock, and we would unload the load, adjust it, and
13 reload it. That happens one to two times per delivery day
14 maximum. That's it.

15 Q. Okay.

16 A. But they -- but the drivers do not do that. The
17 warehouse person does that.

18 Q. Are there any warehouse personnel assisting the drivers
19 in Las Vegas?

20 A. No.

21 Q. Are there any differences between the customers, the
22 drivers service in Las Vegas versus Southern California?

23 A. Approximately 30 to 40 percent of the customers in Vegas
24 are customers that do not exist or we do not deliver here in
25 Southern California.

1 Q. What about the rest?

2 A. The rest are national chain accounts that are delivered
3 by FreshPoint across the country.

4 Q. Do the drivers in Las Vegas receive wage increases?

5 A. Yes.

6 Q. How often?

7 A. Once per year.

8 Q. And on what are those increases based?

9 A. Based on a yearly review given by Edgar Perez, their
10 direct supervisor.

11 Q. Does the Company perform evaluations or complete
12 performance evaluations for the drivers that are covered by
13 the collective bargaining agreement in Southern California?

14 A. No.

15 Q. How are their wages determined, the drivers in Southern
16 California?

17 A. Through the agreement in the collective bargaining
18 agreement.

19 Q. Is there a legal entity or government entity that
20 determines meal and rest breaks for drivers employed by the
21 Company?

22 A. Yeah, the Federal DOT regulations.

23 Q. Does that apply to all drivers for FreshPoint?

24 A. Yes.

25 MS. ANASTAS: Okay. I don't have anything further right

1 bargaining unit drivers in Las Vegas would receive the same
2 handbook as -- are there any other -- like what are the
3 other groups of employees, other than the Las Vegas drivers,
4 that would get that handbook?

5 THE WITNESS: Any non-bargaining unit associates, hourly
6 or salary, here at the City of Industry facility.

7 HEARING OFFICER DEMIROK: Could you just give us an
8 example, like what classifications that would be?

9 THE WITNESS: Our customer service department, our
10 buyers, our quality associates, our sales associates, and
11 our maintenance associates.

12 HEARING OFFICER DEMIROK: Now, do the two different
13 handbooks cover the same topics?

14 THE WITNESS: Yes.

15 HEARING OFFICER DEMIROK: And then, Mr. Collie, you
16 mentioned -- you were testifying about your direct reports,
17 and you mentioned two that have a title including QA
18 specialists. What does the QA stand for?

19 THE WITNESS: Quality assurance.

20 HEARING OFFICER DEMIROK: Okay. And is that a
21 particular department within the organization of the
22 Company?

23 THE WITNESS: I wouldn't say department. A job
24 function. It's more of a job function where they inspect
25 all incoming and in-house product to ensure it meets the

1 Q. Okay. And in terms of, you know, with the -- outside of
2 San Diego, the other domicile yards that we've been talking
3 about, can you share with us how, you know, how did you
4 learn that those would become part of the contract?

5 A. Again, it's under Article 20 under resident drivers. So
6 the Company has approached me and said that they were going
7 to open, I call them satellites, cross-docks, and it would
8 benefit the drivers to add them onto head counts. It was
9 bid there at City of Industry.

10 Q. Outside of San Diego, do you recall when you were
11 approached about these, what you refer to as satellite or
12 domicile yards?

13 A. About maybe 2 years ago.

14 Q. Okay. And who approached you from the Company?

15 A. John.

16 Q. John Collie?

17 A. John Collie, yes.

18 Q. And what did Mr. Collie share with you?

19 A. That they were interested in opening up more resident
20 yards and, yeah, I was fine with it. It would benefit my
21 drivers who may live within that area, so to make it easier.

22 Q. And what happened after that? So there's that
23 discussion. What, you know, how did this kind of come to
24 light in terms of these actual locations?

25 A. Like I said, I was approached. They were, you know,

1 or docks.

2 MR. GARCIA: I don't think I have anything left for this
3 witness. No, nothing further for this witness.

4 HEARING OFFICER DEMIROK: Okay. Would Employer's
5 counsel like to follow up?

6 MS. ANASTAS: Just a couple of questions.

7 **CROSS-EXAMINATION**

8 Q. BY MS. ANASTAS: Hi, Felix.

9 A. Hi.

10 Q. My first question is related to the bid postings that
11 you just reviewed with your attorney.

12 A. Um-hum.

13 Q. You didn't get any such postings for the Las Vegas
14 drivers; is that right?

15 A. That's correct.

16 Q. Okay. So just the domiciles in California?

17 A. That's right.

18 Q. Okay. And just a couple of minutes ago, when you
19 testified about the pre- and post-trip, the facts relating
20 to pre- and post-trip duties, when you referenced domicile
21 yards, you're referring to the California domicile yards,
22 right?

23 A. That's correct.

24 MS. ANASTAS: Okay. That's all. I just wanted to clear
25 those two things up. Thank you.

1 MS. ANASTAS: Just one quick question.

2 THE WITNESS: Sure.

3 **RECROSS-EXAMINATION**

4 Q. BY MS. ANASTAS: I just wanted to confirm, the
5 California-based drivers don't make any deliveries to Las
6 Vegas customers; is that accurate?

7 A. Yes.

8 MS. ANASTAS: Okay. That's all.

9 HEARING OFFICER DEMIROK: Okay. All right. Thank you
10 very much for your time once again, and you are free to go,
11 but you certainly don't have to go, all right.

12 THE WITNESS: Okay. Thank you.

13 **(Witness excused.)**

14 **HEARING OFFICER DEMIROK: All right. So we'll go off**
15 **the record for a moment.**

16 **(Off the record from 12:07 p.m. to 12:39 p.m.)**

17 HEARING OFFICER DEMIROK: Okay. So we took a short
18 break. We do have another witness to call to get testimony
19 from, but before we do that, I am going to introduce three
20 exhibits which have been given to both parties for review.

21 The first exhibit is Board Exhibit Number 13, and that
22 is supplemental formal papers.

23 **(Board's Exhibit 13 marked for identification.)**

24 HEARING OFFICER DEMIROK: Is there any objection to
25 admission of Board Exhibit 13?

