

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

ALLAN BROS. INC.,¹

Employer

and

Case 19-RC-265331

**TRABAJADORES UNIDOS POR LA
JUSTICIA,**

Petitioner

DECISION AND DIRECTION OF ELECTION

Trabajadores Unidos Por La Justicia (Petitioner) filed the instant petition on August 27, 2020² seeking to represent certain employees of Allan Bros., Inc. (Employer) for the purposes of collective bargaining. Petitioner and the Employer disagree regarding the composition of the unit: the Petitioner is seeking a unit consisting of only production employees, while the Employer contends that a plantwide unit is the only appropriate bargaining unit.

Specifically, the Petitioner seeks a unit as follows:

Included: All full-time and regular part-time production employees, including leads, in the following classifications: line, box filler, tray filler, pallet ticket stamper, strapper, PLU sticker, packing supplies, sizer, sizer technician, clams and production forklift operators employed by the Employer at its facility located at 31 Allan Rd. Naches, Washington.

Excluded: All other employees, seasonal cherry warehouse employees, office clerical employees, information systems employees, accounting employees, truck drivers, non-production forklift operators, maintenance employees, facilities employees, shipping employees, receiving employees, quality control employees,

¹ To the extent the formal documents in this proceeding do not correctly reflect the correct name of the parties, I grant the parties' joint motion to amend the petition and other formal documents to correctly reflect the names of the parties set forth herein.

² All dates hereinafter are in 2020 unless noted otherwise.

storage employees, agricultural employees, professionals, confidential employees, and guard and supervisors as defined in the Act.

The Employer has proposed a plant-wide “wall-to-wall” unit as follows:

Included: All full time and regular part-time non-professional and non-administrative employees, including all production employees, including apple warehouse employees, facilities operators, facilities assistant, and facilities lead; facilities sanitation lead, facilities sanitation team members, operators, and leads; facilities repair and maintenance lead, technicians and operators, facilities repair and maintenance fruit storage technician, lead, and operator; quality control technicians and leads; receiving and shipping department forklift operators, truck driver, clerks, technicians and leads employed by the Employer at its facility located at 31 Allan Road, Naches, Washington

Excluded: All office clerical employees, seasonal cherry warehouse employees, accounting employees, professionals, confidential employees, guards and supervisors as defined in the Act.

The unit requested by the Petitioner consists of approximately 225 employees. The larger unit that the Employer maintains is the appropriate unit contains an additional 176 employees, for a total of approximately 401.

A hearing in this matter was held before a Hearing Officer of the National Labor Relations Board (Board), and the parties filed post-hearing briefs. As explained more fully below, based on the totality of the record and the parties’ respective arguments, I find that a plantwide unit is the smallest appropriate bargaining unit. Inasmuch as the parties have agreed to proceed to an election in any unit I find appropriate, I have directed an election accordingly. Moreover, based upon the current COVID-19 pandemic, I have ordered that a mail-ballot election be conducted.

THE EMPLOYER’S OPERATION

The Employer is engaged in the business of packing and shipping fruit, specifically apples and cherries, at its facility in Naches, Washington (the facility), consisting of over one million square feet of covered space. Currently, the Employer processes over 10,000 SKUs, signifying over 10,000 different varieties, sizes, and grades of apples.³ Many of the Employer’s

³ SKUs, or Stock Keeping Units usually in the form of bar code stickers, are used to identify a distinct type of item for sale. Unlike UPCs, or Universal Price Codes, SKUs are generally used for a particular vendor.

customers also have proprietary products, so apples may be packaged in bulk, in bags, or in special plastic containers for special retailers.⁴

The operation is comprised of several departments: Production (235 employees); Facilities (45 employees); Shipping (28 employees); Receiving (39 employees); and Quality Control (QC) (31 employees). There are also 4 fruit storage employees, and a number of truck drivers.

The process begins with the receiving department, which includes the receiving truck drivers, forklift drivers, and bin repair and wash employees. These employees in receiving manage the logistics of the arriving fruit, transporting it from the orchard to the Employer's facility, and from storage or cold rooms to the production department.⁵ The receiving department also works closely with the production department, ensuring that they are provided with sufficient quantity and type of product to meet the orders to be shipped that day.

Apples being delivered to the facility by the receiving department truck drivers⁶ from the growers may go directly into the production line, to temporary storage for up to 90 days, or to long-term cold storage: the destination is determined by the sales and marketing department based on anticipated sales.⁷ The fruit arrives from the growers in bins loaded with up to 1000 pounds of product, which is put through an automated dumper system into a water flume. This end of the facility is referred to as the "wet side," or "high risk" side because it poses the greatest risk for product contamination. The receiving employees, particularly the receiving fork lift drivers, work closely with the production employees to provide bins and support and to move the product to the production line: they also assist with organizing the bins in the storage room, which contains both unsorted fruit arriving from the growers and already sorted and sized fruit, by keeping them separated and easy to locate.⁸ The receiving forklift drivers also remove "culled" product which is not suitable for packing and goes back to the storage room to eventually be processed as juice or even discarded. The rejected product, or "processor," is assessed by a processor lead, who is in close contact with the customers.

Following the dumper system, the fruit is then sorted for either immediate processing or placed in storage to be sold later. The apples selected for immediate processing proceed through a series of cleaning brushes and then to the computerized sizers, which initially grade them by

⁴ These plastic containers are referred to as "clams." These as well as crates, bags, and the SKU stickers are created and/or maintained on-site. All packing supplies – cardboard, bags, plastic containers, straps, and protective packaging – are referred to collectively as "shook."

⁵ Approximately 3 of the receiving employees came out of the production department.

⁶ The Employer employs 7 receiving drivers, as well as an unspecified number of contract drivers for incoming deliveries. The growers contact the Employer's dispatcher, who then schedules the drivers to pick up the product or to return empty bins from the facility back to the growers.

⁷ Apples may be cold-stored year-round depending on demand, but cherries do not store well because they are more fragile. The apple storage facilities are located on-site in separate buildings. There are also apple storage facilities in other locations not at issue herein.

⁸ During cherry season, the receiving department also pulls the cooling pads off the cherry bins as they arrive from the orchards.

color, defect standard, and size: this process was once done by humans but is now largely automated with minimal oversight by Quality Control (QC). The QC workers regularly interact with the sizer technicians who ensure the sizers are accurately performing to specifications. Once sized, the apples go through another set of flumes and cleaning brushes to protect product safety then through the waxer.

After that, the apples go through another sizing system and then onto a number of conveyer belts past individual workstations in the processing department. As noted above, few humans have been involved in the process up to this point with the exception of those technicians and QC employees monitoring the machines. The processing workers at these workstations visually inspect the apples for any defects that the automated system may have missed – bruises, discolorations, worms, etc. – and ensure that the final grade and quality level is met. They then place the fruit on trays which have been prepared and mechanically separated by “de-nesters.” The trays proceed to the box fillers at the end of the conveyer belt to be boxed.⁹ The production employees do not receive any specialized training, rather, they are mentored by more senior employees and then are able to mentor others.

At some point during the processing, a Price Look-Up (PLU) sticker is affixed to each apple: this is a small sticker with a 4 or 5-digit number that identifies the variety of apple, its origin, its size group, and other information.¹⁰ A production employee prepares the machines with the appropriate stickers before the line starts running to indicate the size and priority of the product. This employee generally performs other production tasks as well, including filling trays or bags. The PLU machines are maintained by the mechanics if they are not functioning properly: also QC employees will get involved if there is a problem with the accuracy or lack of a sticker.

The boxes are fabricated by a box making team on the second floor who use flat stock material – usually corrugated cardboard – and form it with a machine to make the boxes, which are then carried downstairs by conveyer belt to the packing area. These employees do not generally interact directly with other employees on the production line except to supply them with boxes as needed. There are also “shook” forklift drivers who work with the box making teams delivering materials.

Once boxed or packaged, the product proceeds to the shipping department. The shipping department has about 31 employees¹¹ who are responsible for order entry, invoicing, billing; loading trucks; preparing export documentation – including that required by the Washington State Department of Agriculture (WSDA). The four shipping clerks use the Warehouse

⁹ As described above, some apples are packed in bags or “clams” to meet customer specifications.

¹⁰ The PLU sticker differs from the SKU (Stock Keeping Unit), in that the latter is a product code used by an individual store generally used for inventory control. The PLU (Price Look-Up) code is used primarily for produce sold by weight, volume, or quantity. A PLU may contain the price, the SKU, and stock-keeping information.

¹¹ About 67% of the employees in the shipping department came out of the production department.

Management System (WMS) that requires some general level of computer literacy.¹² In this regard, the shipping employees also serve as liaison between the Employer and its marketers to confirm order details.¹³ Shipping works closely with the production department, since the production schedule is determined by what orders need to be shipped on a particular day.

Once a box is filled, it proceeds to the stamping area where the box or container is identified with the requisite U.S. Department of Agriculture (USDA) and WSDA information, along with information for internal inventory processing. The box is then sealed and goes to the stamper, who ensures that the labels are correctly stamped: the stamping machine also puts the glue on the boxes to seal them. Any problems with the stamping machine is handled by the mechanics: this occurs about once a week on average. The boxes then proceed to the pallet ticketers, who refer to inventory and order data on the computer to ensure that all inventory is accurately accounted for. These ticketers work closely with quality control for label accuracy, and with the robot techs and mechanics who do the palletizing of the boxes.

A random number of packed boxes are pulled for additional inspection by the QC technicians to ensure the quality of the completed order before it is shipped, while the remainder are robotically palletized according to customer order and go to finished-goods storage to await shipping by the shipping department. These employees at the end of the conveyer line also work with the shipping forklift drivers to move the palletized product once it has been identified by the pallet ticketers. The approximately 11 shipping forklift drivers deliver the finished product from the production department to storage: although they operate the same type of forklift as the receiving forklift drivers, their duties differ slightly because they are more paperwork-driven by virtue of shipping requirements.

There are currently about 38 employees in the quality control department (QC) who are educated in apple quality and, as described above, are involved in several steps of the process.¹⁴ Incoming fruit has a Controlled Atmosphere (CA) designation, and the QC employees in receiving confirm that the fruit comports with its designation for either early or late storage.¹⁵ In the production area, the QC employees recheck the fruit after it has gone through the pre-grader and before it reaches the production line: they double-check to make sure the graders are not “over-grading” the product. Once the product goes through the “wet side,” the QC employees inspect it again before it goes into the boxes and, as noted above, also randomly inspect already boxed product in storage before it is shipped out. If product is damaged or incorrectly packaged, the QC employees oversee the necessary repack process.¹⁶ The QC employees also work

¹² The Warehouse Management System (WMS) is an inventory management system used throughout the facility to follow the product from the time it arrives until it goes out the door.

¹³ The Employer contracts with an independent outside marketing company – Rainier Sales – to sell its fruit.

¹⁴ About 58% of the quality control employees came out of the production department.

¹⁵ According to the Employer, “stronger” fruit is appropriate for longer-term storage, while the “weaker” fruit needs to be packed sooner because it degrades sooner.

¹⁶ Repack occurs when the Quality Control workers at the dock find the product has been damaged or spoiled, requiring the box to be opened and repacked after the damaged product is removed. Repack can also entail

directly with the stampers to make sure the designations are accurate, as well as with the baggers to ensure the bag clips are correctly attached and the bag weight is accurate.

Thus, the QC employees are present during three parts of the process: after the pre-grader, when the product crosses over from the “wet side” to the dry – or processing – side, and post-pack after the stamping of the boxes of product. Inasmuch as most of the QC employees worked in the production department at one time, they use the same skills, plus reporting data into the warehouse management system by filling in fields on an iPad.

Approximately 13 QC employees work as lab technicians who work in one or two on-site labs to test fruit for certain characteristics like starchiness or pressure, using hand-held equipment and visual/tactile testing. The results of these tests are proprietary information that belongs to the grower and not the Employer, so these employees are required to keep the results of their testing confidential. These employees may also travel to the off-site cold storage facilities to collect product samples for testing, so they are required to have a valid driver license. Several times a week for periods of three to four hours each, these QC lab technicians may be asked to assist the production line employees if needed.

With regard to storage, there are four storage employees who monitor and maintain the industrial ammonia refrigeration systems on-site and at the two off-site storage facilities. These employees interface with the receiving and production employees, particularly during the cherry season as described below. Their schedules are generally matched to those of the receiving department because they need to be present when the product arrives. Their hours are also affected by the time of year and the harvest seasons.

The outbound product is then transported to its final destination by two shipping department truck drivers who are employees of the Employer, assisted by an unspecified number of contract drivers as needed.

In the past few years, according to the Employer, the process has continued to become more automated with regard to using cameras for inspecting and sorting the apples. As a result, the production and other line employees are increasingly required to use touch screens and become familiar with new equipment. There are also “robot technicians” in production who troubleshoot the automated system for the packed finished boxes on their way to be palletized to ensure a smooth flow of product. These employees, in addition to basic mechanical skill, must also exercise basic computer skills and use touchscreens. They work closely with the mechanics from the repair and maintenance department, as well as the stamper and pallet ticket techs.

As noted above, the Employer also processes and ships cherries a few months out of the year, which, because they are more perishable and have a shorter season than the apples, require somewhat different handling. Because of their perishability, they require more aggressive cold

changing packaging, for example switching boxed fruit to bags or vice versa, to meet customer demand. For many years, repack was part of the shipping department but was moved to production about two years ago.

treatment and the use of different water systems to maintain this. Also, the production schedule is dictated by the growers and not necessarily by the customers.

Because of their unique characteristics, the cherries have separate line equipment which cannot be used for apples, and vice versa. When the cherries are received from the growers, they are immediately hydrocooled to reduce their temperature very quickly and then stored for only a very short period. The storage employees play a particularly important role in the production process for the cherries to maintain precise hydrocooling parameters: they are also involved with the fumigation of the cherries in storage under WSDA oversight. The production forklift drivers deliver the bins containing the cherries into a cherry dumper, and after that the process is similar to the apple processing insofar as shook support, quality control, and packing. Also, during cherry season, some of the production employees and five Quality Control employees work as cherry production employees for about two months.¹⁷

In addition to the receiving, production, shipping, and quality control employees, the Employer also employs eight maintenance employees whose job is to maintain the equipment on the production line from the initial dumper to the robotics that perform the palletizing of the boxed product. There is no special training or testing required to be a maintenance employee, and newer employees are essentially mentored by the more senior ones.¹⁸ Most of the current production line equipment was installed in late 2018, so the maintenance employees are still adjusting and modifying it to meet the needs of the production department. If the maintenance employees are not able to fix a problem identified by the operators or technicians, they call for assistance from the vendor or other specialized trades. The maintenance employees may work in different locations throughout the facility and interact with the employees in production, repack, QC, and shipping to ensure that equipment is working properly and not damaging the fruit. Most of them are focused on the production line and work side-by-side with the production employees and control the general flow of the product through the production process.

One maintenance employee is assigned to apply the wax to the apples after they come through the water flumes and cleaning brushes: not all varieties are waxed, for example, organic produce. The wax is applied during the production process just before the dry side sizing.

There are also approximately twenty sanitation employees who clean the production line and make it microbially safe for the start of the day's production process. This includes dumping and replacing the water, cleaning debris, and working with the production technicians to add the proper chemicals to the water systems. These employees also assist the facilities department in cleaning restrooms, the kitchen and common areas, and sanitizing handrails and frequently touched services to reduce any COVID-19 contamination. The sanitation employees have their own schedule straddling the day and night shifts and concentrating on the small window of time when there is no production. They do not work the "ABC" described below schedule worked by

¹⁷ The Employer also uses an unspecified number of seasonal workers during cherry season, whom both parties agree should be excluded from the unit.

¹⁸ At least two of the maintenance employees came out of the production department.

the production employees, however, and generally have one or two days off on the weekend, depending on whether the facility is working a five or six-day week. The sanitation employees work throughout the facility, with an emphasis on the production line.¹⁹

The twenty facilities employees maintain the physical facility, including the systems and infrastructure.²⁰ They also perform general janitorial functions and order the requisite supplies. As noted above, they are regularly assisted by the sanitation employees. They also provide occasional seasonal road maintenance and snow removal to ensure unimpeded access to the facility.

The schedules for the maintenance, sanitation, and facilities employees are largely tied to the production line schedule, since they must ensure that everything is up and running before the production shift starts. They remain for the duration of the production shift and may remain after hours to perform tasks to ensure the equipment is ready for the following day. Each shift stays after to handoff to the next shift, and they also work in a rotation similar to that of the production workers, averaging between 50-60 hours per week.

COMMUNITY OF INTEREST FACTORS

Department Organization and Supervision

As described above, there are eight departments at the facility under three head managers: the Director of Operations oversees production; the Logistics Manager oversees shipping, receiving, and quality control; and the Repair and Maintenance Manager oversees maintenance, facilities, sanitation, storage and refrigeration. In addition to the three managers, there are layers of supervisors for specific units within the department: all of the above managers and supervisors ultimately report to the CEO and Co-owner Miles Kohl.

The Department Managers receive common trainings regarding progressive discipline and annual trainings in sexual harassment, drug and alcohol awareness, as well as for new state and federal regulations such as paid sick leave and COVID-19 protocols. Department Managers and occasionally supervisors regularly meet with senior management to ensure that hiring, staffing, and firing determinations are consistent throughout all departments.

The Logistics Manager in charge of shipping, receiving and QC works closely with and usually spends 5 or 6 hours out of a ten-hour day with the Director of Operations to ensure smooth workflow and accurate product production. Likewise, the Repair and Maintenance manager works closely with both the Logistics and Production Managers to ensure that their

¹⁹ At one point, the sanitation employees worked in the production unit but then were switched to the facilities department in about September 2019 to balance work among the managers. Their job functions did not change as a result of the reassignment, however.

²⁰ At least two of the facilities employees came out of the production department.

respective equipment is working properly and efficiently to further support an uninterrupted workflow.

In addition, as part of the functional integration of the facility, the production department has a number of non-supervisory production leads who facilitate the flow of product and ensure grading standards have been reached and also regularly report to the supervisors and the Director of Operations who rely on them to make needed changes throughout the shift to maximize workflow.

Integration of Operations

Production is the largest department and is the “hub” of the facility, with all other departments designed to support the production line where the product is cleaned, sorted, labeled, inventoried, and packaged. All rely upon the same Warehouse Management System (WMS) to control and monitor the flow of product through the facility from receipt to delivery. In fact, the scheduling of many departments is determined by the production department. As described above and analyzed more fully below, the facility works as a single integrated process with many classifications of employees supporting one another towards one unified purpose.

Employee Interchange

With regard to interchange, most of the employees in the facility begin in the production department and then are promoted and/or transferred to other departments.

Also, certain employees with undefined “life skills” regularly crossover into and assist other departments. For example, as described above, forklift drivers from one department, like production, may be assigned to work in shipping or receiving if needed – usually several times a week or month. The opposite may also occur, where shipping or receiving forklift operators can help in production to meet workload. One day or short-term transfers between departments usually are not documented by the Employer, although a longer-term transfer to the other department may be. Nearly all the forklifts throughout the facility are the same type and size and the type of work is largely fungible: the forklift drivers’ wages stay the same regardless of where in the facility they work. Also, many of the mechanics and maintenance employees, as well as some sanitation employees, came out of the production department.

Also, when production demand is high or there is a large workload for repack, the Employer will ask for volunteers from sanitation or reassign production workers to assist in other areas. Also, production employees may be asked to volunteer on their days off to help out in repack: this may occur a few times a year.

Training

The Employer regularly cross-trains between departments in an effort to stay as fluid as possible to cover absences and demand. Home departments for each area are still maintained; however, positions may shift from one to another. For example, the sanitation employees used to be part of the production department but are now in facilities maintenance. Repack was moved from shipping and made part of the production department some years ago. More recently, the Employer has begun to train employees between the equipment on the wet side and the dry side of the processing line for greater flexibility.

The Employer confirmed that most entry-level employees begin in the production department sorting and packing product. These sorting skills can then be carried over into other positions like sizer technician or labeling or even QC. Production employees can also become forklift drivers once trained and certified by the Employer, or even mechanics.

The entry-level production department also has the highest turnover and the most open positions at any given time. As noted above, the production employees do not receive any specific training for their jobs but learn on-the-job from others on the line. They, in turn, eventually train newer employees.

The shipping employees are required to have some computer skills, but these appear to be rudimentary and consist primarily of checking boxes or filling in fields on a hand-held computer pad. The record does not show that these employees receive any specialized training or additional education.

Work Schedules

The facility operates 24-hours a day. Schedules in the facility remain somewhat consistent, although there are peak and off-peak periods based on season and demand. The apple schedules are more consistent, with the harvest season ranging from August through November. The cherry season is shorter – usually from the end of May to the end of July. Thus, cherry processing is largely based on harvesting schedules – a good cherry season could require more work hours per week than the standard apple schedule.

All departments – particularly sanitation and maintenance – are coordinated to the production schedule and the arrival of product. Likewise, receiving and shipping have to be coordinated with each other as well as with the production schedule to ensure orderly flow and timely delivery of the product.

There are two shifts in the production department – day and night. The shipping department can also have two shifts, and the maintenance department works exclusively at night. The transitions from the apples to cherries and back are considered “off-peak” so the schedules can be more flexible.

In addition, the Employer uses an “ABC” schedule for the production line employees that is commonly used in the industry to allow for packing six days a week. Basically, it provides for three groups of employees – A, B and C – to have a similar schedule with regard to rotation for days off. The days off rotate every week on a three-week rotation so that all employees get the opportunity to have weekend days off on a consistent basis. In order to have a complete line, two of the three units must be scheduled together to cover the 24-hour day. Most employees work a 45-hour week, although again it can vary. The technicians and forklift drivers do not work this ABC schedule, although they do rotate through a six-day schedule.

The receiving and shipping truck drivers do not work a predictable schedule: their routes and schedules are set by the dispatchers in response to customer needs. As a result, they can work a varying schedule, including short notice of reporting to work, long hours per day and numerous days in a row.

Terms and Conditions of Employment

All employees are subject to the same Employee Manual and attend the same new hire orientation, including food safety training. All employees have the same “dress code,” and must appear neatly groomed with appropriate attire. The same food safety regulations apply to all, particularly with regard to prohibiting the wearing of items which can fall into the food product or jam machinery, such as false nails or eyelashes and jewelry. All employees must wear a standard orange safety vest, with leads and QC given yellow vests for easy identification on the shop floor.²¹

The Employer maintains a progressive discipline system based on established policies that define employee expectations. All terminations must go through the Human Resources Department.

All employees receive the same benefits based upon their tenure: non-administrative “Group 1” employees receive both paid time-off based on length of service and six paid holidays per year. They are also eligible for benefits including a 401(k) plan, medical, dental, and vision insurance, along with access to an on-site clinic. Paid sick leave is provided pursuant to state statute.

The Employer has a safety committee with elected or self-appointed employee representatives from the various departments who bring concerns within their respective departments to management’s attention. There is also a benefits committee of high-level management who review and evaluate the benefits package offered to employees. The morale enhancement committee plans the annual employee appreciation event and other events, for example, Christmas parties and Halloween observances, which are open to all employees.

²¹ Supervisors and managers wear red and blue vests, respectively.

All employees share a common parking lot, as well as an on-site kitchen and a new cafeteria where all employees can take breaks and lunches. Presently, since the onset of the COVID-19 pandemic, the production and QC employees on a given shift have the same lunch break, during which the production line is shut down. The Employer's on-site clinic is also open to all employees.

Wages

The Employer has a wage committee consisting of the Human Resources Director, the CFO, and senior managers from the departments that meets annually to discuss wages for the non-administrative employee groups. Seniority is taken into account, and wages within like positions are evaluated, as well as those for positions that cross-over between departments. This is done to ensure competitive wages with regard to the Employer's competitors and also to ensure proportional compensation for positions with similar functions and responsibilities. New employees who pass a 90-day probationary period also get a pay increase, and there is a nightshift differential in effect for all departments. Employees are also eligible for seniority enhancements at the three, five, and ten-year mark of employment.

Wage ranges are fairly consistent among the employees in the various departments, according to payroll records provided by the Employer. The lowest rung of employees is referred to as team members, and the highest are non-supervisory leads. Production employees are paid between \$13.50 - \$20.56/hour, with nearly half of them receiving \$14/hour or less. Facilities employees receive between \$14 - \$19/hour, with only one out of 45 receiving \$14/hour or less. Shipping employees are paid between \$14.75 - \$20.75/hour, while receiving employees receive between \$13.50 - \$20.75/hour, with only 3 of them at the lowest rate. Quality Control employees receive between \$14.60 - \$18.15/hour. Finally, Fruit Storage employees are paid between \$15.00 - \$17.25/hour.²²

THE POSITIONS OF THE PARTIES

The Employer asserts that an appropriate unit consists of all non-administrative, non-seasonal employees in all departments at the facility. In this regard, the Employer argues, all non-administrative plant employees share community of interest, proximity, working conditions, administration, benefits, scheduling, interchange between departments, and a recent history of bargaining following a strike that encompassed the entire plant.²³

²² The minimum wage in the State of Washington is currently \$13.50/hour.

²³ Although not specifically articulated as a community of interest factor, the Board has considered bargaining history as part of its considerations. *The Boeing Co.*, 368 NLRB No. 67 (2019). In this instance, the Employer is referring to a strike that occurred on May 7 over issues surrounding the pandemic, specifically hazard pay, communication regarding active COVID-19 cases, and more PPE. At the Employer's suggestion, the employees involved selected representatives from the various departments, and the Employer met with them to discuss their issues and try to resolve them. The employees executed a Return to Work Agreement on May 28 signed by the employee representatives who referred to themselves as the "Comite." Although the Agreement was signed by only

The Petitioner urges that the petitioned-for unit of production employees is an appropriate unit because its employees share “a deep internal community of interest,” and are markedly distinct from the excluded employees in the various other departments. In this regard, the Petitioner argues, the production employees all pack fruit, for which there is no stringent skill criteria. Furthermore, they work in the same department structure under common supervision. Finally, the distinct interests of the excluded employees outweigh the similarities with the production employees, in that they perform different tasks related to suppliers and customers and have different working conditions.

ANALYSIS OF UNIT COMPOSITION

It is well settled that the Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit: rather, the Act requires only that the unit be an appropriate one. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board’s procedure for determining an appropriate unit under Section 9(b) is first to examine the unit sought by the petitioner: if that unit is appropriate, the inquiry ends. *Bartlett Collins Co.*, 334 NLRB 484 (2001). If the petitioned-for unit is not appropriate, the Board may examine alternative units suggested by the parties, or it may select a unit different from the proposed alternative units. See, e.g., *Bartlett Collins Co.*, *supra*; *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000).

In *PCC Structural, Inc.*, 365 NLRB No. 160, (Dec. 15, 2017) the Board clarified the standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees. Specifically, the Board reinstated the traditional community-of-interest standard as articulated in, e.g., *United Operations, Inc.*, 338 NLRB 123 (2002).

In this regard, the Board traditionally has determined, in each case in which unit appropriateness is questioned, whether the employees in a petitioned-for group share a community of interest *sufficiently distinct* from the interests of employees excluded from the

some employees of the production department, the Employer asserted it applied to other departments as well. The Agreement did not include specific provisions, but only committed the Employer to continue to bargain in good faith with employee representatives from each department and shift (production, shipping, receiving, QC, facilities and maintenance) between July 6 and July 17 regarding the issue of a permanent wage increase. In subsequent meetings, the Employer and representatives from all departments – not just production or those who had signed the Agreement – continued to discuss wages, seniority, and safety issues related to COVID-19, including increased mask usage and barriers, at these meetings. By late July, the Employer believed that the wage issue was resolved, and new wages went into effect in August, as well as paid time off (PTO). The Employer confirmed that, going forward, it was able to unilaterally change wages or terms and conditions of employment without consulting with these employees or those who executed the Agreement as part of the “comite.” Moreover, the Employer confirmed it has had no further discussions with the “comite” since then. While I am not convinced that this strike settlement constitutes “bargaining history” for the purposes of establishing a community of interest between the employees of the various departments, as the Employer asserts, I find that I need not analyze this further since the other, more traditional, factors already militate in favor of a plant-wide unit.

petitioned-for group to warrant a finding that the proposed group constitutes a separate bargaining unit. *PCC, supra*, slip op. at 11 (emphasis in original).

In *The Boeing Co.*, 368 NLRB No. 67 (2019), the Board further clarified *PCC Structurals* to, among other things, emphasize that the community-of-interest inquiry must include examining whether employees excluded from the unit “have meaningfully distinct interest in the context of collective bargaining that outweigh similarities with unit members.” *Id.*, citing *PCC Structurals*, slip op. at 11. If those distinct interests do not outweigh the similarities, the unit is inappropriate. To make the determination, the Board has applied a multi-factor test that requires an assessment of (1) whether the employees are organized into a separate department; (2) have distinct skill and training; (3) have distinct job functions and perform distinct work, including an inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with the employer’s other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *Id.*, citing *United Operations, Inc., supra* at 123.

The Board considers all of the above factors together, as no single factor is controlling. Moreover, in applying the above factors, the emphasis is not necessarily what the numerous groups of employees have in common, but rather whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant the establishment of a separate unit. *Id.*, citing *Wheeling Island Gaming*, 355 NLRB 637 (2010) (emphasis in original).

In addition to the foregoing, Congress has expressly contemplated the plantwide unit in Section 9(b), and the Board has long found that a “plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees.” In the instant case, the Petitioner seeks a unit of only production employees, excluding all other employees, while the Employer seeks a plant-wide unit. The burden is on the party seeking to rebut that presumption – in this case, the Petitioner – to provide specific detailed evidence in support of its position: general conclusory statements are not sufficient.

Taking the record as a whole, I conclude that a plant-wide unit is the smallest appropriate unit. While recognizing that no single factor is controlling, I particularly note that the Employer’s operation is completely functionally integrated from start to finish: from the drivers’ delivery of the product from the growers and its being unloaded by the receiving fork lift drivers, to the production workers’ sorting and boxing of the product with the constant oversight of the QC employees and the assistance of the facilities department (maintenance, repair, and sanitation), to the labeling and inventorying of the product in the boxes made by the box makers, the storage and monitoring of the product, and the removal of the packaged product by the shipping fork lift drivers to storage or to the shipping drivers who deliver the product to the Employer’s customers.

Although the employees are categorized in separate departments, the Employer conceded that the other departments were designed and operated to assist and support the production

employees to get the product out the door in an expeditious and accurate manner to ensure customer satisfaction. Thus, there is considerable overlap in job functions and work, in that all of the above employees work together with the common goal to keep the production line moving.

I further note that many of the other factors favoring a plant-wide unit are also present. As the record reflects, that seamless integration described above necessarily results in, or derives from, constant and regular interaction among and between all departments. Although the Petitioner argues there is little contact between the employees in the separate departments, the record evidence belies this, in that it shows the production workers frequently communicate with the facilities employees – particularly in maintenance and repair – as well as with the QC employees, and that many of them regularly work side-by-side.

Moreover, there is evidence of regular interchange between the receiving and shipping forklift drivers, as well as between QC and production employees, and to a lesser extent between the production and sanitation employees as needed. While there does not appear to be much permanent transfer between departments, it is clear that many, if not most, of the facility's employees begin as entry-level employees in production and then are promoted to positions in other departments as they gain more experience and training.

With regard to training, it does not appear that any specialized or distinct training is required for most of the employees. The production employees are primarily self-trained on the job. The forklift drivers are certified by the Employer, but there is no evidence that special licensing is required. Nor is there any evidence that the facilities or QC employees positions require any distinct skill or training, and many of them were previously production employees who acquired the requisite "life skills" on the job.

Although three separate managers oversee the various departments, they regularly communicate with one another, particularly receiving and production, further demonstrating that the departments are all part of one fully integrated facility. Also, specific department oversight has been transferred from one manager to another on at least two occasions, suggesting that any functional distinction between the departments is minimal.

Furthermore, the employees do not appear to have distinct terms and conditions of employment, in that their wage ranges are similar between different departments, and are jointly set by the department managers so as to avoid disparate treatment of employees with similar skills, seniority, and responsibilities. All of the employees are covered by the same employee handbook and are eligible for the same benefits, including paid time off and a 401(k) plan.

Finally, I conclude that the interest of the receiving and shipping drivers are not so disparate that they cannot be represented in the same unit with production, facilities, shipping, receiving, QC, and food storage employees. While they may have specific licensing requirements and different schedules, the record shows that they too are functionally integrated

into the process of delivering, storing, retrieving, and delivering the product. In this regard, they regularly interact with both the receiving and shipping forklift drivers, and their work is largely controlled by the production schedule as to what they deliver, when, and how. Moreover, the Board has repeatedly held that drivers are properly included in a plantwide unit even where they lack certain common terms and conditions of employment with production and maintenance workers. See, e.g., *Triangle Building Products Corp.*, 338 NLRB 257, 274 (2002). Although their functions are somewhat distinct and they may spend most of their time away from the facility, their work is closely integrated with the work of other employees at the facility. Also, I note that their exclusion from a plantwide unit would result in the undesirable creation of a small residual unit. See e.g. *Airco Inc.*, 273 NLRB 348, 349 (1984), citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962).

In conclusion, based upon the foregoing and the record as a whole and considering the respective arguments of the parties, I find that the employees excluded from the petitioned-for unit do not have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members, and therefore the petitioned-for unit is inappropriate.²⁴ I further find that the plantwide unit sought by the Employer is the smallest appropriate unit and shall direct an election accordingly. As noted above, the parties agreed to proceed to any election in any unit I found appropriate. There are about 401 employees in the Unit.²⁵

A MAIL BALLOT ELECTION IS APPROPRIATE

Congress has entrusted the Board with a wide degree of discretion in establishing the procedures and safeguards necessary to insure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas & Elec.*, 325 NLRB 1143, 1144 (1998), citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas*, *supra*, at 1144-1145. Furthermore, whatever decision a Regional Director makes should not be overturned unless a clear abuse of discretion is shown. *National Van Lines*, *supra*, at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually.²⁶ However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. This

²⁴ See *PCC Structural*, *supra*, slip op. at 11.

²⁵ Inasmuch as the Petitioner has indicated its willingness to participate in an election in a unit larger than that it petitioned for, it must provide an adequate showing of interest in the unit found appropriate within two business days of the issuance of this Decision.

²⁶ *National Labor Relations Board Casehandling Manual Part Two – Representation Proceedings*, Sec. 11301.2. I note that the provisions of the *Casehandling Manual* are not binding procedural rules: it is issued by the General Counsel and not the Board and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 637 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).

includes a few specific situations addressed by the Board, including where voters are “scattered” over a wide geographic area or “scattered” in time due to work schedules, in strike situations, or “other extraordinary circumstances.” *San Diego Gas, supra* at 1145.

On May 8, the Board, in an Order denying a request for review in *Atlas Pacific Engineering Co.*, Case 21-RC-258742, addressed a mail-ballot determination by a Regional Director in the context of the COVID-19 pandemic. In a footnote to its Order, the Board noted that *San Diego Gas, supra*, contemplated “extraordinary circumstances” beyond the limited considerations described above, and that the circumstances in place at that time – federal, state, and local government directives limiting nonessential travel, requiring the closure of nonessential business, and the Regional Office that would be conducting the election being on mandatory telework – constituted a valid basis for directing a mail-ballot election.

On July 6, the General Counsel issued *Memorandum GC 20-10 “Suggested Manual Election Protocols.”* (GC 20-10). In that memo, the General Counsel reiterated that Regional Directors have the authority, delegated by the Board, to make “initial decisions about when, how, and in what manner all elections are conducted.” The General Counsel further noted Regional Directors have, and will:

make these decisions on a case-by-case basis, considering numerous variables, including, but not limited to, the safety of Board Agents and participants when conducting the election, the size of the proposed bargaining unit, the location of the election, the staff required to operate the election, and the status of pandemic outbreak in the election locality.

GC 20-10 further addressed suggested specific election mechanics, certifications and notifications designed to ensure that a safe election can occur, and the need to include election arrangements in an election agreement. The memo concludes with additional notes regarding the assignment and travel of Board Agents.

More recently, the Board set forth the considerations that Regional Directors should weigh in determining whether an election should be conducted by mail-ballot, as opposed to an in-person manual-election, because of COVID-19-related considerations. Specifically, in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), the Board reaffirmed its long-standing policy favoring manual elections and outlined six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic. When one or more of the following situations is present, a Regional Director should consider directing a mail-ballot election:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;
2. Either the 14-day trend in number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;

3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The Employer fails or refuses to commit to abide by GC Memo 20-10, Suggested Manual Election Protocols;
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
6. Other similarly compelling circumstances.

The Board ordered this new guidance would be applied retroactively to all pending cases.

In the instant case, both parties have requested that a manual election be held as soon as practicable over two days to accommodate the various shifts. The Employer has proposed that the election be held in the employee breakroom at the facility from 1:00 p.m. to 9:00 p.m. on two consecutive days.

The Petitioner had initially proposed that the election be held on the grassy area near the plant around the corporate office, but in its post-hearing Statement of Position, proposed the Employer's reception room where employee meetings are held: it is unclear whether this is the same as the employee breakroom proposed by the Employer.²⁷ The Petitioner further purposed multiple polling stations because of the size of its petitioned-for unit. As for dates and times, the Petitioner has suggested three sessions: the first on October 20 from 5:00 a.m. to 2:00 p.m. and a second from 4:00 p.m. to 9:00 p.m.; and the third on October 21 from 5:00 a.m. to 2:00 p.m.

The question of whether the Region can safely conduct a manual election must be considered in every instance during the ongoing COVID-19 pandemic. It is not enough that, as here, simply because the parties agree on a manual election a manual election should be ordered. Rather, it is incumbent on me as the Regional Director to consider the totality of the circumstances present and conclude whether sending a Board Agent to a location, and having employees gather under the auspices of a Board election, is a responsible choice.

After careful consideration, I find that given the current state of the COVID-19 pandemic, a mail-ballot election is appropriate. The effect of the virus nationally has been well documented, and as of November 9 there are nearly 10 million cases with 237,037 reported deaths.²⁸ Its risks to the public have become well known, and the guidelines issued by federal, state, and local governments largely agree on preventative measures such as avoiding social

²⁷ The Employer confirmed that the initially proposed outdoor area was not appropriate, since it was outside of the facility's COVID-19 screening area and thus would not meet State or Board protocols.

²⁸ <https://coronavirus.jhu.edu/us-map> (last accessed November 9, 2020); <https://covid.cdc.gov> > COVID data tracker (last accessed November 9, 2020).

gatherings; wearing face coverings; maintaining proper 6-foot social distancing from others, and practicing good hygiene.²⁹ These precautions are particularly crucial with regard to the risk of pre-symptomatic or asymptomatic transmission of the COVID-19 virus.³⁰ Early on in the pandemic, the National Centers for Disease Control (CDC) issued suggested guidelines on elections to generally encourage officials to “consider offering alternatives to in-person voting if allowed” and that “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19.”³¹

Like most of the nation, the State of Washington issued a broad stay-at-home order on March 23 which required non-essential business to cease operations not later than March 25. However, the Employer’s employees were exempted from this order and classified as essential employees who needed to continue to work to ensure that the nation’s food supply chain was not disrupted. As a result, the Employer’s employees do not have the option to work from home and must report to the facility when scheduled to do so.

The State subsequently issued emergency rules regarding Agricultural COVID-19 protocols, which continued to be updated regularly as more is learned about the virus. On about April 17, the Washington Department of Labor and Industries (L&I) provided more specific safety mandates for agriculture and packing facilities like the Employer’s.³² These mandates include face coverings for all workers and other PPE as required; physical distancing, with physical barriers when distancing cannot be maintained; regular sanitation of high-frequency touch points, common areas, and regular sanitation between shifts; handwashing stations; and education materials and training for employees. There are also requirements for mandatory daily screening; access to testing for symptomatic employees; reporting of COVID-19 symptoms, reporting of positive cases and isolation of those with symptoms; and notification of those who may have come into contact with a potentially infected coworker.

The State has also initiated a “*Safe Start WA – Phased Approach to Opening Businesses*” program to allow certain activities to resume in a county when certain metrics are met in each of the four phases.³³ Recently, the State, like many others, has experienced a “surge” in cases, reporting 1000 new cases on October 30 – the largest number since the summer. As a result, the Washington State Department of Health has recommended that residents engage in fewer, shorter, and smaller social gatherings to reduce close contact with others and slow the rate of infection, particularly during the upcoming holiday season.³⁴

²⁹ *How to Protect Yourself & Others*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

³⁰ *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Pre-symptomatic or Asymptomatic*, https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article

³¹ *Considerations for Election Polling Locations and Voters*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

³² <https://www.governor.wa.gov/sites/default/files/COVID19AgriculturalSafetyPlan.pdf>

³³ <https://coronavirus.wa.gov/what-you-need-to-know/covid-19> (last accessed November 3, 2020)

³⁴ <https://doh.wa.gov/newsroom> (last updated November 3, 2020)

Yakima County, where the Employer’s facility is located, recently advanced to Phase 2 on October 3. This phase still has significant restrictions, however, and allows for gatherings of no more than 5 people with others outside a household per week; indoor retail services limited to 25% capacity or 200 people, whichever is less; weddings and funerals limited to 30 people or 25% capacity, whichever is less; and some outdoor recreation. Libraries and movie theatres in this phase are limited to 25% capacity, retail stores and malls to 30%, and indoor restaurants to 50%.

Despite the foregoing, Yakima County has not been meeting its goals for infection rates or per-centage of positive tests to allow it to advance to the next phase with fewer restrictions.³⁵ Currently, the County has 13,112 cases, with 231 resulting deaths.³⁶ Furthermore, the County’s website shows an infection rate per 100,000 population at 94.2 – well above the County’s goal of under 25 per 100,000. Moreover, the percentage of positive tests over the 14-day period preceding this Decision is 8.4% again over the County’s stated goal of under 2%.³⁷

The town of Naches, home of the Employer’s facility, with a population of approximately 800 people,³⁸ currently has 68 cases and has reported no deaths to date. This figure represents a 4.7% increase over the 63 reported cases in early October.³⁹

The Employer concedes that initially it had difficulty obtaining PPE because of a shortage of such supplies. In fact, in early May, some of its employees (in conjunction with workers at other packing facilities) went on strike to protest the lack of PPE and social distancing at the facility and their belief that the Employer was not communicating with them regarding infection rates. Despite this, the Employer contends that it has gone above and beyond the recommended guidelines to safeguard the health of its employees.

Specifically, the Employer asserts that in accordance with the above State and L&I requirements, it currently provides PPE for all employees. Additionally, it has installed plexiglass barriers, provided plastic face shields, and restricted access to its facilities to only essential personnel. With regard to screening, there are three screeners stationed at the entrance to the facility to perform the required mandated checks, including questioning for symptoms and checking temperatures. The screening process is applied to all employees and vendors, as well as anyone else entering the facility during its 24 hours of operation. The sanitation and facilities janitorial staff perform sanitation duties for frequently touched services in the facility. As a result of the foregoing, the Employer had not had a positive COVID-19 test at its facility for five weeks prior to the date of the hearing.⁴⁰

³⁵ <https://coronavirus.wa.gov/what-you-need-to-know/covid-19-risk-assessment-dashboard> (last accessed November 3, 2020)

³⁶ <https://www.yakima.county.us/2439/Yakima-county-city-data> (last accessed November 3, 2020)

³⁷ <https://yakima.county.us> – *Phase and Risk Assessment Charts* (last accessed November 9, 2020)

³⁸ www.townofnaches.com.

³⁹ <https://www.yakima.county.us/2439/Yakima-county-city-data> (last accessed November 3, 2020)

⁴⁰ The Employer also asserted at the hearing that it had experienced no COVID-19 infections among its 500-person workforce. It is unclear whether it is distinguishing between “positive tests” and “infections,” and what that

Despite the foregoing steps taken by the Employer and its assurance that it will comport with the suggestions in GC 20-10, I nevertheless am not willing to order a manual election at this time. I note that while the Employer asserted it had few COVID-19 positive tests prior to the time of the hearing, statistics show that the infection rate continues to rise in Yakima County and that current success in suppressing infection is no guarantee of future success in this regard. Moreover, the County is still only in Phase 2 of the State-wide reopening plan, which severely restricts the size of public gatherings, particularly in indoor spaces.

Specifically, I note that the County where the Employer is located fails to meet the second situation described by the Board in *Aspirus Keweenaw, supra*, slip op at p.5, with regard to the 14-day testing positivity rate in the county where the facility is located being 5% or lower. As noted above, the current percentage of positive tests in Yakima County for the 14-day period preceding this Decision is 8.4%. This factor alone would suggest the propriety of a mail-ballot election.

Moreover, I am also concerned about the lack of detail provided by the Employer regarding a manual election procedure, despite its assurances that it will comply with the protocols in GC 20-10. Although the Employer asserts that its suggested location in the employees' breakroom is sufficiently large to allow for appropriate social distancing of the parties, no information was provided about the actual size of the room or how it would be set up for a manual election. Also, the Employer did not describe any avenues of ingress or egress for the room, or where employees might be able to line up and maintain social distancing while waiting to vote. Furthermore, there is no plan for how 400 employees would be released to vote, which could be an issue given their complex schedules and the demands of the production line. With regard to the production employees – the largest department – they currently shut down the line to take lunch but this could mean that all of them might have to vote during that short period of time, making it difficult to maintain social distancing and potentially overwhelming the Board Agent and observers.

Furthermore, both parties have requested lengthy multiple polling sessions over two successive days: the Employer wants an 8-hour session on each day, and the Petitioner wants a 9-hour and a 5-hour session on the first day, following by another 9-hour session on the second day. The Petitioner has also requested multiple polling stations to expedite the voting. While this factor is not specifically listed in *Aspirus Keweenaw, supra*, as justification for a mail-ballot election, in my view and under the current circumstances, such an arrangement would expose multiple Board Agents to potential infection for many hours, inasmuch as they would be spending the equivalent of two entire workdays at the facility. Likewise, the observers would be similarly exposed for extended periods of time. Inasmuch as these risks can be ameliorated by conducting a mail-ballot election, I find it prudent to accordingly order one.

distinction might mean. Also, the Employer does not reveal how many positive COVID-19 tests it has had at the facility since the beginning of the pandemic in March, or whether it has had any employees quarantine during that period. This lack of specific information, in my view, further favors a mail-ballot election.

CONCLUSIONS

I have considered the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold an election among the employees in a facility-wide unit as described below.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴¹
3. The parties stipulated, and I so find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute an appropriate bargaining within the meaning of Section 9(b) of the Act:

Included: All full time and regular part-time non-professional and non-administrative employees, including all production employees, including apple warehouse employees, facilities operators, facilities assistant, and facilities lead; facilities sanitation lead, facilities sanitation team members, operators, and leads; facilities repair and maintenance lead, technicians and operators, facilities repair and maintenance fruit storage technician, lead, and operator; quality control technicians and leads; receiving and shipping department forklift operators, truck driver, clerks, technicians and leads employed by the Employer at its facility located at 31 Allan Road, Naches, Washington

⁴¹ During the hearing the parties stipulated, and I so find, that the Employer is a State of Washington corporation with an office and place of business in Naches, Washington, where it is engaged in the business of packing and shipping fruit. Within the past 12 months, a representative period, the Employer derived gross revenue in excess of \$500,000 and purchased and received at its Naches, Washington facility goods valued in excess of \$50,000 from points directly outside the State of Washington.

Excluded: All office clerical employees, seasonal cherry warehouse employees, accounting employees, professionals, confidential employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Trabajadores Unidos por la Justicia**.

A. Election Details

The election will be conducted by mail. On **Tuesday, November 24, 2020**, the ballots, in Spanish and English, will be mailed to voters by a designated official from the National Labor Relations Board, Region 19. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Any person who has not received a ballot by **Wednesday, December 2, 2020**, should immediately contact the Region 19 office at **206-220-6300**, or our national toll-free line at **1-866-667-NLRB (1-866-667-6572)**.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 19 office by **12:00 p.m. (noon) PST on Wednesday, December 23, 2020**. No ballots will be counted that are received after the due date. All ballots will be commingled and counted by an agent of Region 19 of the National Labor Relations Board on **Tuesday, December 29, 2020 at 1:00 p.m.** with participants being present via electronic means. No party may make a video or audio recording or save any image of the ballot count.⁴²

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during **payroll period ending immediately prior to the date of this Decision**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

⁴² If, at a later date, it is determined that a ballot count can be safely held in the Regional Office, the Region will inform the parties with sufficient notice so that they may attend.

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

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Friday, November 13, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

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

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

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

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

D. Posting of Notices of Election

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

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board. A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.⁴³ 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. A request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain

⁴³ On October 21, 2019, the General Counsel(GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden.

the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at Seattle, Washington on November 10, 2020.

Ronald K. Hooks

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