

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

FRESHPOINT SOUTHERN CALIFORNIA, INC.,

Employer,

Case 28-RC-252613

and

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

Petitioner.

**PETITIONER'S OPPOSITION TO THE EMPLOYER'S REQUEST FOR
REVIEW OF THE REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION**

I. INTRODUCTION

Petitioner, International Brotherhood of Teamsters, Local 630 (“Petitioner” or “Local 630”), and pursuant to Section 102.67(f) of the National Labor Relations Board’s (“Board”) Rules and Regulations, submits its Statement in Opposition (“Opposition”) to Employer, FreshPoint Southern California, Inc.’s (“Employer”) Request for Review of the Regional Director for Region 28’s Supplemental Decision dated October 23, 2020.

On December 19, 2019, the Regional Director issued its Decision and Direction of Election finding the petitioned-for unit was appropriate and declared that an *Armour-Globe* election was appropriate. On October 23, 2020, the Regional Director correctly concluded *for a second time* that the eight Las Vegas driver employees in the petitioned-for unit are an appropriate unit that share a community of interest with the existing

employee unit. Additionally, the Regional Director aptly determined Local 630's petitioned-for self-determination election for a multifacility unit was appropriate based on the multifacility factor analysis. As explained below, the Regional Director's factual findings and Supplemental Decision are entirely consistent with, and supported by, the record and Board precedent.

The Employer's Request for Review fails to establish any legitimate basis for discretionary review by the Board, as required by Rule 102.67(d) of the Board's Rules and Regulations, of any factual finding by the Regional Director that is contrary to the record, any prejudicial error that occurred at the hearing or in connection with the hearing, or any other legitimate "compelling reason" to review the Supplemental Decision. The Board is left with the inescapable conclusion that the Employer here wants a third bite at the apple and a chance to undo what the Regional Director has already determined twice. The Regional Director's decision involved a straightforward application of settled Board precedent as evidenced through his analysis of the multifacility factors. Accordingly, the Board should deny the Employer's Request for Review of the Supplemental Decision in its entirety.

II. PROCEDURAL AND FACTUAL BACKGROUND

The Employer distributes fresh produce to restaurants, hotel chains, schools, nursing homes, and other customers. (Hearing Transcript ("Tr.") 34:8-12.)¹ The Employer has approximately seven domicile yards other than its main facility in City of Industry, California. (Tr. 35:22-25; 230:7-19.) The domicile yards are located in Las Vegas, San Diego, Redlands, Fontana, Costa Mesa, Sylmar, and Ventura. (Tr. 36:7-10.)

¹ The hearing transcript sections cited throughout this brief are included as Attachment 1.

All but the Las Vegas domicile yard are subject to the same collective bargaining agreement between Petitioner and the Employer. (Tr. 36:14-23; 230:3-25; 231:1-4; 241:15-25, 242:1-4.)

On November 26, 2019, Petitioner filed a petition for representation (“Petition”) that sought an *Armour-Globe* election to add or include all Drivers employed by the Employer at its facility located in Las Vegas, Nevada to the existing unit located in City of Industry, California. The Employer alleged the petitioned-for unit was inappropriate because the self-determination election included a group of employees who did not share a community of interest with the existing bargaining unit.

On December 9 and 10, 2019, the Petition came before Hearing Officer Sara S. Demirok at Region 28. On December 19, 2019, Regional Director Cornele A. Overstreet issued Region 28’s Decision and Direction of Election finding the petitioned-for unit was appropriate.²

On December 27, 2019, the election was held. The tally of ballots (for a unit of 8 eligible voters) reflected 8 votes in favor of the Petitioner, and 0 votes against the Petitioner, with 0 challenged ballots. The Employer filed no objections to the election.

On January 9, 2020, the Regional Director certified the results of the election and declared the Petitioner as the exclusive collective bargaining representative of the petitioned-for employees. In doing so, the Regional Director recognized Local 630 as the exclusive bargaining unit of the employees in the following appropriate unit:

UNIT: All full-time and regular part-time Freezer Persons, Receiving Clerks, Forklift Operators, General Warehousemen, Sorters/Packers, Drivers, Semi-Drivers, Double Drivers and apprentices employed by the Employer at its facilities in City of Industry, Sylmar, Redlands, San Diego, Fontana, Costa Mesa,

² The Decision and Direction of Election is included as Attachment 2.

and Ventura, California, and Las Vegas, Nevada; excluding all other employees including fruit, produce and cello salad employees, janitorial employees, equipment maintenance employees, office clerical employees, professional employees, guards and supervisors as defined by the National Labor Relations Act, as amended.

On January 23, 2020, the Employer filed its *first* Request for Review challenging the Regional Director's Decision and Direction of Election. The Board remanded the matter to the Regional Director to determine 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 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. Additionally, 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 and the degree to which resultant unit conforms to the Employer's administrative groupings does or does not support including the Las Vegas drivers in the existing unit, and the weight each factor should be accorded. On July 30, 2020, the Regional Director reopened the record to supplement the record and held a hearing before Hearing Officer Sara Demirok.

On October 23, 2020, the Regional Director issued his Supplemental Decision, which found Petitioner's petitioned-for self-determination election for a multifacility unit was appropriate.³ The Regional Director found the factors of employee skills, duties and workings; functional integration of business operations; centralized control of management and supervision; and bargaining history and extent of union organizing, and

³ The Supplemental Decision is included as Attachment 3.

employee choice all weighed in favor of his finding. The factors of employee interchange and geographic proximity weighed against his finding. Nevertheless, based on the foregoing and the record as a whole, on balance, the Regional Director found the petitioned-for self-determination election for a multifacility unit was appropriate. On November 6, 2020, the Employer filed its *second* Request for Review challenging the Regional Director's Supplemental Decision.

III. LEGAL ARGUMENT

A. **There are no compelling reasons to grant the Employer's Request for Review.**

The Board will only grant a request for review of a Regional Director's decision where compelling reasons exist and upon one of four enumerated bases set forth in Section 102.67(d) of the Board's regulations. The Board's narrow grounds for reviewing a Regional Director's decision are:

1. That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
2. That the Regional Director's decision on a substantial factual is clearly erroneous on the record and such error prejudicially affects the rights of a party.
3. That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
4. That there are compelling reasons for reconsideration of an important Board rule or policy.

Here, none of the grounds set forth in Rule 102.67(d) for granting review of a Regional Director's decision are present. The Regional Director's Supplemental Decision involved a straightforward application of settled Board precedent.

The Employer fails to establish how the issues it presented relate to the standard of review, which the Board is required to apply when determining whether to grant

review. The Employer raises no “substantial question of law or policy” that departs from Board precedent; it does not cite to a “substantial factual issue” on which the Supplemental Decision was “clearly erroneous” as a matter of law; it provides no evidence of any conduct from the hearing or ruling in connection with the proceeding that resulted in prejudicial error; nor does the Employer provide any compelling reasons for reconsideration of an “important Board rule or policy.” The fact that the Employer does not agree with the Regional Director’s Supplemental Decision does not mean the decision was not based on precedent and record evidence. Therefore, the Employer’s Request for Review should be denied.

B. The Regional Director correctly found that a community of interest exists between the petitioned-for Las Vegas drivers and the existing bargaining unit.

The Regional Director correctly concluded 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 *all* weigh in favor of finding that the Las Vegas drivers share a community of interest with the existing unit.

The Board determines whether a petitioned-for multifacility unit is appropriate based on a variant of the community of interest test, by reviewing 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 (2004); see also *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1081-82 (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).

- 1. The Regional Director correctly found that all the Employer's drivers share similar skills, duties, and working conditions regardless of their assigned Employer facility.**

The Regional Director correctly concluded that employees' skills, duties, and working conditions are similar regardless of their assigned Employer facility. The Employer's Vice President of Operations, John Collie, for example, testified that the "Las Vegas drivers' wages are *slightly* lower" than those in the existing unit. (Emphasis added.) (Tr. 54:1-7.) According to Mr. Collie, there are just two Las Vegas drivers "that are about \$2 lower. But beyond that *just a few cents* if not a dollar more lower" for the rest of the Las Vegas drivers when compared to employees in the existing unit. (Emphasis added.) (Tr. 54:4-7.)

The Employer attempts to augment its argument by claiming that differences in state labor and employment laws establishes a lack of community of interest between the petitioned-for unit and the existing unit. There is nothing in the record, however, that shows the Employer is precluded from supplying these differences in collective bargaining. In *Local 1325, Retail Clerks v. NLRB*, 414 F.2d 1194 (D.C. Cir. 1969), the Court of Appeals for the District of Columbia Circuit held that the Board erred in determining that an appropriate bargaining unit consisted of a state-wide unit because there were no substantial reasons in terms of state laws to draw the line at state boundaries. In finding that the Board erred in determining that an appropriate bargaining unit consisted of the employer's employees in one state only, it reasoned:

An examination of prior decisions of the Board only strengthens our conclusions that the Board's reliance on state laws is unwarranted in this case. There is not a

single Board decision in which state laws were mentioned as a factor relevant to unit determination for retail stores. In fact, the Board has in the past approved a unit for a retail drug chain consisting of all the stores in a metropolitan area which extended into two states. *Id.* at 1203-04.

The fact that an area may cross state lines and covers cities in more than one state does not alter the appropriateness of the unit. See *Barr's Jewelers*, 131 NLRB 235 (1961) (approved unit consisted of 10 retail jewelry stores in the greater Philadelphia area including stores in Camden and Vineland, New Jersey); *Metropolitan Life Ins. Co.*, 138 NLRB 734 (1962) (unit approved consisting of employees of Sioux City, Iowa, Fargo, North Dakota, and Sioux Falls, South Dakota); *Crown Drug Co.*, 108 NLRB 1126 (1954) (Board approved unit consisting of the 31 stores in the Kansas City metropolitan area which consisted of stores in both Missouri and Kansas).

The Employer fails to point to any specific aspects of state and federal laws which make the employees included with the unit different from the employees in the existing unit. Mr. Collie testified that Federal DOT regulations govern meal and rest periods for all the Employer's employees regardless of their location. (Tr. 247:19-24; 308:8-17.) Any differences with regard to extra breaks are limited to fluctuations in the weather; even so, both Las Vegas and the existing unit are eligible for extra breaks. (Tr. 255:12-25, 256:1-9.) And the record reflected that both groups have similar working hours, skills and duties regardless of their assigned Employer facility. (Tr. 50:10-20; 61:12-25; 62:1; 65:5-7.)

The Employer makes vague references to kin care, medical and school leaves without explaining the differences. More importantly, the Employer fails to explain how these laws affect hours, wages and working conditions of the Las Vegas drivers in such a way as to create a "special community of interest apart from" the existing unit

employees. There are no citations to specific statutes; and the Employer fails to explain how such laws, in any significant way, differentiate the Las Vegas drivers from those in the existing unit.

The Employer argues the Regional Director did not take into account that the annual wage increase for Las Vegas drivers are determined by annual reviews while those in the existing unit are set by the Parties' Collective Bargaining Agreement. This assertion, however, is inaccurate. The Regional Director correctly concluded that any differences in compensation and benefits are reasonably expected in the *Armour-Globe* context because it is attributable to the fact that one group is represented and subject to a collective bargaining agreement and the other is not. (Supplemental Decision, pg. 10.) See *Public Service Co. of Colorado*, 365 NLRB No. 104, slip op. at 1 fn. 4 (2017); *Unisys Corp.*, 354 NLRB 825, 830 (2009) (two-member Board) ("While there are some differences in pay and benefits, the differences are the result of collective bargaining."). See also *Six Flags/White Water & American Adventures*, 333 NLRB 662 (2001) (seasonal maintenance employees' exclusion from participating in various fringe benefits does not, by itself, support excluding them from the bargaining unit). Mr. Collie acknowledged that differences between the sick and vacation leaves, overtime policies, health and welfare benefits, retirement or pension plans in Las Vegas and existing unit were the product of collective bargaining. (Tr. 248:16-22; 249:14-18; 250:1-7.)

Under the Employer's view, the terms and conditions of two groups would need to match to a tee in order for the petitioned-for unit to be found appropriate. This argument flies in the face of decades of Board analysis. Thus, even if there are minor differences there is nothing in the record, or Board precedent for that matter, which

precludes the Parties from bargaining over the terms and conditions of employment for the petitioned-for unit.

2. The Regional Director correctly found that there is substantial functional integration of business operations.

The Regional Director correctly determined 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 other domicile yards. (Supplemental Decision, pg. 10.) According to the Employer, the Regional Director's analysis is deficient because it is based on a single finding that a router at the main facility coordinates the loading and delivery of the Company's product across all facilities, including Las Vegas.

The Employer, however, overlooks the Regional Director's findings included that there is substantial functional integration because this shared routing system connects all drivers to the distribution network that stems from the main facility. (Tr. 67:13-25, 68:1-23; 315:3-12.) Through the shared routing system, both groups of employees access the driving routes on Employer provided tablets mounted inside each truck to distribute the product throughout its jurisdiction, including Las Vegas. Additionally, all the 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. (Supplemental Decision, pg. 11.) The Regional Director aptly determined that this driver training given to all 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 delivery to

customers. (Supplemental Decision, pg. 11; 292:25, 293:1-5.) The produce the Las Vegas drivers deliver comes loaded from the Employer's main facility in City of Industry (i.e., the existing unit). (242:5-15; 307:14-16.)

The Employer ignores—what the Regional Director did not—which is that the record evidence does not establish local autonomy of operations because the Las Vegas drivers are the only employees at its Las Vegas domicile yard. (Supplemental Decision, pg.11.) The Las Vegas drivers are supervised by transportation supervisor Edgar Perez, who works at the Employer's main facility at City of Industry. (235:19-24; 239:15-19; 250:8-10; 306:7-11.) Although the Regional Director found there was minimal employee exchange between employees at two jobsites, he correctly concluded that this factor was outweighed by the foregoing and the record as a whole based on all the other factors that the petitioned-for self-determination election is appropriate.

3. The Regional Director correctly found that the employees share common supervision and management regardless of their assigned Employer facility.

The Employer recognizes, but downplays, the amount of supervision the Las Vegas drivers receive from management located at the Employer's main facility. The Regional Director correctly concluded that the Employer has several transportation supervisors employed at its main facility who supervise *all* of the Employer's drivers, including those employees situated in its satellite facilities. (Tr. 61:12-24, 62:8-25, 63:10-25.) Here, the Employer's human resources department, located at its main facility, services all the Employer's facilities, including the Las Vegas domicile yard. (Supplemental Decision, pg. 13; 259:22-25.) The employee handbooks and driver

training manuals contain virtually identical policies for the Las Vegas drivers as well as the existing unit. (Supplemental Decision, pg. 13; 257:12-14; 260:5-18.)

The Las Vegas drivers communicate with supervisors, managers, and dispatch located in the Employer's main facility on a regular basis. The Las Vegas drivers are supervised by transportation supervisor Edgar Perez, who works at the Employer's main facility at City of Industry. (235:19-24; 239:15-19; 250:8-10; 306:7-11.) The transportation supervisors report to Transportation Manager Cesar Rosiles, who then reports to Vice President of Operations, John Collie; both Messrs. Rosiles and Collie work out of the Employer's main facility. (Tr. 59:20-25, 60:23-25, 61:1-2, 63:14-15.) Thus, the record supports the Regional Director's finding that the petitioned-for and existing unit have shared management since the supervision originates from the Employer's main facility at all times.

4. The functional integration of the Employer's business operations and common supervision and management makes the petitioned-for unit and the existing unit geographically proximate.

The Regional Director concluded that geographic proximity was outweighed by a host of other factors that weighed in favor of finding that the petitioned-for self-determination election for multifacility unit was appropriate. Even before COVID-19, the Employer took advantage of the opportunity to supervise and manage the Las Vegas drivers remotely. Technological innovation has demonstrated that employers can virtually connect with employees despite geographical distance. Even so, the Employer physically monitors the Las Vegas drivers 1-2 times a month by sending supervisors from its main facility to Las Vegas. (241:4-5.) As noted above, the Las Vegas drivers were

functionally integrated into the existing unit because they are subject to the Employer's Southern California distribution network.

The inclusion of the Las Vegas drivers in the existing unit is consistent with the Parties' Collective Bargaining Agreement which covers employees across five counties (i.e., San Diego, San Bernardino, Orange County, Los Angeles, and Ventura). The existing unit is comprised of employees located as far south as San Diego County (Southern California), as far north as Ventura County (Central Coast of California), as far west as the Pacific Ocean (Los Angeles, Orange and Ventura Counties) and as far east as San Bernardino, which county line meets the state of Nevada. The petitioned-for unit and existing unit share the function of transporting and delivering the Employer's products through this geographic area. Even if there is no geographic proximity, the Regional Director correctly concluded that this factor was outweighed by *all* the other factors that weighed in favor of finding the petitioned-for self-determination for a multifacility unit was appropriate.

5. The Regional Director correctly concluded that the factors of bargaining history, extent of union organizing, and employee free choice weigh in favor of finding that the petitioned-for self-determination election for a multifacility unit was appropriate.

On December 27, 2019, the Las Vegas drivers voted unanimously, 8-0, in favor of representation by Local 630 and inclusion in the existing unit. Consequently, on January 9, 2020, a Certification of Representative issued, certifying Local 630 as the representative of the existing unit including the Las Vegas drivers. (Supplemental Decision, pg. 13.) Clearly, this is strong evidence of employee choice in favor of representation and inclusion in the existing unit.

Moreover, since at least 2006, there is a history of bargaining and collective bargaining agreements between the parties including the Parties' current Collective Bargaining Agreement. (*Ibid.*) Yet again, the record evidence supports the Regional Director's finding that the pattern of bargaining between the Parties weighs in favor of inclusion. Therefore, on balance, the Regional Director correctly found that the Las Vegas drivers share a community of interest with the employees in the existing bargaining unit to warrant their inclusion in the existing unit.

C. The Regional Director correctly determined that differences in retirement benefits or terms and conditions do not preclude a finding that the Las Vegas drivers be added to the existing unit.

The Regional Director correctly concluded that any differences in the benefits or terms and conditions of employment, of the petitioned-for Las Vegas drivers and existing unit employees, do not mandate exclusion and may be expected in the *Armour-Globe* context, where the existing unit employees' terms are the result of collective bargaining. (Supplemental Decision, pg. 10); *Public Service Co. of Colorado*, 365 NLRB No. 104, slip op. at 1 fn. 4 (2017).

The Employer makes a renewed attempt to argue against the inclusion of the Las Vegas drivers into the existing unit on the single basis that doing so would force the Employer to add them to the existing pension plan in the existing Collective Bargaining Agreement without an opportunity to bargain over retirement benefits. In the alternative, it argues the Las Vegas drivers would be unable to keep their current 401(k) plan. The Employer, however, can point to no case ever where inclusion of a petitioned-for unit mandated acceptance of certain retirement benefits without bargaining or that such factor determined the scope of the bargaining unit. Notably, while arguing that the Regional

Director departed from precedent, the Employer requests this Board to reject or ignore precedent.

First, the Board has held that a newly added group of employees resulting from an *Armour-Globe* election are not automatically swept under the terms of the agreement covering the existing unit. *Federal-Mogul Corp.*, 209 NLRB 343 (1974); Accord: *Wells Fargo Armored Service Corp.*, 300 NLRB 1104 (1990); *Bay Medical Center*, 239 NLRB 731, 732 (1978). In other words, Board law provides that the union and the employer bargain over the terms and conditions under which the fringe group will work until the contract in the larger unit expires, and the status quo from which they bargain is the current working conditions of those employees. *Federal-Mogul*, 209 NLRB at 344. See also *NLRB v. Henry Vogt Machinery Co.*, 718 F.2d 802, 809 (6th Cir. 1983) (employer permitted laboratory employees who had voted to join existing unit to retain cafeteria privilege during bargaining over whether that privilege should be retained now that they were in unit of others who did not enjoy it.) (Decision, pg. 6.)

Secondly, there are no terms under the pension plan that mandate the petitioned-for employees be added to the existing unit by operation of law. During the hearing, The Employer's own witness, attorney Lorne Dauenhauer, contradicted the Employer's argument by acknowledging that the pension plan is amendable. (Tr. 137:8-17.) The Employer provided no legal authority, citation to the record, pension or 401(k) plans showing it is precluded from bargaining retirement benefits. Additionally, the Regional Director's finding that Las Vegas drivers and employees in the existing unit have similar working hours, pay rates, and other terms and conditions of employment, including

retirement benefits does not compel or require any party to make any bargaining concessions.

While the retirement plans may have minor differences, the fact remains both groups have retirement plans. As noted above, these differences are purely an outgrowth of collective bargaining for the existing unit employees. *Unisys Corp.*, 354 NLRB 825 (2009).

D. The Regional Director correctly found the employer-wide unit of drivers including all of the Employer's facilities was appropriate.

The Regional Director correctly concluded the Employer 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 was inappropriate. *Blue Man Vegas, LLC v. NLRB*, 529 NLRB 417, 429 (D.C. Cir. 2008) (the employer must "show the prima facie appropriate unit is 'truly inappropriate.'") The Board has held that a unit need not be the only appropriate unit, or even the most appropriate unit. *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), citing *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991), and *Serramonte Oldsmobile, Inc. v. NLRB*, 86 F.3d 227, 236 (D.C. Cir. 1996). The petitioning party need only show that the proposed unit is an appropriate one. See e.g. *Avondale Shipyards, Inc.*, 174 NLRB 73, fn. 5 (1969). (Decision, pg. 5.)

Here, the record reflects the petitioned-for unit is an appropriate one. The Employer, however, argues the Las Vegas drivers would comprise a separate appropriate unit and relies on *Capp Express, Inc.*, 220 NLRB 816 (1975) in support of its argument. Unlike *Capp Express, Inc.*, the Regional Director found the record evidence insufficient to rebut the presumptive appropriateness of the Las Vegas unit to include all of the Employer's drivers employed at all of the Employer's facilities. (Supplemental Decision

pgs. 8-9.) Here, the petitioned-for and existing unit have similar hourly rates of pay and working conditions. (Tr. 54:1-7.) Additionally, they enjoy similar work schedules and receive their daily driving routes in the same manner. (Tr. 50:10-20, 61:12-25, 62:1.) There is no difference between the skills and duties of the Las Vegas drivers and the existing unit. (Tr. 65:5-7.) In fact, they operate the same kind of equipment and they interface with the Employer's facilities and customer in similar fashion. All of the Employer's employees are subject to the same employee handbook provisions. (Tr. 63:6-9.)

Next, the Regional Director found substantial functional integration of business operations not only for the Las Vegas domicile yard, but also for the Employer's main facility and its other California domicile yards. (Supplemental Decision pg. 10.) All of the Employer's drivers share the same duties and perform the same function of transporting and delivering the Employer's products. And as the Employer acknowledged, both groups enjoy common supervision because the Employer has centralized control of human resources for all facilities, which stems from its main facility in City of Industry.

Moreover, with respect to the existing unit, there is a history of bargaining and collective bargaining agreements between the parties. Additionally, there is strong evidence of employee free 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. (Supplemental Decision, pg. 13.)

Accordingly, the Regional Director found 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 *all* weighed in favor of finding that the petitioned-for self-determination election seeking a multifacility unit is appropriate.

Finally, the Employer's proposal to fracture the group runs contrary to the Board's policy of fostering efficient and effective collective bargaining and is contrary to the Act's mission of maintaining labor stability. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981).

IV. CONCLUSION

For the foregoing reasons, International Brotherhood of Teamsters, Local 630 respectfully requests the Board deny the Employer's Request for Review and affirm the Regional Director for Region 28's Supplemental Decision.

Dated: November 13, 2020

Respectfully submitted,

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