

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

AT&T MOBILITY SERVICES LLC,

Employer

and

COMMUNICATIONS WORKERS OF
AMERICA,

Union/Petitioner

Case 07-RC-269780

**EMPLOYER AT&T MOBILITY SERVICES LLC'S REQUEST FOR REVIEW OF THE
REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Pursuant to Section 102.67(d) of the Board’s Rules and Regulations, the National Labor Relations Board (“Board” or “NLRB”) must review and reverse the Decision and Direction of Election (“Decision”) issued February 2, 2021, by the Regional Director, NLRB Region 7 (“RD”), because (1) the Decision raises substantial questions of law or policy based on a departure from officially reported Board precedent, and (2) the Decision on substantial factual issues is clearly erroneous on the record and such error prejudicially affects the rights of the Employer, AT&T Mobility Services, LLC (“Employer” or “Mobility”).¹ Accordingly, the Board should grant the Employer’s Request for Review and also reverse the Decision.

The RD erred as a matter of law in concluding the petitioned-for unit comprised of the Employer’s four operating Hubs located in Southfield, Michigan was an appropriate unit for bargaining because she improperly applied the “single facility presumption” to four distinct and autonomous operating units that indisputably are not structured nor operated as a “single facility.” (Decision 11). The four “In-Home Solutions” (or “IHX”) “Hubs” located in Southfield are four separate operating units and not a “single facility!” By erroneously applying that inapplicable

¹ The RD determined that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act and directed an election in that unit (hereinafter, the “Unit”):

All full-time and regular part-time Integrated Solutions Consultants (ISCs) and Integrated Sales Support Specialists (ISSS) employed by the Employer at its facility located at 23500 Northwestern Hwy, Building S, Southfield, Michigan, but excluding all managers, and guards and supervisors as defined in the Act.

The Unit is comprised of approximately 47 employees who work in four separate operating hubs located at the Southfield, Michigan address. ISCs and ISSSs perform outside sales and support functions within Mobility’s “In-Home Solutions” (“IHX”) organization. The Company operates eight IHX “Hubs” within the state of Michigan, which comprise the “Michigan Market” of Mobility’s IHX organization. The Employer’s position is that the Unit is not an appropriate unit for bargaining and that the only appropriate unit is one that also includes all full-time and regular part-time ISCs and ISSSs employed by the Employer at all eight Hubs in the Michigan Market, to also include the Hubs located at 811 N. Mitchell St., Cadillac, MI; 955 36th St. SE, Grand Rapids, MI; 421 E. Grand River Ave., Howell, MI; and 309 S. Washington Ave., Saginaw, MI (approximately 51 additional ISSSs and ISCs).

legal standard, the RD improperly placed on the Employer “the heavy burden of rebutting [the] presumptive appropriateness” of the ostensible “single-facility unit.” The Decision compounds this error because the unit found appropriate carves off an arbitrary segment of the Company’s IHX business and workforce in violation of governing precedent. Because the eight IHX Hubs in the Michigan Market indisputably comprise a distinct segment of Mobility’s IHX business, the Decision impermissibly fractures the only appropriate unit, a statewide unit consisting of all eight Hubs within the Employer’s Michigan Market. Finally, the RD’s departure from the governing precedent of *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), also constitutes reversible error.

The Decision further erred by ignoring and misrepresenting relevant and material facts in the record. The Decision is replete with substantial factual errors, on which the RD relied in finding the four IHX Hubs located in Southfield comprise a “single facility” and an appropriate bargaining unit. Undisputed evidence proves that the four Hubs located in Southfield in the Unit operate independently from one another, and there is no heightened degree of operational integration, common supervision or meaningful employee interchange between those four Hubs than exists between all eight IHX Hubs in the Michigan Market. The Decision erroneously conflates the four Hubs in Southfield by repeatedly and fictitiously characterizing them as the “Southfield teams” and a “single facility,” which also contradicts the record in this regard. Ignoring the utter lack of evidence of the type of meaningful functional integration and employee interchange required for a unit limited to the four Hubs in Southfield, the Decision erroneously rests on anecdotal evidence of isolated employee “contact” and infrequent social interaction.

Finally, the Decision’s wholesale dismissal of the Employer’s “bargaining history” evidence is legally indefensible. Beyond simply finding it “not controlling,” the Decision erroneously concludes that the parties’ undisputed 20+ year history of voluntary agreements on

statewide bargaining units was “[not] relevant or persuasive to conclude that the Employer has met its burden with respect to this factor to overcome the single facility presumption.” (Decision 18).

Based on all these substantial legal and factual errors, the Board should grant the Employer's Request for Review of the Decision, reverse the Decision, and find that the only appropriate unit is a unit comprised of all eight IHX Hubs within Mobility's Michigan Market

II. SUMMARY OF EVIDENTIARY RECORD

A. Background of the Parties

Mobility provides wireless telecommunications services and operates retail stores across the United States. Mobility employs 35,000 CWA-represented employees throughout the United States operating under four regional collective bargaining agreements. (Frost 100).² The "Orange" CBA covers bargaining unit employees working across 36 states, including Michigan. (LaCorte 50-51). It is undisputed that Mobility employees engaged in outside sales are expressly excluded from the bargaining unit under the Orange CBA. (ER 2, 13).

B. Creation of the New IHX Organization and Sales Channel

In July 2015, AT&T acquired DirecTV (“DTV”), which provides television and entertainment services through satellite transmissions. At acquisition, DTV had 25 million U.S. subscribers, 20 million of whom had a wireless provider other than Mobility. In most cases Verizon, Sprint or T-Mobile was the wireless provider for the DTV customers. In 3Q 2016, Assistant VP of Sales Operations, IHX, Chip LaCorte, was tasked to create an entirely new line of business to convert these 20 million DTV customers to Mobility wireless. (LaCorte 44-48).

² As used herein, the references to “ER_” and “U_” refer to the Employer's Exhibits and Union Exhibits, respectively. The references to “[Witness Name]” refer to the witness and the transcript pages of the witness's testimony from the official Transcript of Proceedings of the hearing held before the Hearing Officer via videoconference on January 5, 2021.

On August 1, 2017, Mobility launched nationally the new sales organization called “In Home Solutions” or “IHX,” which included the new ISC and ISSS (or "Dispatcher") positions. (LaCorte 45-46). IHX was an entirely new sales channel focused on selling to a new base of potential customers – residential customers who have purchased DTV services but who are currently not Mobility wireless customers. (LaCorte 47-49).

Mobility set up the IHX organization as a distinct sales channel. IHX was an outside sales organization that involved a fundamentally different scope of work than retail sales. IHX’s core business objective was to sell “new” lines and “new” accounts to brand new Mobility customers being “stolen” from a competitor.

C. Organizational Structure of the IHX Business

The IHX organization and management team are separate and distinct from Mobility’s retail sales organization. (LaCorte 47-49). Within Michigan, each distinct IHX team (or Hubs as they are known) contains approximately 10-16 ISCs, and an ISSS and ISM. In turn, eight ISMs report to ISD Tameeka Bell, who reports to an Assistant Vice President (“AVP”), IHX. (Bell 295). Bell oversees the strategic planning for the eight IHX Hubs that comprise the Michigan Market, as well as recruitment, development, and coaching of ISCs, ISSSs, and ISMs. (Bell 300-01).

The Michigan Market is supported by a Sales Execution Lead ("SEL"), Thomas Leeson, who provides leadership metrics and sales performance figures on a market-wide basis (i.e., the entire Michigan Market), with a focus on “Postpaid Voice” (new lines), premium video and broadband sales. The SEL also assists with dispatch efficiency, communicating with all of the Hub’s dispatchers to identify additional dispatch opportunities, which impacts staffing decisions for the entire Michigan Market. (Bell 308-09). The SEL rolls out promotions and policy and procedure changes throughout the Michigan Market.

Importantly, each IHX team constitutes a separate IHX Hub. (Bell 292-294). Each Hub has a designated address within an AT&T corporate building, which may be an office building, technician garage, former device support center or, in some cases, in the same physical building as a Mobility retail store. (LaCorte 116). There are eight separate Hubs within Michigan, which Mobility operates as a discrete “market” segment. (LaCorte 52, 55; Bell 292-294). In densely populated areas, there may be more than one Hub located within the same physical address. (LaCorte 74). This is done to reduce operating costs since the ISCs spend 90% of their time in the field performing outside sales. (LaCorte 75). Hubs sharing an address, however, still maintain separate “OPUS” system IDs and operate independently in all manners. (LaCorte 61-66). Significantly, this includes the purpose of IHX’s existence, its goods to sell. As LaCorte noted:

Systematically, you cannot share the same inventory. Just like if you were in two separate buildings or in one building, if you wanted to transfer the inventory from one location to another, you could. That would be whether you're in the same building or in totally separate areas. Systematically, though, you cannot share inventory. It will not sell out through the OPUS system if you do not have that in your location ID of inventory. So it is not possible for them to actually share inventory.

(LaCorte 65).

In Michigan, there are four separate Hubs in Southfield, and four separate Hubs located in Cadillac, Grand Rapids, Saginaw, and Howell. (Bell 294; Decision 2). Although four Hubs are located in one office building in Southfield, each Hub is a separate operating and reporting entity, with a separate team (ISM, ISCs and ISSS), separate inventory,³ and separate administrative coding within Mobility's OPUS point of sale software (LaCorte 74-75, 94; Bell 326). The Hubs in Southfield are referred to as Novi 1, Novi 2, Novi 3, and Detroit. (Bell 293; Decision 2).

³ In Southfield, the inventory for each Hub is maintained separately in locked lockers, with each Hub having its own assigned inventory. (Bell 325, 378; Besic 271).

D. Staffing the IHX Business

When hiring ISCs and ISSSs, the ISMs conduct the initial interview and Bell conducts the second interview. (Bell 301). Together, Bell and the ISM (at each Hub) make final hiring decisions for each team, with support from the IHX HR team. (*Id.*). The ISMs supervise ISCs and ISSSs, evaluate their performance, hold periodic team meetings, and, with ISD Bell, provide coaching to ISCs struggling to improve performance and discipline ISCs and ISSSs. (Bell 302-03). With the support of HR, Bell and the ISMs make termination decisions.⁴ (Bell 302).

Mobility uses its normal hiring procedures (AT&T's "Career Path" internal hiring website) to staff all IHX positions, including those in the Michigan Market. (Best 278). For ISC and ISSS jobs in Michigan, each Hub's ISM (separately) and the ISD (for the Michigan Market) act as the hiring managers. (Bell 301).

E. ISC Job Duties

1. Overview of ISC Job Duties

All ISCs in the Michigan Market perform the same job duties. (LaCorte 73; Decision 12). ISCs spend 90% of their day working in or travelling to customers' homes. ISCs go to homes that have a scheduled DTV installation, upgrade or service planned, *and* have wireless service through one of Mobility's "Big 3" competitors, T-Mobile, Sprint or Verizon. (LaCorte 57-61).

To build rapport with customers, ISCs deliver a "white glove" experience that includes downloading/installing DTV and AT&T Apps onto the customers' devices and syncing devices to allow the customer to enjoy DTV services wherever they go. (Bell 304; LaCorte 58-60). ISCs sell tablets, phones, watches and wireless services. (LaCorte 59). The focus of the ISCs' sales

⁴ Jane Marie Best is the HR Business Partner supporting IHX in Michigan. Michelle Pedone is the Employee Relations Manager ("ERM") supporting the IHX Michigan Market. ERMs provide coaching and disciplinary support to ISMs and assist with terminations and internal investigations when necessary. By contrast, the IHX HR Business Partners provide more strategic support and assist IHX managers throughout the hiring process. (Best 274-75).

involve trying to change the mind of non-customers to convert them to Mobility wireless services. (LaCorte 60-61). ISCs use OPUS on iPads to process sales and administratively “check out” their inventory to permit its sale to a customer. (LaCorte 60).

2. Driving of Company Vehicles

ISCs drive company-owned vehicles in the ordinary course of performing their work, averaging 46,000-47,000 miles annually within the Michigan Market. (Bell 341). Each vehicle contains a safe built into the trunk in which ISCs store inventory. ISCs typically spend 2-3 hours a day in their company vehicle driving between customer appointments. (LaCorte 62-3).

3. Accountability for Inventory

ISCs carry and are accountable for up to \$10,000 of “trunk” inventory. ISCs determine the composition of their inventory. ISCs receive inventory from their “Hub” inventory, where the ISSS administratively “checks out” each device from the Hub’s locked inventory account to the ISC’s individual inventory account in OPUS. ISCs can only sell inventory from their assigned Hub inventory. (LaCorte 63-5). If an ISC's assigned Hub runs out of a product the ISC needs, the ISM will work with ISSSs to locate the product in another Hub or a retail store, and, once located, that Hub’s ISM can systematically transfer the product to the requested Hub through OPUS. (LaCorte 63-65). The ISCs are fully responsible for any “checked out” to them and subject to discipline if any inventory in their individual account is lost or damaged. (LaCorte 66).

4. Other ISC Working Conditions

ISCs work five or six days per week, Monday through Saturday. ISCs manage their own time during the day and average 4-6 customer visits per day. ISCs do not record their time, have no set start or end time, and take breaks and lunches when they choose. Schedules vary daily as ISCs frequently have follow up customer appointments outside regular hours. (LaCorte 68-69).

All ISCs in the Michigan Market are subject to the same workplace policies, including the ATT Code of Business Conduct, fleet management policies, and expense reporting. All ISCs receive the same benefits, including medical benefits; vision; dental, 401(k), vacation, illness time, discounts on Mobility products and services, and disability leave. (Best 285-87).

ISCs must meet sales objectives and can track their performance results daily. (LaCorte 71-72). Each ISC's sales results roll up to their ISM's aggregate results at the Hub level, and the results for all eight Michigan ISMs and Hubs are aggregated in the Michigan Market's sales results. These sales results in turn roll up to ISD Bell. (LaCorte 56-57, 89; Bell 352).

ISCs are subject to Mobility's performance management plan. Under that plan, ISCs who are not meeting their sales metrics are coached by the ISM. If coaching is not successful, the ISC moves to the formal "Performance Commitment" process for 60 days, during which the ISC agrees to take specific steps to improve their metrics and meet with the ISM regularly to monitor progress. If still unsuccessful, the ISC may be subject to discipline or termination. (Best 287-88).

Sales and performance objectives also are reflected in the compensation plan for ISCs. The ISCs are compensated with base salary, plus at-risk commission. ISCs earn three different categories of commission for their sales: Tier 1 (wireless service); Tier 2 (data devices such as watches and tablets); and Tier 3 (protection, such as insurance). (LaCorte 72; Best 287).

All ISCs are required to wear Mobility's branded apparel. ISCs are provided an allotment twice per year to select their branded apparel through an online website; this applies to all ISCs in the Michigan Market. (Bell 341).

When an ISM is absent up to a week (e.g., sick, PTO), an ISC from that ISM's Hub is designated to oversee the team. That ISC is then temporarily included on the group messaging for all eight ISMs as they report metrics to ISD Bell. (Bell 342-43).

F. ISSS Job Duties

ISSSs work as dispatchers in their assigned Hub. (LaCorte 74, 76). ISSSs assign work to ISCs; manage inventory and vehicles; fulfill recordkeeping and compliance duties; conduct audits; and resolve customer escalations. (Bell 326-27).

1. Assigning and Dispatching Work to ISCs

ISSSs perform an important function within IHX: assigning and dispatching ISCs to customer appointments. ISSSs consider a range of factors when matching ISCs to a particular assignment, including the ISC starting location or home address; customer location; type of DTV appointment (new install, upgrade or service); time of day; local traffic patterns; customer's current wireless carrier; quality of the carrier's network versus Mobility's network in the area; if the customer needs a Spanish-speaking ISC; whether the ISC has successfully sold in an area; whether the ISC has follow-up appointments scheduled nearby; and the ISC's personality, preferences and needs. ISSSs rely on their training, knowledge and judgment to assign ISCs to a particular "Big 3" opportunity. (LaCorte 76-7).

All ISSSs assign work to ISCs within their Hub using Mobility's Oracle Field Service computer system. (LaCorte 69-70). However, each ISSS is free to develop their own method for making dispatch assignments and how to weigh individual factors when prioritizing assignments. The Oracle software displays the geographic location for each job, the customer's carrier and a predictive "score" determined by proprietary technology. (LaCorte 76-77). ISSSs are in constant contact with ISCs throughout the day to optimize sales opportunities. (LaCorte 77).

2. Inventory Management and Accountability

ISSSs are accountable for all inventory assigned to their Hub, usually \$300,000 - \$500,000 in value. ISSSs are subject to discipline for lost or damaged inventory. (LaCorte 78-9). Hubs do not share inventory. Each Hub has a separate inventory account within OPUS and must keep their

inventory physically separated. (Bell 325-27). The ISSS's normal inventory-related duties include receiving shipments and scanning them into the Hub's inventory account in OPUS, managing and storing inventory, "checking out" inventory to ISCs and conducting periodic inventory audits. These audits include weekly "trunk audits" of each ISC's trunk stock. (LaCorte 78). If an ISC lacks trunk stock, the ISSS is empowered to check-out more inventory to the ISC. (Bell 326-27).

Hubs and retail stores also do not share any inventory. Each have separate inventory accounts within OPUS and keep their inventory physically separated. If there is a shortage of a device in the Hub's inventory, on occasion an ISSS may work with an ISM and an Area Retail Sales Manager – second level manager on the retail side – to approve transferring a device from a retail store to an IHX Hub or from one Hub to another. (Bell 325-28).

When ISSSs are on vacation or take a day off, their work is covered either by their ISM or their "dispatch pair." Bell oversees eight teams, and each ISSS has a partner (assigned by Bell) to cover their dispatches when they may be out. For example, when the Grand Rapids ISSS is out, the Howell ISSS covers his dispatches. (Bell 333-34). ISMs also can perform dispatch duties for a Hub, which allows the ISM to coach ISCs during the work day while dispatching. For example, recently the ISM for Novi 1 dispatched for Howell and then Saginaw. (Bell 334, 386-87).

3. Other ISSS Working Conditions

ISSSs manage all company-owned vehicles within their team's fleet, 10-16 cars per ISSS. They schedule all necessary maintenance, inspections and repairs, and retain accurate records for each vehicle. (LaCorte 79). ISSSs are paid on an hourly basis and are overtime eligible. (Bell 397). As detailed above, all ISSSs receive the same benefits and are subject to the same workplace policies as the ISCs. (Best 286).

G. IHX Operations in the Michigan Market

The IHX organization is divided nationally into operating “Markets.” The scope of each Market is based on an average “span of control” of 10:1, meaning an average of 10 ISCs per ISM; 10 ISMs per ISD; and 10 ISDs per AVP. Each ISD manages a distinct Market. And each Market is its own distinct operating unit, responsible for its own P&L statement, sales goals, sales reporting, performance metrics and inventory. Also, a Sales Execution Lead (SEL) from the operations side of the business is assigned to and supports the sales teams in each Market.

The eight Hubs in Michigan comprise the IHX organization’s Michigan Market, headed by ISD Tameeka Bell and supported by SEL Thomas Leeson. (LaCorte 82-83; Bell 293, 300-01, 308). The Michigan Market has 95 ISCs, 8 ISSSs, and 8 ISMs. (Bell 295). The ISSSs are the only IHX employees who report to their Hub each day, as ISCs perform outside sales throughout the Michigan Market and ISMs do not have assigned offices in a Hub as they too spend most of their time in the field. (Bell 295).

H. Management of the Individual ISM Teams

Through the testimony of LaCorte and Bell, the Company presented evidence demonstrating the common management and operations of *all eight Hubs* in the Michigan Market. The fact that Bell runs the Michigan Market as one entity is unrebutted in the record. In contrast, the Union’s three witnesses did not even describe the operations of all four Hubs in the Unit and provided no testimony regarding the four excluded Hubs. This evidentiary failure undercuts the RD’s finding that the Hubs in Southfield share a community of interest.

Each Hub comprises an ISC team led by an ISM. Each ISM holds meetings with their team (only), some with daily meetings and others holding meetings 2-3 times per week. (Bell 322).

Employees can view their work and vacation schedules through software called MOOSE. (Bell 307). Employees within an ISM team can also see the work and vacation schedules of others on their team, but cannot see schedules for those working in other Hubs. (Bell 307).

Each ISM team has a group messaging systems, some using WebEx and others using iMessage. Each ISM team based in Southfield has their own messaging system, which cannot be accessed by employees working out of one of the other Hubs located within Southfield. (Bell 324).

I. Market-Wide Meetings and Events

Bell regularly holds a series of different types of meetings for various groups of employees *across the Michigan Market*. Bell communicates with her teams using WebEx videoconferencing and discussion boards. (Bell 306). Bell holds weekly staff conferences with the ISMs from each of the eight Hubs and the SEL every Tuesday at 9:00 am to discuss staffing and performance for the Michigan Market, and the agenda for the Friday all Michigan Market meetings. (Bell 311-12).

Each Thursday, Bell hosts a videoconference with the ISMs to discuss minimum staffing requirements for each Hub for the upcoming weekend. (Bell 306). Bell also holds “one-on-one” meetings with each Michigan ISM weekly. In those meetings, they discuss sales performance of their team, budgets, coaching opportunities, and dispatch efficiency. (Bell 315-16).

Every other Friday, Bell hosts a "Fired Up Friday" call with all of the Michigan Market ISCs, ISSSs, ISMs and the SEL. (Bell 312-13).⁵ On those calls, they celebrate high performing ISCs, discuss upcoming promotions, and offer words of encouragement. (Bell 314).

⁵ Meetings that conflict with a holiday, such as Thanksgiving or Christmas, may be cancelled. Bell confirmed that she otherwise does not routinely cancel the Friday meetings, as the Union falsely claimed. (Bell 313).

Bell also holds monthly calls for all newly hired ISCs in the Michigan Market. They discuss the history of IHX and what is expected of them. It also gives the ISCs an opportunity to tell Bell and the other ISCs about themselves. (Bell 315).

Bell holds calls with low-performing ISCs across the Michigan Market. (Bell 317). It is optional for ISMs to join those calls. They discuss issues the ISCs are having and how to overcome those issues. (Bell 318). Bell also conducts weekly ride-alongs with ISMs and ISCs throughout the Michigan Market for purposes of coaching and development. (Bell 305).

The SEL holds meetings with all eight ISSSs every other week to address issues facing the Hubs. ISMs may attend those meetings, but are not required to do so. (Bell 311).

Bell created the “Hot Shots Club” to celebrate high performers across the Michigan Market. ISCs who sold 30 or more Postpaid Voice products in a month are invited to a celebratory social event outing such as a Detroit Tigers game or Top Golf. (Bell 318-320).⁶ Before the outing, Bell holds a planning call with the ISCs to discuss where the Hot Shots Club outing will be held within Michigan. (Bell 318-19). Bell tries to choose an outing in a place that is reasonably accessible for all 18-24 ISCs in the Michigan Market who qualified for the month. In addition, Bell holds an annual picnic for all IHX employees in the Michigan Market. (Bell 319-20).

In 2019 Bell sponsored a “Leadership Development” program to develop one “bench player” from each of the eight Hubs. The leadership program included training led by an ISM based out of the Saginaw Hub. (Bell 320-21). The group met once per month for approximately six months, for a half day each meeting. (Bell 321). The attendees discussed management books to learn management skills, and were trained on concepts as market share, profits and losses, and how to utilize different software programs used by management to monitor sales. (Bell 322).

⁶ Prior to 2020, Bell hosted the Hotshots Club outing every month. Due to the pandemic, the Hot Shots club met less often, approximately four times in 2020. (Bell 319).

All IHX employees in the Michigan Market have access to a WebEx group chat for the entire market. All ISCs, ISSSs, ISMs, the SEL and ISD have access to the group. In fact, within the Michigan Market, ISCs often post when they make a sale. Bell also will post when there are changes in sales promotions and to otherwise update her team of pending items. (Bell 323-24).

J. Bargaining History of the Parties

1. The Mobility CBAs and Card Check Agreements

Mobility and CWA have an extensive and undisputed bargaining history which is founded on Mobility and CWA creating bargaining units on a statewide basis. The CWA is the statutory bargaining representative of 35,000 bargaining unit employees nationwide (under four regional contracts). (Frost 100-01; ER 2). Since 2001, Mobility and the CWA have been parties to a series of Orange CBAs, which cover bargaining unit employees in 36 states including Michigan and the District of Columbia, primarily working in three categories of job titles: retail store employees, call center employees and network technicians. (ER 2-5). The current CBA is effective from February 11, 2017 to February 12, 2022, and covers 15,000 unit employees. (Frost 101; ER 2). The first Orange CBA was negotiated in 2000 and signed in early 2001. (Frost 102). The parties negotiated successive Orange CBAs every four years thereafter. (Frost 102; ER 2-6).

Mobility and the CWA also are parties to a “Memorandum of Agreement Regarding Voluntary Recognition” (“Orange VRN”), which provides procedures for CWA to attempt to organize certain Mobility non-represented “management” employees through a card check recognition process. The term of each Orange VRN has run concurrently with the term of each respective CBA. Paragraphs 1(d) and 2(c) of the Orange VRN expressly excludes “all outside sales employees” from being organized under the card check procedures. (Frost 112; E-16). Paragraph 2(c) of the Orange VRN also expressly provides that bargaining units would be organized “within each individual State.” (E-16).

Mobility and the CWA are the same signatories to three other “regional” labor agreements and VRNs covering similar job titles in retail, call center and network operations throughout the country. (Frost 105). The other regional labor agreements are the: (1) “Black CBA,” which covers nine Southeastern states within CWA District 3 (ER 8); (2) “Purple CBA,” which covers five Southwestern states within CWA District 6 (ER 9); and (3) “Green CBA,” which covers Puerto Rico within CWA District 3. (ER 10). In each of those regions, Mobility and CWA also are parties to parallel card check agreements – or VRNs. (ER 13-16).

Like the Orange CBA, the Black and Green CBAs expressly exclude outside sales positions from their scope. (Frost 116; E-15, E-17). Concomitantly, outside sales positions cannot be organized under the Black and Green VRNs. (Frost 115; ER 14-15, at Paragraphs 2(c) and 1(d)).

The Purple CBA and VRN are unique. There is no similar “outside sales” exclusion under the Purple CBA. (Frost 117; ER 9, 16). Thus, for many years, outside sales positions have been *included* in the Purple bargaining unit on a statewide basis and have been subject to card check organizing under the Purple VRN. (Frost 116-17; ER 14). In fact, the CWA has sought to organize the ISCs and ISSSs in each state within the Purple CBA footprint. (Frost 119-20; ER 19-20).

2. The Parties’ History of Statewide Bargaining Units

Although the regional CBAs cover multiple states, when the bargaining units were being organized under the VRN card check procedures, the parties historically agreed to, and utilized, statewide bargaining units for organizing employees. (Frost 120).

Mobility’s predecessor, Cingular Wireless, doubled its size in 2005 when it acquired the assets and operations of the former “AT&T Wireless” (“ATTWS”) business, which included 40,000 unrepresented ATTWS employees. (Frost 118). Over the next few years, the CWA organized the former ATTWS employees under the terms of the Mobility Orange, Purple and Black VRNs. It is undisputed that CWA organized all ATTWS sales employees through statewide

bargaining units. (Frost 119). Over subsequent years, Mobility acquired additional companies with non-represented employees, including Dobson Cellular, Century Wireless, and Alltel, all of which the CWA organized under the applicable VRNs and through agreed *statewide* bargaining units. (Frost 119-121). Steve Frost, Mobility's AVP Labor, provided uncontroverted testimony that since 2005, CWA has engaged in at least 80 separate efforts to organize Mobility sales employees, and in all of those the parties have agreed to utilize statewide bargaining units. (Frost 123-24; Tr. 123).⁷ The Union did not refute, and could not refute, any of this evidence.

3. CWA Attempts to Organize IHX Employees Under the Purple, Black and Green VRNs

During 2019, the CWA attempted to organize ISCs and ISSSs under the Purple, Black and Green VRNs. Consistent with the parties' historical administration of those CBAs and VRNs, Mobility agreed to card check organizing of those outside sale positions under the Purple VRN, but has objected to such organizing under the Black and Green VRNs. (Frost 116).

In February 2019, the American Arbitration Association (AAA) notified Mobility that a CWA Local in Puerto Rico requested certification of a card check majority of ISCs, even though the CWA never notified Mobility of that organizing effort, as the Green VRN requires. (Frost 125; ER 17). Mobility declined to provide the list because outside sales positions are not eligible to be organized under the Green VRN, and the CWA withdrew its request. (Frost 125-26).

Following this, on June 17, 2019, CWA Local 3010 (Puerto Rico) filed an RC petition in NLRB Region 12 to organize the ISC and ISSS titles within all three IHX Hubs located in Puerto Rico (Case 12-RC-243403). (ER 17). Although those Hubs were located several hundred miles

⁷The Union also conceded at the hearing that Section 2(c) of the respective Orange, Black, Green and Purple VRNs specifically provides "The appropriate units for bargaining shall be consistent with the units established by the parties' bargaining history, pursuant to which they shall continue to be separated into the following units within each individual State and each unit including the job titles determined appropriate by the Company . . ." (ER 13-16).

and 3+ hours apart on the island, the CWA sought to include them in a single bargaining unit. Mobility did not object to the proposed unit because it covered the full territory of Puerto Rico, akin to a statewide unit. (Frost 125-26). Later, the CWA withdrew their organizing petition and the Region subsequently approved the Local's withdrawal of the petition, and the ISC and ISSS titles remain *excluded* from the Green bargaining unit. (Frost 125-26).

Conversely, in September 2019, Mobility *agreed* to the CWA's request to organize the ISC and ISSS titles under the Purple VRN. Thus, the CWA recently organized a statewide bargaining unit of ISCs and ISSSs in Arkansas. The CWA also attempted to organize the ISCs and ISSSs in a statewide unit in Texas under the Purple VRN, but failed to gain majority status. (Frost 130-31).

III. ARGUMENT

A. Standard of Review

Under Section 102.67(d) of its Rules and Regulations, the Board may grant a request for review on one or more of the following grounds:

- (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 issue 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.

29 C.F.R. § 102.67(d). As more fully detailed below, the Board should grant Mobility's Request for Review pursuant to Section 102.67(d)(1)(ii) and (d)(2).

B. The Regional Director's Decision Departed from Reported Precedent by Applying the "Single-Facility Unit Presumption"

The RD erred as a matter of law in applying the "single-facility unit" presumption to the Employer's four separate IHX Hubs located in Southfield, Michigan. (Decision 11; citing *D&L*

Transportation, Inc., 324 NLRB 160 (1997)). The Decision departed from established Board precedent by improperly applying a presumption applicable to a single-facility operation to four distinct and autonomous operating units that indisputably are not structured nor operated as a “single facility.” There is no dispute in the record that the four Hubs located in Southfield are four separate operating units and not a “single facility.” By erroneously applying that inapplicable legal standard, the RD improperly placed on the Employer “the heavy burden of rebutting [the] presumptive appropriateness” of the ostensible “single-facility unit.”

Any notion the four IHX Hubs that share an address in Southfield are a “single-facility” is pure fiction and not supported in the record. The facts proving that those four Hubs operate as independent and autonomous units of the collective Michigan Market are undisputed. ISD Bell was unequivocal in her statement that the four Hubs located in Southfield operate independently. (Bell 292-294). Equally undisputed is that, other than geography, the four Hubs in Southfield have no functional or operational relationship to each other any different than that of all eight Hubs in the Michigan Market. There is no factual or legal basis for the RD’s determination the Hubs located in Southfield are a “single-facility.”

The four Hubs located in Southfield operate independently from each other in the same manner as all eight Michigan Hubs operate. All eight Hubs operate as a separate business silo within the Michigan Market. Each Hub is a distinct team of 10-16 ISCs and one ISSS, managed by a separate ISM. There are eight separate IHX teams in Michigan and eight ISMs, all reporting to the ISD. Each Hub and ISM team operates as a separate business unit, with its own inventory, dispatches and work assignments. Each Hub is accountable for its own sales results and performance metrics. Each ISM is responsible for the performance of his or her team. These separate ISM teams/Hubs comprise the Michigan Market that reports to Bell.

Moreover, the RD's suggestion the IHX employees administratively assigned to the Southfield address "share the same workspace, parking lot, cafeteria and restrooms at the Southfield facility" is equally fictitious and lacks support in the record. (Decision 13). Of the 51 employees in the Unit, only the four ISSSs have a report location at the Southfield address. The remaining 47 ISCs in the Unit start and end their work days from home, not the Southfield address. They then spend more than 90% of their time in the field, driving to appointments and/or working in customers' homes. To be frank, when not with a customer, they spend the majority of time in their vehicle traveling and preparing for their next sale. This is evidenced by the (average) 46,000+ miles each ISC drives their company vehicle annually within the Michigan Market. (Bell 341). The ISCs physically go to the Southfield building on rare occasions to pick up or exchange inventory or for trunk audits, and indisputably such visits are sporadic and of very short duration.

Collectively, all eight Hubs comprise the Michigan Market for Mobility's IHX operations. The Michigan Market is itself a distinct operating unit, responsible for its own P&L statement, sales goals, sales reporting, performance metrics and inventory. The Sales Execution Lead (SEL) provides the same support functions to all eight Hubs and sales teams in the Michigan Market.

Far from being a "single-facility," there also is no heightened functional integration among the four Hubs located in Southfield as distinguished from the other four Michigan Hubs. Each of the eight ISMs hold separate meetings several times per week with their Hub. Each Hub maintains its own WebEx messaging for its team, to the exclusion of the other Hubs. Each ISM handles scheduling and staffing only for their team and rely only on the teams' ISSS to handle dispatches for ISCs in the team in the ordinary course. When an ISM is absent, their duties are not "assigned" to or covered by another ISM, but rather handled by a designated ISC from the team. All eight

Hubs have their own inventory and account for it in OPUS; the four Hubs located in Southfield do not share inventory. The processes for exchanging inventory are identical for all Michigan Hubs.

Nor is there any record evidence of any events or operations unique to the four Hubs in Southfield and exclusive of the other four Michigan Hubs. Even more substantively, the record is deplete of any evidence of any “Southfield employees” being "loaned" or temporarily transferred between the Hubs in Southfield. None of these facts are disputed and all disprove any notion that the four Hubs in Southfield comprise a “single-facility.” The "single-facility" presumption simply has no application to the IHX employees who work on separate teams for separate managers.

The RD also failed to cite valid precedent for her misapplication of the single-facility presumption. The Board’s decision in *D&L Transportation, Inc.*, 324 NLRB 160 (1997) (relied on by the RD) is inapposite. In *D&L*, the Board held the petitioned-for employees at one of the employer’s bus terminals was an appropriate unit for bargaining, reversing the Regional Director’s decision those employees did not constitute a separate appropriate unit from the employer’s other six terminals. The Board properly applied the single-facility presumption precisely because *the subject terminal was a single, discrete operating facility*. Likewise, the other cases cited by the RD involved genuine single-facility operations, and, thus, none support her misapplication of the single-facility presumption in this case. *See Trane*, 339 NLRB 866 (2003) (two distinct and separate manufacturing facilities); *J&L Plate, Inc.*, 310 NLRB 429 (1993) (same).

The RD’s reliance on *Audio Visual Services Group, LLC*, 370 NLRB No. 39 (October 26, 2020) in support of her single-facility proposition further departs from reported Board precedent. Properly construed, the Board’s decision in *Audio Visual* supports review of the Decision.

First, the Board’s unit determination in *Audio Visual* was not premised on application of the “single-facility presumption.” Rather, the Board applied the test applicable to determining the

appropriateness of a multi-facility unit. This is because, as here, *the petitioned-for unit itself was a “multi-facility” unit* and not a single operating facility, to wit, the petitioned-for unit consisted of the employees at four separate employer jobsites in Monterey, California and excluded 16 other jobsites in Northern California. Although there is some overlap in the relevant factors considered, under that test the Board did not impose on the employer the “heavy burden” to overcome the presumption of single-facility appropriateness, as the RD erroneously did in the present case.

Further, the *Audio Visual* facts are easily distinguishable for two primary reasons, which require the contrary result. First, the Board’s decision was principally based on the evidence of a “significant level of interchange and functional integration” between the four petitioned-for job sites, as distinguished from the 16 other job sites the employer proposed to include in the unit. In particular, the employer regularly shared employees among the four Monterey jobsites and excluded the other jobsites, resulting in employees at the four petitioned-for Monterey jobsites working at a different Monterey jobsite 22% of the time. No such actions occur in the case at bar.

Also, the supervisors of the Monterey jobsites met together each week to strategically share employees to cover staffing needs, excluding the supervisors from the excluded jobsites. Those facts do not exist here. There is no similar “significant level of interchange and functional integration” between the four Hubs in the Unit, standing alone or in comparison to the other four Hubs in the Michigan Market. Indeed, as the CWA’s own witnesses confirmed, it is undisputed that there is no evidence of any employees from the Hubs located in Southfield being “loaned” or shared” with other Hubs in Southfield. (Lant 151; Bivins 203)

Secondly, in *Audio Visual* the Board specifically noted that there was no relevant bargaining history in the case. In stark contrast, the parties’ 20+ year bargaining history of organizing via statewide bargaining units is undisputed and a highly probative factor for finding

the Unit inappropriate. For these reasons, the Board’s decision in *Audio Visual* warrants the opposite result here: that a unit limited to four Hubs in Southfield is not appropriate, and the only appropriate unit is one that includes all eight Hubs in the Michigan Market.

The RD’s flawed reliance on the single-facility presumption undermined and tainted the entire analysis of the relevant community of interest factors. Save for their geographic location,⁸ the Hubs located in Southfield have no more operational relationship to one another than all eight Michigan Hubs have to each other. Indeed, the RD’s express finding that all eight Hubs in the Michigan Market have “local autonomy” and “separate supervision” refutes her inexplicable mischaracterization of the four distinct Hubs located in Southfield as the “Southfield facility” (Decision 18). The Decision must be reviewed because it departed from Board precedent and erroneously applied the single-facility presumption to eight distinct operating facilities.

C. The Regional Director’s Decision Departed from Board Precedent by Finding the Unit Appropriate Under *PCC Structural*s

The RD’s parallel conclusion that the Unit is appropriate under *PCC Structural*s, 365 NLRB No. 160 (2017), also is a departure from reported Board precedent and not supported by the evidentiary record. The RD’s finding that employees in the Hubs located in Southfield “are a sufficiently distinct, recognizable group” does little more than pay lip service to the community-of-interest factors cited in *PCC Structural*s and is not supported by the law or facts. (Decision 22). That conclusion ignores the utter lack of evidence of the type of *meaningful* functional integration, common supervision and employee interchange required for a unit limited to the four Hubs located in Southfield. The Decision instead erroneously rests on anecdotal evidence of isolated employee

⁸ Geography (and the nominal distances apart) is even less important in the instant matter given that the ISCs spend the overwhelming majority of their time working from home and in the field and drive an average 46,000-47,000 miles a year annually in their Company-provided vehicle. (Bell 341).

"contact" and infrequent social interactions and conflates casual employee contact with functional integration and interchange. The Decision does not withstand scrutiny of the factual record.⁹

In *PCC Structural, Inc.*, the Board overturned *Specialty Healthcare*, 357 NLRB No. 83 (2011), reinstating its prior standard for determining the appropriateness of a petitioned-for bargaining unit. Explicitly rejecting *Specialty Healthcare*'s "overwhelming community of interest" standard, the Board instead applies "the traditional community-of-interest standard that [it] has applied throughout most of its history." *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 7. Under this standard, when a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, the Board applies its traditional community of interest factors to "determine whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit." *Id.* Those factors include whether the employees:

1. Are organized into a separate department;
2. Have distinct skills;
3. Have distinct job functions and perform distinct work, including inquiry into the 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., slip op. at 5.

⁹ The RD's conclusion under Section III(C) of the Decision also departs from applicable Board precedent based on the same evidentiary and analytical errors discussed in this section.

Based on those factors, the Board determines, on a case-by-case basis, “whether the petitioned-for employees share[d] a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit.” *Id.*

As the Board explained in *PCC Structural*s, *supra*, slip op. at 5:

[t]he required assessment of whether the sought-after employees' interests are sufficiently distinct from those of employees excluded from the petitioned for group provides some assurance that extent of organizing will not be determinative, consistent with *Section 9(c)(5)*; it ensures that bargaining units will not be arbitrary, irrational, or "fractured" – that is, composed of a **gerrymandered grouping of employees whose interests are insufficiently distinct from those of other employees to constitute that grouping a separate appropriate unit**; and it ensures that the *Section 7* rights of excluded employees who share a substantial (but less than "overwhelming") community of interests with the sought-after group are taken into consideration.

Id. (emphasis added).

"[T]he community-of-interest analysis must consider whether excluded employees 'have meaningfully distinct interests in the context of collective bargaining that outweigh similarities' with the included employees." *Boeing*, 368 NLRB No. 67 (2019). If not, the proposed unit is not appropriate. Under this standard, the interests of the employees in Hubs located in Southfield are insufficiently distinct from the other four Michigan Hubs to constitute a separate appropriate unit.

It is undisputed that the ISC and ISSS employees working in all eight Hubs in the Michigan Market, respectively, perform the same job duties, and are subject to the same wages and benefits, workplace policies and working conditions. Thus, the RD's flawed conclusion that employees working in Hubs located in Southfield were a "sufficiently distinct, recognizable group" as to constitute an appropriate unit was wrongly based on the factors of "organization of the plant," and alleged "common supervision," "employee contact and interchange" and "functional integration." On these factors, the RD's conclusions cannot rationally be drawn from the record evidence.

1. The Proposed Unit Does Not Match Recognized Operational Lines

The Decision neglects meaningful evaluation of the organizational structure of the Michigan Market, mistakenly concluding "the record demonstrates that the Employer's operations in Michigan, as well as its other markets, are decentralized on a much narrower basis with ISMs who are responsible at an individual hub level for employees who work toward the common goal of delivering wireless sales and services." (Decision 18-19). Without reference to any facts in the record, the Regional Director simply ignores the fact that there are four separate Hubs overseen by four separate ISMs in the Unit. Even if the Regional Director's assertion was true, the Unit is an arbitrary collection of Hubs without any connection to the Company's organizational lines and ISD Bell's centralized oversight responsibilities.

The Board has consistently looked to how the *employer* has structured its operations when analyzing whether a community of interest exists. *See Macy's, Inc.*, 361 NLRB 4 (2014), slip op. at 9, *overturned on other grounds* ("The fact that the petitioned-for unit tracks a dividing line drawn by the Employer is particularly significant."); *Neiman Marcus*, 361 NLRB 11 (2014), slip op. at 3 (finding no community of interest when, "The boundaries of the petitioned-for unit do not resemble any administrative or operational lines drawn by the Employer.") Here, a Unit comprising ISCs and ISSSs working in only four of the eight Hubs in the Michigan Market does not match any administrative or operational lines utilized by the Company.

2. There is No *Meaningful* Functional Integration between the Four Hubs Located in Southfield Different than the Eight Michigan Hubs

The evidence cited by the RD of alleged "functional integration" between the Hubs located in Southfield was scant and unpersuasive. The only relevant factor cited under the *PCC Structural's* analysis was the ISSS employees within Hubs the in Southfield occasionally transfer inventory between Hubs. (Decision 21). But the RD ignored that this is a process shared with retail stores

and non-Southfield Hubs alike and one administratively completed through the OPUS system. Given this, if anything, it proves the similarity of all eight Hubs within the Michigan Market.

Otherwise, the RD relies on evidence which demonstrably is not probative of integration of the Hubs located in Southfield: performance of sales and dispatch operations for individual ISM teams; familiarity with sales operations and customer promotions and discounts; recording of information necessary to track performance metrics and sales results; reporting and compliance obligations; and meetings amongst the individual ISM teams. (Decision 21). *All* of these functions are routinely performed by *all* Michigan IHX employees, and *none* of them reflect any unique or heightened “integration” between the Hubs located in Southfield.

Also, in reaching that unsupported conclusion, the RD ignored record evidence proving all eight Michigan Market Hubs share a high degree of meaningful functional integration in the ordinary course of business. ***Indisputably, all eight Hubs in the Michigan Market are managed by ISD Bell as a single unit.*** All Michigan Market Hubs share the same degree of functional integration, with no heightened integration among the Hubs located in Southfield. This is clearly demonstrated by the regularity of market-wide operational meetings and events:

- Bell hosts market-wide meetings with all eight ISMs (representing the 8 distinct Hubs) every Tuesday and Thursday. (Bell 311-312).
- Bell holds weekly one-on-one meetings with each ISM. (Bell 306, 315).
- Bell performs “ride-along” coaching sessions with ISCs and ISMs throughout the Michigan Market on a weekly basis. (Bell 305).
- Bell conducts “Fired Up Friday” conference calls on a market-wide basis every other week for all Michigan IHX employees. (312-314).
- The SEL provides operational support for the entire Michigan Market. (Bell 308).
- The SEL holds conference calls with all eight ISSSs (again representing the 8 distinct Hubs) every other week, to review and discuss operational issues and policy changes. (Bell 311).

- Each month, top performing ISCs from all eight Michigan Market Hubs participate in a planning call and attend a social outing for the “Hot Shots Club.” (Bell 318-20).
- Bell holds monthly calls for all newly hired ISCs in the Michigan Market. (Bell 315).
- Bell conducts calls with all low performing ISCs in the Michigan Market, to which the respective ISM is invited to attend. (Bell 317).
- There is an annual picnic for all IHX employees in the Michigan Market. (Bell 320).
- In 2019, Bell hosted a “Leadership Development” program for selected ISCs throughout the Michigan Market, over the course of six months. (Bell 320-21).
- All IHX employees have access to and utilize a Market-wide group chat on the WebEx platform. (Bell 324).

In addition, all eight Michigan Market Hubs collectively function as a distinct operating unit, with a common P&L statement, sales goals and sales reporting, performance metrics and inventory – for all of which ISD Bell is responsible. Similarly, the Michigan Market’s results all rolls up to ISD Bell and she is judged on its performance. (LaCorte 56-57, 89; Bell 352).

Conversely, the parallel finding of a supposed “heightened” degree of functional integration among the four Hubs located in Southfield is anecdotal and substantively insufficient to justify or support that conclusion. The actual evidence was limited to testimony about various brief and casual “interactions” between isolated employees assigned to the Hubs located in Southfield and which were not job related. (Lant 164-65, 182). *All* of these were a function of geography and *none* were sufficient to prove meaningful functional integration among those Hubs.

For example, ISCs Jeremy Lant and Jasmin Besic (Petitioner witnesses) testified they occasionally have been dispatched by the ISSS in the Howell Hub. (Lant 152; Besic 229). Lant also testified he has only ever contacted an ISM from another Hub in the Unit one time when his ISM was unavailable. (Lant 141). ISM Tracy Bivins testified he has never contacted an ISM from

a Hub in Southfield other than the ISM on his team. (Bivins 196). Basic and Lant explained while they have social relationships with ISCs from other Hubs, they call ISCs on their own teams when they need work related assistance. (Lant 160, 167; Basic 241). Bivins does not even know anyone from the other teams in the Unit. (Bivins 200-01). When Hubs run out of needed inventory, the ISCs contact the ISSS on their team to make arrangements to get it from another Hub. ISCs may be aware of which Hubs have inventory in stock, but they do not contact the ISSS or ISM from the other team. (Lant 157; Bivins 206-07). This is not functional integration. The Michigan Market is the only appropriate unit because all functional integration occurs on a market-wide basis.

All eight Hubs are managed as a unit and there is simply no factual or legal basis to isolate the four Hubs located in Southfield into a fractured “bargaining unit.” *See Terex*, 199 LRRM 2075 (N.L.R.B. 2014) (holding that the petitioned-for unit was fractured in part because the employee’s work was “functionally integrated with the work of other assembly employees.”); *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999) (high degree of functional integration in facility’s operations precluded establishment of separate unit).

3. There Is No Heightened Degree of Employee “Interchange” Among the Four Hubs in the Proposed Unit.

The Board is generally disinclined to find a multi-facility unit appropriate when the petitioned-for facilities have no more degree of employee interchange with each other than they do with the excluded facilities. *See, e.g., Bashas', Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000). In analyzing “employee interchange,” the Board “distinguishes between two types of interchange – temporary transfers and permanent transfers.” *Frontier Tel. of Rochester, Inc.*, 344 NLRB at 1272. A temporary transfer occurs when an employee “fills in” for another position. The latter occurs when a unit employee permanently “transfers” into another position. *Dedicated Servs., Inc.*, 352 NLRB 753, 764 (2008).

“[T]he Board has long regarded permanent transfers to be a less significant indication of actual interchange than temporary transfers.” *Novato Disposal Servs., Inc.*, 330 NLRB 632, 632 n.3 (2000) (citing *Red Lobster*, 300 NLRB 908, 911 (1990)); *see also Lehigh Valley Hosp.-Schuylkill*, 367 NLRB No. 100, slip op. at 5 (2019) (“The Board does not find evidence of one-way or permanent interchange to be particularly persuasive.”); *Walt Disney World Co.*, 367 NLRB No. 80 at slip op. 4 (2019) (same); *Deaconess Medical Ctr.*, 314 NLRB 677, 677 n.1 (1994) (same); *Passavant Ret. & Health Ctr., Inc.*, 313 NLRB 1216, 1218 n.2 (1994) (same).

Here, there is simply no evidence of temporary transfers between the Hubs in Southfield. Indisputably, ***there is no evidence that any employees located in Hubs in Southfield have been “loaned” or temporarily transferred or assigned to work in another Hub in Southfield. None.*** Indeed, the Petitioner’s witnesses conceded that IHX does not “loan” or “substitute” employees from one Hub to another. (Lant 151; Bivins 203). Moreover, the few permanent transfers that have occurred have equally involved transfers among various Michigan Hubs.¹⁰ Absent evidence of temporary transfers between the subject Hubs, there is no factual or legal bases for the RD’s conclusion of a “heightened” degree of employee interchange within the Hubs in Southfield.

The RD erred by again erroneously relying on alleged social “contact” between Southfield-based employees rather than meaningful interchange, as required by Board precedent. (Decision 13-14). Isolated and casual social contacts are not interchange. They are entirely different concepts. The Decision breathlessly notes that ISCs working from the Hubs located in Southfield

¹⁰ In early 2019 Bell created a new Detroit team by permanently transferring select ISCs from the Novi 1, 2 and 3 teams to the new team. That was a function of the rapid growth of sales in the Detroit area and part of an effort to create a new ISM sales team. And, Bell made those decisions because she wanted to pair experienced ISCs with a new ISM. (Bell 339-340). Also, in August 2020 Bell permanently transferred two different ISCs between other Michigan Hubs: (a) permanent transfer of ISC Derek Churchly from the Cadillac (Travers City) Hub to Grand Rapids, and (b) permanent transfer of ISC Parris Rutter from Howell to Grand Rapids. (Bell 330-31). Similarly, more than a year ago, Bell permanently transferred ISC Dennis Leese from Saginaw to a Hub located in Southfield. (Bell 332-33)

"regularly communicate with each other by text message and they see each other frequently while going to and from assignments" as if such casual interactions are a fair facsimile for the type of meaningful interchange required under Board law. (Decision 14).¹¹ They are not.

4. There is No “Common Supervision” Among the Four Hubs Located in Southfield

The RD’s determination that the *lack* of “common supervision” among the eight Michigan Hubs “weighs in favor of a separate unit” of the Hubs located in Southfield is unsupported on the law and facts. In this regard, the RD wholly ignored not only Bell’s role as ISD for the entire Michigan Market, but also her undisputed testimony given in support of how she functionally operates the Michigan Market in the ordinary course.

In support of a multi-facility unit, the Board will give substantial and favorable consideration to the administrative integration and unified control of an employer’s operating procedures. *Twenty-First Century Restaurant*, 199 NLRB 881 (1971); *Alamo Rent-A-Car*, 330 NLRB 147 (2000); *Harrah's Illinois Corp.*, 319 NLRB 749, 750 (1995) (sharing overall and immediate supervision with excluded employees are each relevant to the supervision factor).

While the Decision correctly notes that the individual ISMs of all eight Michigan Market Hubs manage day-to-day operations of their respective Hubs, supervise the ISCs and ISSSs on their individual teams, and provide coaching and conduct meetings with their own teams, that finding belies the conclusion the Hubs located in Southfield are an appropriate unit. There is no evidence of any degree of “common supervision” among the four Hubs located in Southfield.

¹¹ Notably, the record evidence demonstrates that the group text messaging regularly utilized either includes ISCs from the same Hub, or for the entire Michigan Market. In addition, one ISC testified that while working he would occasionally see ISCs in "other cars driving the other way on the road." (Besic 162). Passing an ISC while driving is irrelevant to the analysis of interchange.

Common supervision of the entire Michigan Market indisputably exists at the second level with ISD Bell. The ISMs and IHX employees from all eight Hubs report to ISD Bell and are supported by a centralized SEL and centralized HR personnel. (Best 275). These key facts are undisputed and unrebutted in the record.

Given the complete absence of any common supervision at the first level and the existence of common supervision at the second level, it cannot logically follow that this factor “weighs in favor” of a separate unit limited to the four Hubs located in Southfield. Not surprisingly, the RD offered no legal authority for this irrational conclusion. (Decision 19).

Pursuant to *PCC Structural*s, the Unit determination is fatally flawed and warrants review because it is not supported by evidence of the type of meaningful functional integration and employee interchange required for a unit limited to the four Hubs located in Southfield.

D. The Regional Director Departed from Reported Board Precedent by Directing an Election for a Fractured Unit

A petitioner cannot fracture a unit by seeking representation in "an arbitrary segment" of what would be an appropriate unit. *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999). "[T]he Board does not approve fractured units, i.e., combinations of employees that . . . have no rational basis." *Seaboard Marine*, 327 NLRB 556, 556 (1999). There is no rational basis to fracture the Michigan Market and arbitrarily segment the four Hubs located in Southfield from the rest of the market.

As comprehensively discussed, the eight Hubs in Michigan comprise the IHX organization’s Michigan Market, headed by ISD Bell and supported by SEL Leeson. (LaCorte 82-83; Bell 300-01, 308). *ISD Bell oversees and manages all eight Michigan Market Hubs, and only those eight Hubs*. The glue that ties the Michigan Hubs together is ISD Bell, SEL Leeson and the IHX organization’s designated Market – which includes *all* eight Michigan Hubs.

The Unit literally splits the Michigan Market in half, absent any operational or organizational rationale. The result is a fractured unit that is not an appropriate one.

E. The Regional Director Erred by Ignoring the Parties' Undisputed and Controlling Bargaining History of Agreed Statewide Bargaining Units

The Regional Director's wholesale dismissal of the parties' 20-year bargaining history of statewide bargaining units alone requires review of the Decision. The Decision goes beyond finding this probative evidence "not controlling," holding the bargaining history "[not] relevant or persuasive to conclude that the Employer has met its burden with respect to this factor to overcome the single facility presumption" (which the RD improperly misapplied). The parties' unique and undisputed 20+ year history of statewide bargaining units for organizing cannot logically be dismissed as irrelevant simply it was "not predicated on a Board certification." (Decision 17-18).

In the interest of economy, the comprehensive factual summary above will not be repeated here. But it is undisputed the CWA has organized tens of thousands of Mobility sales employees through organizing procedures and agreed *statewide* bargaining units.

The record is clear (and undisputed) that CWA organized all 40,000 of the former ATTWS sales employees through *statewide* bargaining units. (Frost 119). Also, Steve Frost, Mobility's AVP Labor, provided uncontroverted testimony that since 2005, CWA has engaged in at least 80 separate efforts to organize Mobility sales employees and in all of those the parties have agreed to utilize *statewide bargaining units*. (Frost 123-24; Tr. 123).

Even more substantively, within the IHX organization, the CWA recently organized a statewide bargaining unit of ISCs and ISSSs in Arkansas, under the Purple VRN (and failed to gain majority status for its efforts to organize a statewide unit of ISCs and ISSSs in Texas). Also, in June 2019, the CWA filed a petition with NLRB Sub-region 24, which requested to organize a "statewide" unit consisting of all three IHX Hubs in Puerto Rico. (Frost 125-131; ER 17). This

unique and undisputed bargaining history between Mobility and the CWA of organizing based on *statewide* bargaining units is a highly relevant factor that supports review and rejection of the Unit. See *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1081-1082 (2004). The RD's claim to dismiss this controlling history as "irrelevant" cannot withstand scrutiny.

F. Review is Necessary Because the Decision on Substantial Factual Issues is Clearly Erroneous on the Record and Such Errors Prejudice Mobility

The Board will grant a request for review of a Regional Director's decision where a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party. 28 CFR § 167(d)(2). The Decision is replete with clearly erroneous, substantial factual errors, on which the RD relied to direct an election for an inappropriate Unit. The following factual findings are clearly erroneous on the record and prejudicially affected Mobility's rights:

1. *"In Southfield, the Southfield ISCs and ISSSs receive their work assignments from Southfield ISMs out of the Southfield facility and they report for work to and/or out of the Southfield facility – they share the same workspace, parking lot, cafeteria and restrooms at the Southfield facility."* (Decision 13). As stated, four separate teams work from four separate Hubs in Southfield. Of the 47 employees in the Unit, only four report to work at the Southfield facility in the ordinary course. The 43 ISCs in the Unit work from home and spend 90% of their day working in the field.
2. *"There is some evidence that the Southfield ISCs also compete against each other in reaching sales targets and communicate."* (Decision 4). There is nothing in the record to support this untrue claim. There is no evidence or testimony of rewards or competitions between the four Hubs located in Southfield or the excluded Michigan Hubs. In fact, ISD Bell gathers ISCs from the entire Michigan Market for her Leadership Development program and the Hot Shots Club.
3. *"In Southfield, the ISCs have only picked up equipment from the inventories of the Southfield hubs at the Southfield facility or a nearby retail store and there is no record evidence that any of the Southfield ISCs have interacted with or received any equipment from any of the outlying hubs."* (Decision 5). This also is not true. The evidence reflects two specific instances in which a non-Southfield ISC received inventory transferred from one of the Hubs located in Southfield inventory accounts. (Bell 327-28).
4. *"There have been no temporary transfers or 'loaning' of Southfield ISCs to any of the outlying hubs or vice versa, and there is no record evidence that any of the Southfield ISCs have at any time performed work in the outlying hubs or vice versa."* (Decision 4). In fact, the record indisputably showed there has been no "loaning" of employees between any of

the Michigan Hubs or between the Hubs located in Southfield. (Bivins 203; Lant 151). The Decision's focus on the issue of "loaning" ISCs to the excluded Hubs is a red herring.

5. *"There is no evidence that any Southfield ISSSs have been temporarily assigned or 'loaned' to an outlying Hub to perform dispatch duties or vice versa."* (Decision 7). In fact, there is no evidence that an ISSS from one of the Hubs located in Southfield was "temporarily assigned" or "loaned" to another Hub located in Southfield. Undisputed evidence also demonstrated occasions where ISCs working out of a Hub located in Southfield received dispatches from other Hubs in the Michigan Market, such as Lansing. (Besic 229).
6. *"When a team ISM is absent for an extended time, the ISD or another ISM typically oversees the team in the ISM's absence."* (Decision 10). This is false. It is undisputed that in an ISM's absence, an ISC from the same Hub is selected to oversee the team temporarily.
7. *"The Southfield ISCs and ISSSs regularly attend team meetings, held on average once each day, which are conducted telephonically by their team ISM to discuss issues exclusively involving their team in Southfield regarding sales and dispatch performance, sales rankings, discounts and promotions, kudos, and general business news."* (Decision 13). This misrepresentation conflates the four separate teams working out of Southfield. Each team holds separate meetings; there are no collective meetings for those Hubs.
8. *"The Detroit team was staffed with all existing ISCs from the Novi 1, 2 and 3 teams who were transferred to the Detroit team."* (Decision 2). ISD Bell's undisputed testimony demonstrates she planned to build the Detroit team and did so by hiring additional ISCs and trained and developed them on Novi 1, 2, and 3. This was a planned expansion to minimize disruption to operations by training ISCs prior to hiring an ISSS and ISM (and creating the Hub) so they did not train an entire new team at the same time. (Bell 340).
9. *"Hubs are geographically grouped together into market segments. There are approximately eight to 12 market segments nationwide.... There are 12 Integrated Solutions Directors (ISDs) nationwide."* (Decision 2). This claim is spun from whole cloth. It is undisputed there are 8 ISM teams/Hubs in the Michigan Market; 10-16 ISCs working on each team; and approximately 250 Hubs in the country. Each Hub has an ISM, who reports to an ISD, who oversees a Market segment. (LaCorte 52-3, 88).
10. *"Since all of the Southfield ISCs work in the same geographical territory, it is not uncommon for them to see each other while driving to and from their calls."* (Decision 4). There is no dispute that each ISC's geographical territory is based on the location of their residence and not the Hub location. (LaCorte 76; Bell 298-99; Decision 3). There is nothing in the record to support this assertion that all ISCs assigned to a Hub located in Southfield live in the "same geographical territory."
11. *"ISC routes begin and end at their assigned hub."* (Decision 14). This statement lacks any support in the record. ISCs dispatch from home, as the RD recognized. (See Decision at 3: "[ISCs] are initially dispatched to their first assignment from their residence.")

12. "[T]he record also demonstrates some local supervision and autonomy over labor relations matters." (Decision 16). There is no centralized first-level control over the four Hubs located in Southfield. They operate as four separate units, with common second-level control with the other four Hubs located in the Michigan Market via ISD Bell.
13. "Despite the distinction of some centralized reporting, as previously noted, I find that departmental organization weighs in favor of finding a shared community of interest between the petitioned-for ISCs and ISSSs in Southfield." (Decision 19). There is no "departmental organization" that links the four Hubs located in Southfield. The only applicable departmental organization is the Michigan Market as extensively testified to by ISD Bell, LaCorte and Best. All this testimony was unrebutted in the record.

This is not a comprehensive list of the factual errors in the Decision, but rather a compilation of the core errors on which the RD relied in support of her flawed conclusion that the four Hubs located in Southfield comprise an appropriate bargaining unit. Based on these substantial factual errors, the Board should grant the Employer's Request for Review.

IV. CONCLUSION

For all these reasons, the Board should grant the Employer's Request for Review, reverse the Decision, and find the Unit inappropriate because the only appropriate unit is a unit comprised of all eight Hubs in the Michigan Market.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2021, a copy of the foregoing was served upon the following, in the manner indicated:

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