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AT&T Mobility Services, LLC and Communication Workers of America, AFL–CIO, CLC, Petitioner. Case 07–RC–269780

August 2, 2021

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND RING

The Employer’s Request for Review of the Regional Director’s Decision and Direction of Election is granted as it raises substantial issues warranting review. On review, we affirm the Regional Director’s Decision, but only for the reasons stated herein.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

I. BACKGROUND

As more fully set forth in the Regional Director’s decision (pertinent portions of which are attached), the Employer is a nationwide wireless telecommunications company, which also operates retail stores. In August 2017, the Employer launched IHX, a new outside sales organization separate from its existing retail operations. The IHX organization includes the integrated sales consultants (ISCs) and integrated sales support specialists (ISSSs) at issue in this proceeding. IHX has a total of eight hubs in the state of Michigan: four hubs are located in the same building in Southfield—Novi 1, Novi 2, Novi 3, and Detroit—and collectively serve the Detroit metro/tri-county area. The remaining four hubs are located in Howell, Saginaw, Grand Rapids and Cadillac.

In this case, the Petitioner seeks to represent a unit of ISSSs based in the four Southfield hubs, as well as the ISCs who receive dispatches from the Southfield facility and who work in the Detroit metropolitan area. The Employer contends that the only appropriate unit for bargaining purposes must also include the ISSSs and ISCs who work at or from the other four Michigan hubs. The

¹ The Regional Director also directed a mail-ballot election. Pursuant to Sec. 102.67(c) of the Board’s Rules and Regulations, the ballots were automatically impounded.

² In *PCC Structurals*, the Board also explained that nothing in its decision “change[d] or abandon[ed]” principles “regarding bargaining units that the Board deems presumptively appropriate,” and stated that the Board would “continue to apply existing principles regarding bargaining units that the Board deems presumptively appropriate[.]” *Id.*, slip op. at 9 fn. 44.

Chairman McFerran joins her colleagues in disavowing the Regional Director’s reliance on *PCC Structurals* here. For the reasons stated in her dissenting opinion in *PCC Structurals*, the Chairman adheres to the

Regional Director concluded that the petitioned-for unit constitutes a single-facility unit; that the Board’s single-facility presumption therefore applies; and that the Employer had not rebutted the single-facility presumption.¹ The Regional Director also found that the petitioned-for unit was “sufficiently distinct” from the employees at the excluded hubs and was therefore appropriate under *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017).

II. ANALYSIS

As a preliminary matter, we disavow the Regional Director’s reliance on the framework set forth in *PCC Structurals*. *PCC Structurals* applies when a non-petitioning party contends that the petitioned-for unit is inappropriate unless the unit includes certain additional employee *classifications*; it does not apply where, as here, a party contends that the petitioned-for unit is inappropriate without the inclusion of employees at additional *locations*.² *Id.*, slip op. at 1.

Applying the proper analytical framework herein, we agree with the Regional Director that the Board’s single-facility presumption of appropriateness applies to the petitioned-for Southfield facility, and that the Employer did not rebut that presumption.

Here, the ISSSs in the petitioned-for unit all perform their work (including dispatching the ISCs) in a common cubicle area in the Southfield facility. And although the petitioned-for ISCs depart from their respective homes rather than the Southfield facility when receiving their first daily dispatch and return to their homes at the end of each workday,³ these ISCs visit the Southfield building one to four times per week for such purposes as picking up equipment that customers request, dropping off trade-in equipment, and meeting with their team ISSS for the weekly trunk inventory count. Furthermore, even assuming that the Employer has established that the four Southfield hubs are separate business units, such evidence does not render the single-facility presumption inapplicable.⁴ See *Visiting Nurses Assn. of Central Illinois*, 324 NLRB 55, 55 (1997) (Board affirmed Regional Director’s application of the single-facility presumption to find that the petitioned-for nurses at the employer’s facility, who worked primarily at

view that the Board should return to the unit-determination standard set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *affd.* sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), which *PCC Structurals* overruled. *Id.*, slip op. at 13–26.

³ To the extent that one could interpret the Regional Director’s finding that “Employees are assigned to one hub; ISC routes begin and end at their assigned hub” as stating that ISCs begin and end their workdays at the Southfield facility rather than at their respective homes, we disavow that statement.

⁴ *Cf. Child’s Hospital*, 307 NLRB 90 (1992).

patients' homes rather than at the employer's office building, to be an appropriate unit).

We agree with the Regional Director that the Employer has not rebutted the single-facility presumption because although the Southfield employees share similar skills, functions, and working conditions with the employees in the excluded hubs, the bargaining history factor is either neutral or may provide some support to presumptively-appropriate unit, and all the other factors support the petitioned-for unit's appropriateness, including the Southfield employees' geographic proximity, greater contact and interchange with one another (versus their lack of contact and interchange with the employees of the excluded hubs), and the Southfield managers' significant degree of local autonomy.⁵

Even assuming, however, that the four hubs operating out the Southfield building were not considered a "single facility," the petitioned-for unit is still appropriate under the Board's traditional community of interest test for petitioned-for multi-facility units. "In determining whether a petitioned-for multifacility unit is appropriate the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history." *Audio Visual Services Group, LLC*, 370 NLRB No. 39, slip op. at 2 (quoting language from *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1081 (2004)). Further, "[a]n appropriate multi-facility unit is one that has a 'distinct' community of interest from the excluded facilities." *Id.* (citing *Laboratory Corp.*, 341 NLRB at 1082; *Acme Markets, Inc.*, 328 NLRB 1208, 1209 (1999)).

Here, although the petitioned-for and excluded employees' common skills and duties as well as terms and conditions of employment arguably weigh in favor of a broader, Michigan-wide unit, the employee interchange and functional integration factors weigh in favor of the petitioned-for unit. Notably, the Southfield employees have more contact with one another than they do with the excluded employees, and any contact that the Southfield employees have with excluded employees always or almost always involves employees from all Southfield hubs.⁶

Next, the geographic proximity factor weighs heavily in favor of the appropriateness of the petitioned-for unit. The Southfield facility is located in the Detroit standard

metropolitan area and covers that same geographic territory, whereas none of the excluded hubs are included in the Detroit standard metropolitan area.⁷ The closest excluded hub (Howell) is located 39 miles from the Southfield facility and the Saginaw, Grand Rapids, and Cadillac hubs are located 96, 142, and 202 miles from the Southfield hub, respectively. Moreover, the Board has routinely found that a unit consisting of all of an employer's locations within a standard metropolitan statistical area is appropriate even when the petitioned-for unit did not coincide with the employer's administrative lines.⁸

Further, even if the centralized supervision and management factor weighs against the appropriateness of the petitioned-for unit, its weight is not heavy. We note that where, as here, front-line supervisors (the Integrated Solutions Managers) have significant autonomy with respect to day-to-day labor relations matters and the petitioned-for locations cover a defined geographic area in which no excluded location is located, the fact that all petitioned-for employees do not share a supervisory link among themselves that is not also shared by the excluded employees does not render the unit inappropriate.⁹ Finally, the bargaining history factor is, at worst, neutral to finding the petitioned-for unit appropriate.

In sum, having weighed all of the factors, we conclude that even if the single-facility presumption is inapplicable here, the petitioned-for unit is an appropriate unit because it has a distinct community of interest from the excluded hubs.

ORDER

The Regional Director's Decision and Direction of Election is affirmed.

Dated, Washington, D.C. August 2, 2021

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

⁵ See *Hilander Foods*, 348 NLRB 1200, 1200 (2006); *Esco Corp.*, 298 NLRB 837, 839 (1990).

⁶ See, e.g., *id.*, slip op. at 2-3; *Motts Shop Rite of Springfield*, 182 NLRB 172, 173 (1970).

⁷ See *Esco Corp.*, supra at 839.

⁸ See, e.g., *Drug Fair-Community Drug Co., Inc.*, 180 NLRB 525, 527 fn. 10 (1969) (collecting cases); see also *U-Tote-Em Grocery Co.*, 185 NLRB 52 (1970).

⁹ See, e.g., *Verizon Wireless*, 341 NLRB 483 (2004); *U-Tote-Em Grocery Co.*, supra at 52-53; *Frito-Lay, Inc.*, 170 NLRB 1678, 1678-1679 (1968).

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

DECISION AND DIRECTION OF ELECTION

The issue presented in this case whether a single-facility unit sought by Petitioner is appropriate. Petitioner contends that a single-facility unit comprised of 50 integrated sales consultants (ISCs) and integrated sales support specialists (ISSSs) employed at and out of the Employer’s office building located in Southfield, Michigan (the Southfield facility) is an appropriate unit for bargaining. The Employer contends that the only appropriate unit is a multifacility state-wide unit which must include 50 additional employees employed in the same classifications at four additional outlying facilities located in Howell, Grand Rapids, Saginaw and Cadillac.¹

I. DECISION

A hearing officer of the Board held a video hearing in this matter where all parties were allowed to present evidence and arguments in support of their positions. As explained below, based on the record and relevant Board law, I find that the petitioned-for unit is an appropriate unit.

II. FACTS

A. *The Employer’s Operations*

The Employer is engaged in wireless telecommunications and operates retail stores on a nationwide basis. In July 2015, the Employer acquired DirecTV (DTV), an entity providing satellite television services. At that time, the Employer had 25 million subscribers, 20 million of whom had a wireless provider other than the Employer. On August 1, 2017, the Employer nationally launched a new outside sales organization, separate from its retail sales organization, referred to as “in home experts” or

“IHX,” which includes the ISC and ISSS classifications at issue in this proceeding. The IHX organization focuses on a new base of potential customers, specifically residential customers,² in contrast with retail store customers, who purchased DTV but were not current wireless customers of the Employer. The purpose of this new outside sales organization was to send ISC employees to the homes of DTV customers during DTV installation and service³ to convert wireless customers from T-Mobile, Sprint, or Verizon to the Employer’s cell phone service, referred to as “Pre-Paid Voice” (PPV). IHX has a separate business plan, management, employees, equipment, systems, inventory, and operating budget from the DTV operations.

The IHX business is structured by systematic locations nationwide called “hubs” located in various Employer facilities such as corporate office buildings and certain retail store locations. Hubs are geographically grouped together into market segments. There are approximately eight to 12 market segments nationwide. Eight hubs in Michigan comprise the IHX Michigan market—four of these hubs are located in an office building at the petitioned-for Southfield facility⁴ and four hubs are separately located in Howell,⁵ Grand Rapids, Saginaw, and Cadillac.⁶ Each hub is comprised of a team of approximately eight to 12 ISCs and ISSSs—there is one ISSS/dispatcher per team and the remaining team employees are ISCs.

The Southfield hubs/teams⁷ are named Novi 1, Novi 2, Novi 3, and Detroit.⁸ During the first year of the IHX launch in 2017 to 2018, Novi 1 and Novi 2 occupied space at an AT&T retail store located in Novi. These two teams outgrew their space resulting in the Novi 2 team moving for a short time to another AT&T retail store located in Farmington Hills. Thereafter, in about May 2018, as the IHX business continued to grow, the Novi 1 and Novi 2 teams moved to the petitioned-for Southfield facility and the Novi 3 team was created there with all newly hired employees. Thereafter, in about January 2019, the Detroit team was created and added to the Southfield facility. The Detroit team was staffed with all existing ISCs from the Novi 1, 2 and 3 teams who were transferred to the Detroit team. The four Southfield hubs/teams share the same

¹ In addition to taking the position that a state-wide facility is appropriate, the Employer takes the position that the two petitioned-for employee classifications (ICS and ISSS) are not an appropriate bargaining unit.

² There is no record evidence to support Employer counsel’s statement at the hearing and in his posthearing brief that ISCs provide services to small businesses as well as residential customers.

³ The Employer does not employ the DTV technicians who install and service satellite television.

⁴ Throughout the U.S., particularly in densely populated areas such as the Detroit area, multiple hubs are commonly located together in a single office building like the Southfield facility.

⁵ The Howell hub relocated from Lansing.

⁶ The Cadillac hub relocated from Traverse City.

⁷ At the hearing and in brief, the parties disagreed regarding the use of the terms “hub” and “team” interchangeably. While I note, as pointed out by Petitioner, that the Employer’s glossary of IHX terms defines “hub” as an “office facility within an IHX market where ISSSs and ISMs work,” this is not necessarily inconsistent with the Employer’s position that the terms are interchangeable.

⁸ The Novi 2 team is also known as “the Dominators” and the Detroit team is also known as “Motor City Muscle.”

geographical sales territory consisting of the Detroit and metro-Detroit areas, also known as the Wayne, Oakland and Macomb tri-county area. Based on the current IHX market status in Michigan, the Employer does not anticipate further growth in that market in the near future.

The petitioned-for Southfield facility is approximately 39 miles from the Howell hub, 142 miles from the Grand Rapids hub, 96 miles from the Saginaw hub, and 202 miles from the Cadillac hub.

There are 12 Integrated Solutions Directors (ISDs) nationwide. ISD Tameeka Bell oversees the Michigan market.⁹ She works in an office located at the Southfield facility as well as in the field observing all of the ISCs and ISSSs and visiting the outlying Michigan hubs. Bell reports to Adam Ragab, Assistant Vice President of IHX Sales,¹⁰ who reports to Rob Forsyth, Senior Vice President of National Distribution for IHX. Forsyth reports to Kelly King, President of Distribution for the Employer.

Eight Integrated Solutions Managers (ISMs) report directly to Bell, one for each hub in Michigan, to whom the team ISCs and ISSSs report. At the Southfield facility, the ISM for the Novi 1 team is Sammie Pierce; the ISM for the Novi 2 team is Christopher Isadore; and the ISM for the Detroit team is Sean Brown.¹¹ The ISM for the Novi 3 team has been vacant since about November 2020—since then, the Novi 3 team ISCs and ISSS have been dispersed among the other three teams in the Southfield facility (Novi 1, Novi 2 and Detroit).

B. Bargaining History

The parties stipulated there is no collective bargaining history covering any of the employees in the petitioned-for unit. There is no record evidence of collective bargaining history regarding any ISCs and/or ISSSs at any of the Michigan hubs. Petitioner represents approximately 35,000 employees employed by the Employer nationwide who are covered by collective-bargaining agreements (CBAs) between the Employer and Petitioner. Four CBAs between the parties were identified as the “Orange,” “Black,” “Green,” and “Purple” CBAs. With respect to the Orange CBA, the Employer and Petitioner have been parties to successor agreements since about 2001, via voluntary recognition. Regarding the Black, Green and Purple CBAs, the Employer and Petitioner have been parties

to a CBA since at least 2014, 2015 and 2016, respectively, also via voluntary recognition. The most recent Orange CBA covers approximately 15,000 employees employed in 36 states and Washington D.C.; the Black CBA covers employees employed in nine southeast states; the Green CBA covers employees employed in Puerto Rico;¹² and the Purple CBA covers employees employed in five southeast states. All four CBAs cover employees generally working in the categories of retail store employees, call center employees and network technicians, and, except for the Purple CBA, exclude outside sales employees. The Purple CBA covers some outside sales employees which appear to be classified as “COS Sales Advocates.”¹³

C. The Petitioned-for ISCs and ISSSs

1. Duties, Terms and Conditions of Employment of ISCs

The ISCs generally work the same hours as the DTV technicians, from about 8 a.m. to 4 p.m., Monday through Saturday, as scheduled by their team ISM. All of the ISCs in Michigan reside in or near the area to which they are dispatched to work. Accordingly, all of the Southfield ISCs reside in and cover the Detroit/metro-Detroit tri-county territory regardless of which team they are on. In general, all of Southfield ISCs’ assignments range within a 50-mile radius from their residence. On average, they are dispatched to four to six customer homes per day, with each stop lasting anywhere from about 45 minutes to multiple hours depending on the extent of wireless services provided. They are initially dispatched to their first assignment from their residence—dispatch calls are transmitted to their iPads by their respective ISSS.¹⁴ 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. When they arrive at their first customer stop, the ISCs activate, or “lock in,” their first dispatch by pushing “start” on their iPad. After each customer stop, the ISCs call their team ISSS to advise of any necessary follow-up appointments and get dispatched to their next assignment.

All of the ISCs¹⁵ in Michigan perform the same job duties. They spend 80 to 90 percent of their working time in the field performing outside sales at customer homes.¹⁶ They are dispatched by their team ISSS to residential homes in which a DTV technician is providing installation

⁹ Effective January 15, 2021, Bell will no longer be ISD for the Michigan market having accepted another position with the Employer in Florida. The record is silent as to Bell’s replacement.

¹⁰ There are four Assistant Vice Presidents of IHX Sales nationwide.

¹¹ The record does not identify the ISMs for Howell, Grand Rapids, Saginaw and Cadillac hubs.

¹² In about 2019, Petitioner attempted to organize ISCs and ISSSs employed in Puerto Rico via a card check procedure and voluntary recognition which was rejected by the Employer. Thereafter, Petitioner filed a

petition in Case 12–RC–243403 to represent the ISCs and ISSSs in the entire Puerto Rico IHX market consisting of three hubs. However, that petition was withdrawn by the Petitioner before any election stipulation or decision was reached.

¹³ The Purple CBA does not specifically reference ISCs or ISSSs.

¹⁴ Some ISSSs dispatch initial calls to ISCs the night before and others in the early morning hours.

¹⁵ ISCs are also referred to as “experts” or “in-home experts.”

¹⁶ The ISCs drive approximately 46,000 miles per year.

and other DTV services. The ISC provides a company-described in-home “white glove experience” during which the ISC provides assistance in installing and downloading DTV and AT&T apps onto the customer’s devices. Through this process, the ISC evaluates the customer’s wireless needs and transitions to engaging the customer primarily in the “upsale” of PPV, as well as other wireless products and services such as smart phones, watches, tablets, broadband internet service (high-speed wireless internet connection), and AT&T TV (multi-channel streaming television service). ISCs are issued company smart phones, iPads and scanning devices for processing customer sales. They have a “level 1A” authority in the Employer’s OPUS point of sale system¹⁷ allowing them to process customer sales via their iPad and to offer customers current promotions, discounts, and credits.

In Southfield, the ISCs spend remaining work time in training, conference calls, and processing paperwork. They perform such duties from home and when they are at the Southfield facility. Although the Southfield ISCs do not have offices at the Southfield facility, they visit the facility regularly, at least one to two times per week, to pick up equipment requested by customers, drop off trade-ins, and meet with their team ISSS for a weekly trunk inventory count as further described below. They must provide notification to their team ISM when visiting the facility. They engage with other employees working there, mainly their team ISSS and ISCs about work operations as well as social matters. There is some evidence that the Southfield ISCs also compete against each other in reaching sales targets and communicate with each other by text message regarding sales and personal matters. The Southfield ISCs do not compete against or have regular contact with ISCs from the outlying hubs. There is no record evidence as to the amount of time spent in the hub offices by the Howell, Grand Rapids, Saginaw and Cadillac ISCs. There is no record evidence that ISCs report to the Southfield facility.

As noted, in about January 2019, when the Detroit team was created, it was staffed with ISCs from the other Southfield teams, and since about November 2020, while the ISM position on the Novi 3 team has been vacant, the ISCs on the Novi 3 team have been dispersed among the other three Southfield teams. 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. For the most part,

the Southfield and non-Southfield ISCs do not know each other by name and are familiar with each other only to the extent they participate in bi-weekly conference calls and/or monthly outings with the ISD, as further described below.

As the ISCs perform outside sales, they drive company vehicles containing up to \$10,000 of equipment for which they are held accountable—this is called their “trunk inventory.” They replenish inventory as needed in coordination with their team ISSS. On occasion, a customer may request equipment, such as a certain smart phone or tablet, which is not contained in the ISC’s trunk inventory. When this happens, the ISC requests such equipment from the team ISSS and the ISSS checks it out of the team inventory to the ISC’s “cart” as further described below. The ISC then picks up such equipment at the hub. If the requested equipment is not contained in the team inventory, then the team ISSS locates it from another hub’s inventory or from a local retail store and the ISC picks up the equipment there. 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.

There are three examples in the record of limited interaction between non-Southfield ISCs and the Southfield hubs regarding equipment requests. In this regard, on one occasion in about December 2020, a Howell ISC picked up a handset from a Southfield hub—there is no record evidence as to who requested the equipment or how. On another occasion during the same time period, the same Howell ISC received equipment at a customer’s home delivered by a Southfield ISM from a Southfield hub. In that instance, the Howell ISC did not request the equipment, rather, the ISD made the equipment transfer arrangements between the Southfield and Howell ISMs for delivery to the ISC. Additionally, in about October 2020, a Saginaw ISC who was performing an extraordinarily large job needed 13 mobile devices for the installation of 13 wireless lines, some of which were requested from Southfield. There is no record evidence that any ISCs were involved in these equipment transfers. Rather, the Southfield and Saginaw ISMs arranged the inventory transactions and equipment deliveries from Southfield to Saginaw.

All ISCs are paid salary plus commission based on sales—there is no record evidence regarding salary ranges. Performance metrics¹⁸ and sales goals¹⁹ are

¹⁷ The record was unclear as to whether OPUS was an acronym and, if so, what it stood for.

¹⁸ Performance metrics are data organized by IHX designed to help the organization monitor whether it is on track to achieve its sales goals.

¹⁹ Sales goals for ISCs are primarily targeted to the sale of PPV—the PPV sales goal for ISCs is 30 plus sales per month.

tracked by each team ISM and the ISD on a daily basis and provided to the ISCs. ISCs are subject to performance management and discipline if they do not meet their sales goals. ISCs are required to possess a high school diploma but do not require any significant sales or other experience to be hired, although some sales experience is preferred. Newly hired ISCs attend a 2 to 3-week training session. Until the onset of the COVID-19 pandemic in about March 2020, training for new ISCs was held nationwide in Dallas, Texas for 1 week followed by 1 week of on-the-job training at the ISC's individual hub. Currently, all training has been conducted virtually by *Zoom* for about 2 weeks followed by 1 week of on-the-job hub training.

Since 2018, the ISCs have participated in a market-wide online Webex group chat created by ISD Bell called "Passion, Positivity, Power" to bolster team-building among the ISCs—in this group chat, the ISCs create posts and comments regarding sales and performance, promotions, and employee incentives. In 2019, one ISC from each hub in Michigan attended a leadership development class directed by the Saginaw ISM in Lansing. This leadership group of ISCs continued to meet for about 6 months thereafter until it was disbanded. Top performing ISCs who reach sales targets of 30 plus PPV sales per month are invited into the "Hot Shots Club," created by ISD Bell at the start of her tenure in 2018. In recognition of their sales performance, an average of 17 to 24 "hot shot" ISCs are invited to a monthly call and social outing organized by Bell. Social outings have taken place at such venues as Detroit Tigers Comerica Park or Topgolf in Auburn Hills. Hot Shot outings were held on about a monthly basis before the onset of the COVID-19 pandemic. Since then, about four outings have taken place—the last outing was at Topgolf in Auburn Hills in November 2020. Low performing ISCs are required to attend periodic conference calls conducted by Bell to discuss job performance and suggestions for improvement in an open dialogue setting.

2. Duties, Terms and Conditions of Employment of ISSSs

The ISSSs²⁰ work the same hours as ISCs, 8 a.m. to 4 p.m., Monday through Saturday, as scheduled by their team ISM. All of the ISSSs in Michigan are stationed at their hub facility and perform the same job duties which include dispatching work assignments to the ISCs. They use the Employer's Oracle Field Service Cloud (OFSC) dispatch system to dispatch work assignments to ISCs on their team. In making assignments to ISCs, the ISSSs, in

coordination with their ISM, consider data compiled into the OFSC system along with other factors such as: starting/residential location of ISC relative to the customer appointments; type of DTV appointment;²¹ time of day; and traffic pattern. As noted, in general, dispatches are kept to within about a 50-mile radius from an ISC's residence. Work assignments and other communications from the ISSSs are typically transmitted to the ISC's iPad or sometimes via a team group message²² depending on the team's preference. Following each dispatch, the ISSSs are required to enter notes and answer a pre-determined checklist of questions into the OFSC system which are subject to review by management and used to track performance metrics and sales.

With regard to the Southfield hubs, where all assignments are dispatched to the same geographical area, there is a component called "Lock" in the OFSC dispatch system which prevents more than one ISC being dispatched to the same call. However, on occasion, a system error will occur resulting in Southfield ISCs from different teams being dispatched to the same customer home. This is called a "double-dispatch." This has occurred when an ISC is held up at one call and cannot get to the next call, resulting in the generation of an extra dispatch ticket for a missed call. In general, the ISC who arrives first—regardless of which team they originate from—will stay and the other ISC will call the team ISSS for another assignment. Double-dispatches in Southfield have never involved ISCs from the outlying hubs.

The four ISSSs who work at the Southfield facility are: Zarinah Vance, the ISSS for the Novi 1 team; Althea Daniels-Potts, the ISSS for the Novi 2 team;²³ Michael Neumann, the ISSS for the Novi 3 team; and Lanina Fleming, the ISSS for the Detroit team. They work side-by-side in cubicles separated by partitions in the "S" office building of the Southfield facility which is part of an office complex that largely consists of multiple AT&T buildings. Their workstations are located down the hall from ISD Bell's office. As noted, the Southfield ISSSs dispatch work assignments to their team ISCs throughout the Detroit/metro-Detroit tri-county area. The Southfield ISSSs have a group chat²⁴ among themselves to communicate with each other regularly about inventory and daily operations—this Southfield chat group is not accessible to ISSSs in the outlying hubs. In addition to their dispatch duties, ISSSs manage company vehicles within their team's

²⁰ ISSSs are also referred to as "dispatchers" or "sales support leads (SSLs)."

²¹ Requests for service are scored in the ORACLE system based on the likelihood of sales and the ISSS looks for high-scoring jobs likely to generate sales for the ISCs.

²² Presumably a group text message including all team ISCs and the team ISSS.

²³ ISSS Potts is a former Novi 2 ISC.

²⁴ Webex and/or iMessage.

fleet driven by ISCs, including scheduling maintenance, inspections, and repairs and maintaining vehicle records.

Due to the fluctuating nature of their Monday through Saturday work schedule, each ISSS is regularly absent for 1 day during each week. When an ISSS is off work on a regular day or absent up to a week due to other reasons such as vacation or illness, another team ISSS will cover dispatches in the absence of the ISSS. In this regard, the ISSSs are paired together and scheduled to cover for each other on their off days as well as other absences. Specifically, the Novi 1 ISSS is paired with the Detroit ISSS; the Novi 2 ISSS is paired with the Novi 3 ISSS; the Howell ISSS is paired with the Grand Rapids ISSS; and the Cadillac ISSS is paired with the Saginaw ISSS. In Southfield, in the event both paired ISSSs are absent, then the other Southfield ISSSs will fill in. 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.

On rare occasion, a Southfield ISSS will perform dispatch duties for an outlying or vice versa. The record vaguely describes one undated example of a Novi 1 ISSS performing dispatch for the Howell and Saginaw hubs and another example in about 2018 of a Saginaw ISSS performing dispatch for all four Southfield hubs in the absence of the Southfield ISSSs.

Each hub maintains its own inventory which is received, managed and distributed by the ISSSs. In Southfield, there are four separate locked cages at the facility which hold inventory for each team—only the ISSS and ISM have keys to their team’s inventory cage. The ISSSs scan and check in equipment delivered by FedEx and UPS into the OPUS inventory system using a specific location ID assigned to each hub. They re-scan and check out equipment from their team inventory to the ISCs for sales to customers. On average, the ISSSs are responsible for about \$500,000 worth of inventory contained in their inventory cage and the vehicles of ISCs on their team. The ISSSs continually track inventory by performing weekly trunk audits of the ISCs’ vehicles and check out additional inventory to the ISCs as needed. Additionally, the ISSSs perform monthly inventory audits for the hub’s overall audits conducted regularly by the IHX organization. ISSSs are subject to discipline for lost inventory.

In Southfield, if equipment requested by an ISC is not available in the team inventory, the ISSS will request it

from another Southfield hub typically by leaning over a partition at the Southfield facility and asking another ISSS for the requested product, or through their group chat. If the inventory is not available in any Southfield inventory, then the ISSS will attempt find it at a nearby retail store.²⁵ Only as a last resort and on rare occasion will a Southfield ISSS request equipment from an outlying hub—there are no such examples in the record. The team ISM of a requesting ISSS must approve all transfers of inventory involving another team/hub or retail store. When inventory is transferred to the requesting hub, the requesting hub’s location ID is assigned to it in OPUS which allows the requesting ISSS to check in the equipment and transfer it to the requesting ISC’s “cart” for pick-up by the ISC. As noted, the record contains limited and vague evidence which does not address the involvement of ISSSs regarding requests for equipment by outlying hubs from the inventory of the Southfield hubs.

The ISSSs also have some reporting and compliance obligations with regard to customer bill credits, equipment returns and trade-ins. They track and review customer trade-ins for accuracy. Additionally, they must be aware of all national promotions and discounts periodically offered to customers which are rolled out by the Employer through a Sales Execution Leads (SELS) assigned to each market.²⁶ The SEL for the Employer’s Michigan market is Thomas Leeson²⁷ who works closely and in coordination with ISD Bell to assist the ISSSs regarding national initiatives as well as dispatch efficiency.²⁸ All eight Michigan ISSSs attend a bi-weekly meeting via Webex conducted by Leeson to discuss dispatch efficiency including reviewing ISSS overtime data relative to ISC sales goals and performance metrics.

All ISSSs are paid hourly and are eligible for an annual bonus—there is no record evidence regarding hourly wage ranges or bonus amounts. Hiring qualifications for ISSSs include competent communication, organization and multi-tasking skills; and ability to use computerized dispatch and other communications systems. The record does not address training for newly hired ISSSs—regular on-the-job training is conducted by the team ISMs.

3. Common Terms and Conditions of Employment of ISCs and ISSSs

As noted, all ISCs and ISSSs in Michigan work a Monday to Saturday work schedule with Sunday and one other regular day off as scheduled by the team ISM. Off-days

²⁵ The ISSSs are able to view all available inventory in Michigan through OPUS including in each hub and at retail stores.

²⁶ SELS are part of the National Operations Organization side of AT&T.

²⁷ Leeson reports to Michelle Murray, Regional Project Execution Manager, who reports to the Director of Sales Operations, both of whom

report to Assistant Vice President of National Distribution Operations Pasquale LaCorte.

²⁸ Like ISD Bell, Leeson appears to work at or out of the Southfield facility.

are distributed evenly based on seniority. All ISCs and ISSs are subject to the same company-wide policies, procedures and work rules as set forth in the Employer's Code of Business Conduct, fleet management policy, expense reporting policies, performance management policies, and paid time off (PTO) and leave of absence (LOA) policies. Along with IHX management employees, they all receive the same company benefits: health and disability insurance; 401(k) retirement benefits; vacation, sick and paid time off (PTO) benefits; and employee discounts on all AT&T products and services. They all wear the same company-issued uniform consisting of dark pants, a company-provided shirt and jacket and receive a clothing allowance two times per year to order attire from a company website. All Michigan ISCs and ISSs are invited to an annual company picnic which is organized by Bell at a convenient location to accommodate employees throughout the state.

All ISCs and ISSs attend regular meetings held telephonically by their team ISM.²⁹ These calls last from about five to 25 minutes and are typically conducted on a daily basis, however, the frequency as well as timing of the meetings are at the discretion of the individual ISM. Topics discussed at these meetings include sales and dispatch performance, sales rankings, discounts and promotions, kudos,³⁰ and general business news. All ISCs and ISMs also regularly communicate with their team ISM via email regarding monthly performance expectations as well as company rules, policies and procedures and most teams also have an iMessage texting group for group communication throughout the day. All ISCs and ISSs in Michigan attend mandatory bi-weekly Webex meetings conducted virtually by ISD Bell bi-weekly on Fridays called "Fired-Up Fridays" during which topics such as dispatch and sales performance, new sales promotions, and recognition of top performing employees are discussed—these meetings are also attended by all eight ISMs and SEL Leeson. Newly hired ISCs and ISSs attend monthly calls also conducted by Bell.

The ISCs and ISSs in Southfield share the same parking lot, cafeteria and restrooms at the Southfield facility. For the most part, the Southfield ISCs and ISSs are self-sufficient and do not require much day-to-day supervision—they reach out to their team ISM as necessary and rely on their counterparts when they require assistance in the field or at the Southfield facility.³¹ There is some record evidence regarding team building meetings and sales competitions between the Southfield teams which have been organized by the Southfield ISMs or former

Employer Assistant Vice President Dana Poole. However, the timing of such meetings is unclear.

4. Hiring, Transfer and Discipline

Hiring for all IHX teams is largely centralized nationwide. In this regard, IHX job openings for all non-management and management positions are posted internally and externally for 7 days in "Career Path," an AT&T posting platform. ISCs and ISSs do not have any automatic transfer rights regarding open positions. Rather, they must go through the formal hiring process. Job applications for ISCs and ISSs are screened and reviewed by a staffing management team of staff managers who forward viable candidates to a centralized hiring manager—external job applicants are required to provide a video interview for review. The record is unclear as to whether the centralized manager forwards suitable candidates to another hiring manager or directly to the ISD for in-person interviews. The ISD conducts final interviews of candidates for his/her market and makes hiring recommendations to the hiring manager who makes final selections and directs staffing managers to prepare job offers. Although the record does not address the extent to which the team ISMs are involved in the interview and hiring process, there is record evidence that the ISMs work in coordination with the ISD in hiring matters involving their team. All ISC job offers are subject to driving reviews.

All permanent transfers in the IHX organization must be processed via a "Personnel Change Request" (PCR). For ISCs and ISSs, a PCR is initiated by the ISD and an ISM at the individual hub and processed by HR and payroll operations. Some ISCs in Michigan have requested a permanent transfer from one hub to another based on residential moves. In the last year, one Cadillac ISC and one Howell ISC permanently transferred to the Grand Rapids hub upon request because they resided closer to Grand Rapids.

Discipline for all ISCs and ISSs is handled by the team ISMs in coordination with the ISD. Although the record does not address a formal discipline procedure for employees, all discipline goes through human resources (HR). Jane Marie Best is the Employer's HR Business Partner and handles all HR matters for the eastern U.S. IHX organization.³² Reporting to Best is Employee Relations Manager Michelle Pedone who handles HR and performance management matters for the ISCs and ISSs in Michigan. Deficient performance of ISCs and ISSs is initially addressed by the team ISMs, along with the ISD, who provide coaching for the deficient employee in an

²⁹ ISD Bell also attends these meetings on occasion.

³⁰ Kudos are verbal recognition by management to ISCs regarding their sales performance.

³¹ This is the peer-to-peer model for work assistance.

³² Best's counterpart for the western U.S. is April Cook—the record does not address their reporting structure.

effort to improve job performance. If coaching is not successful, then the ISM and ISD will contact Pedone to request a performance review by HR which often includes a recommendation for discipline. HR determines an appropriate measure of employee discipline which can include placing the employee on a 60-day “formal performance commitment process” which is monitored by the ISM and ISD. If the employee does not succeed in improving performance, then the ISM and ISD, in coordination with HR, will consider employee termination.

D. *The ISMs and ISD*

As noted, all ISCs and ISSSs are overseen by and report directly to their team ISM who reports to the ISD for the market.³³ In Michigan, the job duties of the ISMs and ISD are similar and include responsibility for managing employee performance matters, including recruiting and hiring, coaching, training, evaluation, and discipline; scheduling; and strategic planning and development, including analyzing profit and loss. The ISMs perform these duties on a hub/team-wide basis while the ISD performs them on a market-wide basis. Like the Southfield ISCs, the Southfield ISMs do not have offices at the Southfield facility and spend a majority of their time working in the field. They use the cafeteria as their workspace when they report to the Southfield facility. The record contains one vague example of ISM Pierce performing dispatch duties for her team ISM. The record does not address office arrangements for the ISMs in outlying hubs.

The ISMs regularly observe their team ISCs providing in-home white-glove experiences to customers as well as other sales and services. The ISD likewise observes the performance of ISCs in weekly “ride-alongs” conducted among the eight Michigan hubs. The ISMs are in charge of weekly work as well as vacation scheduling for ISCs and ISSSs on their team. In Southfield, each team meets annually, around the end of December to the beginning of January, to request and plan vacation time for the upcoming year—all vacation requests are subject to the team ISM’s approval. Each ISM posts work and vacation schedules for their team in the Employer’s “Management Out Of Office Scheduling Environment” (MOOSE) system. ISCs and ISSSs have access to MOOSE to view schedules for their own team only.³⁴ ISD Bell holds weekly calls with all eight ISMs and regularly communicates with them via a group text message to discuss staffing for the entire market³⁵ and weekly one-on-one meetings with each ISM to discuss the sales and dispatch

performance of the individual teams, coaching opportunities, team budget issues and leadership metrics.

The ISMs, like the ISCs and ISSSs, are regularly absent from work for a day during each week due to the fluctuating nature of their Monday through Saturday work schedule. An ISM may also be absent for the same or longer time due to reasons such as vacation or illness. Typically, when a team ISM is absent for a short time of a week or less, an experienced ISC from the team will be designated as acting ISM. When a team ISM is absent for an extended time, the ISD or another ISM typically oversees the team in the ISM’s absence.

III. UNIT SCOPE AND COMPOSITION

A. *Board Law Regarding Single-Facility Units*

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. *D&L Transportation, Inc.*, 324 NLRB 160, 160 (1997). The party opposing the single-facility unit bears the heavy burden of rebutting its presumptive appropriateness. *J&L Plate, Inc.*, 310 NLRB 429, 429 (1993); *Renzetti’s Market, Inc.*, 238 NLRB 174, 175 (1978). In order to rebut the presumption, the party challenging the presumption must be able to show that the day-to-day interests of the employees at the single location have merged with those of the employees at the other locations. *Id.* at 175. The Board has found a single unit of multiple jobsites to be appropriate when it has a “distinct” community of interest from excluded facilities sought to be added. *Audio Visual Services Group, LLC*, 370 NLRB No. 39, slip op. at 3 (October 26, 2020).

To determine whether the single-facility presumption has been rebutted, the Board examines several factors including: (1) employees’ skills and duties; (2) terms and conditions of employment; (3) employee contact and interchange; (4) functional integration; (5) geographic proximity; (6) centralized control of management and supervision; and (7) bargaining history, if any exists. *Audio Visual Services Group, LLC*, 370 NLRB at 3, citing *Laboratory Corp. of America Holdings*, 341 NLRB at 1081–1082; *Trane*, 339 NLRB 866, 867 (2003); *D&L Transportation*, 324 NLRB at 160; *J&L Plate, Inc.*, 310 NLRB at 429.

B. *Board Law Regarding Community of Interest*

When examining the appropriateness of a unit, the Board must determine not whether the unit sought is the

³³ The parties stipulated that the classification of ISD is supervisory based on authority to hire, fire, and discipline within the meaning of Section 2(11) of the Act, and that the Michigan ISMs herein are supervisors based on their authority to effectively recommend hiring, hiring and discipline within the meaning of Section 2(11) of the Act.

³⁴ Regarding scheduling, the ISD is tasked with ensuring that ISMs in each hub are scheduling 65 of their ISCs during Thursday through Saturday, the busiest sales days of the week.

³⁵ Bell’s administrative assistant, Lisa Pradle, and Leeson also attend these weekly meetings.

only appropriate unit or the most appropriate unit, but rather whether it is “an appropriate unit.” *Wheeling Island Gaming*, 355 NLRB 637, 637 fn. 1 (2010) (emphasis in original) (citing *Overnite Transportation Co.*, 322 NLRB 723 (1996)). In determining whether a unit is appropriate, the Board looks at whether the petitioned-for employees have shared interests. See, *Wheeling Island Gaming*, 355 NLRB at 637. Additionally, the Board analyzes “whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from that unit to warrant a separate bargaining unit.” *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 12 (2017) (emphasis in original). See also, *Wheeling Island Gaming*, 355 NLRB at 637 fn. 1 (the Board’s inquiry “necessarily proceeds to a further determination of whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant establishment of a separate unit”). In weighing the “shared and distinct interests of petitioned-for and excluded employees [...] the Board must determine whether ‘excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.’” *PCC Structurals*, 365 NLRB at 13 (emphasis in original) (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)). Once this determination is made, “the appropriate-unit analysis is at an end.” *PCC Structurals*, 365 NLRB at 13.

In making these determinations, the Board relies on its community of interest standard, which examines the same factors examined in a single-facility analysis, as stated above:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

The Board considers all of the factors together, as no single factor is controlling. *Id.* at 13 (citing *United Operations*, 338 NLRB 123 (2002)).

C. Application of Board Law Regarding Single Facility Units

Petitioner contends that the petitioned-for ISCs and ISSSs at the Employer’s Southfield facility constitute an appropriate single-facility unit, while the Employer asserts that the only appropriate unit is a multifacility state-wide unit including the Howell, Grand Rapids, Saginaw, and Cadillac facilities. In this regard, the Employer contends

that the petitioned-for employees do not share a community of interest *sufficiently distinct* from those of the other employees to warrant establishment of a separate unit.

For the reasons set forth below, I find that the single-unit facility sought by Petitioner is appropriate.

1. Employees’ Skills, Duties, and Terms and Conditions of Employment

The similarities or dissimilarities of work, qualifications, working conditions, wages and benefits between employees has some bearing on determining the appropriateness of the single-facility unit. However, this factor is less important than whether individual facility management has autonomy and whether there is substantial interchange. See, *Dattco, Inc.*, 338 NLRB 49, 51 (2002) (“This level of interdependence and interchange is significant and, *with the centralization of operations and uniformity of skills, functions and working conditions*, is sufficient to rebut the presumptive appropriateness of the single-facility unit.” (emphasis added)).

Generally speaking, the ISCs and ISSSs among the eight hubs in Michigan are engaged in similar work and share similar skills—all of the ISCs perform in-home wireless sales and all of the ISSSs perform dispatch and other duties related to wireless sales. Additionally, they work the same work schedule, wear the same uniforms, share the same company benefits, and are subject to the same company-wide policies, procedures and work rules. Although the Michigan hubs also run similar operations, there are some notable differences among the hubs. Importantly, the ISCs and ISSSs from each hub are separately supervised by a team ISM who is responsible for managing employee performance matters for all team employees. Team ISMs oversee the job performance of each ISC and ISSS on their team by physically observing the ISCs performing work in customer homes and overseeing the ISSSs performing dispatch work at the individual hubs.

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. Each team in Southfield has an iMessage texting group for group communication throughout the day. They also regularly communicate with their team ISM via email regarding monthly performance expectations as well as company rules, policies and procedures. There is also some record evidence regarding specific team building meetings and sales competitions between the Southfield ISCs and ISSSs, although the timing of such events is unclear. 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. While I acknowledge the Southfield employees' attendance at bi-weekly Webex meetings with all of the ISCs and ISSSs in Michigan, I find this factor does not outweigh the multitude of meetings, events and operations that take place on an individual team and facility level in Southfield as stated above.

The Employer's reliance on *C&K Market, Inc.*, 319 NLRB 724 (1995), to support its position that only a state-wide unit is appropriate because the skills and training of the ISCs and ISSSs throughout Michigan are not distinct, is misplaced. That case specifically involved a petitioned-for unit of bakery/deli employees working in a grocery store excluding other grocery employees. Relying on longstanding Board precedent placing bakery/deli employees in storewide units with grocery employees, the Board found that that petitioned-for unit did not constitute a separate appropriate unit. *Id.* at 725–726. There is no such precedent involving classifications of employees which are the same or similar to the petitioned-for employees herein.

In sum, that the excluded employees share similar skills, duties and terms and conditions of employment with the petitioned-for employees, does not automatically warrant a conclusion that the excluded employees must be included in the proposed unit as argued by the Employer, where the record evidence demonstrates the two groups of employees have little else in common, particularly in the areas of separate supervision, and absence of employee contact and interchange. See, *American Security Corp.*, 321 NLRB 1145, 1146 (1996); *Bradley Steel, Inc.*, 342 NLRB 215, 215–216 (2004); *Overnite Transportation Co.*, 322 NLRB at 350. I conclude that the petitioned-for employees at the Southfield facility remain easily identifiable as a separate contingent of employees.

2. Employee Contact and Interchange

Interchange occurs where a portion of the work force of one facility is involved in the work of the facilities through temporary transfer or assignment of work. The Board has found that the factors of employee interchange as well as functional integration weigh in favor of a petitioned-for multifacility unit where the petitioned-for employees have substantially more contact and interchange with each other than they do with excluded employees. *Audio Visual*, 370 NLRB at 3, citing *Verizon Wireless*, 341 NLRB 483, 485, 490 (2004), *Panera Bread*, 361 NLRB 1236,

1236 fn. 1 (2014). Also important in considering interchange is whether any temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. *New Britain Transportation Co.*, 330 NLRB at 398.

Here, there is substantially more contact and interchange among the ISCs and ISSSs working at and out of the Southfield hubs than there is between those employees and the outlying hub employees which the Employer seeks to include. In this regard, all of the ISCs and ISSSs in Southfield share the same geographic territory for work. The Southfield ISSSs work in close proximity at the Southfield facility separated only by a partition. They communicate with and swap inventory regularly. They have a group chat exclusively among themselves through which they communicate regularly regarding Southfield inventory and daily operations—this Southfield chat group is not accessible to any employees in the outlying hubs. Additionally, the Southfield ISSSs are scheduled in pairs to cover for each other on their regular day off and during other absences. Likewise, the Southfield ISCs regularly communicate with each other by text message and they see each other frequently while going to and from assignments. When the [sic] they visit the Southfield facility, they engage with other employees there about work matters, especially with their ISSSs related to inventory matters. Currently, the ISCs on the Novi 3 team have been dispersed among the other three Southfield teams while the Novi 3 ISM position has been vacant.

In contrast, the Southfield ISCs and ISSSs do not have any regular contact with ISSSs or ISCs from the outlying hubs; they do not know each other by name and are familiar with each other only to the extent that they participate in the bi-weekly Fired Up Friday Webex meetings conducted by ISD Bell. Employees are permanently assigned to one hub; ISC routes begin and end at their assigned hub. The Southfield hubs rarely (if ever) rely on the excluded hubs to cover their staffing needs and vice versa. There is only limited and vague record evidence that few Southfield ISSSs have performed dispatch duties for non-Southfield hub and vice versa—in each of the examples presented, there was no indication that the ISSS performing dispatch duties for an outlying hub took direction from management other than their assigned facility. Importantly, there is no evidence demonstrating that any Southfield employees have been temporarily assigned or “loaned” to an outlying hub to perform their work duties or vice versa.³⁶ Although there is some evidence that

³⁶ There is some record evidence that the Employer periodically reviews IHX markets and individual hubs for adequate staffing which can result in transferring employees within a market from one hub to another

in an effort to “load balance.” However, there is no record evidence that this has actually happened in Michigan.

some outlying hub ISCs have received equipment from Southfield inventory, there is no indication that such exchanges involved contact between Southfield and non-Southfield ISCs and ISSSs. Moreover, there is no record evidence that any Southfield ISCs have received any equipment from any of the outlying hubs. Rather, inventory transfers in Southfield occur predominantly among the Southfield teams.

Finally, with regard to permanent transfers, the record is void of evidence demonstrating that any permanent transfers of ISCs or ISSSs were required. Rather, in each example presented, the employees were permanently transferred to a hub closer to their residence at the employee's request. See *Red Lobster*, 300 NLRB 908, 911 (1990) (finding that the significance of employee interchange in the context of a potential multi-facility unit is diminished where it occurs as a matter of employee convenience, i.e., is voluntary).

Based on the above, I disagree with the Employer that there is no heightened degree of employee contact and interchange among the ISCs and ISSSs working at and out of the Southfield facility. There is significant record evidence of interchange among the Southfield ISCs and ISSSs sufficiently distinct from that between them and the outlying hubs warranting a finding that the petitioned-for unit of the hubs located at the Southfield facility is appropriate. Overall, the record does not establish that any significant portion of the work force regularly or frequently works between the Southfield facilities and the outlying hubs which the Employer contends must be in the unit.

3. Functional Integration

Evidence of functional integration is relevant to the issue of whether a single-facility unit is appropriate. Functional integration refers to when employees at two or more facilities are closely integrated with one another functionally, notwithstanding their physical separation. *Budget Rent A Car Systems*, 337 NLRB 884, 884 (2002). This functional integration involves employees at the various facilities participating equally and fully at various stages in the employer's operation, such that the employees constitute integral and indispensable parts of a single work process. *Id.* The Board has generally been disinclined to find a multifacility single unit appropriate when the petitioned-for facilities have no more functional interchange with each other than they do with the excluded facilities. *Audio Visual*, 370 NLRB at 3, citing *Bashas', Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000). However, an important element of functional integration is that the employees from the various facilities have frequent contact with one another. *Id.* at 885.

Although all of the ISCs and ISSSs in Michigan perform work dedicated to sale and delivery of wireless services

and products in a single market, the petitioned-for Southfield hubs at the Southfield facility do not rely on the excluded hubs to cover their operational or staffing needs; there is no degree to which the petitioned-for Southfield employees are dependent on the employees from the outlying hubs the Employer seeks to include. As noted, the record also does not identify *regular and frequent* work-related interchange among the Southfield and non-Southfield employees. In contrast, the Southfield operations have some functional integration to the extent that the individual hubs regularly transfer of inventory among each other; rarely is inventory transferred between the Southfield and non-Southfield hubs. The petitioned-for Southfield employees also have more contact among each other than with the non-Southfield employees related to work activities supportive of the Employer's sales and service operations. In this regard, as noted, the Southfield employees share the same geographic territory for work, report to and out of the same facility, and are separately supervised from the excluded employees. The ISSSs work in close proximity of each other, communicate regularly regarding work operations, and cover dispatch duties for each other. The ISCs regularly communicate and engage with each other and the ISSSs, and there have been transfers of ISCs among the Southfield hubs.

The Employer relies on *Terex*, 360 NLRB 1252 (2014), in support of its argument that since all eight hubs in Michigan are managed as a unit, there is no basis to isolate the four hubs in Southfield into a "fractured" bargaining unit. In that case the Board found, in agreement with the Regional Director, that a petitioned-for unit of employees working in the undercarriage section of the employer's assembly department should appropriately include the entire assembly department, not just the undercarriage section. Unlike the instant case, that case involved a group of assemblers at a single plant which performed a unique function highly integrated within the commonly supervised assembly area compared to other non-assembly employees. Thus, the evidence of functional integration in the assembly unit found appropriate was distinct and weighed in contrast to a different classification of non-assembly employees with separate and distinct interests.

Here, however, the record evidence fails to demonstrate that there is any functional integration, other than personnel policies, occasional phone calls or events and high-level supervision that integrate employees in the outlying hubs with those in Southfield in any meaningful way. As such, I conclude that the Employer has not established a degree of integration to warrant rejection of the separately identifiable and distinct unit sought herein.

4. Geographic Proximity

Here, the factor of geographical proximity weighs in favor of the petitioned-for unit. The Southfield hubs are all located at the same location. That Southfield facility is approximately 39 miles from the Howell hub, 142 miles from the Grand Rapids hub, 96 miles from the Saginaw hub, and 202 miles from the Cadillac hub. Overall, there is significant distance between the Southfield facility and the outlying hubs in this case. The record establishes that such distance between the Southfield facility and the outlying facilities result in virtually no interchange between the Southfield and other employees, as noted above. This factor of geographical proximity, itself, weighs in favor of the petitioned-for unit. Furthermore, the geographical proximity in conjunction with the other factors is sufficient to find the petitioned for unit appropriate. See, *Audio Visual*, 370 NLRB at 4.

5. Central Control over Daily Operations and Labor Relations

The Board has made clear that “the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption.” *California Pacific Medical Center*, 357 NLRB 197, 198 (2011) (citations omitted). Thus, “centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.” *Hilander Foods*, 348 NLRB 1200, 1203 (2006). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees’ day-to-day working lives.

I acknowledge that the Employer maintains centralized control over some personnel matters and labor relations functions for all eight hubs in Michigan and nationwide. In this regard, employees at all eight hubs wear the same uniforms, receive the same benefits and training, and are covered by the same company-wide policies and procedures. ISD Bell oversees wireless operations for the eight hubs in Michigan and HR is involved personnel matters including hiring and discipline for the eastern U.S. IHX organization, including the Michigan market. However, the record also demonstrates some local supervision and autonomy over labor relations matters. ISMs in each hub

conduct team meetings with employees, enforce policies, and provide input into all performance and personnel decisions. They are involved in key decisions including hiring, scheduling, work assignments, performance management, coaching, training, discipline, and terminations. Specifically, the individual ISMs provide recommendations for hiring, discipline and termination of ISCs and ISSSs in coordination with ISD Bell to HR.³⁷ The ISMs also monitor performance improvement plans implemented by HR which can lead to termination. Although there is scant record regarding a formal evaluation procedure, ISMs spend a majority of their time observing, managing and evaluating the performance of ISCs and ISSSs, in the field and at the hub facility. Such evaluations for ISSSs arguably would affect annual performance bonuses awarded to them. Although the record indicates that ISCs and ISSSs at all eight hubs for the most part receive the same company-wide training, they also receive on-the-job training. ISCs and ISSSs direct their questions and issues to these direct supervisors. ISMs are also responsible for approving and posting all work and vacation scheduling for their team.

Overall, the record demonstrates that the ISMs maintain control over employees’ day-to-day working conditions at their respective hubs. This exercise of considerable control over employees’ day-to-day working supports the presumption of a single-facility unit. See, *Rental Uniform Service*, 330 NLRB 334, 335–336 (1999); *Executive Resources Associates*, 301 NLRB 400, 402 (1991); *Renzetti’s Market*, 238 NLRB at 175–176.

6. Bargaining History

While Petitioner represents approximately 35,000 employees employed by the Employer across the U.S. who are covered by collective-bargaining agreements (CBAs) between the Employer and Petitioner, the parties stipulated there is no history of collective bargaining with regard to the petitioned-for employees. There is also no collective bargaining history regarding any ISCs and/or ISSSs at any of the Michigan hubs.

Through voluntary recognition by the Employer, the Employer and Petitioner are parties to four CBAs identified as the “Orange,” “Black,” “Green,” and “Purple” CBAs. The most recent Orange CBA covers approximately 15,000 employees employed in 36 states and Washington D.C.; the Black CBA covers employees employed in nine southeast states; the Green CBA covers employees employed in Puerto Rico; and the Purple CBA covers employees employed in five southeast states. All four CBAs cover employees generally working in the

³⁷ The record does not support the Petitioner’s statement in its brief that ISMs “have full discretion in making hiring decisions.”

categories of retail store employees, call center employees and network technicians and specifically exclude outside sales employees. The Purple CBA covers some outside sales employees which appear to be classified as “COS Sales Advocates.” The Employer argues that such bargaining history for bargaining units is relevant and controlling and “manifests that the only appropriate unit [in this case] must be a state-wide unit.”

Although in the past the Employer has bargained in the multilocation state-wide units described above, I find that history is not controlling. Such units are much broader in terms of the hubs included than either the unit sought by Petitioner herein or the outlying hubs that the Employer contends share a community of interest. See, *Esco Corporation*, 298 NLRB 837, 839–840 (1990). Board cases establish that the absence of bargaining history weighs in favor of the single-facility presumption where, as here, no union seeks to represent employees on a broader basis. See *New Britain Transportation Co.*, 330 NLRB at 398. Additionally, as noted by Petitioner in its brief “[p]ast history of bargaining, not predicated on a Board certification, is not controlling on the issue of what constitutes an appropriate unit.” *NLRB v. Porter County Farm Bureau*, 314 F.2d 133, 136 (7th Cir. 1963).³⁸ I do not find the bargaining history referenced by the Employer relevant or persuasive to conclude that the Employer has met its burden with respect to this factor to overcome the single-facility presumption. See also, *Exemplar, Inc.*, 363 NLRB 1500, 1505 (2016).

7. Conclusion Regarding Unit Scope and Single-Unit Facility

I have carefully considered the record evidence and weighed the various factors described above, and I find the single-facility presumption has not been rebutted. In doing so I reject the Employer’s assertion that its operations are so effectively merged into one comprehensive unit, or so functionally integrated, that the petitioned-for employees at the Southfield facility have no separate identity. In particular, I rely on a nearly complete lack of employee contact and interchange and contact between the Southfield facility and outlying hubs, the degree of local autonomy as demonstrated by the existence of separate supervisory management for each hub, and the lack of geographic proximity of the outlying hubs to the Southfield facility to consider that the Employer has not overcome the single-facility presumption.

³⁸ In its brief, the Employer cites *Laboratory Corp. of America*, 341 NLRB at 1081–1082, in support of its arguments regarding its collective bargaining history. However, in addressing the factor of bargaining history in that case, the Board found there was no bargaining history for the employees sought by the petition, and although the petitioned-for unit was similar to a bargaining unit that was *stipulated* as appropriate years

D. Application of Board Law Regarding Community of Interest Between the Petitioned-for Employees

Even though the Employer argues that a multifacility state-wide unit of ISCs and ISSSs in Michigan would be appropriate, it would not agree at the hearing that the petitioned-for ISCs and ISSSs at the Southfield facility share a community of interest with each other.

For the reasons set forth below, I find that ISCs and ISSSs at the Southfield facility share a community of interest sufficiently distinct from the interests of the employees at the outlying hubs which the Employer seeks to include such that and the outlying hub employees are appropriately excluded from the petitioned-for single-facility unit.

1. Organization of the Plant

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer’s operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer’s production and maintenance employees. See, *Check Printers, Inc.*, 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit even though other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1289–1291 (2000).

Here, all of the ISCs and ISSSs in the Michigan, including the petitioned-for employees, constitute the Michigan market within the Employer’s IHX outside sales organization. The Employer argues that because its IHX outside sales organization is centralized state-wide, reporting up to ISD Bell in Michigan, the petitioned-for unit is not appropriate. However, 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. 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.

2. Common Supervision

Another community-of-interest factor the Board considers when evaluating the appropriateness of a petitioned-for unit is whether the employees in dispute are commonly

before, there was never any Board finding as to its appropriateness. Thus, the Board followed its longstanding “policy not to consider itself bound by a bargaining history (or lack of bargaining history) resulting from a consent election in a unit stipulated by the parties rather than one determined by the Board.” *Id.* at 1083 (other citations omitted).

supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, fire or discipline employees (or effectively recommend those actions) or supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resource Associates*, 301 NLRB at 402. Common supervision weighs in favor of placing the employees in dispute in one unit but does not mandate separate units. *Casino Aztar*, 349 NLRB 603, 607, fn. 11 (2007). However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. *United Operations*, 338 NLRB at 125.

Here, the petitioned-for ISCs and ISSSs are commonly supervised by team ISMs at the Southfield facility who, as noted above, manage employees' day-to-day working conditions at their respective hub. Thus, petitioned-for ISCs and ISSSs on the same team commonly report to the same ISM. Additionally, as noted, since about November 2020, while the Novi 3 ISM position has been vacant, the Novi 3 team ISCs and ISSS have been dispersed among the other three Southfield teams and have been reporting among the other Southfield ISMs. In contrast, the excluded employees at the outlying hubs are separately supervised. The record evidence demonstrating that the petitioned-for ISCs and ISSSs are separately supervised and do not share common supervision with the other non-Southfield employees weighs in favor of a separate unit of ISCs and ISSSs at the Southfield facility as petitioned by Petitioner.

3. Employees' Skills, Duties and Terms and Conditions of Employment

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, supports a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB at 603 (petitioned-for beverage employees have no separate community of interest from restaurant and catering with regard to job function, duties, or skills); *J.C. Penney Co., Inc.*, 328 NLRB 766, 766-767

(1999) (petitioned-for employees in catalog fulfillment department and telemarketing employees "have similar skills and perform similar functions"); *Brand Precision Services*, 313 NLRB 657, 657-658 (1994) (a unit of operators, apart from other production employees, is not appropriate where "the operators' training, skills, and functions are not distinct from those of the laborers or leadmen"); *Phoenixian*, 308 NLRB 826, 827-828 (1992) (petitioned-for unit of golf course maintenance employees is too limited in scope and must include the landscape employees where "high degree of overlap in job functions" exists).

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the fact that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not have sufficient interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215, 215-216 (2004); *Overnite Transportation Co.*, 322 NLRB at 350. Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corp.*, 321 NLRB 1145, 1146 (1996).

Here, the petitioned-for ISCs and ISSSs at the Southfield facility share the same terms and conditions of employment and possess some of the same skills and duties. They all work the same work schedule, wear the same uniforms, share the same workspace/office and company benefits, and are subject to the same company-wide policies, procedures and work rules. There is record evidence that ISCs and ISSSs must have similar requirements to perform sales and dispatch work including a high school diploma, communication and organizational skills, and the ability to utilize computerized communication systems. Although their primary duties are different in that the ISSSs perform dispatch duties and the ISCs perform sales duties, the record demonstrates that both classifications are focused on the Employer's outside sales operations and the ISSSs possess and use knowledge regarding sales targets in dispatching fruitful sales assignments to the ISCs. This evidence, along with record evidence supporting other community of interest factors listed herein, supports a conclusion that a community of interest exists among the petitioned-for employees at the Southfield.

4. Employee Contact and Interchange

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB at 401 (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081)). Lack of significant employee interchange between groups of employees is a “strong indicator” that employees enjoy a separate community of interest. *Id.* at 401.

As noted above, there is substantial contact and interchange among the petitioned-for ISCs and ISSSs at the Southfield facility. The ISSSs function as the command center for the ISCs. They are in constant communication with each other during work operations regarding work assignments and managing equipment from the team inventory. With each customer stop, the ISCs call their team ISSS to advise of any necessary equipment requests and follow-up appointments and to get dispatched to their next assignment. In this regard, there is regular communication between the ISCs and the ISSSs in Southfield throughout the day. The ISCs and ISSSs share the same workspace at the Southfield facility and engage with each other regularly with regard to sales operations and inventory matters. They share the same parking lot, cafeteria and restrooms at the Southfield facility. Currently, the ISCs on the Novi 3 team have been dispersed among the other three Southfield teams while the Novi 3 ISM position has been vacant. All ISCs and ISSSs also attend regular meetings together held telephonically by their team ISM and they regularly communicate with their team ISM via email and text message regarding performance expectations and company rules, policies and procedures. There is also some record evidence regarding team building meetings and sales competitions between the Southfield ISCs and ISSSs, although the timing of such meetings is unclear. While there have not been any transfers from ISSS to ISC, there is record evidence that current Southfield ISSS Daniels-Potts was a Southfield ISC.

Overall, the record establishes frequent interchange among the petitioned-for Southfield ISCs and ISSSs along

with a lack of significant interchange with the employees in the outlying hubs, as noted above, demonstrating that the petitioned-for employees enjoy a separate community of interest.

5. Functional Integration

As noted, functional integration refers to when employees’ work constitutes integral elements of an employer’s production process or business. For example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Evidence that employees work together on the same matters, *have frequent contact with one another, and perform similar functions* is relevant when examining whether functional integration exists for community of interest purposes. *Transerv Systems*, 311 NLRB 766, 766 (1993) (emphasis added). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

On a broad level, the Southfield ISCs and ISSSs perform work in the Employer’s combined sales and dispatch operations resulting in the delivery of in-home wireless services and products to customers. On a narrower level, employees at the Southfield hubs transfer inventory regularly among each other to accomplish this end result. As noted, both ISC and ISSS classifications must be familiar with sales operations to perform their duties. For example, they must be aware of all national promotions and discounts periodically offered to customers. Additionally, after each ISC assignment, ISSSs are required to enter notes and answer a pre-determined checklist of questions into the OFSC system which are used to track performance metrics and sales targets for ISCs. The ISSSs also have some reporting and compliance obligations with regard to customer bill credits, equipment returns and trade-ins initiated by the ISCs. Team meetings attended by ISCs and ISSSs together address sales and dispatch topics. Based upon the foregoing, the record demonstrates functional integration regarding the appropriateness of a combined unit of ISCs and ISSSs at the Southfield facility.

6. Conclusion Regarding Unit Composition and Community of Interest

In determining that the unit sought by Petitioner is appropriate, I have carefully weighed the community of interest factors cited in *PCC Structurals* and *United Operations*, supra.³⁹ I conclude that the unit sought by Petitioner

³⁹ In its brief, Petitioner mis-cites *PCC Structurals* as 370 NLRB No. 39 (2017), and argues that the Board wrongfully decided *PCC* and that the framework set forth by the Board in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 954 (2011) should apply in this case rather than the Board’s reasoning in *PCC*. I reject the Petitioner’s

argument on the basis that in *PCC Structurals*, the Board specifically overruled *Specialty Healthcare* and reinstated the traditional community-of-interest standard cited in *United Operations* for determining an appropriate bargaining unit in union representation cases, that is, “whether employees in the proposed unit share a community of interest

is appropriate because the record reveals that the petitioned-for employees are a sufficiently distinct, recognizable group.⁴⁰ Their distinct interests outweigh their shared interests the employees the Employer seeks to include and strongly weigh favor of finding that the ISCs and ISSSs at the Southfield facility constitute an appropriate unit.

IV. CONCLUSION

For the reasons stated above, I have concluded that the single-facility unit of ISCs and ISSSs sought by Petitioner is appropriate.

Therefore, based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

sufficiently distinct from the interests of employees excluded from that unit to warrant a separate bargaining unit.” *PCC*, 365 NLRB at 1, 12.

⁴⁰ I reject the Employer’s argument in its brief that Petitioner failed to show a community of interest among all four hubs in Southfield

[. . .]

5. 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 (the Unit):

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

because it failed to present any evidence specifically regarding the Novi 3 team. As noted herein, ample evidence was presented regarding the employees working at and out of the petitioned-for Southfield facility to support the appropriateness of the petitioned-for unit.