

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

BOISE CASCADE COMPANY

Employer

and

Case 12-RC-359261

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 769**

Petitioner

DECISION AND DIRECTION OF ELECTION

Boise Cascade Company (the Employer) is engaged in the manufacture and wholesale distribution of a variety of wood products and other building materials to commercial customers, including lumber yards and entities such as Home Depot. On January 29, 2025, International Brotherhood of Teamsters, Local Union No. 769 (the Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent a unit that includes all truck drivers, warehouse workers, material handlers, maintenance specialists, and crew leaders employed by the Employer at its 1341 NW 15th Street, Pompano Beach, Florida and 1300 Allendale Road, West Palm Beach, Florida facilities, excluding all other employees, guards, and supervisors as defined by the Act. There are approximately 30 employees in the petitioned-for unit, including 17 assigned to Pompano Beach and 13 assigned to West Palm Beach.

The Employer contends that a multi-facility unit is not appropriate because there is insufficient evidence to show that employees from the two facilities share a community of interest. The Employer also contends that the Pompano Beach facility employees are not an appropriate unit and should be excluded from any unit found appropriate because the Employer has decided not to renew its lease of that facility when the lease expires on May 31, 2025, and closing of that facility is imminent. The Employer further argues that the workforce at the West Palm Beach facility is expected to expand and there is not a substantial and representative complement of employees working at that facility, and that there is substantial doubt as to the scope of an appropriate unit in view of the Employer's plans to "expand" by opening a Miami, Florida facility in conjunction with the closing of the Pompano Beach facility. Accordingly, the Employer urges that the petition be dismissed. The Employer also contends that two freight specialists and one assistant freight specialist, all of whom are assigned to the West Palm Beach facility, share an overwhelming community of interest with employees in the petitioned-for job classifications at that location, and should be included in any unit found appropriate.¹ There are

¹ As discussed below, the Employer expects to lease a facility in Miami that will operate as a satellite facility to the West Palm Beach facility.

no employees in the freight specialist or assistant freight specialist job classifications at the Pompano Beach facility.

The Petitioner asserts that the petitioned-for unit covering employees at West Palm Beach and Pompano Beach is an appropriate unit based on an analysis of the community of interest factors, and that the freight specialists and assistant freight specialist do not share a community of interest with employees in the petitioned-for unit, and that the unit sought is neither contracting nor expanding and is expected to remain essentially unchanged after the Pompano Beach facility closes.

On February 10, 2025, a hearing officer of the Board held a hearing in this matter during which the parties were given the opportunity to present their positions and supporting evidence. Thereafter, the parties submitted post-hearing briefs. I have carefully considered the record evidence and the parties' briefs.

As described below, based on the record and relevant Board authority, I find that the petitioned-for unit is an appropriate unit, and that a substantial and representative complement of unit employees exists notwithstanding plans to close the facility in Pompano Beach and possibly open a facility in Miami. I further find insufficient evidence to show that the freight specialists and assistant freight specialist share a community of interest with the employees in the petitioned-for job classifications to warrant their inclusion in the unit.

I. The Employer's Request to Stay the Processing of the Petition

On February 19, 2025, the Employer filed a request to stay the processing of the instant petition because, at the time of the Employer's request, the National Labor Relations Board (the Board) lacked the 3-member quorum required pursuant to Section 3(b) of the Act. On February 26, 2025, the Petitioner filed a response opposing the Employer's request for a stay.

The Board did not have a quorum between January 27 and March 6, 2025, because President Donald J. Trump removed Board Member Gwynne A. Wilcox from her position on January 27, 2025. On March 6, the District Court for the District of Columbia held that the removal of Member Wilcox violated Section 3(a) of the Act, providing that Board members "may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause." The District Court declared Member Wilcox's removal "null and void," and enjoined Board Chairman Marvin E. Kaplan from in any way treating Member Wilcox as having been removed from office." *Wilcox v. Trump*, Case 1:25-cv-00334-BAH (Mar. 6, 2025) (dkt #34). As a result of the District Court's reinstatement of Member Wilcox, the Board had a quorum from March 6 to March 28, 2025.

On March 7, 2025, the Department of Justice appealed the District Court's order to the United States Court of Appeals for the D.C. Circuit and, thereafter, filed a request for an immediate stay. *Emergency Motion for Stay Pending Appeal, Wilcox v. Trump*, No. 25-5057 (D.C. Cir. filed Mar. 10, 2025). The request for a stay of the District Court's reinstatement order was granted by the Court of Appeals on March 28, 2025. Accordingly, since March 28, the only Board members have been Chairman Kaplan and Member Prouty, and the Board has lacked a 3-

member quorum. The Department of Justice's appeal of the District Court's reinstatement of Member Wilcox remains pending before the Court of Appeals.

Notwithstanding the current lack of a Board quorum, the Employer's request for a stay is denied. Section 3(b) of the Act authorizes the Board to delegate its powers under Section 9 of the Act to regional directors, including to determine appropriate units for collective bargaining, determine whether a question concerning representation exists, direct an election, take a secret ballot, and certify the results thereof, subject to review by the Board if a request for review is filed. The Board delegated that authority to regional directors pursuant to Section 3(b) of the Act on May 15, 1961, and has never withdrawn it. 26 FR 3885, 3889 (1961). In addition, Section 102.182 of the Board's Rules, Subpart X – Special Procedures When the Board Lacks a Quorum, provides that when the Board lacks a quorum “to the extent practicable, all representation cases may continue to be processed and the appropriate certification should be issued by the Regional Director notwithstanding the pendency of a request for review, subject to revision or revocation by the Board pursuant to a request for review filed in accordance with this subpart.” 82 FR 11786 (February 24, 2017).

II. Facts

A. The Employer's South Florida operations

The Employer receives building materials, such as plywood, lumber, rebar, and “pretty much anything you build a house with” at its warehouse and yard facilities in West Palm Beach and Pompano Beach, Florida. It sells and distributes those products by tractor-trailer to retailers and wholesalers such as Home Depot, Shell Lumber, and Florida Lumber. The Employer opened its Pompano Beach facility in approximately 2010. When the facility opened it was the Employer's only facility in South Florida. Charles “Chuck” Donaldson has been the Branch Manager in charge of the Employer's South Florida operations since the Pompano Beach facility opened. He reports to a Regional General Manager. The Employer had no previous operations in South Florida. The Pompano Beach facility is located in Broward County, which is immediately north of Miami-Dade County and immediately south of Palm Beach County. The Pompano Beach facility includes a small warehouse of 9600 square feet. Most of the work at the facility is performed outdoors, subjecting employees who work there to the harsh summertime heat and the rainy season of South Florida.

According to Branch Manager Donaldson, five to seven years after the Pompano Beach facility opened the Employer realized that it had outgrown the facility and planned to replace it with two other warehouse facilities in South Florida, a main branch facility and a smaller satellite facility. The Employer wanted larger warehouses so work could be performed indoors. About six years ago, the Employer began operating out of a 44,000 square foot warehouse in Miami, Florida, which it operated as a satellite facility of the Pompano Beach facility. The Miami warehouse was staffed by four employees. The lease on the Miami warehouse expired about a year before the hearing in this case, and the Employer closed that facility upon the expiration of the lease.

At about the same time, in late 2023, the Employer leased a 120,000 square foot warehouse on a property that includes about 10 acres of land in West Palm Beach, located in Palm Beach County, which is just north of Broward County. Since January 2024, the Employer has operated the West Palm Beach facility as its main location and has continued to operate the Pompano Beach facility as its only facilities in South Florida. The office at the West Palm Beach facility, where Branch Manager Donaldson works, is also used by sales employees, an inventory control specialist, administrative employees, product managers, a location controller, and freight specialists. The Employer had an Operations Manager at West Palm Beach until December 31, 2024, when that individual transferred “out west” to another job with the Employer. Donaldson testified that he hired a new Operations Manager who was expected to start working at the West Palm Beach office the week after the hearing.

B. The Employer’s plans to close Pompano Beach and open a new Miami facility

Donaldson testified that the Employer plans to continue operating in Pompano Beach until May 31, 2025, when its lease for that facility expires, and to then close the Pompano Beach facility.² Donaldson further testified that in October 2024, the Employer signed a letter of intent to lease a 96,000 square foot warehouse and a separate 6,000 square foot “office-type” building at 7000 NW 32nd Avenue, Miami, Florida, as its satellite facility to the West Palm Beach branch office. Donaldson testified that attorneys for the Employer and the landlord had been negotiating the terms of the lease agreement for the Miami property and understood that they virtually agreed on the terms, and he hoped to have a signed lease later the day of the hearing, February 10, 2025.³ The record does not reflect the tentative effective date of the anticipated lease. According to Donaldson, if the lease is executed, the new Miami facility will be a “satellite” of the West Palm Beach branch facility.

Donaldson testified that the Employer does not plan to lay off any of its employees as a result of the closing of the Pompano Beach facility, whether or not the Miami facility is ready to open by that time. Rather, he anticipates that the Employer will offer all Pompano Beach employees jobs in West Palm Beach or, if the anticipated new Miami facility opens, in West Palm Beach or Miami. Donaldson further testified that he expects all of the current employees to remain employed by the Employer after the Pompano Beach facility is closed. The record does not reflect any plan to add new job classifications when the Pompano Beach facility closes, and/or the new Miami facility opens. Although Donaldson testified that the Employer hopes to grow the branch’s business, there is no evidence of a specific plan or timeline for any such growth. In addition, although Donaldson testified that the Employer will probably hire a couple of drivers in Miami, there is no evidence that the Employer has definite hiring plans or that it will expand the size of the current combined West Palm Beach and Pompano Beach work force.

Like Donaldson, the new Operations Manager will have his office at the West Palm Beach facility and will be responsible for the West Palm Beach and new Miami facilities. The Operations Manager will visit the Miami facility on an as needed basis. The Employer does not

² Neither the Pompano Beach lease nor any documents related to the plan to close the facility are in evidence.

³ Neither the letter of intent to lease the new Miami facility nor any other documents pertaining to that potential lease are in evidence.

plan to have an onsite manager or supervisor at the new Miami facility. Rather, crew leads in Miami will report to the recently hired Operations Manager located in West Palm Beach.

The driving distance between the West Palm Beach and Pompano Beach facilities is approximately 43 miles.⁴ The driving distance between the West Palm Beach facility and the anticipated Miami facility is about 65 miles.⁵

C. Duties and skills of employees

Branch Manager Donaldson testified about the duties of the employees in each job classification in the petitioned-for unit and the duties of the freight specialists and assistant freight specialist. A truck driver assigned to the West Palm Beach facility also testified about the duties of employees in various job classifications.

Based on the Employer's position statement it employs 3 truck drivers, 9 material handlers, 1 crew leader, 2 freight specialists, and 1 assistant freight specialist at its West Palm Beach facility, and employs 5 truck drivers, 9 material handlers, 2 crew leaders, and 1 maintenance specialist at its Pompano Beach facility.

The truck drivers operate tractor-trailers, and their main function is to deliver orders to customers. Each truckload may contain orders requiring multiple stops. The driver testified that drivers start work at West Palm Beach before any other employees, at about 5:00 a.m., to beat the Miami traffic. Drivers making deliveries from West Palm Beach to the Florida Keys start as early as 2:00 a.m. The paperwork or "book" for the drivers' delivery route, which has been prepared by freight specialists during the previous day, is on the front seat of the drivers' trucks when they arrive for work. The driver checks the paperwork, which has been signed by employees who loaded the truck and checked the load (apparently material handlers and crew leaders). The driver checks the load and straps it down. The driver also performs a Department of Transportation (DOT) pre-trip inspection of the tractor and trailer. Drivers log in and out on an electronic logging device located in the truck called PeopleNet to record their time. They regularly work overtime and deliver a second load daily. The driver witness testified that he sometimes makes deliveries from West Palm Beach to the Miami area (for example, to Cutler Bay, which is south of Miami). Often, he then drives north to the Pompano Beach facility with an empty trailer and waits while his second run is "live loaded" by material handlers in Pompano Beach or drops his empty trailer at Pompano Beach and picks up a full trailer that has been pre-loaded by material handlers at Pompano Beach for his second run. Sometimes he delivers product needed in Pompano Beach from the West Palm Beach facility directly to the Pompano Beach facility. On such occasions, when he arrives at Pompano Beach he drops the trailer so the product can be unloaded and stored by material handlers at Pompano Beach. The driver then picks up a pre-loaded trailer at Pompano Beach for deliveries to customers or waits while Pompano Beach material handlers load a trailer for his delivery to customers. On other occasions, as needed, the driver is assigned to bring products needed in West Palm Beach from Pompano Beach to West Palm Beach. The driver testified that these duties are performed by all of the drivers. He estimated that approximately 75 percent of his day is spent behind the wheel.

⁴ [1300 Allendale Road, West Palm Beach, FL to 1341 NW 15th St, Pompano Beach, FL 33069 - Google Maps.](#)

⁵ [1300 Allendale Road, West Palm Beach, FL to 7200 NW 32nd Ave, Miami, FL 33147 - Google Maps.](#)

Material handlers operate forklifts to unload inbound freight from containers that arrive by truck or rail.⁶ They also put material away in the warehouse or yard, pull and stage material for orders, and load trucks for the drivers. Crew leaders perform material handler work, give basic assignments to material handlers such as unload a truck, pick an order, or load a truck, and guide less experienced material handlers. These assignments appear to be routine in nature, and there is no evidence that such assignments require the use of independent judgment. Neither party contends that crew leaders are supervisors within the meaning of Section 2(11) of the Act, and there is no evidence that the crew leaders exercise any indicia of supervisory status other than making routine assignments.

Branch Manager Donaldson testified that the maintenance specialist, who currently works at the Pompano Beach facility, will likely transfer to West Palm Beach after the Pompano facility closes. The maintenance specialist operates a forklift to empty dumpsters, cleans the yard, cleans railcars, does some landscaping, and assists the material handlers as needed.

The evidence shows that Pompano Beach and West Palm Beach employees in the truck driver, material handler, and crew leader classifications perform the same tasks and have the same skills. In addition, it appears that truck drivers from either facility may deliver to the same customers and/or geographic area. However, truck drivers from West Palm Beach do not substitute for absent Pompano Beach drivers. In addition, there is no evidence that employees from West Palm Beach and Pompano Beach interchange on a day-to-day basis to substitute for absent employees at the other location.

The Employer submitted in evidence its job summary, also referred to as job description, for dispatch employees, including the positions of Trucking Dispatch Supervisor, Senior Freight Specialist, Freight Specialist, and Assistant Freight Specialist.⁷ Without specifying, Branch Manager Donaldson testified that some of the primary functions listed in the job summary do not apply at the West Palm Beach and Pompano Beach facilities, but a majority of the primary functions “look correct.” The job summary states that the primary functions of these positions include the following: schedule inbound and/or outbound delivery of products and orders to customers via contract or company truck drivers; coordinate with the location’s personnel to provide trucking arrangements for all freight needs; review routes, assign route numbers, release pick ticket information to scanning equipment for trucks and/or will calls; develop efficient delivery schedules; meet customer service requirements and monitor department productivity and location goals; maintain the company-owned truck fleet including truck maintenance and maintenance records, and physical inspection of equipment to keep it in effective operating condition; create day-to-day awareness of DOT and OSHA regulations; maintain profiles and freight contracts, motor carrier profiles, shipping rates, driving logs, etc.; assure timely monitoring of commercial vehicle inspections and reports; and monitor hours of service

⁶ The Employer has rail spurs at the West Palm Beach and Pompano Beach facilities. Less than 10 percent of the inbound freight it receives at the Pompano Beach facility is received by rail. The record does not reflect the percentage of inbound freight received at the West Palm Beach facility that is received by rail. There is no rail spur at the potential Miami facility.

⁷ There is no evidence that the Employer employs a Trucking Dispatch Supervisor or Senior Freight Specialist in West Palm Beach or Pompano Beach.

compliance and message truck drivers as needed. The job summary also includes additional job-level criteria for assistant freight supervisors: "Developing technical expertise; local routes, single customers" and for freight specialists: "Acquired technical expertise, including Agility or other systems."⁸

There are 2 freight specialists who work in the shipping office within the main offices at West Palm Beach. One is experienced and the other was recently promoted from a truck driver position. The freight specialist job is to organize truck loads for delivery to customers. They create "books" for each outbound truckload, which are apparently used by material handlers to pick orders in the afternoon and to guide drivers in making their deliveries the next day. The freight specialists also direct inbound trucks as to where to park, and radio employees about the arrival of inbound freight to be unloaded. The West Palm Beach truck driver testified that the freight specialists perform dispatcher work in the office all the time and get information from sales employees that they use to route the delivery loads. The freight specialists track drivers' hours of work throughout the day.

According to Branch Manager Donaldson, the only employee titled "assistant freight specialist" works in the "dispatch - - trucking office" at West Palm Beach. Donaldson testified that the assistant freight specialist notifies drivers delivering product to the Employer where they should park for unloading.⁹ The assistant freight specialist then calls material handlers by radio to let them know when and where to unload the inbound freight. Donaldson testified that the assistant freight specialist in West Palm Beach transferred from Pompano Beach, and a material handler in Pompano Beach "has kind of taken his position in Pompano" on a temporary basis until the Pompano facility closes. He further testified that this individual is still classified as a material handler, although he has not been spending a lot of time on the forklifts and is currently mostly in the office "doing inbounds" when trucks arrive. Donaldson testified that if the material handlers need help the assistant freight specialist gets on a forklift and assists them. At another point he testified that this occurs almost daily, but he did not testify how he knows this or say anything about the percentage of the assistant freight handler's work time that is spent operating a forklift or otherwise performing material handler work. The only specific instance when the assistant freight specialist in West Palm Beach performed material handler work cited by Donaldson was the unloading of containers all day on the Friday before the hearing. The truck driver witness testified that the assistant freight specialist at West Palm Beach works in a little office on the loading dock with the "dispatchers," referring to the freight specialists, and does paperwork, although it is not clear how he knows this in view of the fact that he leaves West Palm Beach early in the day and often returns late.

Branch Manager Donaldson testified that the assistant freight specialist reports to the Operations Manager, as do the material handlers and, apparently, the crew leads. It appears that the Branch Manager and the Operations Manager are responsible for the supervision of all of the employees at both West Palm Beach and Pompano Beach, although the record does not

⁸ The record does not describe the Agility system.

⁹ It appears that most of the inbound truck freight delivered to West Palm Beach or Pompano Beach is not delivered by drivers in the petitioned-for unit. The drivers in the petitioned-for unit mainly deliver product from those facilities to the Employer's customers, but sometimes transfer product needed in West Palm Beach to Pompano Beach, or vice versa, as described above.

expressly show to whom the truck drivers, maintenance specialist, or freight specialists directly report.

D. Terms and conditions of employment

There is scant testimony about the wage structure. As noted above, the truck driver witness earns \$23.00 per hour. The Branch Manager testified that he is generally familiar with the pay rates, and that the assistant freight specialist and the material handlers have similar pay rates.

Based on the Employer's Statement of Position, unit employees work Monday through Friday, and all of them work full-time, with drivers at both locations starting at either 4:00 a.m. or 4:30 a.m. However, as noted above, testimonial evidence shows that truck drivers start their workdays at varying times between 2:00 a.m. and 5:00 a.m., depending on their expected route for the day, and they work significant amounts of overtime. The following start times are based on the Employer's Statement of Position. At Pompano Beach five material handlers start at 5:30 a.m. and the other four start at 8:00 a.m. or 8:30 a.m.; one of the crew leaders starts at 6:30 a.m. and the other one starts at 8:30 a.m.; and the maintenance specialist starts at 8:00 a.m. At West Palm Beach material handlers have staggered start times at 6:00 a.m., 7:00 a.m., and 8:00 a.m.; the crew leader starts at 6:30 a.m., the assistant freight specialist starts at 6:00 a.m., and the freight specialists start at 8:00 a.m. Whereas truck drivers use PeopleNet to record their work time, other employees use a biometric system to record their work time.

There are break rooms at both West Palm Beach and Pompano Beach. The West Palm Beach driver who testified has used the Pompano Beach break room on occasion when he is waiting there for his trailer to be loaded.

Branch Manager Donaldson testified that the assistant freight specialist receives the same benefits as the employees in the petitioned-for unit. Truck drivers receive benefits including health and dental insurance, paid time off called "your time off" and holidays, uniform shirts, a coupon for safety shoes, a hard helmet, safety glasses, and a high visibility vest. The truck driver testified that he believed that material handlers and other employees receive the same benefits.

III. Analysis

This case concerns the issues of whether the petitioned-for two-facility unit is appropriate, whether a question concerning representation may be raised with respect to the Pompano Beach employees in view of the closing of that facility or with respect to the West Palm Beach employees in view of the expected transfer of some Pompano Beach employees to West Palm Beach, and whether freight specialists and the assistant freight specialist should be included in the petitioned-for unit.

A. The petitioned-for two-facility unit is an appropriate unit.

The Act requires a petitioner to seek representation of employees in an appropriate unit, but not in the most appropriate or optimum unit possible. *Overnite Transportation Co.*, 322

NLRB 723 (1996), citing *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988) and *The Black and Decker Manufacturing Company*, 147 NLRB 825, 828 (1964). Contrary to the Employer's assertion, the presumption of a single-facility unit is inapplicable where, as here, the petitioning union seeks to represent a multi-facility unit. *Exemplar, Inc.*, 363 NLRB 1500, 1501 (2016); *Capital Coors Co.*, 309 NLRB 322, 322, fn.2 (1992). Rather, as stated in *Exemplar*:

In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates the following community-of-interest factors among employees working at the different locations: similarity in employees' skills, duties, and working conditions; centralized control of management and supervision; functional integration of business operations, including employee interchange; geographic proximity; bargaining history; and extent of union organization and employee choice.

363 NLRB at 1501 (citations omitted).

Regarding similarity of employees' skills, duties, and working conditions, the undisputed evidence shows that to the extent there are employees in the same classifications at both the West Palm Beach and Pompano Beach facilities - truck drivers, material handlers, and crew leaders - they have the same skills and duties regardless of work location. There is no evidence that this will change after the Pompano Beach facility closes. The truck drivers, material handlers, and crew leaders include 29 of the 30 employees in the petitioned-for unit. The 30th employee is the maintenance specialist who the Employer will transfer from Pompano Beach to West Palm Beach when the Pompano Beach facility closes. That employee regularly operates a forklift, like the material handlers and crew leaders, but for the purpose of moving dumpsters. It appears that truck drivers share the same working conditions regardless of their assigned facility. Although material handlers and crew leaders at Pompano Beach apparently stock most building materials and pull most orders outdoors because of limited warehouse space, it is expected that they will do most of this work in a warehouse, as in West Palm Beach, whether they transfer to West Palm Beach or to the expected new Miami facility, which has a much larger warehouse than the Pompano Beach facility. Moreover, it appears that wages, hours of work, and benefits of employees in the petitioned-for unit are the same regardless of work location. Accordingly, I find that this factor weighs strongly in favor of finding the two-location unit appropriate.

The record demonstrates that there is centralized control of management and supervision. The Employer has organized its South Florida operations as a single branch, with a main facility and a satellite facility. The employees at both facilities are managed and supervised from the West Palm Beach facility by the Branch Manager and Operations Manager. It is undisputed that this will not change when the Pompano Beach location closes, whether or not the Employer immediately begins operating in Miami, because the anticipated Miami facility will not have an on-site supervisor or manager. This factor also weighs strongly in favor of finding the two-location unit appropriate.

There is a high degree of functional integration between the West Palm Beach and Pompano Beach facilities, and there is no evidence that will change after the Pompano Beach facility closes and the Miami facility opens. Products located in one facility and needed in the

other facility are regularly transferred from West Palm Beach to Pompano Beach and vice versa. The freight specialists in West Palm Beach route sales orders for delivery for both locations. Their work is used by material handlers and crew leaders to pick orders, stage products for truck loading, and load trucks. The route "books" prepared by freight specialists are also used by truck drivers to make deliveries. The freight specialists also keep track of deliveries and communicate with all drivers, regardless of the driver's assigned work location. Material handlers in Pompano Beach load the trucks of drivers from West Palm Beach for second runs. On the other hand, there is no day-to-day interchange between the two locations. I find that the high degree of functional integration favors finding a two-facility unit, whereas the lack of interchange weighs against finding a two-facility unit appropriate.

Regarding geographic proximity, as noted above, the Pompano Beach facility and the expected new Miami facility are 43 miles and 65 miles, respectively, from the West Palm Beach location. This favors a single-facility unit. There is no bargaining history, so this does not affect the unit determination. Finally, the Petitioner desires to represent employees at both facilities, which favors finding the two-facility unit appropriate, although it need not be relied on in view of the other factors.

On balance, the strong evidence of similarity of skills, duties, and working conditions, centralized control of management and supervision, and high degree of functional integration, outweighs the lack of interchange and the lack of geographic proximity. These facts are similar to those in *Waste Management Northwest*, 331 NLRB 309, 309 (2000), in which the Board found a two-facility unit appropriate. For these reasons, I find that a two-facility unit is appropriate in this case.

B. Neither the impending closure of the Pompano Beach facility, nor the possible expansion of the number of employees assigned to the West Palm Beach facility, affects the question concerning representation raised by the petition.

The undisputed evidence shows that although the Employer will close the Pompano Beach facility on May 31, 2025, all of the employees will be offered jobs at the West Palm Beach branch office or at the new Miami facility. There is not expected to be any reduction of the overall workforce, though there will possibly be two more drivers hired in Miami, increasing the total complement of employees in the two-facility unit from 30 to 32. There will not be any new job classifications. The cases cited by the Employer are inapposite. Those cases state that a petition should be dismissed "when cessation of the employer's operations is imminent, such as when an employer completely ceases to operate, sells its operations, or fundamentally changes the nature of its business." *Retro Environmental, Inc./Green Jobworks, LLC*, 364 NLRB 922, 925 (2016), and cases cited therein. However, the Employer is simply moving to a new facility and transferring employees from the closing facility to its remaining facility and to the new facility. The Employer's operations will continue essentially as they currently exist, albeit at a new satellite location. The Employer's assertions that there is not a question concerning representation because of the forthcoming expansion of the West Palm Beach workforce and reduction of the Pompano Beach workforce is without merit.

C. The petitioned-for unit is an appropriate and the freight specialists and assistant freight specialist do not share a community of interest with the employees in that unit and should be excluded from the unit.

In *American Steel Construction, Inc.*, 372 NLRB No. 23 (2022), the Board overruled the standard articulated in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), as revised in *The Boeing Co.*, 368 NLRB No. 67 (2019), and reinstated the analysis for determining an appropriate unit contained in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), stating:

..... the Board will once again approve a petitioned-for “subdivision” of employee classifications if the petitioned-for unit: (1) shares an internal community of interest; (2) is readily identifiable as a group based on job classifications, departments, functions, work locations, skills, or similar factors; and (3) is sufficiently distinct. Of course, the Board need not address each element in every case: if a particular element is not disputed, it need not be adjudicated. But if a party contends that the petitioned-for unit is not sufficiently distinct—i.e., that the appropriate unit should contain additional employees—then the Board will apply its traditional community-of-interest factors to determine whether there is an “overwhelming community of interest” between the petitioned-for and excluded employees, such that there is no rational basis for the exclusion. If there are only minimal differences, from the perspective of collective bargaining, between the petitioned-for employees and a particular classification, then an overwhelming community of interest exists, and that classification must be included in the unit. As the Board noted in *Specialty Healthcare*, this test does not disturb or displace any preexisting rules or presumptions applicable to specific industries or occupations.

American Steel, supra, slip op. at 13.

In addition, the Board has made clear that it will not approve fractured units, that is, combinations of employees that have no rational basis. *Odwalla, Inc.*, 357 NLRB 1608 (2011); *Seaboard Marine*, 327 NLRB 556 (1999). However, “[a] unit is not fractured simply because a larger unit might also be appropriate, or even more appropriate.” *Macy’s Inc.*, 361 NLRB 12, 22 (2014), citing *Specialty Healthcare*, supra, at 942.

The Board’s test for whether a petitioned-for unit shares a community of interest considers whether employees are organized into a separate department or administrative grouping; 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. *American Steel*, above, slip op. at 2, citing *United Operations, Inc.*, 338 NLRB 123 (2002). Particularly important in considering whether the unit sought is appropriate is the organization of the plant and the utilization of employees’ skills.

Gustave Fisher, Inc., 256 NLRB 1069, fn. 5 (1981). However, all relevant factors must be weighed in determining community of interest.

The second inquiry is whether additional employees share an overwhelming community of interest with the petitioned-for employees such that there “is no legitimate basis upon which to exclude (the) employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *American Steel*, supra, slip op. at 21, fn. 35. The burden of demonstrating the existence of an overwhelming community of interest rests on the party asserting it. *Id.*, citing *Specialty Healthcare*, supra, at 944.

A unit is readily identifiable based upon “job classifications, departments, functions, work locations, skills, or other similar factors.” *American Steel*, supra, slip op. at 4. I conclude that the employees in the petitioned-for unit are “readily identifiable as a group” because, with the exception of the lone maintenance specialist, they are hourly employees who handle and transport the products received and delivered by the Employer. Like, material handlers, the maintenance specialist regularly operates a forklift to move dumpsters and occasionally operates a forklift to assist material handlers at the Pompano Beach facility, in addition to maintaining the yard where the material handlers and crew leaders work. All employees in the petitioned-for unit have the same managers and supervisors. I find that the employees in the petitioned-for unit are readily identifiable as a group.¹⁰

With respect to the Employer’s contention that freight specialists and assistant freight specialists must be included in the unit, the evidence shows that the exclusive function of the freight specialists and the primary function of the assistant freight specialist is a dispatch function. The freight specialists perform as dispatchers of the Employer’s truck drivers and also coordinate deliveries of inbound freight, working from the main office area at West Palm Beach. Similarly, the only titled assistant freight specialist primarily coordinates inbound freight deliveries from the West Palm Beach “dispatch – trucking office.” Based on their job descriptions and the record as a whole it appears that freight specialist and assistant freight specialist in West Palm Beach perform a separate and distinct function from the functions of the employees in the petitioned-for unit and work in separate office locations. The evidence as a whole is insufficient to find that freight specialists and/or the assistant freight specialist share an overwhelming community of interest with the employees in the petitioned-for unit despite common management and supervision, functional integration, and the regular communications between freight specialists and truck drivers. In making this finding I have determined that the vague testimony of Branch Manager Donaldson regarding the assistant freight specialist’s performance of some material handler work is also insufficient to establish assistant freight specialists share an overwhelming community of interest with the petitioned-for employees such that there “is no legitimate basis upon which to exclude (the) employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *American Steel*, 372 NLRB No. 23, slip op. at 21, fn. 35.

¹⁰ The material handler in Pompano Beach who is currently performing assistant freight specialist work is only doing so temporarily until the Pompano Beach facility closes and remains classified as a material handler. Accordingly, I find that he is eligible to vote as a material handler.

IV. CONCLUSIONS

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

1. The rulings of the Hearing Officer at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹¹
3. The parties stipulated, and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. The parties stipulated, and I find that there is no collective-bargaining agreement covering any of the employees in the unit sought in the Petition herein and there is no contract bar to this proceeding.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time truck drivers, warehouse workers, material handlers, maintenance specialists, and crew leaders employed by the Employer at its facilities in South Florida, currently located at 1300 Allendale Road, West Palm Beach, Florida and 1341 NW 15th Street, Pompano Beach, Florida; excluding all other employees, guards, and supervisors as defined in the Act.

¹¹ The parties stipulated that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board based on the following commerce facts: The Employer is a Delaware corporation in the business of manufacturing and distributing building materials, with its principal office and place of business in Boise, Idaho, and with places of business at 1341 N.W. 15th Street, Pompano Beach, Florida and 1300 Allendale Road, West Palm Beach, Florida. During the past 12 months, a representative period, the Employer, in conducting its operations, purchased and received at locations in the State of Florida goods valued in excess \$50,000 directly from points located outside the State of Florida.

V. DIRECTION OF ELECTION

A. Election Details

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for the purposes of collective bargaining by International Brotherhood of Teamsters, Local Union No. 769.

A manual election will be conducted on April 15, 2025, from 3:30 a.m. to 5:45 a.m. and from 7:30 a.m. to 9:00 a.m. at the following locations:

Poll 1: Employer's facility, Break Room, 1300 Allendale Road, West Palm Beach, Florida

Poll 2: Employer's facility, Warehouse Two, 1341 NW 15th Street, Pompano Beach, Florida

The ballots from Polls 1 and 2 will be commingled and counted at Poll 2 after the arrival of the Board Agent from Poll 1.

The ballots and Notice of Election shall be printed in English and Spanish.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending March 30, 2025, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, and separate lists for Poll 1 and Poll 2 with the same information.

To be timely filed and served, the list must be *received* by the regional director and the parties by **April 4, 2025**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**¹²

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

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

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, which will be provided separately at a later date, in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least

¹² The Petitioner agreed to waive 2 days of 10-day period that it is entitled to have the voter list.

3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

VI. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

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

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: April 2, 2025.



David Cohen, Regional Director
National Labor Relations Board, Region 12
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