

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

**SYSCO USA III, LLC d/b/a
SYSCO ALLENTOWN¹**

Employer

and

Case 04-RC-366220

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 773**

Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue in this case is whether the drivers-only bargaining unit sought by International Brotherhood of Teamsters, Local Union No. 773 (the Petitioner) is an appropriate unit. The Petitioner seeks to represent a bargaining unit of approximately 83 full-time and regular part-time delivery drivers, local delivery drivers, driver trainees, shuttle drivers, and special delivery drivers² employed by Sysco USA III, LLC d/b/a Sysco Allentown (the Employer) in its Transportation Department (Transportation) working out of its 800 Willowbrook Road, Northampton, Pennsylvania facility (the Facility)³ and its three associated domicile locations.⁴ The Employer maintains that the petitioned-for unit is fractured and the only appropriate unit is a wall-to-wall unit that includes an additional 75 employees⁵ working in its Warehouse Department (Warehouse) and Fleet and Facility Maintenance Department (Maintenance) at the Facility in the following 16 classifications: outbound selectors, inbound receivers, forklift operators, fleet technician IIIs, fleet technicians IIs, facility technicians IIs, maintenance utility workers, forklift drivers, outbound loaders, yard spotters, MHE tech Is, MHE tech IIIs, refrigeration tech IIs,

¹ The correct legal name of the parties appear in this Decision as stipulated by the parties.

² The petition reflects that Petitioner was seeking full-time and regular part-time delivery partners, delivery drivers, drop yard drivers, and shuttle drivers. At the hearing, Petitioner clarified that it was seeking delivery drivers (who are also referred to as delivery partners), local delivery drivers, driver trainees, shuttle drivers, and special delivery drivers.

³ Northampton is in the Allentown area, and this facility is known as the Allentown Facility.

⁴ According to the Employer's Statement of Position (SOP), its Dorrance Domicile is located at 1183 South Main Road, Mountain Top, Pennsylvania; its Mt. Pocono Domicile is located at 2200 Harvest Lane, Pocono Summit, Pennsylvania; and its Pittston Domicile is located at 141 Brown Road, Pittston, Pennsylvania. Although the Employer's SOP is not part of the Board Exhibits, both the Petitioner and Employer referenced it in their briefs. I hereby take administrative notice of it, and I rely upon it in this Decision.

⁵ While the Employer may refer to them as "colleagues" or "partners," I refer to them as employees throughout this decision as this is the statutory term.

inbound (will call) selectors, slotting coordinators, and outbound short runners.⁶ The Employer also seeks to include two routers who work in Transportation.

In support of its proposed expanded unit, the Employer argues that these additional employees share an overwhelming community of interest with the drivers because they have similar pay, benefits, and working conditions, and that their jobs are functionally integrated with the drivers' jobs, with a high degree of "operational interaction." The Petitioner counters that the Employer has presented insufficient evidence to rebut the appropriateness of its petitioned-for drivers-only unit. There is no history of bargaining or unionization at the Facility.

A hearing officer of the Board held a hearing on June 3-4, 2025⁷ in this matter to adduce relevant testimony and receive documentary evidence, and the parties filed post-hearing briefs, which I have carefully reviewed and considered. The Employer presented five witnesses at the hearing: Operations Vice President Slavic Vdov; Human Resources Director Stephanie Fista; Transportation Director Isaac Esposito; Fleet and Facility Maintenance Director Todd Zayatz; and Warehouse Director Jeffrey Smith. The Petitioner presented delivery driver Todd Dorn and Union Representative Robert Reznick.⁸

The witnesses testified similarly, and the facts are largely undisputed. Prior to the hearing, the parties entered into a stipulation (Board Exhibit 3) that the employee classifications in the petitioned-for unit possess the functional integration and community of interest with each other for inclusion in an appropriate unit. Thus, there is no question that the five categories of drivers are appropriately contained in a single unit. During the hearing, the Petitioner also indicated that it would be willing to represent a unit different from the petitioned-for unit should that be found to be appropriate. The parties agree that a manual election is appropriate but request a second voting site at an unspecified public location to accommodate drivers working out of the three domicile locations.⁹

As explained below, based on the entire record and relevant Board law, I find that the petitioned-for drivers-only unit is an appropriate unit and I therefore direct an election in that unit.

I. THE FACTS:

A. Overview of the Employer's Operation

The Employer, a Pennsylvania limited liability company, is engaged in the wholesale distribution of food and non-food products to customers that sell or service food from its Allentown, PA facility. It is a subsidiary of the Sysco Corporation (Sysco), a multinational corporation that sells, markets, and distributes food service products and supplies to markets,

⁶ Although the record indicates that there is at least one warehouse clerk, the Employer is apparently not seeking to include that classification.

⁷ All dates referred to herein are in 2025 unless otherwise specified.

⁸ The record does not indicate Reznick's specific position with the Union.

⁹ The parties also agreed that Spanish Notices of Election and ballots are appropriate.

restaurants, healthcare, educational, and other venues. The Employer is part of Sysco's Pennsylvania Region, which also includes operations in Philadelphia and Harrisburg.

The Employer provides frozen and refrigerated perishable items as well as dry products and cleaning supplies to customers in northeastern Pennsylvania, New Jersey, southern New York, Maryland, and West Virginia. The Employer opened its 450,000 square-foot Facility in May 2024 and it consists of the central warehouse and maintenance facility in Allentown, as well as the three domicile locations in Mt. Pocono, Dorrance, and Pittston, which are also referred to as depots or drop yards. The domiciles are all located within a 45-90 minute drive from the Facility and are utilized to reduce travel time to and from the Facility, allowing drivers to service remote customers while remaining compliant with Department of Transportation (DOT) regulations concerning drivers' hours. According to the list of petitioned-for employees in Attachment B to the Employer's SOP, 12 out of the 83 drivers, or about 15 percent, are assigned to work out of the domicile locations, with four currently working out of each location.

B. The Operations Department Management (Operations)

The Facility consists of four departments: Sales, Finance, Merchandising, and Operations.¹⁰ Operations, which is at issue herein, is responsible for the delivery and sale of goods, and is overseen by Operations Vice President Slavic Vdov (Vdov). Vdov has been in this position since about September 2023, prior to the opening of the Facility. Within Operations, there are three separate and distinct departments: Transportation, which includes all of the drivers in the petitioned-for unit as well as the routers; Warehouse; and Maintenance. Each of these departments has its own director, who reports to Vdov as well as separate supervisors. Transportation Director Isaac Esposito (Esposito) manages the 85 Transportation employees who bring the product to the customers. Warehouse Director Jeffrey Smith (Smith) oversees the 64 Warehouse employees and is responsible for all inbound and outbound warehouse functions. Maintenance Director Todd Zayatz (Zayatz) is responsible for the 13 Maintenance employees who perform repair, maintenance, and preventative maintenance on equipment used at the Facility as well as on the Facility itself.

Vdov also manages Safety Director Arnaldo (Rey) Reynoso, who does not have any direct reports. Additionally, although Human Resources does not fall under Operations, Human Resources Director Stephanie Fister provides support to Vdov with respect to employee relations, the Employer's policies and procedures, employee benefits, and discipline. Fister has been in this position since February 2024 and reports to Market Vice President of Human Resources John Carroll, who has responsibility for Sysco's entire northeast corridor. Fister also has an assistant, HR Generalist Nicole Delgado.

¹⁰ The Sales Department builds relationships with customers and takes orders. The Finance Department, which is directed by Director of Finances Tara Adlon, ensures that invoices are paid and performs audits. The Merchandising Department is overseen by Director of Merchandising Sarah Demen and is responsible for inventory control.

C. Transportation

1. Management and Supervision

According to Attachment B to the Employer's SOP, there are currently 83 drivers in Transportation. Of those, 65 are delivery drivers, nine are driver-trainees, three are shuttle drivers, three are special delivery drivers, and three are local delivery drivers. Esposito has been the Transportation Manager since December 2024. He is responsible for hiring, coaching, and disciplining the 83 drivers and two routers in that department. He conducts driver interviews along with other Transportation managers and supervisors.

Under Esposito, there are two managers in Transportation: Delivery Service Center (DSC) Supervisor/Manager¹¹ Jacob Schuster and Transportation Manager Xavier Drummond, who was recently promoted from the position of DSC Supervisor. There are also five Transportation Supervisors: Howard Philbrick, Richard Ellenberger, John Santiago, John Burns, and Jonathan Reimert. They work out of the Transportation Office at the Facility, where they monitor the drivers and the delivery process. The Transportation Supervisors also act as "road supervisors" on a rotating basis, assisting drivers with concerns and issues they encounter while on the road. All drivers report to one of the five Transportation Supervisors listed above. The domicile delivery drivers are mostly supervised by Transportation Supervisor Richard Ellenberger.

The DSC, which houses the Employer's dispatchers, is the lifeline of Transportation, and all communications flow in and out of that office. Drivers call the DSC if they need to call out, report an issue with their route, have issues with customers, or if they break down. The DSC also monitors the drivers in real time to make sure they can complete their routes in a timely manner that is compliant with DOT guidelines. Although the record establishes that drivers report all issues to the DSC, there may be occasions when issues are also reported to a supervisor within the Warehouse, although the record does not disclose how often or when in the process this occurs.

2. Drivers' Skills, Duties, and Working Conditions

Delivery drivers drive tractors and trailers and make product deliveries to customers. They must have CDL Class A licenses. Delivery drivers who are domicile drivers (also referred to as drop yard drivers) report to their assigned domicile locations instead of the Facility and make their deliveries from those locations. Delivery drivers earn a starting pay of \$32.73 per hour; shuttle drivers earn \$35.11 per hour; and special delivery drivers earn \$23.06 per hour. With the exception of specialty delivery drivers and shuttle drivers, drivers are also eligible for incentive bonuses, but the record does not disclose the amount, the standards used for determining the bonus amount, or the frequency of these bonuses. Drivers receive periodic training on modules pertaining to driving safety.

Delivery drivers receive their dispatch times, which can vary daily, as well as their route assignments prior to arriving at the Facility, typically by text message from Transportation the evening before the route is scheduled to depart. Drivers arrive at the Facility or domicile location

¹¹ The record is not clear which of these titles is correct.

between 12:30 a.m. and 6:00 a.m. and then perform their pre-trip inspection, reporting any mechanical issues to the DSC. Many of the drivers have pre-assigned tractors. Before leaving the Facility or domicile location, drivers scan their product with a handheld device which sends information into the STS portal. The entire pre-trip process takes about 30 minutes and drivers spend the remainder of their workday on the road delivering the product to customers. When making deliveries, drivers use a lift gate or a ramp to unload their product from the truck. They then remove the plastic shrink-wrap from the pallets, scan and deliver the product, obtain the customer's signature, and then, if necessary, rearrange the remaining product for the next delivery. If product is missing, they report it to the DSC. Drivers may address minor mechanical issues that arise during the delivery process, like repairing liftgates.

When drivers return to the Facility, they park their trailer and tractor at the dock in the drivers' check-in area and unload returns to the pallet storage area or return staging area where a Warehouse employee restocks the product. Although there was some testimony proffered by the Employer concerning drivers placing frozen product in the freezer area if a Warehouse employee was unavailable, the record does not contain any specific examples of this occurring nor does it indicate the frequency with which it occurs. Moreover, the record indicates that drivers usually return their loads prior to 6:00 p.m. at which time Warehouse employees are still at the Facility to re-stock the product or place it in the freezer. After their trailers are unloaded, and the shrink wrap is recycled, drivers return them to the fuel island for refueling. Drivers then complete their post-trip inspections, identifying any equipment that needs re-inspection or maintenance, and return any equipment used in the delivery process to the dry dock. Domicile drivers complete a similar process remotely but fuel their own trucks.

Once their routes are complete, drivers may provide feedback on their loads through their assigned Transportation Supervisors using the Employer's "routing feedback sheet" or "load quality sheet." They may also have occasion to speak with Warehouse employees directly to share their opinions; however, the Warehouse employees would not reciprocate in this process, and the record does not provide examples of when or how frequently this sharing of feedback occurs. Drivers complete route request forms if they have routing issues, or they may discuss their routes directly with the routers. The record does not indicate how often or under what circumstances these interactions occur with routers. Drivers then contact the dispatch office to see whether any other drivers require assistance to complete their routes, which can occur during a driver's regular hours or result in extra hours. The entire post-trip process takes 20-30 minutes.

Shuttle drivers begin their workday at 6:00 p.m. and work overnight. If shuttle drivers have loading issues, they report them to their supervisor or Esposito, or they may text Warehouse Director Smith. They do not interact with any Warehouse employees. Shuttle drivers transport loaded trailers along with driver paperwork and customer invoices from the Facility to the domicile locations for delivery by the domicile drivers. They do not deliver directly to customers, and usually drive doubles, which require "doubles endorsements."

Specialty drivers operate vans or box trucks to recover product that was not delivered and provide assistance to drivers who may have fallen behind in their daily deliveries. They also perform "hot shots," which are unplanned deliveries that are time sensitive.

Driver trainees are essentially new drivers who are in their probationary period and are training with delivery drivers. The training period varies, based on their skill, from 4-5 weeks to three months. Neither the record nor the parties' briefs provide any insight into the job duties of local delivery drivers or how they differ from the other delivery drivers. Although the vast majority, if not all,¹² of the Employer's drivers hold CDL licenses, the record reflects that there are some jobs, such as specialty driver, for which such licensing may not be required.

3. Routers' Skills, Duties and Working Conditions

Per the Employer's Distribution Operations Organization (Employer Exhibit 4), routers and transportation clerks fall under Transportation, although the record indicates there are currently only two routers whose inclusion the Employer seeks and it does not appear to be seeking to include transportation clerks, if any currently exist. Routers plan the routes, establish cutoff times for when customers are permitted to place their orders, and ensure the efficiency of the routes. They use a program called Roadnet, which may result in orders moving from one route to another based on drivers' schedules or customers' preferences. It is undisputed that while the routers report to Transportation supervisors and managers, they physically sit in Maintenance and receive feedback from Warehouse employees concerning how to fit loads onto the trucks. Routers may also receive feedback from drivers concerning their routes, or information concerning restrictions or customer requests necessitating changes to the routes. However, the record does not specifically indicate how frequently this has occurred, nor does it contain any documentation of such interactions. In any event, this information is also transmitted by computer, potentially avoiding the need for any interaction between drivers and routers. Routers earn \$36.05 per hour – the highest base hourly rate at the Facility. Of all the employees whom the Employer seeks to include in this unit, the routers appear to have the most frequent contact with drivers. That said, according to Dorn's uncontroverted and credible testimony, he communicates directly with routers only on rare occasions and for a brief (10-20 minute) duration when that has occurred.

D. Warehouse

1. Management and Supervision

Smith has been the Warehouse Director since about March 2024. Warehouse also has an Inbound Supervisor, Adam Kramer, who is responsible for overseeing the process of receiving the product. Kramer directly supervises the inbound receivers, inbound forklift operators, and inbound (will call) selectors. There is an Outbound Warehouse Manager, Jason McCoy, who manages four Outbound Warehouse Supervisors. They oversee the selection and loading process and supervise the outbound selectors, outbound short runners, and forklift operators, let down. McCoy also manages the outbound warehouse clerk and yard spotter. There is also a Slotting Coordinator but the record is unclear as to their job responsibilities and oversight. Additional Outbound Supervisors include Kayana Harvey, Dan Leonard, Amy Panier, and Eric Flores. It is undisputed that none of the aforementioned Warehouse supervisors directly supervise any drivers.

¹² The record does not indicate which of the drivers do not hold such licenses and Dorn testified that he believes all drivers have CDLs.

2. Warehouse Employees' Skills, Duties and Working Conditions

According to Attachment C to the Employer's SOP and Employer Exhibit 4, approximately 62 out of the 77 employees whom the Employer seeks to include with the petitioned-for drivers work out of the Warehouse. They consist of 46 outbound selectors, one outbound loader, one outbound short runner, one inbound (will call) selector, five inbound receivers, six forklift operators inbound, and two forklift operators let down. Warehouse employees all report to the Facility, arriving between 5:00 and 6:00 p.m. and leaving when their picking and/or loading tasks are completed. This is typically prior to when the drivers arrive in the morning. Similarly, most Warehouse employees have not arrived when the drivers leave for the day in the evening. The exception is that inbound product employees arrive at 5:30 a.m. and work until 2:30 to 4:30 p.m.; however, they do not work near the dock where the drivers' vehicles are parked.

All Warehouse employees are provided with information necessary to complete their daily tasks in a pre-shift meeting or huddle. Inbound receivers check in the product when it is delivered to the loading dock by third party suppliers. They label the products which are then put away by forklift operators. Outbound selectors, who comprise about 60 percent of the classifications which the Employer is seeking to add, are responsible for selecting the orders. They select the product out of the dry warehouse, cooler, or freezer, scan it, and place it on the pallet, which they build utilizing zones provided to them through the SWIMS system. Selectors wear wireless printers that print labels specific to the items they are selecting, which are then scanned by drivers upon delivery for verification. Outbound loaders inspect the pallets once they are selected and then wrap them in shrink wrap and load them on the trailer, using a load map that is built by a warehouse supervisor or manager. The map is also contained on the driver's manifest so drivers know how their trucks are loaded. Outbound loaders also scan float labels onto pallets and secure the loads with straps or bars. Let down forklift drivers ensure that the slots selectors use to select the product are replenished. Yard spotters move tractors and trailers within the yard to ensure they are in the correct location to be loaded. They also set the temperature in the trailer and communicate with the Warehouse if the loading process needs to be stopped.

Warehouse employees earn a range from \$23.55 per hour to \$32.94 per hour, with an average starting pay of about \$28 per hour. More specifically, yard spotters earn \$23.55; slotting coordinators earn \$24.50; outbound selectors and outbound short runners earn \$28.36; forklift operators inbound and forklift operators, letdown earn \$29.43; outbound loaders earn \$29.86; and inbound receivers earn \$32.94. While some Warehouse employees receive incentive bonuses, the record does not disclose which employees, how frequently, or how much they receive. It appears that this is a different program than the drivers' incentive program, with different standards and guidelines. Warehouse employees receive periodic training concerning job-related warehouse safety functions.

E. Maintenance

1. Management and Supervision

In addition to Maintenance Manager Zayatz, who has been in that position since July 2024, Maintenance has a Fleet Maintenance Manager, Art Harris, who supervises maintenance utility

workers and fleet techs who repair and clean tractors, trailers, stray trucks, box trucks, vans, and dollies. It appears that material equipment techs, refrigeration tech, fleet and material handling coordinator, and facility techs all report directly to Zavatz.

2. Maintenance Employees' Skills, Duties, Working Conditions

The Employer seeks to include in the petitioned-for unit 13 employees in Maintenance, including: one fleet technician II, three fleet technicians III, two facility technician IIs, one yard spotter (also referred to as a jockey or a hostler), one slotting coordinator, two maintenance utility workers, one MHE technician I, one MHE technician III, and one refrigeration tech II. These employees work in a separate maintenance building at the Facility, which has a separate break room.

Most of the Maintenance employees work from 7:00 a.m. to 3:30 p.m. although one employee works from 3:00 p.m. to 11:30 p.m. and another works 11:00 p.m. to 7:30 a.m. to achieve 24-7 coverage. In addition, three fuelers work from 11:00 a.m. to 9:30 p.m. Within Maintenance, material handling equipment technicians (MHE techs) are responsible for all maintenance on equipment in the Facility. There are currently two MHE techs with a third in training. They work from 7:00 a.m. to 11:00 p.m. on weekdays and work out of a shop near the main break room. They receive work orders through a system that is based upon reports from Warehouse employees. They also maintain battery charges on material handling equipment used by Warehouse employees. The yard spotter essentially moves equipment from one location of the yard to another. There are also four fleet technicians who repair and maintain fleet vehicles and work out of the fleet shop but assist throughout the Facility, including with repairing trucks. There are currently two maintenance utility techs (or fuelers), with a third who is completing the onboarding process, who work 10-hour shifts out of the fuel island and are responsible for fueling and sanitizing the vehicles. Lastly, there are three facility technicians who repair and maintain the Facility itself, including fixing doors, floors, lights, and some refrigeration units, who work 7:00 a.m. to 3:30 p.m. One of these individuals is a refrigeration tech who has the additional responsibility of maintaining the ammonia system needed to ensure accurate refrigeration.

Maintenance employees' hourly rates range from \$18.55 to \$34.00. More specifically, maintenance utility workers earn \$18.55; MHE Tech 1s earn \$22.00; coordinator, fleet and material handling equipment earn \$22.90; facility technician IIs earn \$25.50; MHE tech IIs earn \$32.00; and fleet technician IIIs and MHE tech IIIs earn \$34.00.

F. Functional Integration of Business Operations (Operational Interaction)

At the hearing, the Employer presented evidence concerning its operations process in an effort to establish the functional integration of its operation, or at least, operational interaction. Its witnesses explained that the process begins when a customer places an order through the SWIMS system, which is then sent to the SUS system. At that time, the routers establish cutoff times for the customer order, and the Warehouse inputs the order into the Roadnet system, which generates prebuilt routes that may be changed by the routers, if necessary. Once the routes are established, Transportation determines the dispatch times of the routes and advises the drivers when they will be dispatched in the morning. The routers then send the information to the Warehouse Supervisor,

who uses Syntelic to create a load map for the selectors and loaders, who in turn place the product onto the trailers for delivery by the drivers.

Additionally, during the day, the will call office takes orders from customers for urgent deliveries, which are performed by specialty drivers (hot shot drivers) or delivery drivers who have already finished their assigned routes. This occurs several times per week. Will call orders follow the same protocols as regular orders and are selected by Warehouse employees. They are then loaded onto the truck by the Warehouse employee or the driver, depending on the time of the day and staffing, although the record does not indicate how frequently the drivers do so. Will call orders may also be picked up by the customer at the Facility. In those circumstances, a Warehouse employee loads the product into the customer's vehicle.

The record indicates that the managers from each of the three departments coordinate with one another during the course of the day, but it does not indicate how frequently this occurs. Employees from different departments may also have occasion to utilize the same equipment such as pallet jacks (walkies) or hand trucks and share the responsibility for charging them. All departments have access and input into the daily workflow sheet, which includes driver start times and loading dock door numbers.

Throughout the hearing, the Employer elicited testimony from its witnesses concerning employee feedback and how it related to the function of its operation. This is one area in which the testimony of the Employer's witnesses and the Union's employee-witness were not entirely consistent. Nevertheless, it is clear that drivers generally provide feedback on their loads directly to their Transportation Supervisors at the DSC either by phone or in person when they return to the Facility. The Employer also holds separate meetings within each department to elicit feedback. The DSC then advises the Warehouse Director of any issues, which can trigger discussions by the DSC with the driver about how they want their trucks loaded. During this process, the driver may even take photos of their loads with their scanner or their cell phones. The record contains an email from mid-September 2024 in which Warehouse Director Smith identified drivers who had been complaining about how their trucks were loaded.

The Employer communicates with employees using bulletin boards at the Facility, or through the television in the main break room, which do not distinguish between employee classifications or departments. It communicates safety and employee of the month announcements in this manner although it is not clear how many drivers see these messages as they spend all but one hour a day on the road making deliveries. The Employer also solicits feedback from all its employees using its annual "Sysco Speaks," survey. However, the results of the survey are evaluated by department and the Employer holds separate meetings in each department to discuss the results.

G. Employee Contact, Interchange, and Transfer

The record supports that there is little daily contact or interaction between the petitioned-for drivers and the employees in the other departments. Dorn, the sole driver to testify in this matter, who has been employed at the Facility since it opened, credibly testified that he was not familiar with nearly all of the classifications in Warehouse and Maintenance, and that his interactions with these individuals was “nonexistent.” He testified that he never encountered Warehouse employees with the exception of perhaps asking them to move aside so he could load his pallets. Zayatz’s and Smith’s testimony underscored Dorn’s as they acknowledged that Warehouse and Maintenance managers had little regular interaction with the drivers, other than greeting them, because drivers did not work in their departments. Moreover, since the 12 domicile drivers do not regularly report to the Facility, they do not interact, at least in person, with the employees whom the Employer seeks to include. Rather, drivers may call into the DSC during the day if there are issues.

While the Employer presented testimony from its supervisors and managers that drivers may have occasion to interact with Warehouse or Maintenance employees before they left for their runs or when they returned, there was no indication that this interaction was anything other than incidental, such as drivers seeing employees in the breakroom when drivers went in to get a snack, and Dorn testified that he and the other drivers do not use the breakroom in any event. Similarly, the Employer maintains that drivers may see Warehouse employees on the refrigerator dock or use Warehouse equipment if they need to reload their trailer, perhaps even with the assistance of a Warehouse employee, but once again, the record does not indicate how frequently this occurs and makes clear that drivers can submit work orders requesting a re-load. Additionally, Dorn credibly testified that for the eight months preceding the hearing, drivers were not permitted on the dock where Warehouse employees regularly perform their work.¹³ While the Employer submits that drivers may speak with Warehouse employees if they are looking for equipment, there is no indication that these contacts are anything but brief momentary discussions.

Likewise, the Employer proffered testimony from managers concerning driver interactions with mechanics, such as reporting issues with their vehicles, but offered no specific examples of such conduct nor any documentary evidence concerning the frequency with which this has occurred. While Zayatz testified that 2-5 drivers a day have mechanical issues, drivers report such equipment issues by failing the vehicle on the scanner during their pre-trip inspection, which generates a work order in Sprocket that is sent to the Maintenance Shop. According to Dorn, drivers also place red tags on their vehicles if they need to be repaired. Although the Employer offered testimony that drivers may talk with fuelers directly to let them know if their truck needed to be fueled or washed, it contained no specific examples of this occurring nor did it explain why this would be necessary if the information was contained in post-trip reports. On this point, while Zayatz initially testified on direct examination that drivers have a “high level of interaction” when dropping off their trucks with fuelers at the end of the day, he qualified that statement during cross-examination to state that they are “generally just oral interactions about what needs to be done or something to that effect, or I’m done with my route, please fill it, I need fuel,” conceding that there was very little operative interaction between them.

¹³ Esposito confirmed that such a policy had been in place but said he believed it was rescinded, although he did not recall when and under what circumstances this occurred.

The Employer has a safety committee on which drivers, warehouse, and maintenance employees may participate but the record does not indicate how many of each classification serve on the committee nor does it indicate how often it meets. I note that the agenda and list of attendees from this committee's meeting on January 15, which is Employer Exhibit 15, does not appear to list the names of any current drivers or Warehouse or Maintenance employees according to Exhibits B and C on the Employer's SOP. Further, the record reflects that there are distinct safety issues between the three departments. The Employer also holds monthly social functions to which all employees, supervisors, and managers are invited, such as cookouts, its Dorney Park outing on June 21, or its rodeo on August 9. The record does not indicate how many drivers, Warehouse, or Maintenance employees have attended these functions.

As to employee interchange or temporary transfer, the Employer presented vague testimony that during the "busy season" or when necessary to assist drivers who were struggling with their routes, it might assign drivers or Warehouse employees as "co-drivers" to go out on routes with drivers to assist them in loading and unloading deliveries or as part of the Employer's ride-along program.¹⁴ During that time, the Warehouse employee would be paid their Warehouse employee wage rate and be directed by a Transportation supervisor. The Employer's witnesses did not indicate the frequency with which this occurred, and Smith conceded that this practice was "sporadic." Furthermore, Dorn testified that such occurrences were rare and that he never had a Warehouse employee ride with him. The Employer's witnesses referenced only two specific instances of interchange. The first involved night shift outbound selector Thomas DiPaolo a few weeks prior to the hearing but the record does not indicate which driver he assisted or the reason he was assigned to assist. The second was when warehouse employee Keven Velez went out on a route with driver Eric Rasmussen. On this point, I note that Employer Exhibit 27, which is an undated document appearing to show driver assignments for an unspecified day, lists seven co-drivers by name but none of them are employed as drivers or in Warehouse or Maintenance according to Attachments B and C to the Employer's SOP.

As to drivers working within the Warehouse, the record reveals that on occasion, drivers who are assigned to light duty due to injuries, whether work-related or non-work-related, will assist with the staging of tractors if there is no Transportation work to perform. On those occasions, they are supervised by Warehouse supervisors. The Employer provided non-specific testimony about one such individual named Khalif Rivera but Esposito testified he thought that there were 1-5 such employees in that category since the Facility opened. The Employer also presented evidence that during the last week in May, which was the week prior to the hearing, driver Andrew Morris assisted in the Warehouse selecting loads in an effort to reduce selection errors. Morris had previously worked at another facility¹⁵ as a selector so he had specific knowledge and experience in warehouse selection. It appears that this was done on a voluntary basis.

With respect to employee transfer, the Employer has a Warehouse to Wheels program, whereby Warehouse employees can acquire Class A CDLs, presumably to become drivers.¹⁶ After

¹⁴ Only co-drivers who have CDLs can operate the trucks.

¹⁵ The record is unclear as to whether it was a Sysco facility.

¹⁶ There are driver positions which do not require CDLs, although the record does not clarify which ones or how many such drivers exist, and Dorn testified that he was unaware of any.

an employee indicates interest and the Employer communicates the requirements to them, the Employer pairs the employee with an outside CDL school and the Outbound Warehouse Manager schedules times for the employee to ride with drivers on their routes. While the Employer elicited testimony that there are currently 5-6 employees in this program, Dorn was only aware of one such employee. More importantly, while Vdov testified that the Employer tracked their progress, no such evidence was presented. Significantly, no employee has completed the program to date, nor is it clear that any successful employee would convert to become a driver for the Employer. Thus, there is no evidence that any Warehouse or Maintenance employee has permanently transferred into Transportation, including becoming a router, nor is there any evidence that any driver has transferred into Warehouse or Maintenance.

H. Labor Relations and Employee Benefits

It is undisputed that all of the Employer's employees are subject to the same labor relations policies, which are overseen by its Human Resources Department. Employees undergo the same hiring and talent acquisition process, receive the same welcome letter, and attend the same orientation sessions, which include a two-hour safety presentation as well as a presentation concerning the Employer's position on unionization. All employees must complete the same on-line training through Percipio, which includes medical exposure records training, active shooter training, and blood form pathogen awareness training – to name a few. All employees are also subject to the Employer's site visit retention policy, receiving visits from managers and supervisors at 30, 60, 90, and 180 days, respectively. Employees are subject to the same handbook, code of conduct, and workplace policies such as attendance and dress code. All employees complete the same annual code of conduct training. Employees also have access to the same employee benefits. In addition, all employees receive department-specific training during their first 90 days of employment. However, in Transportation, drivers complete the Delivery Partner Academy, which lasts about five days, and complete training modules for CDL drivers such as the Smith System. All of the employees who work in the Facility have the same swipe cards to get in and out.

I. Collective Bargaining History and the Extent of Organization

The Facility had been open for about a year when the instant petition was filed, and there is no history of collective bargaining at that location. However, the record establishes that many of Sysco's locations are unionized, including its Philadelphia location, at which the Transportation employees (drivers) and Warehouse employees are not only in separate bargaining units but are represented by two different Teamsters Union locals. The record further discloses that there are at least two other Sysco locations with drivers-only bargaining units, located in Chicago, Illinois and in Hampton Roads, Virginia.¹⁷

II. LEGAL AUTHORITY

¹⁷ This may not be an exhaustive list, and I take administrative notice that the NLRB issued certifications of representative in the drivers-only units in the above-cited decisions in *Sysco Louisville, Inc.*, Case 09-RC-293861; *Sysco Central California, Inc.* Case 32-RC-285722; *Sysco Central California, Inc.*, Case 32-RC-272442; and *Sysco South Florida, Inc.*, Case 12-RC-233214. There are no pending requests for review in those cases.

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). “[I]n every unit determination case, the Board’s inquiry will ‘consider only whether the requested unit is an appropriate one even though it may not be the optimum or most appropriate unit for collective bargaining.’” *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op. at 3 (2022), quoting *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an “overwhelming community of interest” with those in the petitioned-for unit. See *American Steel Construction, Inc.*, *supra*, overruling *PCC Structural, Inc.*, 365 NLRB 1696 (2017) (which reinstated the traditional community of interest standard) as modified in *Boeing Co.*, 368 NLRB No. 67 (2019), and returning to the standard articulated in *Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB 934 (2011) *enfd. sub nom.*, with clarifications; *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013.).¹⁸

The first inquiry is whether the job classifications sought by the Petitioner are readily identifiable as a group and share a community of interest. 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) (merchandisers could not be excluded from a unit of warehouse and product distribution employees); *Seaboard Marine*, 327 NLRB 556 (1999). An important consideration is whether the employees sought are organized into a separate department or administrative grouping. Also important are whether the employees sought by a petitioner union 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. *United Operations, Inc.*, 338 NLRB 123 (2002). Particularly important in considering whether the unit being sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fischer, Inc.*, 256 NLRB 1069, fn. 5 (1981). However, all relevant factors must be weighed in determining community of interest and no single factor is dispositive. It should be emphasized that the Board will only find functional integration where employees must work together and depend upon one another to accomplish their tasks, and not merely when they are part of the same production process. *DTG Operations, Inc.*, 357 NLRB 2122, 2126-2128 (2011) (application

¹⁸ It bears mention here that both the *Specialty Healthcare-American Steel* and *PCC Structural-Boeing* frameworks are in broad agreement about the overall process of unit determinations and the elements or inquires that are involved; the one point of difference is the showing required under the “sufficiently distinct” element. *American Steel Construction Co.*, *supra* at 10, 16. Thus, both frameworks agree that the petitioned-for employees must share an internal community of interest, there is no disagreement that the petitioned-for unit must be “identifiable,” and both frameworks contemplate that, where relevant, the Board will consider industry-specific precedent and rules it has developed through case adjudication.

of the “overwhelming community of interest” test under *Specialty Healthcare*, finding petitioned-for unit of rental service agents and lead rental service agents appropriately excluded various other hourly employees).

Where a party objects to the petitioned-for unit on the basis that it is too small, and that the smallest appropriate unit must contain additional employees, then the inquiry moves to the second step to consider 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.” *Specialty Healthcare*, supra at 943-945, fn. 28 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). The burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017 fn. 8 (2011). As the Board highlighted in *DPI Secuprint, Inc.*, 362 NLRB 1407, 1410 (2015) quoting *Specialty Healthcare*, supra, there may be a number of ways in which employees in a given workplace may be appropriately grouped, but demonstrating that another expanded grouping is appropriate, or even more appropriate, is insufficient to demonstrate that the petitioned-for smaller unit is appropriate. See also *Pacemaker Mobile Homes*, 194 NLRB 742, 743 (1972) (where the Board stated the unit requested which excluded truck drivers was an appropriate unit so it was irrelevant that a larger unit might also be appropriate).

The Board has long held that drivers-only units are inherently appropriate. See *E. H. Koester Bakery Co., Inc.*, 136 NLRB 1006, 1006, 1012 (1962) (where the Board found that the drivers at issue could be excluded from a petitioned-for production and maintenance unit because, among other things, drivers spent the vast majority of their time away from the facility, had distinct working conditions, and had little contact with the petitioned-for employees). More recently, the Board has held “[D]rivers may constitute an appropriate unit apart from warehouse and production employees unless they are so integrated with a larger unit that they have lost their separate identity.” *Triangle Building Products Corp.*, 338 NLRB 257, 266 (2002) (citing, among others, *E. H. Koester*). See also *Home Depot USA*, 331 NLRB 1289, 1291 (2000) (where the Board found a drivers-only unit appropriate despite spending 30-40% of working time on non-driving tasks and sharing interest with others). See *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000) (reversing finding that petitioned-for unit of dockworkers should include truck drivers reasoning that drivers perform a separate function, possess special skills and qualifications, worked away from the facility most of the day, and did not have any overlapping duties or interchange with the other employees); see also *Overnite Transportation Co.*, 322 NLRB 347 (1996), rehearing denied 322 NLRB 723 (1996); (driver unit appropriate without mechanics).

Further, over the last eight years, the question of whether drivers-only bargaining units are appropriate at similarly organized Sysco-owned facilities has been decided at least seven times. In each circumstance, the respective Regional Director found the petitioned-for drivers-only unit to be appropriate. See *Sysco Knoxville, LLC*, Case 10-RC-328253 (February 20, 2024) (Regional Director found a petitioned-for unit of 84 delivery drivers, special delivery drivers, shuttle drivers, routers, transportation clerks to be an appropriate unit, excluding 75 routers, transportation clerks, warehouse, and maintenance employees whom the employer sought to include); *Sysco Louisville, Inc.*, Case 09-RC-293861 (July 1, 2022) (Regional Director found a petitioned-for unit of 97

delivery drivers, shuttle drivers, and driver helpers to be appropriate, excluding 69 warehouse and maintenance department employees whom the employer sought to include); *Sysco Central California, Inc.*, Case 32-RC-285744 (January 19, 2022) (Regional Director found a petitioned-for unit of 60 delivery drivers (including special delivery drivers and hot shot delivery drivers) and shuttle drivers to be appropriate, excluding 115 routers, transportation clerks, warehouse and maintenance employees whom the employer sought to include); *Sysco Central California, Inc.*, Case 32-RC-272441 (April 21, 2021) (Regional Director found a petitioned-for unit of delivery drivers (including shuttle drivers) and a backhaul driver to be appropriate, excluding routers, warehouse, and maintenance employees whom the employer sought to include); *North Star Seafood (Sysco)*, Case 12-RC-233250 (February 4, 2019) (Regional Director found petitioned-for unit of 25 delivery drivers to be appropriate, excluding 14 warehouse employees the employer sought to include); *Sysco South Florida, Inc.*, Case 12-RC-233214 (January 30, 2018) (Regional Director found a petitioned-for unit of 128 delivery drivers, fresh drivers, export/cruise drivers, shuttle drivers and hot shot drivers to be appropriate, excluding 169 routers, transportation clerks, warehouse, and maintenance employees the employer sought to include); and *North Star Seafood, LLC (Sysco)*, Case 12-RC-204152 (September 27, 2017) (Regional Director found petitioned-for unit of 38 drivers to be appropriate, excluding 67 warehouse and maintenance employees the employer sought to include).

Finally, Petitioners' desires as to the unit is always a relevant consideration and it is not essential that a unit be the most appropriate unit. *NLRB v. Southern Metal Services*, 606 F.2d 512 (5th Cir. 1979); see also *Airco, Inc.*, 273 NLRB 348, 348 fn. 1 (1984) (petitioner's desires are relevant); *Overnite Transportation Co.*, 325 NLRB 612, 614 (1998) (petitioner's desires may be considered); *Publix Super Markets*, 343 NLRB 1023, 1029 (2004) (more than one truck driver unit may be appropriate and union can seek election in any appropriate unit).

III. ANALYSIS

A. The Petitioned-for Unit of Drivers is Readily Identifiable as a Group and Share a Community of Interest.

The parties stipulated that the five categories of drivers in the petitioned-for unit (i.e., the delivery drivers, local delivery drivers, driver trainees, shuttle drivers, and special delivery drivers) possess functional integration and community of interest with each other for inclusion in an appropriate unit. However, the first prong of the test set forth in *American Steel Construction, Inc.*, supra, requires that I also find the drivers to be a readily identifiable group based on their placement in a separate department or administrative grouping and that I examine whether they have distinct skills and training and perform separate job functions and distinct work. This necessarily includes an inquiry into the amount and type of job overlap between classifications; functional integration with the Employer's other employees; contact and interchange with other employees; and whether they have distinct terms and conditions of employment and separate supervision. See also *United Operations, Inc.*, supra. For the reasons set forth below, the record in this case establishes that the petitioned-for drivers-only unit not only share a strong community of interest but is also a readily identifiable group, easily meeting the first prong of the *American Steel Construction, Inc.* test.

First, the drivers work out of Transportation, which is a separate administrative division within Operations at the Facility. Transportation has its own management and supervision that is distinct from that of Warehouse and Maintenance. The 83 drivers sought by the Petitioner are managed by Transportation Manager Esposito, DSC Supervisor/Manager Schuster, and Transportation Manager Drummond as well as Transportation Supervisors Philbrick, Ellenberger, Santiago, Burns, and Reimert. The drivers report to and interact with these eight individuals regularly on a daily basis, whether they are at home, at the Facility, or on the road. There is no evidence that they are required to report to or interact with any other supervisors or managers for any reason. This is also true for the domicile delivery drivers, who report directly to the domicile locations and have no in-person interaction with Warehouse or Maintenance Supervisors.

Drivers possess distinct skills and training from the Warehouse and Maintenance employees whom the Employer seeks to include. The vast majority of the Employer's drivers possess CDL licenses that are necessary to perform their work. This licensing requires schooling and on-the-job training and none of the Employer's Warehouse or Maintenance employees have successfully obtained this licensing to date. Drivers are also trained in safety and DOT regulations and guidelines that are specific to driving. Simply put, the other employees at the Facility cannot perform the primary tasks that the drivers perform, that is, driving tractor trailers to distant locations in Pennsylvania, New Jersey, New York, Maryland, and West Virginia to transport the Employer's product.

Drivers have different terms and conditions of employment than the Warehouse and Maintenance employees whom the Employer seeks to include. To start with, most of the drivers have different working hours than Warehouse and Maintenance employees. With the exception of shuttle drivers, they arrive at the Facility or their domicile locations between 12:30 a.m. and 6:00 a.m. As a result, the majority of drivers arrive at the Facility after the Warehouse employees have already left for the day, and the drivers leave at the end of their runs before the Warehouse employees arrive for their next shifts, greatly reducing the possibility of employee interactions or interchange. Additionally, although there are some exceptions, drivers generally earn \$5 per hour more in terms of their base pay than the Warehouse employees, and considerably more than most Maintenance employees, who start at \$18.55 per hour. Drivers have a starting wage rate of \$32.73 per hour and receive separate incentive pay whereas the average starting wage rate for Warehouse and Maintenance employees is \$28 per hour and most of them are not eligible for incentive pay (and those that are eligible would be subject to different parameters). I disagree that this can be characterized as "virtually identical pay," as the Employer states in its brief.

Drivers' job functions and work are manifestly distinct from that of the Warehouse and Maintenance employees: they are tasked with over-the-road driving for about 90 percent of their day, with about an hour at the Facility for pre and post-trip inspections. In contrast, the Warehouse employees whom the Employer seeks to include spend 100 percent of their time operating forklifts and other equipment moving product around the Facility and building loads, and the Maintenance employees spend all of their time repairing equipment and the Facility itself. It is undisputed that drivers do not perform Warehouse or Maintenance work. Additionally, drivers regularly interface with customers in the performance of their work making in-person deliveries whereas the other employees generally do not have such customer interaction. The only exception is when a

Warehouse employee loads a will call order into a customer's vehicle, and the record does not indicate how frequently this occurs. While drivers and Warehouse employees may use some of the same equipment, like pallet jacks and hand trucks, to complete some tasks, there appear to be more differences than similarities in their equipment, with the drivers' primary equipment being their trucks themselves, which the other employees obviously do not operate. Drivers are responsible for complying with DOT regulations concerning their driving hours as well as safety, which do not have any impact on the other employees. They also fill out different forms throughout the day which specifically relate to their tasks and utilize different software.

Critically, there is no evidence that the drivers have any significant contact or interchange with Warehouse or Maintenance employees. While drivers may have occasion to greet the other employees at the Facility before they go out on their route or when they return from their run or even comment to employees concerning how their trucks were loaded, these interactions are not directly related to the performance of their assigned tasks. Drivers also work in different areas at the Facility and only visit common areas such as the refrigerator dock or breakroom for brief periods before leaving for their runs (and Maintenance employees use a different breakroom in any event). Repairs and fueling are indicated on forms and coordinated by the DSC so any brief incidental interactions drivers may have with Maintenance employees are not critical to the process. What's more, since the 12 domicile drivers do not regularly report to the Facility, they would have no interaction with the other employees and fuel their own vehicles. Although the Employer points to the fact that it communicates with all its employees by a similar method, using bulletin boards and televisions screens, or that all employees complete annual surveys to deliver feedback, this does not change the fact that drivers perform their job functions away from the other employees for 90 percent of the time. Similarly, the fact that all employees have the opportunity to serve on the safety committee, that they may see each other at monthly social functions, or compete against each other for "Colleague of the Month" does not require a different outcome, particularly when the record is not clear as which employees do so or how the different employees interact on this committee.

Moreover, while there is no question that the drivers and Warehouse and Maintenance employees all perform tasks that contribute to the end objective of efficiently delivering products to customers, and that they work from some of the same computer systems, their tasks are clearly separate. The Board will find functional integration only where employees must work together and depend upon one another to accomplish their tasks, and not merely when they are part of the same production process. *WideOpenWest Illinois, LLC*, 371 NLRB No. 107, slip op. at 7, fn. 16 (2022); (applying the now overruled *Boeing* standard finding the petitioned-for unit was appropriate because the petitioned-for employees shared an internal community of interest and the employees the employer sought to include had meaningfully distinct interests from the petitioned-for employees); see also *DTG Operations, Inc.*, supra. Dorn's testimony that he was not familiar with nearly all of the classifications in Warehouse and Maintenance, and that his interactions with these individuals was "nonexistent" highlights that there is no such cooperation or dependency between drivers and the other employees at the Facility.

With respect to any temporary transfer, the record disclosed only a few instances in which Warehouse employees served as "co-drivers" or participated in "ride-alongs" with drivers for a day or when drivers have performed light duty in the Warehouse for an unspecified amount of

time due to injuries. These sporadic events do not amount to meaningful interchange or transfer. Similarly, the fact that driver Andrew Morris voluntarily spent a week working in the Warehouse the week prior to the hearing appears to be an exceptional circumstance and does not indicate that there is any regular temporary transfer of employees at the Facility. Finally, there is no evidence of any permanent employee transfer between the drivers and the other departments. The fact that the Employer has a program in place – Warehouse to Wheels – to encourage Warehouse employees to acquire CDLs and possibly become drivers is, if anything, evidence of the *possibility* of transfer, not of any current transfer.

B. The Routers, Warehouse and Maintenance Employees Whom the Employer Seeks to Include Do Not Share an Overwhelming Community of Interest with the Drivers

The Employer argues that the petitioned-for drivers-only unit is fractured, and that the smallest appropriate unit herein must contain the two routers and all of the other employees at the Facility, working in Warehouse and Maintenance, which amounts to an additional 75 employees. To be successful, the Employer must establish that these 75 additional employees in 17 different classifications share an overwhelming community of interest with the drivers such that there is no legitimate basis upon which to exclude drivers from a larger unit because the traditional community-of-interest factors “overlap almost completely.” *Specialty Healthcare*, supra. This is the Employer’s burden and it is a heavy one. It bears repeating that demonstrating an expanded grouping is appropriate, or even that it is more appropriate, than a petitioned-for grouping is insufficient to demonstrate that the petitioned-for smaller unit is appropriate. An evaluation of the community-of-interest factors here readily supports the finding that the wall-to-wall unit sought by the Employer does not share an overwhelming community of interest with the drivers such that there is no legitimate basis to exclude them from the other employees. Thus, the Employer has failed to meet its burden.¹⁹

As set forth in greater detail above, the drivers work in a separate department from the Warehouse and Maintenance employees, with different management and supervision. Drivers possess different skills than the other employees as most of the drivers possess CDLs. Drivers receive training specific to their task of safely driving large tractor-trailers over long distances whereas the other employees receive training relevant to their job duties. Drivers have different terms and conditions of employment than the other employees, including different working hours

¹⁹ On page 20, footnote 4 of its brief, the Employer asserts that the Hearing Officer erred in precluding it from presenting certain evidence, which it concedes was corroborative, on the grounds that it was cumulative or duplicative. I have carefully reviewed all of the instances in which Petitioner’s counsel raised such objections to the Employer’s proffered evidence and the Hearing Officer’s concomitant rulings, and in all of these instances, either the Hearing Officer ultimately allowed the evidence to be introduced, or the parties reached a stipulation obviating the need for the Employer to continue with its questioning. In any event, the Employer does not claim that it was prevented from presenting any *new* evidence and all of the evidence it wished to present in support of its case is contained in the record. Had the Employer introduced more of the same evidence, it would not change my conclusions herein. Accordingly, the Hearing Officer’s rulings were appropriate and free from error.

and locations (their trucks and customer locations), and higher pay on average. Drivers' job functions are distinct from the other employees in that they are tasked with driving for about 90 percent of their workday, spending only an hour per day at the Facility, in contrast to the other employees, who work at the Facility 100 percent of the day selecting product, building loads, and repairing equipment. Drivers regularly interact with customers while the other employees do not. Drivers use different equipment (trucks) while the other employees use forklifts, pallet loaders, and tools and drivers use forms and software specific to driving.

Importantly, drivers do not have significant contact or interchange with the other employees that relate directly to the completion of their tasks, and the domicile drivers do not have any incidental contact at all since they work out of remote locations. There is no evidence of temporary transfer except for the few instances in which an injured driver temporarily worked light duty in the Warehouse, a Warehouse employee accompanied a driver to assist with deliveries, or a driver voluntarily worked in the Warehouse the week prior to the hearing for training purposes. See *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999), citing *D&L Transportation*, 324 NLRB 160, 162, fn. 7 (1997) (interchange that is voluntary carries less weight in the Board's analysis). There is also no evidence of permanent transfer between drivers and the other employees: Warehouse and Maintenance employees have not become drivers, nor have drivers become Warehouse or Maintenance employees. While all of the employees, including drivers, are involved in and perform tasks in furtherance of the process of efficiently delivering products to customers, they perform distinct tasks within that process and do so independently. See *WideOpenWest Illinois*, supra.

As noted above, the two routers arguably share some community-of-interest with the drivers because they work in the same department (Transportation) under the same supervision and are tasked with creating the drivers' routes, which dictate drivers' schedules for the day. As a result, they may have occasion to interact with drivers, such as when drivers provide input into their routes or relay customers' requests. They also earn \$36.05 per hour, which is closer to the drivers' wage rates than many of the other classifications whom the Employer seeks to include herein. But the record does not indicate how frequently the routers interact with drivers, and Dorn testified that it occurred only on rare occasions. There does not appear to be any transfer between the two classifications either. Further, routers interact with other employees as well, since they sit in the Maintenance area, and speak with Warehouse employees concerning how to fit loads onto the trucks. Thus, notwithstanding any community of interest shared between drivers and the two routers, the Employer has not established that routers share an overwhelming community of interest with the drivers, nor that there is no legitimate basis to exclude them from the unit.²⁰

In support of its position, the Employer references numerous cases, but none of them compel a different result. It cites *TDK Ferrites Corp*, 342 NLRB 1006, 1008 (2004), but that case is readily distinguishable because the petitioner there was trying to separate maintenance

²⁰ The record herein does not explore whether routers should be excluded from the petitioned-for drivers-only unit on any other basis (for example, in *Sysco Louisville, Inc.*, Case 09-RC-293861, the Employer took the position that the routers were aligned with management and should be excluded). In *Sysco Knoxville, LLC*, Case 10-RC-328253, the petitioner sought to include the routers, although the Decision notes that the position was vacant and temporary filled by a transportation supervisor.

employees and certain production employees from others who were involved in the production process whereas the drivers in the instant case are functionally distinct from the warehouse and maintenance employees. It also relies upon a series of older cases including *International Paper Co.*, 96 NLRB 295, 298, n.7 (1951) (finding a strong community of interest when all positions were equally dependent on the operation's output due to a single integrated process); and *Potter Aeronautics*, 155 NLRB 1077 (1965) (machine shop and electronics department employees functionally integrated because they depended on each other to complete the process resulting in the end product). It cites to *United Rentals*, 341 NLRB 540 (2004) (where the Board included counter employees in petitioned-for unit of drivers, mechanics, and yard employees because the excluded employees regularly and frequently performed duties of petitioned-for employees); *Publix Super Markets, Inc.*, 343 NLRB 1023 (2004) (Board disallowed separation of fluid department from the rest of the production and maintenance employees due to functional integration, significant interchange and employee transfer, common supervision and similarity of skills). The Employer cites to *Calco Plating, Inc.*, 242 NLRB 1364, 1365 (1979) (where the Board included drivers in a production and maintenance unit when production and maintenance employees performed drivers' work on a regular basis by assisting with loading and unloading trucks, making customer deliveries, and hauling supplies between facilities); *Standard Oil Co.*, 147 NLRB 1226 (1964) (where the Board included drivers in the same unit as production and maintenance employees because of shared supervision, working conditions, and wages supporting a close community of interest and functional integration); *Atchinson Lumber & Logging Co.*, 215 NLRB 572 (1974) (where the Board mandated the inclusion of drivers with warehouse employees relying upon regular contact and functional integration); *Donald Carroll Metals, Inc.*, 185 NLRB 409 (1970) (where the Board combined drivers with warehouse employees when they spent 60-65 percent of their time on the road because the remainder was spent doing production and maintenance work); and *Boyden Logging, Inc.*, 164 NLRB 1069 (1967) (where the Board included drivers with production employees because drivers performed multiple jobs, spent up to 25 percent of their time on production work, and did multiple jobs). The Employer also cited to several Regional Directors' Decisions rejecting drivers-only units from 2001, 2005, and 2006.

None of these cases are availing herein because the facts substantially differ from those presented here. In these cases, the Board found that drivers were precluded from separate representation either because they spent a significant amount of time performing the same function as the other employees, the other employees performed the same duties as the drivers, the employees shared the same supervision, pay scale, and benefits as other employees, or the drivers' conditions of employment were substantially the same as that of the others. As discussed above, that cannot be said of the drivers at the Facility. Moreover, all of the cases cited by the Employer arose prior to 2011, when the Board issued its decision in *Specialty Healthcare & Rehab. Ctr. of Mobile, supra*, creating a more deferential standard for unions. That standard, a modified version of which is in place today, requires employers seeking to challenge petitioned-for units to establish that the excluded employees share an *overwhelming community of interest* such that there is no legitimate basis to exclude them. *American Steel Construction, Inc.*, *supra*, overruling *PCC Structurals, Inc.*, *supra*, as modified in *Boeing Co.*, *supra*. The Employer herein has not met that burden in this case.

Finally, although the record in this case fully supports my conclusion, it is worth noting, as the Petitioner does in its brief, that this is not the first time in recent years that Sysco has unsuccessfully raised this argument, i.e., a petitioned-for drivers-only unit is not appropriate and the only appropriate unit is a wall-to-wall unit, including all warehouse and maintenance employees. It has done so in at least four other Regions in seven other matters, all of which contain similar facts to those presented herein (e.g. separate departments; skills and training; hours and pay; and job functions with only brief and sporadic employee contact or interchange, and no transfer of employees between classifications). In each of these cases, the Regional Directors concluded that Sysco had not met its burden and the petitioned-for drivers-only unit was appropriate. See *Sysco Knoxville, LLC*, *Sysco Louisville, Inc.*, *Sysco Central California, Inc.*, (Case 32-RC-285744), *Sysco Central California, Inc.* (Case 32-RC-272441), *North Star Seafood (Sysco)* (Case 12-RC-233250), *Sysco South Florida, Inc.*, and *North Star Seafood, LLC (Sysco)* (Case 12-RC-204152), *supra*. Additionally, the drivers and the warehouse and maintenance employees who are employed at the Employer's neighboring facility in Philadelphia, which is part of the same region as the Employer (the Pennsylvania Region), are not only in separate bargaining units but are represented by different locals of the same union as Petitioner. As discussed above, there are additional Sysco facilities with drivers-only units as well. Although the bargaining pattern at other plants of the same employer or in the particular industry is not considered controlling in relation to the bargaining unit of a particular plant, *Big Y Foods*, 238 NLRB 855, 857 (1978); *Miller & Miller Motor Freight Lines*, 101 NLRB 581 (1953), it may be a factor in unit determination. *Spartan Department Stores*, 140 NLRB 608 (1963).

Based on the foregoing, I conclude that the petitioned-for drivers-only unit, consisting of all full-time and regular part-time delivery drivers, local delivery drivers, driver trainees, shuttle drivers, and special delivery drivers is an appropriate unit.

IV. CONCLUSIONS AND FINDINGS

I have carefully weighed the record evidence and the parties' arguments and conclude that the petitioned-for unit of drivers constitutes an identifiable and distinct group that shares an internal community of interest. Because the Employer has failed to demonstrate that an overwhelming community of interest exists between the petitioned-for drivers-only unit and the routers, Warehouse employees, and Maintenance employees whom it asserts must be included in any appropriate unit sought, it is appropriate to hold an election among the petitioned-for drivers.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based on the entire record in this proceeding, including the stipulations by the parties, and in accordance with the discussion above, I further find and conclude as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial errors and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. 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. There is no collective-bargaining agreement covering any of the employees in the unit, and there is no contract bar or other bar to an election in this matter.

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. 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:

Included: All full-time and regular part-time delivery drivers, local delivery drivers, driver trainees, shuttle drivers, and special delivery drivers working out of the Employer's Allentown Facility located at 800 Willowbrook Road, Northampton, Pennsylvania and its domicile yards located at 1183 South Main Road, Mountain Top, Pennsylvania (the Dorrance Domicile); 2200 Harvest Lane, Pocono Summit, Pennsylvania (Mt. Pocono Domicile); and 141 Brown Road, Pittston, Pennsylvania (the Pittston Domicile).

Excluded: All other employees, routers, Warehouse Department employees, Fleet and Facility Maintenance Department employees, guards and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Brotherhood of Teamsters, Local Union No. 773**.

Both parties have indicated a preference for a manual in-person election. However, given the length of time since the hearing took place, the lack of specific information in the record for conducting a manual election, and the potential need for an off-site polling location that is central to the three domicile locations, I shall give the parties an opportunity to submit a written statement of position with respect to their proposed election arrangements. This should include the election date(s), polling hours, and specific polling location(s), including their positions on the Region holding a mixed manual-mail election, and must be submitted by no later than **Friday, November 21, 2025**.

A. Election Details

As indicated above, the Region has solicited the positions of the parties as to the election details. The Region will consider the election proposals prior to the issuance of the Notice of Election that will issue separately from this decision.

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local Union No. 773.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, November 15, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. 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 with a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **November 20, 2025**. The list must be accompanied by a certificate of service showing service upon all parties. **The Region will no longer serve the voter list.**

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

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

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

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

D. Posting of Notices of Election

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

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board 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.nlr.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: November 18, 2025

/s/ Kimberly E. Andrews

KIMBERLY E. ANDREWS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 04
100 E Penn Square
Suite 403
Philadelphia, PA 19107