

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**FreshPoint Central California, Inc.**

**Employer**

**and**

**Teamsters Local 386**

**Petitioner**

**Case 32-RC-371171**

**Decision and Direction of Election**

On August 12, 2025, Teamsters Union Local 386 (the Petitioner) filed a representation petition under Section 9(c) of the National Labor Relations Act (the Act).<sup>1</sup> The Petitioner seeks to represent the full-time and regular part-time driver employees of FreshPoint Central California, Inc. (the Employer, or FreshPoint), at its facilities in Turlock, Fresno, and Sacramento, California.<sup>2</sup> An NLRB hearing officer held a hearing in this matter by videoconference beginning on September 2. The hearing officer heard testimony from FreshPoint’s Vice President of Operations, its Transportation Manager, its Inbound Manager, a human resources generalist, a shuttle driver, and a delivery driver.

The parties agree that any appropriate unit must include approximately 49 employees in these job classifications at all three locations: Driver A, Driver B, Driver-Domiciled, Driver-Shuttle, and Lead Driver.<sup>3</sup> But FreshPoint contends that the smallest appropriate unit is a near-“wall-to-wall” unit and argues that it must also include approximately 86 employees in 23 additional job classifications:

• Loader (Production)	• Selector (Night)
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<sup>1</sup> Board Ex. 1(a).

<sup>2</sup> The Petitioner initially sought to represent only the drivers at the Turlock facility. At the hearing, the Petitioner moved to amend the petition to include the Fresno and Sacramento drivers as well, and the Regional Director granted the motion. Tr. 13. *See also* Board Ex. 2. The parties agree that a multifacility unit is appropriate, Tr. 433; 452, so the question to be decided is only whether additional *classifications* must be added to the bargaining unit, not whether additional *locations* must be added as well. Compare *Hilander Foods*, 348 NLRB 1200, 1200 (2006) (stating the test for when a petitioner seeks a single-location unit and the employer contends that more locations must be added) with *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1081–82 (2004) (stating the test for when a petitioner seeks a multi-location unit and the employer contends that more locations must be added).

<sup>3</sup> Board Ex. 2. Notably, all employees who work at FreshPoint’s Fresno and Sacramento facilities work in one of the five petitioned-for classifications. Tr. 240; 244. All 23 disputed classifications work out of the Turlock facility only.

<ul style="list-style-type: none"><li>• Produce Redistribution Centers-Operations Workers</li><li>• Repack Associate</li><li>• Production Team Lead</li><li>• Produce Redistribution Centers-Line Lead</li><li>• Truck Jockey (Day)</li><li>• Truck Jockey (Night)</li><li>• Forklift Inbound</li><li>• Inbound Team Lead</li><li>• Receiver</li><li>• Forklift Outbound</li><li>• Loader (Warehouse)</li></ul>	<ul style="list-style-type: none"><li>• Outbound Team Lead</li><li>• Senior Quality Assurance Associate</li><li>• Produce Redistribution Centers-Quality Assurance Associate</li><li>• Driver Check-in Coordinator</li><li>• FP-US-Quality Control Associate</li><li>• Maintenance Technician II</li><li>• Sanitation Associate (Night)</li><li>• Sanitation Associate (Day)</li><li>• Transportation Clerk</li><li>• Inbound Operations Clerk</li></ul>
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The issue before me is whether the Petitioners’ petitioned-for bargaining unit is appropriate, or whether it must include additional employees. Having carefully considered the entire record, and as further explained below, I find that the petitioned-for driver unit is an appropriate with the inclusion of the Truck Jockey (Day), and that the employees in the other 22 job classifications do not share an “overwhelming” community of interest with drivers that would require their inclusion. In addition, I have decided that a mail-ballot election is appropriate in this matter.

To provide context, I begin with an overview of FreshPoint’s operations, including a description of each department and each job classification at issue. I then review the Board law on unit composition, summarize additional relevant facts, and discuss the law’s application to those facts. I conclude with a summary of my findings.

## **I. FRESHPOINT’S OPERATIONS**

Freshpoint is a produce distributor. It supplies fresh produce to institutions in Northern and Central California like caterers, healthcare institutions, hotels, restaurants, schools, and other produce distributors. Its largest customer is its parent company, Sysco.<sup>4</sup> FreshPoint operates a warehouse, truck yard, distribution center, and suite of offices at 5900 N. Golden State Boulevard in Turlock, California. The Turlock facility spans some 120,000 square feet. FreshPoint receives wholesale shipments of fresh fruits and vegetables at its refrigerated receiving and loading dock. The produce is then taken to a repack area, where it is checked for quality and then repacked into smaller containers. The produce is then stored in the warehouse until customers place orders for the product. FreshPoint then prepares the product for transport, loads it onto refrigerated tractor-trailers and box trucks, and delivers it to customers.

To serve customers further from Turlock, FreshPoint operates two additional receiving and loading facilities, called cross-docks, one in Fresno and one in Sacramento.

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<sup>4</sup> Tr. 28; 208. Er. Ex. 1 (referring to FreshPoint as “a division of Sysco.”)

The employees in this case are organized into various departments: transportation, receiving/inbound, production, quality/inventory control, outbound, and maintenance/sanitation. Below, I summarize each of these departments, as well as the various positions within each department that FreshPoint wishes to include in the bargaining unit.<sup>5</sup>

#### **A. Transportation Department**

The transportation department's principal function is moving products between FreshPoint's facilities and its customers. The department employees at issue are delivery drivers, shuttle drivers, lead drivers, transportation clerks, and the daytime "truck jockey." All transportation department employees report directly to FreshPoint's transportation supervisors, who in turn report to the Transportation Manager.<sup>6</sup>

**Delivery Drivers (Driver A, Driver B, Driver-Domiciled).**<sup>7</sup> Also referred to as "route drivers," delivery drivers' primary duty is to transport products to the Employer's customers and unload the products at the customers' facilities.<sup>8</sup> Turlock-based delivery drivers also sometimes stop at growers' produce sheds along their routes, pick up produce, and bring it back to Turlock at the end of their route, a practice called "backhauling." Delivery drivers begin and end their routes at the same location, making around 10 to 15 stops along their route. FreshPoint employs about 28 delivery drivers at its Turlock facility, divided into Driver A and Driver B classifications based on which type of commercial driver's license (CDL) they hold.<sup>9</sup> FreshPoint historically referred to its Fresno- and Sacramento-based delivery drivers as "Driver Domiciled" though it no longer uses this term for new hires. They also hold Class A or B CDLs. FreshPoint employs about 13 delivery drivers in Fresno and 4 in Sacramento.

Delivery drivers at all three locations have similar work schedules.<sup>10</sup> They work for about 10 to 12 hours a day on average, sometimes as much as 14 hours. Drivers spend most of that time on the road each day and spend about 45 minutes to an hour doing other things: performing pre-trip and post-trip inspections, checking their routes, and dropping off paperwork. Their daily shifts have staggered start and end times: they generally clock in between 1:30 AM and 5:00 AM and clock out between 12:30 PM and 5:30 PM. Delivery drivers' weekly hours of service are

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<sup>5</sup> When initially referring to each position in this case, I use the title listed on the Employer's job description.

<sup>6</sup> See Er. Ex. 5.

<sup>7</sup> The Driver-Domiciled classification is a historic classification that is no longer used. It refers to delivery drivers who work out of FreshPoint's facilities in Fresno or Sacramento. Tr. 64–65 & 129.

<sup>8</sup> Delivery drivers also sometimes pick up products from growers' produce sheds along their routes and bring them back to the Turlock facility at the end of their shift, a practice called "backhauling." Tr. 17.

<sup>9</sup> A Class A CDL allows the driver to operate 53-foot tractor-trailers or smaller 28-foot box trucks. A Class B CDL allows them to drive smaller box trucks only. Tr. 221.

<sup>10</sup> See Tr. 221–24; 240–45.

limited by U.S. Department of Transportation regulations.<sup>11</sup> Turlock and Fresno delivery drivers make the same starting wage: \$23 per hour.<sup>12</sup> Sacramento delivery drivers are paid a few dollars more an hour because there is more competition for Class A drivers in that area.<sup>13</sup>

**Shuttle Drivers (Driver-Shuttle).** FreshPoint employs three shuttle drivers, whose primary duty is to transport produce from FreshPoint's Turlock headquarters to its cross-docks in Fresno and Sacramento and load it onto trucks, where will then be delivered by delivery drivers "domiciled" at those locations. Shuttle drivers also occasionally fill in as delivery drivers. All shuttle drivers hold Class A CDLs. Shuttle drivers begin their shifts in Turlock, then drive tractor-trailers to the cross-dock facility. Each trailer typically contains produce for three delivery routes. After arriving at the cross-dock, the shuttle driver loads the produce into empty trucks stationed there, in a sequence provided by the Outbound department team. The shuttle driver also drops off a "route bag" for each driver, containing information and materials that the delivery driver will need that day.<sup>14</sup> The shuttle driver then returns the empty tractor-trailer to Turlock and either repeats the process or clocks out.

Shuttle drivers work at night, also on staggered shifts, starting between around 7 p.m. to 10 p.m. and working until around 5 a.m. to 7:30 a.m. the next day.<sup>15</sup> They earn the same wage as delivery drivers.<sup>16</sup>

**Lead Driver (Driver-Lead).** FreshPoint employs one lead driver.<sup>17</sup> The lead driver works as a delivery driver or shuttle driver, but they also train new drivers and monitor their performance.<sup>18</sup> After new drivers have completed their initial onboarding and general employee training, the lead driver trains them on all aspects of driving work. The trainees start by observing the lead driver, then take on more duties themselves. Eventually the trainees perform all the tasks themselves, with the lead driver observing their performance and serving as a fail-safe if problems arise. This new-driver training lasts about two weeks.<sup>19</sup> Lead drivers start work between about 1 a.m. and 4 a.m. The record does not show their wage rates or when they finish work.

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<sup>11</sup> For example, delivery drivers are generally not allowed to drive for more than 60 hours over 7 consecutive days, or more than 70 hours over 8 consecutive days. Upon reaching the hourly limit, drivers must take a 34-hour break before driving again. 49 C.F.R. § 395.3; Tr. 111–12.

<sup>12</sup> Tr. 115 & 380.

<sup>13</sup> Tr. 115.

<sup>14</sup> Tr. 38–40.

<sup>15</sup> Tr. 131; 235–36; 392–93.

<sup>16</sup> Tr. 383.

<sup>17</sup> Tr. 65.

<sup>18</sup> Er. Ex. 14; Tr. 131–32.

<sup>19</sup> Tr. 131–34.

**Dispatchers (Transportation Clerk).** FreshPoint employs two dispatchers: one during the day and one at night. They work in the Turlock facility's "dock office," along with a transportation supervisor and transportation manager.<sup>20</sup> The day dispatcher arrives at 1 a.m., before the first delivery drivers start to arrive at 1:30 a.m.<sup>21</sup> One of the dispatchers holds a CDL and is not currently qualified to drive a commercial vehicle. A CDL is not a requirement of the job. One of the night dispatcher's duties is to prepare a "route bag" for each driver to take on their shift. The route bag contains everything that the driver will need for that shift, such as invoices, specific delivery instructions for particular stops, and keys to customers' facilities.<sup>22</sup> Transportation clerks also notify the receiving clerks when a driver is returning to Turlock with a backhaul so that the Inbound Department can prepare to receive it.

**Daytime Truck Jockey (Truck Jockey (Day)).** FreshPoint employs one daytime "truck jockey," whose primary job is moving trucks and trailers around the Turlock facility's truck yard and docking area.<sup>23</sup> This employee also performs some basic cleaning and washing of FreshPoint's trucks.<sup>24</sup> The daytime truck jockey also fills in as needed for delivery drivers who are approaching their maximum hours of service, typically around once every two weeks.<sup>25</sup> Therefore, this classification also requires a Class A CDL.<sup>26</sup> When called upon to drive a route, this employee is frequently given a single-delivery route, often to a Sysco facility in Modesto, California.<sup>27</sup> The Truck Jockey (Day) works from 8 a.m. to around 4–6 p.m.<sup>28</sup> The record does not show how much this classification is paid.

## **B. Warehouse Departments**

The Turlock warehouse departments are responsible for receiving wholesale shipments of produce from growers and placing them in appropriate warehouse "slots" (Inbound), preparing the products for resale (Production), ensuring their continued quality over time (Quality/Inventory Control), and assembling customer orders and loading them onto trucks for the drivers (Outbound). There are five different warehouse departments: Inbound/Receiving Department, Production Department, Quality/Inventory Control, Outbound Department, and Maintenance Department. Each will be described below.

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<sup>20</sup> Tr. 100–01.

<sup>21</sup> Tr. 228–29. The night dispatcher's schedule is not clear from the record.

<sup>22</sup> Tr. 37–39.

<sup>23</sup> Tr. 247; Er. Ex. 15.

<sup>24</sup> Tr. 192; Er. Ex. 15.

<sup>25</sup> Tr. 247 & 288.

<sup>26</sup> Tr. 247.

<sup>27</sup> Tr. 247.

<sup>28</sup> Tr. 290.

## 1. Inbound/Receiving Department

The Inbound/Receiving Department checks in produce received from growers and stores it in the warehouse for later processing. Employees in this department report to the Inbound Supervisor, who in turn reports to the Warehouse Manager.

**Receiver.** There is one employee in this classification. This employee receives large wholesale shipments of produce, called “master cases,” from growers. They are responsible for a timely and accurate receipt of items ordered, filling out purchase orders, checking items for quantity and quality, and placing them in specified areas of the warehouse. They work from around 8 a.m. to around 4–5 p.m. Receivers earn about \$18 per hour.<sup>29</sup>

**Inbound Operations Clerk.** There is one employee in this classification. Like receivers, the Inbound Clerk is responsible for verifying the quantity and quality of received products, focusing on data entry and communicating with growers.<sup>30</sup> Their hours of work are 9 a.m. to 5:30 p.m. The record shows that this is an hourly position but does not show the wage rate.

**Forklift Inbound.** This classification operates a forklift and is responsible for putting away inbound produce. They move inbound pallets from the dock to inside the facility, putting the items into product-specific “slots” in a place called the backstock area. If any product slots are empty after the previous night, the inbound forklift will replenish them, making room for more inbound products. They also help pick products for same-day deliveries. These employees earn about \$18 per hour.<sup>31</sup> The record shows that they work “the daytime schedule” but not their actual hours of work.<sup>32</sup>

**Loader (Warehouse).** There are two workers in this classification. Warehouse loaders load master cases onto the production line, where the production team will break the cases down into smaller increments called “splits.” Loaders are trained to use forklifts, but they mostly use electric pallet jacks.<sup>33</sup> Their hours of work are from around 5 p.m. to around 2–4 a.m. Loaders make minimum wage: \$16.50 per hour.<sup>34</sup>

**Inbound Team Lead.** There is one employee in this classification. This employee monitors the overall workflow for the group of inbound employees. Additionally, they help select larger orders for FreshPoint’s Sysco customers. They use the same equipment that inbound

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<sup>29</sup> Tr. 381.

<sup>30</sup> Ex. 28.

<sup>31</sup> Tr. 382–83; Er. Ex. 22.

<sup>32</sup> Tr. 168.

<sup>33</sup> Tr. 145; Er. Ex. 18.

<sup>34</sup> Tr. 381.

forklift operators use. Their hours of work are from 7 a.m. to around 5 p.m.<sup>35</sup> The record shows that this is an hourly position but does not show the wage rate.

## 2. Production Department

About 46 employees work in this department. They report to FreshPoint's Production Supervisor, who in turn reports to the Production Manager.

**Repack Associate.** This position is responsible for repacking master cases of produce into splits, removing any produce that does not meet customer standards, and labeling the splits for inventory management.<sup>36</sup> This classification makes minimum wage: \$16.50 per hour.<sup>37</sup> The record shows that this is an hourly position but does not show the wage rate.

**Loader (Production).** Once the production team has broken the cases down into splits, production loaders take finished splits off of the production line and put them onto pallets. Their working conditions are otherwise the same as the Loader (Warehouse) position.

**Produce Redistribution Center-Operations Worker.** There are about six workers in this classification. This position is similar to a loader.<sup>38</sup> Their primary function is to move products through the production department safely and securely. They also operate different kinds of machines, including a box machine, case erectors, and corrugated baler.<sup>39</sup> They may also ensure that outgoing delivery trucks are loaded accurately. They work from 5 a.m. to around 2–4 p.m. The wage rate is \$16.50 per hour.

**Produce Redistribution Center-Line Lead.** There is one employee in this classification.<sup>40</sup> The production line lead is responsible for training repackers, assessing quality of finished goods, operating FreshPoint's "SG" weighing and labeling system, filling in for absent employees, and monitoring the overall flow of the production line.<sup>41</sup> The hours of work are from 6 a.m. to 2–4 p.m. The record shows that this is an hourly position but does not show the wage rate.

**Production Team Lead.** There is one employee in this classification.<sup>42</sup> The production team lead monitors the overall flow of the entire production department, such as assuring that

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<sup>35</sup> Tr.

<sup>36</sup> Tr. 26–28; Er. Ex. 17.

<sup>37</sup> Tr. 382.

<sup>38</sup> Er. Ex. 20.

<sup>39</sup> Tr.164–65.

<sup>40</sup> Tr. 281.

<sup>41</sup> Tr. 78.

<sup>42</sup> Tr. 281.

production schedules are being followed and that the line-lead's lines are operating correctly.<sup>43</sup> The hours of work are from 6 a.m. to 2–4 p.m. The record shows that this is an hourly position but does not show the wage rate.

### **3. Quality/Inventory Control**

Produce is perishable, and this department's job is to ensure that it continues to meet quality standards while in storage awaiting purchase. Senior Quality Assurance Associate report to the Warehouse Manager (sometimes referred to as Inventory Control Manager) and the QA Associate (Produce Redistribution Centers-Quality Assurance Associate) reports to the Food Safety Manager. None report to the Transportation Manager.

**QA Associate (Produce Redistribution Centers-Quality Assurance Associate).** This classification is responsible for inspecting the produce to identify quality issues, limited to the production repack line. These employees also assist with product repacking as needed. There is at most one worker in this classification, though it is currently unfilled. The record does not show their hours of work or their wage rates.

**Senior Quality Assurance Associate.** There is one employee in this classification, which is also called "Quality Assurance Lead." This classification is primarily responsible for quality assessment of inbound products. The hours of work are 6 a.m. to 2:30 p.m. The record shows that this is an hourly position but does not show the wage rate.

**FP-US-Quality Control Associate.** There is one employee in this classification. They perform the same duties as the Senior QA associate. The hours of work are 6 a.m. to 2:30 p.m. The record shows that this is an hourly position but does not show the wage rate.

**Driver Check-In Coordinator.** There is one employee in this classification. This is a finance classification.<sup>44</sup> Their primary duties are collecting manifests, invoices, and route bags from delivery drivers who have completed their routes. They also count and inspect returned merchandise, recording its quantity, type, and value. The hours of work are around 8 a.m. to around 4:30 or 5:00 p.m. The record shows that this is an hourly position but does not show the wage rate.

### **4. Outbound Department**

**Selector (Night).** There are 13 employees in this classification. After receiving the needed information from the operations clerk, the selectors pull splits according to customer orders, load them on an electric pallet jack, organize them by assignment, and load them onto

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<sup>43</sup> Tr. 78–79; Er. Ex. 19.

<sup>44</sup> Er. Ex. 31.



trucks.<sup>45</sup> They work from around 5 p.m. to around 2–4 a.m. They earn around \$16.50 to \$17 per hour.

**Forklift (Outbound).** There are two employees in this classification. Their job is to replenish production slots. As selectors pull products from slots to fulfill customer orders, it is the outbound forklift's responsibility to grab backstock and replenish the pick slot. Their performance affects the efficiency of the selection production. Their hours of work are from 5 p.m. to around 2–4 a.m. They earn about \$18 per hour.

**Truck Jockey (Night).** FreshPoint employs one nighttime truck jockey. Like the daytime truck jockey, this employee's primary job is moving trucks and trailers around the Turlock facility's truck yard and docking area. This employee also checks the trucks' refrigeration units. But unlike the daytime truck jockey, the nighttime jockey does not hold a CDL and cannot take the trucks out of the yard.<sup>46</sup> Also unlike the daytime jockey, the nighttime jockey is not part of the Transportation Department. This classification is supervised by the Outbound Supervisor and Outbound Manager.<sup>47</sup> The hours of work and wage rate do not appear in the record.

**Sanitation (Night).** There is one employee in this classification. This worker is responsible for general cleaning, sanitation, and janitorial services, as well as cleaning up spills to prevent product cross-contamination. The work hours are 6 p.m. to 2:30 a.m. The wage rate is about \$17 per hour.

**Outbound Team Lead.** This classification monitors the overall workflow of the Outbound department and its employees, including loaders and forklift drivers. This classification also trains new selectors and operates FreshPoint's "Selector Pro" system, an electronic system that gives selectors their assignments to go through the warehouse and pick orders. The record does not show the number of workers in this classification, their wages, or their hours worked.

## 5. Maintenance Department

The Maintenance Department ensures that the facility and equipment are clean and in good working order. This department is overseen by the Fleet & Facilities Manager.

**Sanitation (Day).** There are three to four employees in this classification.<sup>48</sup> This classification cleans the Turlock facility per a master cleaning schedule.<sup>49</sup> Their work hours are 5 a.m. to 1:30 p.m. Their wage rate is about \$17 per hour.

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<sup>45</sup> Er. Ex. 27.

<sup>46</sup> Tr. 187.

<sup>47</sup> Tr. 71; Er. Ex. 4.

<sup>48</sup> Tr. 71–72; 292–93; Er. Ex. 5.

<sup>49</sup> Tr. 192–93.

**Maintenance Tech II.** There is one employee in this classification. This classification performs some simple repairs (e.g. changing light bulbs) and arranges for third party contractors to perform more complex repairs. This classification also performs some cleaning duties per the master cleaning schedule. This classification does no maintenance work on trucks. Truck maintenance is performed under a service contract with a third party.<sup>50</sup> The work hours are 5 a.m. to 1:30 p.m. The record shows that this is an hourly position but does not show the wage rate.

## II. LEGAL STANDARD

When a union petitions for an election in a particular unit, the Board's inquiry begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. A petitioned-for bargaining unit is appropriate where the requested grouping of employee classifications (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. *American Steel Constr., Inc.*, 372 NLRB No. 23, slip op. at 3 (2022). Both the Board and the Supreme Court recognize that there may be more than one reasonable grouping of employee classifications that satisfies this test—and the sole inquiry is whether the proposed unit is one of those reasonable groupings. The petitioned-for unit need only be “an” appropriate unit, “not necessarily *the* single most appropriate unit.” *Id.* at 3 n.11, quoting *American Hospital Ass’n v. NLRB*, 499 U.S. 606, 610 (1991). Therefore, if the union's proposed unit meets the test, it is an appropriate unit for collective bargaining.

If a party contends that the petitioned-for unit is *not* sufficiently distinct—i.e., that the smallest appropriate unit *must* 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. This test considers whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. If there are “only minimal differences” between the petitioned-for employees and an excluded classification, then an overwhelming community of interest exists, and that classification must be included in the unit. *American Steel*, 372 NLRB No. 23, slip op. at 6.

## III. ANALYSIS

### A. The Union's Petitioned-For Driver-Only Unit is an Appropriate Unit.

As shown in detail below, Fresh-Point's full-time and regular part-time drivers are readily identifiable and share an internal community of interest.

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<sup>50</sup> Tr. 193–94.

First, the Board regularly recognizes petitioned-for driver-only units under similar circumstances, even where more than one appropriate driver unit might have been possible. *Publix Super Markets*, 343 NLRB 1023 (2004) (holding that a union may seek election in any appropriate driver-only unit). In *Home Depot*, for example, the Board overruled the Regional Director and found a driver-only unit appropriate based on their distinct terms and conditions of employment, certification requirements, and uniforms, even where some of their coworkers' other job terms were the same.<sup>51</sup> And in *Mc-Mor-Han Trucking Co.*, the Board found that a driver-only unit was appropriate for a milk-hauling company where, as here, a union sought to represent them separately, there was no bargaining history, and no labor organization sought to represent them in a broader unit.<sup>52</sup> So the Petitioner's proposed driver-only unit is supported by Board precedent.

Second, the *American Steel* factors also show FreshPoint drivers' internal community of interest. The petitioned-for drivers are all housed within the same department, the transportation department, and report to the same supervisors. They have similar skills and training in that they all must hold a CDL. They work out of three different FreshPoint facilities, but they all have the same fundamental job function: hauling product from one location to another for FreshPoint. Their duties are fundamentally similar, consisting mostly of driving in solitude from place to place in one of FreshPoint's commercial vehicles (a tractor-trailer or a refrigerated box truck). Delivery drivers sometimes have a little more contact with other employees than shuttle drivers do, but not meaningfully so. And no drivers interchange with other employees. Drivers are at least somewhat functionally integrated, in that the shuttle drivers bring produce to the cross-docks for the delivery drivers to retrieve and deliver to customers. Drivers' terms and conditions of employment are largely the same as well. Although delivery drivers and shuttle drivers work at different times of day, their daily shift lengths are all similar, and their maximum driving hours are all governed by the same regulations. Turlock and Fresno drivers all earn the same hourly wage, and Sacramento drivers earn just a few dollars more. Their benefits are all the same, and they wear the same uniforms. In sum, the petitioned-for driver employees have many common interests suggesting that it would make sense for them to bargain collectively as part of the same unit. The differences among them do not outweigh these commonalities. Neither party claims that they do.

Accordingly, because the Board's precedents and its community-of-interest factors both support it, I find that the first step of the inquiry points toward directing an election in the petitioned-for unit.

**B. None of the Excluded Classifications Shares an Overwhelming Community of Interest with the Petitioned-For Drivers Except for Truck Jockey (Day).**

Having established that the petitioned-for driver employees share an internal community of interest, the burden now shifts to FreshPoint to show that its employees in the 23 excluded

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<sup>51</sup> *Home Depot USA, Inc.*, 331 NLRB 1289 (2000).

<sup>52</sup> 166 NLRB 700, 701 (1967).

classifications share an “overwhelming” community of interest with those drivers, such that it would be irrational not to include them in the unit as well. FreshPoint has not met this burden with the exception of the daytime truck jockey. Below is an analysis of the community of interest factors.

### **1. Departmental Organization**

Only two of the excluded classifications are in the same department as the petitioned-for employees: the Transportation Clerks and the Truck Jockey (Day). All other classifications are in other departments. The record shows that this organizational division has on-the-ground significance: only the transportation department’s supervisors and manager can direct transportation department employees. Thus, this factor weighs in favor of including the Transportation Clerks and the Truck Jockey (Day) in the bargaining unit. It weighs against including any other excluded classifications.

### **2. Skills & Training**

All new FreshPoint employees, regardless of position or department, go through the same week-long onboarding orientation process. Most of it consists of watching training videos. It also includes food-handling training. Employees then receive additional training for their specific jobs, which can last for as little as a day for or as long as two weeks.

The petitioned-for drivers then receive two weeks of additional job-specific training, which is longer and more involved than the job-specific training that the excluded classifications receive. The petitioned-for drivers also hold commercial driver’s licenses, which require weeks or months of training to obtain. (Forklift certification training, by contrast, can take as little as an hour.<sup>53</sup>) The only excluded classification with skills and training similar to drivers is the Truck Jockey (Day). Therefore, this factor slightly weighs in favor of including the Truck Jockey (Day) in the bargaining unit to the extent he has a CDL. It weighs against including any other excluded classifications.

### **3. Job Functions & Duties**

Employees who perform the same duties as petitioned-for drivers are more likely to share a community of interest with them. The strength of that community of interest depends on the amount and extent to which those shared duties overlap. The only excluded classification that has an overlapping driving duty is the Truck Jockey (Day), but the type of driving the Truck Jockey (Day) performs is significantly different in kind and scope as explained below. Thus, this factor weighs against including any of the other excluded employees in the bargaining unit.<sup>54</sup>

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<sup>53</sup> Tr. 294.

<sup>54</sup> No evidence suggests that the petitioned-for drivers share any of the Truck Jockey (Day)’s other duties: moving trucks around the yard and performing basic cleaning and truck-washing duties.

Even in the case of the Truck Jockey (Day), this employee's community of interest with the petitioned-for drivers is not especially strong, because this employee spends much more of their time doing things other than driving routes. The Truck Jockey (Day)'s primary job is moving trucks and trailers around the Turlock facility yard, not driving on the open highway.<sup>55</sup> Moving trucks around the yard does not require a commercial driver's license.<sup>56</sup> It does not require the employee to unload products from the truck or interact with customers. And it involves short, slow-speed trips in a controlled area rather than driving for many miles on the open highway.

True, the Truck Jockey (Day) occasionally drives a delivery route, but this only occurs about once every two weeks. Even then, this employee's driving route is relatively short and simple compared to that of the regular route drivers: this employee is normally assigned a route with just a single stop, while a regular route driver's route normally has around 10 to 15 stops.<sup>57</sup> That means that this employee can simply unload all cargo from the truck at once, rather than having to reorganize the inventory after each stop.<sup>58</sup> And this one stop is typically at a Modesto location only 15 miles from the Turlock facility, whereas regular route drivers often travel much farther.<sup>59</sup> Therefore, the amount and type of overlap between this classification's route-driving work and the route-driving work of the employees in the petitioned-for unit is limited.

#### **4. Functional Integration with Other Employees**

There is evidence that the petitioned-for drivers' work is functionally integrated with the work of the excluded classifications. For example, FreshPoint gave an example where a software failure caused a several-hour delay in the Outbound Department's loading of produce onto trucks. This delay forced the petitioned-for drivers to have delays on their routes, make some deliveries late, and work additional hours—which can then affect driver availability the following day, due to the USDOT's hours-of-service limits. FreshPoint also gave examples of how slotting errors by the Inbound Department can lead to customers receiving the wrong products, which can then force drivers to perform additional work to fix the problem.<sup>60</sup>

Route drivers' functional integration with other employees and departments is not hard to understand. For example, drivers rely on their coworkers in the Transportation Department to move their trucks to the proper loading docks, to keep their trucks looking clean and presentable, to perform dispatching duties when problems arise on their routes, to prepare route bags, and to occasionally fill in when route drivers are short-staffed. Drivers rely on the Production

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<sup>55</sup> Tr. 247; Er. Ex. 15.

<sup>56</sup> See Tr. 248–49.

<sup>57</sup> Tr. 50; 247.

<sup>58</sup> See Tr. 47–49.

<sup>59</sup> See Tr. 307.

<sup>60</sup> Tr. 107–08; Tr. 124–26.

Department to create the correct kind and amount of “splits” to take to customers on their routes. Drivers rely on the Quality Assurance department to assure that the produce they deliver is fresh, avoiding customer returns that require additional driver shifts. And drivers rely on the Maintenance Department to ensure that the produce they deliver meets food safety standards.

Thus, this factor weighs in favor of including the additional classifications that the Employer seeks to add in the bargaining unit.

### **5. Frequent Contact with Other Employees**

The record shows that route drivers have relatively little regular job-related contact with other employees, even within the Transportation Department. Turlock-based route drivers clock in and pick up their route bags at the warehouse dock office at the start of each shift, but this process takes only a short time.<sup>61</sup> The same is true at the end of the shift, when drivers drop off their keys and paperwork and clock out.<sup>62</sup> Drivers can bring issues with their route bag to the dispatchers—in person to the night dispatcher or remotely during the day—but there was no testimony about how often this occurs.<sup>63</sup> A route driver testified that if he has an issue with a delivery, he contacts dispatch, but that this is rare and happens only about once or twice a week.<sup>64</sup> And he testified that he has never seen the truck jockeys clean the trucks. A shuttle driver testified that if he has any produce left in the truck upon returning to the warehouse, he notifies dispatch and the inbound driver check-in, but that this interaction lasts only about 5 to 10 minutes.<sup>65</sup>

As for contacts with employees of other departments, drivers do have regular contact with driver check-in coordinators, but this is limited to about 5 minutes per shift.<sup>66</sup> And if a route driver notices a problem with the way that goods are loaded during their pre-trip inspection, the driver may find a warehouse employee to help them pull the pallet off the truck, rebuild it, and reload it. This may occur once or twice a week.<sup>67</sup> The record shows some other occasional job-related contacts with employees of other departments, but these appear sporadic and isolated. Otherwise, drivers have few or no job-related contacts with warehouse-based workers.<sup>68</sup>

Drivers have few non-job-related contacts with other workers as well, and are largely limited to simple greetings in the warehouse. Drivers use a separate bathroom from non-drivers.

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<sup>61</sup> See Tr. 42.

<sup>62</sup> See Tr. 411.

<sup>63</sup> See Tr. 42.

<sup>64</sup> Tr. 413.

<sup>65</sup> Tr. 118; 284–85; 396.

<sup>66</sup> Tr. 230.

<sup>67</sup> Tr. 316–17.

<sup>68</sup> See Tr. 237–47; 411–13.

There is a break room that drivers and non-drivers can both use, but the route driver testified that he rarely ever uses it, and then only briefly. Drivers often take their meal and rest breaks on the road, further limiting their contact with non-driver employees. And although FreshPoint has a safety committee that employees from different departments can join and attend, drivers rarely attend, again in part because they are often out on the road.<sup>69</sup>

In sum, drivers have relatively little contact with the employees in the excluded classification, in large part because the nature of their work – driving – requires them to spend so much time alone on the road. Thus, this factor weighs against including any of the excluded classifications in the bargaining unit.

## **6. Interchange with Other Employees**

There is very little interchange between the petitioned-for drivers and the excluded classifications. Drivers do not interchange with any of the excluded classifications. Employees in excluded classifications cannot become drivers through promotion. FreshPoint used to have a program that trained warehouse workers to become drivers, but it has not existed for at least a few years, and FreshPoint's witness could remember only two warehouse workers ever having participated in it.<sup>70</sup> FreshPoint's parent company, Sysco, now operates a nationwide training program that allows FreshPoint warehouse employees to train to be drivers, but no FreshPoint Central California employees have ever participated in it.<sup>71</sup> Therefore it is of little relevance.

The only excluded classification that can fill in for a regular driver is the Truck Jockey (Day). But as shown above, this employee does so fairly infrequently, around once every two weeks.<sup>72</sup> And the Truck Jockey's route is significantly shorter and easier than that of a regular driver.

Therefore, this factor weighs against including any of the excluded classifications in the bargaining unit—other than the Truck Jockey (Day), and even then, only to a very limited extent.

## **7. Terms & Conditions of Employment**

**Wages:** Drivers' wages start at \$23 an hour. The excluded classifications' starting wage is between \$16.50 and \$18 an hour.<sup>73</sup> This difference, while not large in absolute terms, is

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<sup>69</sup> Tr. 317–18; 334.

<sup>70</sup> Tr. 206–08.

<sup>71</sup> Tr. 206–09.

<sup>72</sup> See *WLVI Inc.*, 349 NLRB 683, 686 n.5 (2007) (holding that an employee's performing the same work as the petitioned-for employees, for at least 25% of their working time, is usually sufficient (though not necessary) to include them in the bargaining unit; *Avco Corp.*, 308 NLRB 1045 (1992) (same).

<sup>73</sup> Tr. 380–85.

nonetheless significant for this industry. It weighs against including the excluded classifications in the bargaining unit.

**Hours:** All of the employees at issue are hourly employees. Some, like drivers, have variable hours of work each day; others have fixed start and end times. But the significant difference between these employees' hours is that drivers' hours of work are regulated by USDOT. No other employees' hours are regulated by any agency, other than the daytime truck jockey when filling in as a driver.<sup>74</sup> This weighs slightly in favor of including the Truck Jockey (Day) in the bargaining unit. It weighs against including the other excluded employees.

**Workplace Policies:** FreshPoint's own workplace policies are largely the same for all employees. An exception is its distracted-driving policy, which applies only to drivers (and to the daytime truck jockey when serving as a driver).<sup>75</sup> Drivers are also subject to other workplace rules and policies required by the USDOT, including random drug testing and required medical certification.<sup>76</sup> These distinctions weigh against including the excluded classifications in the bargaining unit, other than, to a limited extent, the Truck Jockey (day).

**Benefits:** All FreshPoint employees receive the same benefits.<sup>77</sup> This weighs in favor of including the excluded classifications in the bargaining unit.

**Tools and Supplies:** Drivers operate heavy trucks. Their tools include hand trucks, electric pallet jacks, tablets, and route bags.<sup>78</sup> The other classifications that operate heavy trucks are truck jockeys. Inbound, Production, and Outbound Department workers also use hand trucks and electric pallet jacks. This weighs slightly in favor of including the truck jockeys, Inbound, Production, and Outbound Department workers in the bargaining unit, but no other classifications.

**Worksite:** Drivers spend the great majority of their working time on the road, away from FreshPoint's facilities.<sup>79</sup> This is not true of any of the excluded job classifications and weighs against their inclusion in the bargaining unit.

**Uniforms:** Drivers wear fluorescent shirts with the FreshPoint and Sysco logo on it, hats, gray pants, and steel-toed shoes. Production Department workers wear long, white coats over

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<sup>74</sup> Tr. 251–54.

<sup>75</sup> Tr. 321.

<sup>76</sup> Tr. 377–78

<sup>77</sup> Tr. 375–76.

<sup>78</sup> Tr. 410.

<sup>79</sup> Tr.236–37; 411.



street clothes.<sup>80</sup> Other warehouse workers typically wear street clothes (e.g. jeans) and a vest. These distinctions weigh against including the excluded classifications from the bargaining unit.

## **8. Supervision**

The excluded classifications with the same supervision as drivers are those in the Transportation Department: the truck jockeys and dispatchers.<sup>81</sup> Only Transportation Department supervisors and managers can assign or discipline Transportation Department employees.<sup>82</sup> This factor weighs in favor of including the daytime truck jockeys and dispatchers in the bargaining unit. It weighs against including the other excluded classifications.

### **C. Conclusion on Scope of the Bargaining Unit**

Upon the record evidence in this case, I find that petitioned for drivers (Driver A, Driver B, Driver-Domiciled, Driver-Shuttle, and Lead Driver) share a sufficiently distinct and separate community of interest from the additional 23 job classifications to constitute an appropriate unit without their inclusion. However, after reviewing the record as a whole, I find that the Truck Jockey (Day), which is the only job classification other than drivers to require a CDL, has an overwhelming community of interest with the drivers, and shall be included in the unit.

As the Board recognizes, “It is well settled that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining.”<sup>83</sup> This is especially so in cases that involve truck drivers. As the Board noted in *Pacemaker Mobile Homes*, many Board cases have found that drivers “have what amounts to a dual community of interest,” with some factors supporting inclusion in and some supporting exclusion from a broader unit:

As the Board has frequently noted, in such a situation and where no other labor organization is seeking a unit larger or smaller than the unit requested by the Petitioner, the sole issue to be determined is whether or not the unit requested by the Petitioner is *an* appropriate unit.<sup>84</sup>

Here, as shown above, FreshPoint’s drivers share only a few similarities with the company’s other employees as a whole under the Board’s community of interest factors, including a high degree of functional integration, certain shared work rules, and shared employee benefits. There are some more similarities between the petitioned for drivers and the other Transportation Department employees, particularly the daytime truck jockey, who also holds a

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<sup>80</sup> Tr. 413–14.

<sup>81</sup> Tr. 66.

<sup>82</sup> Tr. 231–33.

<sup>83</sup> *Home Depot USA, Inc.*, 331 NLRB 1289, 1290 (2000), citing *Overnite Transp. Co.*, 322 NLRB 723 (1996).

<sup>84</sup> 194 NLRB 742, 743 (1972).

CDL and who sometimes interchanges with the petitioned-for drivers. Even though the daytime jockey drives a limited route only about once every two weeks, given that it is the only other classification that has some interchange with the drivers, requires the skills and training required to obtain a CDL, requires a CDL, and must therefore following DOT rules for maintaining the CDL, when examined as a whole, daytime truck jockeys share an overwhelming community of interest with drivers.

With respect to the other 22 job classifications, there are more stark differences between them and the drivers and the daytime truck jockey. With only two exceptions, employees from the warehouse departments are organized into five different departments and supervised by different people than are the drivers from the Transportation department. The excluded classifications perform very different functions and job tasks than those of drivers. None require a CDL. There is no interchange between drivers and these other employees. And driver terms and conditions of employment are different than those of other employees, particularly because of the work they do—commercial trucking, a highly-regulated industry—and where they do it (away from FreshPoint’s facilities). This is more than enough to set the drivers apart and make it rational for them to bargain separately over the terms and conditions of their work.<sup>85</sup>

In sum, I find that FreshPoint’s petitioned for unit of drivers do not share an overwhelming community of interest with the excluded classifications with the exception of the Truck Jockey (Day) as explained above. While the Employer’s proposed unit *could* be a single unit,<sup>86</sup> the evidence does not establish a community of interest so “overwhelming” that the petitioned for unit of drivers is inappropriate. Therefore, I am directing an election as specified below.<sup>87</sup>

#### IV. THE ELECTION METHOD

The record shows that there are about 50 driver employees eligible to vote: about 45 delivery drivers, 3 shuttle drivers, 1 lead driver, and 1 Truck Jockey (Day). About 29 eligible voters start and end their shifts at FreshPoint’s main facility in Turlock, 13 start and end at the FreshPoint cross-dock in Fresno, and 4 start and end at the cross-dock in Sacramento. FreshPoint’s Vice

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<sup>85</sup> See, e.g., *Home Depot*, 331 NLRB 1289 (2000) (reversing the Regional Director and holding that truck drivers shared a distinct community of interest based on their heavily-regulated driving work, shared credentials, and distinct uniforms, and despite some overlapping duties and interchange with non-driver employees); cf., e.g., *Standard Oil Co.*, 147 NLRB 1226, 1228 (1964) (finding truck drivers so functionally integrated with plant employees as to preclude separate representation where (a) the drivers spent a substantial amount of time performing the same duties as plant employees, some of whom performed driving duties; (b) the drivers had the same supervision, pay scale, and benefits as plant employees; and (c) the drivers’ conditions of employment were substantially the same as that of plant employees).

<sup>86</sup> See, e.g., *International Bedding Co.*, 356 NLRB 1336, 1337 (2011) (petitioned-for unit of production, warehouse drivers and yard jockeys found appropriate).

<sup>87</sup> As the Petitioner acknowledges, the daytime truck jockey is a close case as he is required to have a CDL unlike all other employees in the excluded classifications. Tr 467.

President of Operations testified that delivery drivers' daily hours of work vary from around 10 to 14 hours a day, that they work staggered shifts, and that the start and end times of those shifts vary. Delivery drivers start work between around 1:30 a.m. and 5 a.m. and stop between around 12:30 p.m. and 5 p.m. Shuttle drivers all start and end their shifts in Turlock. Like delivery drivers, they work staggered shifts, the length of those shifts varies, and the start and end time of those shifts vary as well. Shuttle drivers start work between about 7 p.m. and 10 p.m. and stop between around 5 a.m. and 7 a.m. The lead driver is based out of Turlock and starts work between around 1 a.m. and 4 a.m. The record does not show this employee's end-of-shift time.

The Petitioner's petition requested a manual election. At the hearing, the Employer also requested a manual election and agreed to make its Turlock, Fresno, and Sacramento facilities available for that purpose. The parties agreed on polling times: 2 a.m. to 6 a.m. and 3 p.m. to 6 p.m. for Turlock, and 1 a.m. to 5:30 a.m. for Fresno and Sacramento for a total of 16 hours of polling time. Neither party presented any substantive argument against a mail-ballot election.

It is well-established that the Board has a wide degree of discretion in establishing the procedures and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas & Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.*, 325 NLRB at 1144–45.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2. However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail-ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area or where they are "scattered" in the sense that they are not often present at a common location at common times. *San Diego Gas & Elec.*, 325 NLRB at 1145. *San Diego Gas* also discusses considerations such as the impracticality of a manual election, and the prudent expenditure of Agency resources.

Here, the petitioned-for employees are drivers who spend most of their work time away from the Employer's facilities and do not have set shifts, working as many as 70 hours per week. While most employees work out of Turlock, a substantial number also work out of Fresno (over 80 miles away) and a few out of Sacramento (over 85 miles away). Therefore, I have determined that this case meets the definition of "scattered" under *San Diego Gas & Electric*, in the sense that their work schedule does not permit them to be present at a common location at a common time. Additionally, the efficient and economic use of Agency resources is a valid factor to consider. The parties' proposed election schedule would likely require three to four Board agents to administer, along with their travel costs. A mail-ballot election will provide all the eligible

drivers with adequate and equal opportunity to cast a ballot in this election. In sum, based on these facts, I find that a mail-ballot election is appropriate.

## **V. CONCLUSIONS AND FINDINGS**

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

1. The hearing officers' rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. 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.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. 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.
5. The following employees of the Employer constitute a voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

***Included:*** All full time and regular part time drivers including Driver A, Driver B, Driver-Domiciled, Driver-Shuttle, Lead Driver, and Truck Jockey (Day) employed by the Employer at or from its Turlock, Fresno, and Sacramento, California facilities.

***Excluded:*** All other employees, office clerical employees, managerial employees, professional employees, guards, and supervisors as defined by the 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 on whether they wish to be represented for purposes of collective bargaining by Teamsters Local 386.

If a majority of the valid ballots are cast for Teamsters Local 386, they will be taken to have indicated the employees' desire to be included in the existing bargaining unit of Mechanics and Lead Mechanics currently represented by Teamsters Local 386. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

### **A. Election Details**

The election will be conducted by United States mail.

The mail-ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 5:00 p.m. on Friday, December 12, 2025, from the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 1510N, Oakland, CA 94612-5224. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by December 19, 2025, should communicate immediately with the National Labor Relations Board by either calling the Region 32 Office at (510) 637-3300 or Nicholas L. Tsiliacos (510) 671-3046.

All ballots will be commingled and counted at the Region 32 Office on January 6, 2026, at 3 PM. In order to be valid and counted, the returned ballots must be received in the Region 32 Office prior to the counting of the ballots.

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 **November 22, 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, 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 **[Date]**. The list must be accompanied by a certificate of service showing service on 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](http://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](http://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 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 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.

### **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](http://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 at Oakland, California this 4<sup>th</sup> day of December 2025



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Christy J. Kwon  
Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay St Ste 1510N  
Oakland, CA 94612-5224