UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

Point Management LLC d/b/a Shangri-La[1]

Employer

And **Case 14-RC-315558**

United Food and Commercial Workers Local 655

Petitioner

DECISION AND DIRECTION OF ELECTION

Point Management LLC d/b/a Shangri-La ("the Employer") is engaged in the retail sale of cannabis and currently operates three stores in the State of Missouri. On April 5, 2023[2], United Food and Commercial Workers, Local 655 ("Petitioner") filed the instant Petition under Section 9(c) of the National Labor Relations Act ("the Act"), seeking to represent certain employees performing work at the Employer's store located at 3919 Peachtree Drive, Columbia, Missouri 63205 ("the petitioned-for store" or "the South Store"). The Employer contests the appropriateness of the petitioned-for unit and contends that the unit must include employees at its other store at 1401 Creekwood Parkway, Columbia, Missouri ("the Super Store") and its store at 2118 Missouri Boulevard, Jefferson City, Missouri. Petitioner contends that the petitioned-for unit is a presumptively appropriate single-facility unit and the Employer has not demonstrated an overwhelming community of interest.

The parties agree that in either event, the appropriate unit should include all full-time and regular part-time Patient Consultants, Patient Consultant Supervisors, and Inventory Specialists excluding the General Manager, Assistant General Manager, Inventory Supervisor, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

A hearing officer of the National Labor Relations Board ("the Board") held a videoconference hearing in this matter on April 26, and took evidence on this issue. Petitioner and the Employer filed post-hearing briefs.

As explained below, based on the record, the parties' briefs, and relevant Board law, I find the petitioned-for unit is presumptively appropriate, and that the Employer has failed to

[1] The Employer's name appears as stipulated by the parties.
[2] All dates are in 2023, unless otherwise noted.

meet the heavy burden to overcome this presumption. I therefore order an election to be held in the petitioned-for unit.

I. RECORD EVIDENCE

A. Overview of the Employer's Operations

The Employer operates two cannabis dispensaries (stores) in Columbia, Missouri, and a third in Jefferson City, Missouri. One of its Columbia locations is the petitioned-for store. The Employer is preparing to open four additional stores in the State of Ohio. The Employer's stores are owned by a single entity.

The Employer's Jefferson City store opened first, in April 2021. Its Columbia stores opened at unspecified times after that. Prior to February 2023, at which time the stores began recreational cannabis sales, the stores were engaged only in the sale of medical marijuana. Per the Employee handbook, which was last distributed to employees in December 2022, the Employer refers to its customers as "patients." Because of the nature of its business, the Employer is regulated by the Missouri Department of Health and Senior Services.

The Employer employs a total of approximately 60 employees at its three Missouri locations. Twenty-four (24) of these employees are in the petitioned-for unit at the petitioned-for store.

Human Resources Manager Tessa Orton was the Employer's sole witness at hearing. She testified that each store has a General Manager, Assistant General Manager, and Inventory Supervisor. An "Administrative Team" composed of the Chief Operating Officer Mike LaFrieda, Regional Manager Pat Dyson, Director of Business Operations (the name of whom was not provided on the record), Inventory Manager Randy Sargent, and herself, oversees various aspects of the Employer's operations across all three stores.

Orton is responsible for aspects of hiring, discipline, and training, among other things. She posts internal job openings to all of the Employer's employees, including employees at each of the three cannabis stores as well as employees of Supersonic Transportation, an explanation of which was not presented at the hearing. After job openings are shared internally, the Employer posts them on Indeed, and applications can also be submitted through the Employer's website. Despite Orton's testimony that job openings sometimes indicate that multi-location work is required, the Employer presented no evidence to support this claim. Orton tried to support this claim with her testimony that job fairs are always held at the Super Store, "so all applicants, regardless of the store, will [go to the Super Store] and all three [store] managers will [go] to the Super Store as well."

Applications are initially reviewed by Orton and she sends them to the appropriate store-level managers for review: if the application is for a Patient Consultant or Patient Consultant Supervisor, she sends it to all three stores' managers, and if it is for inventory, she sends it to the three stores' Inventory Supervisors. The managers choose who to interview from this pool, and then conduct the interviews themselves. Orton has observed some interviews since she was hired, but does not participate in the interviews. Store managers give hiring recommendations to Regional Manager Dyson, who makes the final hiring decision. If Dyson has concerns about an applicant's background check or answer to a specific question, he raises them with the Administrative Team. Orton could not think of a specific example of Dyson approaching her with a question in this realm and the Employer did not provide any evidence to support this testimony. The State of Missouri conducts background checks on each new hire.

Orton trains all new employees in person at the corporate office, which is located at the Super Store. She also disseminates weekly training with input from the Administrative Team. All of the Employer's employees receive the same training, regardless of the store where they work. (Tr. 16).

All disciplinary actions go through Orton for final approval. She keeps pay records and HR records in a filing cabinet at her work area, or online. Orton is also responsible for implementing payroll systems and some aspects of hiring for the future Ohio stores.

Orton testified that Regional Manager Dyson is responsible for inventory at all of the stores and orders the same products from the same vendors for all three stores, and there is a single Inventory Manager for all three stores, who manages accounts and makes sure the inventory team runs smoothly. (Tr. 18). The Employer offered no testimony about the other Administrative Team members' responsibilities other than Orton's testimony that she visits each store about every two weeks and LaFrieda and the Director of Business Operations visit each store "about two to three times a week." However, the Employer provided no evidence to support the same, and Orton also testified that the Administrative Team tries to visit the store "at least once a week" but "it just kind of depends."

The Employer asserts that because it sells medical cannabis, it is a healthcare institution within the meaning of Section 2(14) of the Act. The Employer refers to its customers as "patients" and provided the Table of Contents and first two pages of its Employee Handbook to demonstrate use of the term "patients." This handbook was last distributed to employees in December 2022, which predates the sale of recreational marijuana. To receive medical marijuana, one must have a physician-issued patient card. Orton testified that the Employer has relationships with two medical clinics where people can go to get their medical marijuana cards "attached" to its Columbia, Missouri stores. As required by state law, these clinics' employees have no interchange with the Employer's employees, nor are they employees of the Employer.

Now that recreational sale is permitted, anyone can walk into a store and show ID and purchase.

B. Control Over Daily Operations, Labor Relations, and Local Autonomy

With the exception of one inventory employee who is designated as a floater[3], all other employees work at a single specific store. As stated above, each of the Employer's three stores has its own management team on site consisting of a General Manager, Assistant General Manager, and Inventory Supervisor, and these are the people who conduct interviews for open positions within their stores. A store's management team oversees the employees working at that particular store.

Each of the three stores posts its own unique weekly schedule. The record suggests, but does not make clear, that the schedules are created by store-level management. When an employee desires to take an extra shift at an alternate work location, they do so by way of communication with other employees on a What's App group message. When an employee is on site at an alternate work location, they sign a time log and complete an Alternate Work Location Approval form that is also signed by the local store's management.

The store-level managers send all disciplinary actions through Orton for final approval.

The Employer presented no evidence that the store-level managers do not schedule employees, review their requests for time off, assign and direct employees' daily work, ensure day-to-day compliance with employer policies, or settle customer complaints. The Employee Handbook's Table of Contents indicates that many of these subjects have applicable provisions, and perhaps the provisions dictate which personnel enforces which policies, but the contents of the handbook were not provided.

C. Employee Skills, Functions, and Working Conditions

Employees are assigned shifts only at a single store. The responsibilities of the employees at each of the Employer's three stores are the same; specifically, the Patient Consultants interact with the customers to determine the best product for their needs. (Tr. 23). The record does not reflect the responsibilities of the Patient Consultant Supervisors or Inventory Specialists.

The employees at each store clock in and out the same way, via a time-clock app, accessible on an in-store tablet. Additionally, employees at all three stores use the same point of sale equipment: a software program called Dutchie. This is not a program that was developed by the Employer or one that is used only by this Employer. To the contrary, this program is used by

[3] On the record, the Employer identified this floater by name: Jay Edwards. However, Board Exhibit 1(d) lists Edwards as a Patient Consultant assigned to the Super Store.

other dispensaries. The decision to purchase it, and the purchase itself, were executed by the CEO and COO.

An employee's work location does not determine their wages or benefits. Instead, each classification has a set starting wage rate, which is determined by the Administrative Team. Benefits, originally determined by the Administrative Team, are conveyed to all employees by Orton. Employees are also subject to the same policies, as there is a single Employee Handbook containing policies that apply to employees of all three stores.

D. Employee Interchange

As described above, employees are interviewed and recommended for hire by the specific store where they will work, and they are assigned shifts only to that specific location, but they can elect to pick up shifts at other locations when they want to. These "temporary transfers" are always voluntary.

The Employer uses WhatsApp to communicate with employees, and if an employee sees via WhatsApp that a shift is open at another location, they are free to accept the work. When they report to work at the alternate location, the employee is required to sign a time log sheet and complete an Alternate Work Location form, which is signed by local store management.

Orton testified that each employee transfers to a different store once or twice per month, but the Employer did not provide evidence of this, nor are transfers addressed in the Employer handbook. The Employer tracks every instance of an employee working at a store other than their "regular" store, so that the employees can receive their appropriate portion of tips, yet the Employer only presented temporary transfer evidence for February 1 – 25, plus a stray document for January 15-16. At the hearing, Orton testified that these records were for a single pay period, but a review of the evidence indicates otherwise. Of the Alternative Work Location Approval forms produced as Employer's Exhibit 3, five are for employees who self-identified as Patient Consultants, Patient Consultant Supervisors, or Inventory Specialists assigned to the petitioned-for store. However, only two of these employees appear on the list of employees that the Employer submitted to the Board with its Statement of Position. Another employee for whom an Alternate Work Location Approval form was submitted self-identified as an Inventory Supervisor at the petitioned-for store, but that job classification is excluded from the petitioned-for unit. Employer's Exhibit 3 also demonstrates that one employee of the Super Store had a one-day transfer *to* the South Store. Exhibit 3 also reflects that during the period for which evidence was provided, 10 employees transferred between the Employer's other two locations. Notably, the first pay period in February 2023, which is covered by these documents, was the first period that Jefferson City sold recreational cannabis, so it was an unusually large sale week with unusually high need for employees at the Jefferson City store.

Orton testified that the data in Exhibit 3 is indicative of typical transfers between stores. However, Petitioner's employee witness, Benjamin Franklin, testified that the records – in terms of the volume of temporary transfers – are atypical. During the entirety of his 13.5 months of employment with the Employer, during which he was employed at the South Store as a Patient Consultant, Patient Consultant Supervisor, and for several months Assistant Manager, Franklin worked a single shift at the Super Store and reported to the Jefferson City store for training on a single occasion. Further, he testified that the South Store "rarely" required the use of employees from other locations, and that the first pay period of February 2023, included in Employer's Exhibit 3, was an anomaly because it was the first period of recreational marijuana sales at the Jefferson City store. Franklin identified two employees who "regularly" transferred to the petitioned-for store, but described the frequency as less than weekly.

Orton testified that each store has an Inventory Specialist, and on occasion they also work at the Super Store with the Inventory Manager. The Employer presented no evidence demonstrating that anyone has this title, let alone the frequency of this "temporary transfer."

E. Distance Between Locations

The Employer's petitioned-for location is in Columbia, Missouri. According to the Employer, the Super Store is located approximately 6 miles away and its Jefferson City, Missouri location is approximately 25 miles from the petitioned-for location and 27 miles from the Super Store. Details were not offered about the distance between any of these locations and the Employer's future Ohio locations.

F. Bargaining History

There is no history of collective bargaining at the petitioned-for store or any of the Employer's other stores.

II. ANALYSIS

A. Legal Standard

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. See e.g., *Hilander Foods,* 348 NLRB 1200 (2006); *Frisch's Big Boy III-Mar, Inc.*, 147 NLRB 551, 441 fn. 1 (1964). The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. *Id.* To determine whether the single-facility presumption has been rebutted, the Board examines (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866 (2003); *J &L Plate, Inc*., 310 NLRB 429 (1993).

More than sixty years ago, in *Sav-On Drugs*, the Board abandoned its prior general policy in the retail chain context of making unit determinations coextensive with the employer's administrative division or the involved geographic area. 138 NLRB 1032 (1962); *accord Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964). The Board decided that it would "apply to retail chain operations the same unit policy that it applies to multi-plant enterprises in general, that is… in the light of all the relevant circumstances of the particular case." *Frisch's Big Boy*, 147 NLRB at 551-552. The Board expanded upon this policy in *Haag Drug*, stating, "[o]ur experience has led us to conclude that a single store in a retail chain, like single locations in multilocation enterprises in other industries, is *presumptively* an appropriate unit for bargaining." 169 NLRB 877 (1968) (emphasis in original). The Board elaborated: "absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity, the employees' 'fullest freedom' is maximized, we believe, by treating the employees in a single store … as normally constituting an appropriate unit for collective bargaining purposes." *Id.* at 877.

In order to rebut this appropriate unit presumption, the Board requires an Employer to "demonstrate integration so substantial as to negate the separate identity" of the single store unit. *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). See *Haag Drug*, supra, at 879 ("where an individual store lacks meaningful identity as a self-contained economic unit, or the actual day-to-day supervision is done solely by central office officials, or where there is substantial employee interchange destructive of homogeneity, these circumstances militate against the appropriateness of a single-store unit.")

The Board has stated that employee interchange occurs where a portion of the work force of one location is involved in the work of the other location through transfer or assignment of work. *New Britain Transportation Co.,* 330 NLRB 397, 398 (1999). To constitute significant employee interchange, a considerable portion of the work force must be involved and the employees must be actually supervised by the second location. *Id.*

There is nothing in the Act requiring that the unit found appropriate be the only or most appropriate unit; the Act requires only that it be "*an* appropriate unit." *Wheeling Island Gaming,* 355 NLRB 637, 637 n.1 (2010) (emphasis in original) (citing *Overnite Transp. Co.,* 322 NLRB 723 (1996)).

Here, the Employer has failed to carry the above-described evidentiary burden to establish that the unit must consist of the three stores it operates in Missouri.

B. Application

As stated above and at the hearing, the single store unit is presumptively appropriate. *Haag Drug*, supra, at 877. Accordingly, the issue here is whether the Employer has met the evidentiary burden to overcome that presumption.

Based on the parties' arguments and the record as a whole, I find that the Employer has not met its burden of rebutting the single-facility presumption and the petitioned-for single-facility unit is appropriate. The record contains evidence that the Employer's Administrative Team has oversight of all three of its open stores, but that each of its stores has an on-site management team that is involved in the hiring, scheduling, and discipline of employees, among other personnel functions. Additionally, I find that there is vastly insufficient evidence of employee interchange among the three stores to negate the appropriateness of a single store unit, and also that the Employer is not a healthcare facility as defined by the Act. For these reasons, the Employer has failed to meet its burden.

1. The Centralization of Operations

The Board has long recognized that it "is common in retail chain operations… [for there to be] a considerable degree of centralized administration in the functioning of ... stores." *Angeli's Super Valu*, 197 NLRB 85, 85 (1972). Notably, the Board has emphasized that, "though chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation." *Haag Drug*, 169 NLRB at 878.

Although the Employer presented testimony about the centralized oversight of its business, by its Administrative Team and the State of Missouri, under extant Board law such evidence of centralized operations is not considered a primary factor in the consideration of single-store units in the retail industry. *Id*. While the functional integration of two or more plants in substantial respects may weigh heavily in favor of a more comprehensive unit, it is not a conclusive factor. *See Dixie Belle Mills, Inc.*, 139 NLRB 629, 632 (1962); *J&L Plate*, 310 NLRB 429 (1993).

The Employer offered a single witness to testify that its Administrative Team oversees many aspects of its business operations. However, the Employer provided only conclusory and generalized testimony about the responsibilities of the Administrative Team compared to store-level management. Specifically, Orton's testimony that store managers must seek approval for hiring and disciplinary decisions was not supported by specific examples, corroboration by store-level managers, or documentary evidence. Further, no evidence was provided to reflect the frequency of these matters and therefore the record does not establish that these operational aspects constitute a daily occurrence or are otherwise part of day-to-day operations.

Because the Employer bears a heavy burden of proof here, it must provide sufficient evidence to establish that because of its centralized operations, the store management team has little discretion in the day-to-day operation of the stores. I find that the Employer's conclusory, generalized evidence is insufficient to meet this burden.

C. Control over Daily Operations, Labor Relations, and Local Autonomy

The Board considers evidence of local autonomy in daily operations and labor relations to be a key consideration in assessing the appropriateness of single-store units in retail chain operations. Thus, "centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. For example, in *Haag Drug*, the Board found that one of 11 restaurants operated by an employer in a geographic area was an appropriate unit despite a "high degree of centralized administration," including central profit-and-loss records, payroll functions, and chainwide handling of purchasing, vendor payments, and merchandising. 169 NLRB at 878. In finding the single-facility unit appropriate, the Board noted that the centralized operations bore "no direct relation to the employees' day-to-day work and employee interests in the conditions of their employment." *Id.* at 879.

Accordingly, the primary focus of this control factor is the control that facility-level management exerts over employees' day-to-day working lives. *Starbucks Corp.*, 371 NLRB No. 71 (2022) (specific evidence demonstrating store managers adjusting schedules, approving time off, hiring and imposing discipline outweighed automated tools and policies that limited store manager discretion); *Haag Drug*, supra, at 878 (the handling of day-to-day problems has relevance for all the employees in the store, but not necessarily for employees of other stores). See also *Red Lobster,* 300 NLRB 908, 908 (1990); *Cargill, Inc*., 336 NLRB 1114, 1114 (2001); *Renzetti's Market, Inc*., 238 NLRB at 174-175; *Foodland of Ravenswood*, 323 NLRB at 667; *Bud's Thrift-T-Wise*, 236 NLRB 1203, 1204 (1978); *Lipman's*, 227 NLRB 1436, 1437 (1977).

The record establishes that each of the Employer's three stores has its own on-site management team, including a General Manager, Assistant General Manager, and Inventory Supervisor. Each store's managers, not the Administrative Team, conduct the interviews for employees who have applied to work in that specific store, and they make their recommendations to the Administrative Team. Each store posts its own schedule, and the store managers at each store sign off on employees' "temporary transfer" paperwork. Further, the on-site managers recommend disciplinary actions for their own store's employees. The centralized Administrative Team visits the Employer's three stores with unspecified, unregulated varying frequency but are not present every day, and the Employer presented zero evidence about what the Administrative Team does when it is on-site. See *Renzetti's Market Inc*., 238 NLRB 174, 175-176 (1978) (emphasizing that the daily supervisor is "better able to comment on the job performance of employees over whom he has constant supervision"); *Red Lobster* 300 NLRB 908, 908 fn. 4 (1990) (finding local autonomy even though upper-level supervision in restaurant for a full day about once a week noting that this is "insufficient staffing for persons in these two positions to be present in all restaurants at all times . . . it appears that on some days the most responsible person in the restaurant is the assistant or the associate manager"); *Super X Drugs of Illinois*, 233 NLRB 1114 (1977) (finding insufficient local autonomy where the district manager spent up to 70% of his time conducting on-site visits, the visits were used to ascertain whether the store manager was running the store in accordance with the district manager's directions and established business practices, and employee' raises were based on

the district manager's observation of employees and discussion of their work with the local store manager).

While it may be true that benefits are standardized across all three stores and there is a single Employee Handbook containing policies for the employees at all three stores, the Board specifically found in *Starbucks Corp*. that corporate control over some aspects of employment does not preclude a finding of local autonomy. 371 NLRB No. 71 (2022). Further, although the Employer maintains policies from a point of centralized oversight, it is the on-site store management team that implements the policies at the local level. In fact, the Employer did not assert on the record that its Administrative Team is involved in the actual day-to-day operations of its stores, and contrary to the decision cited by the Employer in *Nectar Markets, LLC*, 19-RC-293303 (2022)[4] the record contains no specific examples of the Administrative Team conducting or even participating in interviews other than in an observational capacity, executing temporary transfers, directing work assignments, or conducting independent investigations of disciplines, evaluations, or grievances. In fact, as explained herein, the record is devoid of most information about who does oversee the day-to-day operations of each store, and therefore the Employer fails to meet its burden to demonstrate that day-to-day operations are centralized such that a single-facility unit is inappropriate.

For the reasons stated, this factor weighs against the Employer overcoming the single-facility presumption.

D. Employee Skills, Functions, and Working Conditions

The record establishes that the Patient Consultants, Patient Consultant Supervisors, and Inventory Specialists' basic skills and job functions are identical across the Employer's three current facilities, and no substantial dispute exists that employees' wages and benefits are established by the Administrative Team. However, "[w]hile employee benefits have been centrally established, and the uniformity thereof is of some significance, no greater control or uniformity has been shown here than is characteristic of retail chain store operations generally." *Haag Drug*, 169 NLRB at 879.

Despite this evidence of similar employee skills, functions, and working conditions, this factor is outweighed by others, most significantly the lack of significant interchange and the lack of centralized day-to-day management over each store. *See, e.g. Starbucks Corp*., 371 NLRB No. 71 at 2.

E. Employee Interchange

Employee interchange must be considered in the total context. *Gray Drug Stores, Inc*., 197 NLRB 924 (1972); *Carter Camera Shops*, 130 NLRB 276, 278 (1961). The relevant context is the appropriate legal test, where the key question is the degree of interchange *and* the nature of this interchange. *Starbucks Corporation*, 371 NLRB No. 71 (2022).

[4] This case was incorrectly cited by the Employer as 19-RC-203003 (2023).

With respect to the degree of interchange, although frequent and regular interchange supports finding a community of interest, it is also well-established that infrequent, limited, and one-way interchange does not require finding a shared community of interest. In *Starbucks Corp.*, the Board found that two percent of shifts at the petitioned-for store were worked by employees from other stores, and that this did not "establish that the petitioned-for employees regularly or frequently interchange with employees" in the employer's administrative district "and instead indicate that any interchange is limited and infrequent." *Id* at 1.

Additionally, the Board has long placed less weight on voluntary interchange. *Id. at* n.5 (citing *New Britain Transp. Co.*, 330 NLRB 297, 398 (1999)); *Red Lobster*, 300 NLRB at 911. Where a portion of the work force of one facility is involved in the work of another facility through temporary transfer or assignment of work, the Board considers this temporary interchange. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). However, a significant portion of the work force must be involved, and the work force must be supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. *Id*.

Here, the Employer generally claimed that its employees freely and regularly accept shifts at stores other than their assigned location. The Employer refers to this as a "temporary transfer." However, as described above, even after the Hearing Officer gave the Employer time off the record to gather evidentiary support of this assertion, the Employer offered evidence only for approximately 25 days in February 2023, including the pay period in which recreational marijuana sales in Jefferson City began, resulting in unusually high sale volume and the necessity for additional employee support. The data demonstrated that several employees who self-identified as falling within the bargaining unit employees at the petitioned-for store volunteered for shifts at the Jefferson City Store, and a single employee had a one-day temporary transfer into the South Store. However, as described above, only two of the employees whose Alternate Work Location Approval forms were provided appear on the Employer's list of employees at the petitioned-for store. Further, the Employer presented no evidence about how many *shifts* were filled by these temporary transfers, or what percentage or volume of shifts were filled by these temporary transfers. Nor did the Employer present evidence about the frequency of temporary transfers for a greater period of time or closer in time to the time of the filing of the representation petition or hearing. For these reasons, I find this data to be insufficient to rebut the presumption in favor of a single-store unit.

The Employer failed to provide testimony or data showing that a "significant portion of the workforce" of the South Store is involved in interchange. Additionally, it provided no evidence of permanent transfers or any involuntary transfers, the frequency of transfers, or the percentage of shifts filled by transfers.

Finally, I find that the cases relied on by the Employer in its brief are distinguishable. *St. Luke's Health Systems, Inc.*, 340 NLRB 1171 (2003) and *Stormont-Vail Healthcare*[5], 340 NLRB 1205 (2003) both regard healthcare facilities, which have a different degree of burden, and contrary to the circumstances in *Jones Lang Lasalle Americas, Inc.*, 32-RC-310485 (2023), here, the record reflects that interchange occurs when shift coverage is needed, not when one facility lacks resources another can offer. Additionally, although the Employer cites *Nectar Markets*, supra, for other bases, in that Decision and Direction of election, the Regional Director there found that the employer's reliance on temporary interchange did not meet its burden because voluntary interchange carries less weight than mandatory interchange, the amount of interchange was insufficient, and data from a one-month period was too short to make a determination. *Id.* at 15.

For these reasons, the evidence does not weigh in favor of the Employer rebutting the single facility presumption. I find instead that the level of employee interchange supports the petitioned-for single facility unit.

F. Distance Between Locations

The Board has found varying distances to weigh in favor or against rebutting a single-facility presumption, depending largely on what other factors are present. *See, e.g., Lipman's*, 227 NLRB at fn.7 (1977) (finding stores located only 2 miles apart appropriate single-facility units); *Red Lobster*, 300 NLRB at 908, 912 (finding stores with an average distance of 7 miles apart and all within a 22-mile radius appropriate single-facility units); *New Britain Transp.*, 330 NLRB at 398 ("[G]eographic separation [of 6 to 12 miles], while not determinative, gains significance where, as here, there are other persuasive factors supporting the single-facility unit).

I find here that while the two Columbia, Missouri stores are only several miles apart and this might weigh in favor of a multi-store unit, this is outweighed by the lack of interchange between employees at these stores. In fact, as described above, for the period for which "temporary transfer" information was provided, there was more employee interchange between the Employer's other two stores than with its South Store, which is the subject of the representation petition.

G. Bargaining History

The Board generally finds that the absence of bargaining history is a neutral factor in the analysis of whether a single-facility unit is appropriate. *Starbucks Corp.*, 371 NLRB No. 71 (2022); *Trane*, 339 NLRB at 868, fn. 4. *But see New Britain Transp. Co*., 330 NLRB at 398 (lack of bargaining history weighed in favor of requested single-facility unit); *Lipman's*, 227 NLRB 1436, 1438 (1977) (in finding single store units in retail chain appropriate, emphasized "the fact

[5] Incorrectly cited by the Employer as *Stormart Vail Healthcare*.

that there is no bargaining history for any of these employees, and the fact that no labor organization seeks to represent the employees on a broader basis.")

H. Healthcare Facility

The Employer asserts that it is a "health care employer within the meaning of the Act" because it sells marijuana for medicinal purposes. Section 2(14) reads, "The term 'health care institution' shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person."

Congress has efforted to prevent proliferation of units in the healthcare industry because fragmentation is likely to produce disruption of health care services, inefficient bargaining with labor organizations, whipsawing and resultant increases in health care costs. *Manor Healthcare Corp*., 285 NLRB 224 (1987) Thus, the Employer cites to *Manor Healthcare Corp.* to assert that the party contesting the presumption of a single-facility unit must merely show that the evidence reasonably shows that such a unit is inappropriate. However, that case regards the test to be applied in determining the appropriateness of a single-facility bargaining unit in the healthcare industry, and is therefore inapplicable.

The Employer provided no caselaw finding that marijuana dispensaries are health care institutions, and merely relies on the fact that its business is regulated by the Missouri Department of Health and Senior Services. Its documentary evidence – a printout from MDHHS – predates the Employer's sale of recreational marijuana, but even when the Employer only sold marijuana for medicinal purposes, I would find that by definition it failed to qualify as a health care institution, as it is not a hospital, a convalescent hospital, a health maintenance organization, a health clinic, a nursing home, an extended care facility, or any other institute "devoted to the care of" sick, infirm, or aged persons. To the contrary, like *Nectar Markets, LLC,* relied upon by the Employer for other bases, the Employer is engaged in the retail sale of cannabis and the retail standards for determining whether the petitioned-for unit is appropriate, analyzed herein, apply.

I. Summary

Based upon the record and in accordance with the discussion above, I find that the Petitioner's petitioned-for unit limited to the petitioned-for store at 3919 Peachtree Drive is appropriate. I further find that given the lack of centralized control over day-to-day operations and limited employee interchange, the remaining factors under the Board's single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption.

III. CONCLUSION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based upon the entire record in this proceeding, I find:

1. The hearing officer's 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.[6]

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 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 Patient Consultants, Patient Consultant Supervisors, and Inventory Specialists employed by the Employer at its facility located at 3919 Peachtree Drive, Columbia, Missouri.
>
> **EXCLUDED:** All General Managers, Assistant General Managers, Inventory Supervisors, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

[6] The parties stipulated at hearing that: The Employer, Point Management LLC d/b/a Shangri-La, a Missouri limited liability corporation with its principal offices located at 1401 Creekwood Parkway, Columbia, Missouri and a facility located at 3919 Peachtree Drive, Columbia, Missouri, as well as other facilities in Missouri, is engaged in the retail sale of marijuana. During the past 12 months, a representative period of time, the Employer, in conducting its operations at the above-referenced location, as well as at other locations throughout Missouri, derived gross revenues in excess of $500,000 and purchased and received goods and services valued in excess of $5,000 at each of the Employer's Missouri locations, which goods were shipped directly to each of the Employer's facilities from points located outside the State of Missouri.

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 **United Food and Commercial Workers, Local 655**.

A. Election Details

I have determined that a manual election will be held at a location other than the Employer's store located at 3919 Peachtree Drive.

The record reflects the parties' preference for a manual election to be held between 2:00 p.m. and 4:00 p.m. on a Tuesday or Wednesday. The record indicates that the Employer's facility is not an appropriate place to hold a manual election because of the presence of security cameras. Accordingly, the parties are instructed to provide specific proposals for a date and location so that the Region can issue a notice of election with election details.

Election details (date, time, and location) will be determined following review of the parties' required additional written statements (due by the close of business on **Friday, May 26, 2023)** and after consultation with the parties. If a suitable location cannot be determined, I reserve the right to convert the election to a mail-ballot election with ballots being mailed out as soon as practicable.

B. Election Arrangements and Mechanics Pursuant to *GC Memo 20-10*

If the protocols set forth in *Revised GC Memo 20-10*, "Suggested Manual Election Protocols" (revised May 16, 2023) cannot be followed or attested to, I reserve the right to cancel or reschedule the manual election or convert the election to a mail-ballot election with ballots being mailed out on or as soon as practicable after the scheduled manual election date.

C. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding issuance of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. 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.

D. 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 **Wednesday, May 24, 2023.** 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.nlrb.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.nlrb.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.

E. 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 to be issued after the date, time, and place of the election is set, 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.

V. RIGHT TO REQUEST REVIEW

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

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

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

Dated: May 22, 2023

/s/ Andrea J. Wilkes

Andrea J. Wilkes, Regional Director
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
Saint Louis, Missouri