

BRITISH COLUMBIA LABOUR RELATIONS BOARD

GORDON FOOD SERVICE CANADA LTD.

(the “Employer”)

-and-

TEAMSTERS LOCAL UNION NO. 31

(the “Union”)

PANEL:	Stephanie Drake, Vice-Chair and Registrar
APPEARANCES:	Drew Demerse and Jennifer Hogan, for the Employer Daniel McBain, Tamara Ramusovic and Nyssa Lessingham, for the Union
CASE NO.:	2023-001504
DATES OF HEARING:	November 16, 2023; February 26, 28 and 29, 2024; March 1, 2024
DATE OF DECISION:	September 20, 2024

DECISION OF THE BOARD

I. **NATURE OF APPLICATION**

1 The Union applies (the “Application”) under Section 18(1) of the *Labour Relations Code* (the “Code”) to be certified to represent a bargaining unit of employees of the Employer described as:

employees of the employer working as warehouse employees, custodians, inventory control, shipping office clerks, yard hostlers and drivers at and from 1700 Cliveden Avenue, Delta, BC, except battery and refrigeration technicians, building repair personnel, routers, clerical, sales reps, dispatchers, supervisors and managers.

2 The parties have several disputes over voter eligibility, and the composition and appropriateness of the proposed bargaining unit. The Union says that the description “drivers at and from” the Employer’s distribution centre on Cliveden Avenue in Delta, BC, the Delta Distribution Centre (the “Delta DC”) does not capture certain drivers (the “Contested Transfer Drivers”) whose “home office” is at other Employer locations. Accordingly, the Union says the Contested Transfer Drivers’ votes should not be counted.

3 The Employer says if the Contested Transfer Drivers, and/or a group of employees called routers (the “Routers”) are excluded, the proposed bargaining unit is inappropriate for collective bargaining.

4 Finally, the Union says an employee with the job title of Operations Analyst should not be included on the voter list, because, although he is part of the Warehouse Department, he is not a “warehouse employee” as contemplated in the description of the proposed bargaining unit.

II. **BACKGROUND**

5 The Employer is a wholesale supplier of food and related items to hotels, restaurants, and other businesses engaged in food preparation. It has food distribution centres in several locations in Canada. The Employer’s distribution centre in British Columbia is the Delta DC.

6 The Employer receives grocery items at the Delta DC. It stores these items in coolers, freezers, or dry storage, as applicable. The Employer receives and processes orders, which are picked, packed, and loaded onto trucks for delivery.

A. The Contested Transfer Drivers

7 The parties prepared an agreed statement of facts (the “ASF”) concerning some aspects of the Employer’s business and the duties and job titles of certain employees.

8 According to the ASF:

The employees responsible for delivering product to the Employer’s customers are referred to as Delivery Service Representatives (or “Delivery Drivers”). The employees responsible for transporting trailers of product between the Delta DC and the Employer’s other locations (the “Depots”) or switch points are referred to as Transfer Drivers.

9 The Employer has a total of 18 Depots in BC.

10 The Union objects to the inclusion of two groups of drivers in the proposed bargaining unit (the “Contested Transfer Drivers”), as follows.

11 The first group the Union objects to are 15 Transfer Drivers whose home offices are Depots in one of five locations: Penticton, West Kelowna, Kelowna, Kamloops, or Vernon.

12 The second group the Union objects to are drivers whose home office is the Sunshine Coast Depot and who work some or all of the time as Transfer Drivers (the “Sunshine Coast Drivers”). There are three drivers in this category: 1) a part-time employee who works as both a Delivery Driver and a Transfer Driver. This employee worked 32% of their shifts as a Transfer Driver between September and December 2023; 2) a full-time Delivery Driver who works as a Transfer Driver sometimes. This person worked 26% of their shifts as a Transfer Driver between September and December 2023; and 3) a full-time Transfer Driver who works infrequently as a Delivery Driver.

13 With respect to the duties of the Contested Transfer Drivers, the ASF states:

The [Contested Transfer] Drivers start their trip at their home office, transport two empty trailers to the Delta DC, pick up two trailers loaded with product at the Delta DC, and transport the loaded trailers back to their home office for delivery by Delivery Drivers at those locations.

14 The parties prepared a document that they agree accurately describes a “Day in the Life” of the Contested Transfer Drivers.

15 The ASF describes written pre- and post-trip inspections (the “Inspections”) that Contested Transfer Drivers are required to perform on their equipment. The Regional Transportation Manager (the “Transportation Manager”) testified that the Inspections are a legal requirement pursuant to Transport Canada regulations and are necessary to ensure safe operation of the trucks. The Employer includes 120 minutes of paid time

into the Contested Transfer Drivers' trip rate to compensate them for completing the Inspections.

16 The Contested Transfer Drivers conduct a pre-trip inspection at their home office and leave with empty trailers. After they arrive at the Delta DC, these drivers disconnect their trailers and conduct the required post-trip inspection. Each driver communicates with Yard Lead Hands or Yard Jockeys about where to park equipment and which departure bay will be used to load trailers for the driver's return trip to their home office.

17 Usually, the Contested Transfer Drivers are required to wait for the trailers to be loaded before transporting them back to their home offices. Accordingly, the Employer includes "padding time" in the Contested Transfer Drivers' trip rate to account for wait time. On average, the Contested Transfer Drivers spend 1.5 hours per shift at the Delta DC. While the Contested Transfer Drivers wait for their trailers to be loaded, they take a break, and may perform other tasks such as restocking their vehicles or assisting with vehicle repairs.

18 The Contested Transfer Drivers prepare for the return trip by refuelling their tractors and topping up fluids. The Contested Transfer Drivers usually make any necessary minor repairs themselves using tools provided by the Employer. They also may work on a repair with a member of the yard team. Once any required repairs are complete, the Contested Transfer Drivers report them to a supervisor or other member of the yard team. If a tractor or trailer needs repairs that are beyond a Contested Driver's abilities, the driver will communicate that information to the yard team, who will fix or replace the equipment.

19 The Contested Transfer Drivers return to their vehicles when loading is nearly complete and await confirmation from the Yard Jockey that there are no more pallets to be loaded and the trailer door is closed. Prior to leaving the Delta DC, the Contested Transfer Drivers collect required documentation from the shipping office, as well as any supplies to be transported to their home office. The drivers then perform a pre-trip inspection of their trailers and depart for their home office. In total, the Contested Transfer Drivers' pre- and post-trip inspections at the Delta DC are expected to take about 47 minutes per shift.

20 The Transportation Manager testified about the way Transfer Drivers, including the Contested Transfer Drivers, are supervised. The Transportation Manager said the Employer divides its teams by region and head count. Some teams consist of drivers who all work from the same home office and some teams do not.

B. The Delta Transfer Drivers

21 The Union does not object to the inclusion of Transfer Drivers whose home office is the Delta DC (the "Delta Transfer Drivers"). With respect to the Delta Transfer Drivers, the ASF states:

Except for the instances outlined in Tab 3, a Delta Transfer Driver starts their trip at the Delta DC and transports two loaded trailers to a switch point – usually Cache Creek or Princeton. At the switch point, the Delta Transfer Driver switches trailers with a Transfer Driver from the Prince George or Castlegar Depot who transported empty trailers to the switch point. The Delta Transfer Driver then transports the empty trailers back to the Delta DC.

22 Only one of the Delta Transfer Drivers travelled to another Depot, rather than a switch point, to switch trailers on more than a few occasions between 2020-2023.

23 The Transportation Manager testified that the reasons a Delta Transfer Driver would drive to a Depot instead of a switch point include vacation coverage or a last-minute absence due to illness.

C. The Routers

24 The role of Routers is to plan routes for Delivery Drivers using specialized software. In the past, Routers also regularly performed work in the warehouse. The Employer's Senior Director of Transportation for Canada (the "Senior DoT") testified that, in 2020, in response to the COVID-19 pandemic, the Employer restructured its routing system by centralizing it. As a result, Routers across Canada no longer reported to their regional Transportation Departments but instead reported to the National Transportation Department in Milton, Ontario. While routing was centralized, all Routers worked remotely.

25 The Senior DoT testified he received feedback from Delivery Drivers who were dissatisfied with the new structure and did not believe the Routers were sufficiently responsive to local concerns. The Senior DoT's evidence was that he received approval in May 2023 to reorganize the routing back into regional routing teams. The Employer communicated this decision to all employees on August 21, 2023, and implemented it on October 29, 2023, at the start of the Employer's fiscal year.

26 The Senior DoT's evidence was that the Employer conducted a head count analysis and concluded that BC should have nine Routers, which would necessitate hiring two new Routers. The Routing Supervisor testified that, at the time of the hearing, the Employer had hired two new Routers and was fully staffed. However, the Routing Supervisor's evidence was that one Router was on a graduated return to work and the newly hired Routers were still being trained.

27 As of about February or March 2023, the Routers returned to the office part-time on a hybrid schedule, spending two to three days per week in the office, apart from one employee who relocated to Edmonton during the pandemic and is permitted to continue to work fully remotely.

28 The Routing Supervisor described the duties of Routers. The Routing Department, BC Division plans around 120 routes per day. Routers determine the most

efficient way to make all of the necessary deliveries. Routers have access to a weekly planner document (the “Weekly Planner”), which they pre-fill with route numbers, areas, and Depots. The Supervisors then fill in the Delivery Drivers who will complete each route. Routers will also communicate with Yard Coordinators to determine the equipment that is available for making the deliveries.

29 In addition to the Weekly Planner, Routers have separate Google group chats with: the day shift Supervisors and Lead Hands; the night shift Supervisors and Lead Hands; and the Yard Coordinators. Routers use these chats to ask for additional Delivery Drivers if needed, advise that a Delivery Driver can have a day off, and ask about equipment needs, for example.

30 Routers put together documents called load maps, which indicate where the warehouse employees who load trailers (the “Loaders”) are to position individual pallets in a trailer. The Routing Supervisor testified that Routers receive feedback, including from Loaders and drivers, about the routes and load maps they prepare.

31 The Routing Supervisor gave evidence about a decision he made to have Routers become more involved with loading and delivery work. The purpose of this initiative, according to the Routing Supervisor, was to have teams cross-trained so that workers would better understand each other’s jobs, thereby improving efficiency.

32 On December 28, 2023, the Routing Supervisor emailed the Employer’s Director of Transportation for BC with a schedule that would have the routers based at the Delta DC work part of a shift in the warehouse every two months and a shift on the road with a Delivery Driver every two months. He stated that it would speed up loading if a Router were available to assist warehouse staff by strapping pallets and lifting items by hand. The Routing Supervisor said Routers could also assist Delivery Drivers’ efficiency by performing tasks such as organizing trailers, pulling product off pallets, communicating with customers, and holding doors.

33 At the time of the hearing, two Routers had spent a day with Delivery Drivers, and three Routers and the Routing Supervisor had worked with Loaders. The Routing Supervisor identified two occasions when a Router worked as a Delivery Driver. Besides the foregoing, the Routing Supervisor could not recall another occasion, at least since 2020, when Routers either performed work in the warehouse or as a driver. He testified he had not implemented the schedule laid out in his December 28, 2023 email yet because he had been short-staffed. The Routing Supervisor said he intended to have Routers certified to operate pallet jacks to assist with loading.

34 The Routing Supervisor agreed that the only document he was aware of concerning his plan to integrate Routers with Loaders and drivers was his December 28, 2023 email. He said he had had conversations with other managers about the idea over a period of years, but did not recall details, nor what feedback he had received. The Routing Supervisor agreed he did not talk to the Warehouse Department about his

plan or engage in a study or analysis of operational needs before deciding to do it. The Routing Supervisor said he had spoken to Driver Supervisors about it but did not have a written record of it.

D. The Operations Analyst

35 The Warehouse Operations Manager (the “Warehouse Manager”) testified about the role of the Operations Analyst. The Warehouse Manager said the main duties of that position are to compile data on key performance indicators and productivity in the warehouse for the Employer’s leadership team. The Operations Analyst generally works from home but also has a desk at the Delta DC that he can use when in the office.

III. POSITIONS OF THE PARTIES

A. The Employer

36 The Employer submits that the Union’s objections lack merit, and that the proposed bargaining unit is inappropriate for collective bargaining.

37 First, the Employer argues the Contested Transfer Drivers work “at and from” the Delta DC, because the Contested Transfer Drivers’ jobs require them to be in and out of the Delta DC regularly, or at least from time to time, and they perform work at the Delta DC.

38 The Employer says that “at and from” encompasses not only employees who start their day at a location, as the Union argues, but also employees whose jobs require their attendance at a location, regularly or from time to time. The Employer submits the Union’s withdrawal of its objection to the Squamish and Abbotsford Delivery Drivers also undermines the Union’s position, because it has effectively conceded that employees can work “at and from” the Delta DC even if they do not start their day there. The Employer says the Contested Transfer Drivers work at and from the Delta DC and their votes ought to be counted.

39 As set out in the ASF, the Employer notes that the work of the Contested Transfer Drivers requires them to attend the Delta DC as part of every trip. It says the Contested Transfer Drivers spend an average of 65 minutes per shift at the Delta DC. The Employer argues this amount of time cannot be argued to be *de minimis*, particularly since the Delta Transfer Drivers spend less time per shift at the Delta DC than the Contested Transfer Drivers.

40 Second, the Employer’s argues that, with regard to the factors from *Island Medical Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No.

C217/92 and BCLRB No. B49/93) ("*IML*"), the proposed bargaining unit is inappropriate if it excludes the Contested Transfer Drivers.

41 Third, the Employer also argues the Union's proposed bargaining unit is inappropriate for collective bargaining because it excludes Routers. The Employer submits that Routers and employees in the proposed unit are functionally integrated because Routers perform overlapping tasks with drivers and Loaders. The Employer further submits that Routers receive regular feedback from employees in the Warehouse and Transportation Departments about how to make routes more efficient, and that improving the efficiency of routes is a duty shared among all of these employees, thereby making them functionally integrated.

42 The Employer says it has organized itself operationally such that Routers work daily with the employees in the proposed bargaining unit. It notes that in 2009, in *Neptune Food Service Inc.*, BCLRB No. B40/2009 ("*Neptune*"), the Board concluded that drivers and routers were part of an "integrated, continuous work process" with warehouse employees and it would be inappropriate to exclude them: paras. 71, 75. The Employer argues that the same is true in the current case.

43 The Employer says that when the Board assesses functional integration, it can look at reasonably foreseeable circumstances, in addition to the circumstances in existence when an application is filed. The Employer submits the routing team is in a state of transition, and it is reasonable to expect that once the Routers hired more recently are working at maximum output, Routers will become more integrated with the warehouse and transportation teams. The Employer notes it has initiated "cross-training" between departments. Accordingly, three Routers and the Routing Supervisor have recently assisted with loading trailers in the warehouse. In two recent instances, Routers assisted as driver helpers (or swampers).

44 The Employer says that the Routing Supervisor had for years intended to implement cross-training and had spoken about it in meetings with the Employer's leadership team. The Employer says the Routing Supervisor was waiting for the right conditions to begin cross-training, including a full complement of Routers.

45 The Employer also says that the *IML* factor of geography supports a conclusion that the proposed bargaining unit is inappropriate because it excludes Routers. It states that eight of the nine Routers in the BC Division have the Delta DC as their home office and Routers' offices are next to the lunchroom that employees of the Delta DC use.

46 Finally, concerning the Union's objection to the Operations Analyst, the Employer argues that this person is a "warehouse employee" within the scope of the proposed bargaining unit. The Employer notes that the Operations Analyst, who collects and analyzes data for the warehouse, is included in the warehouse department. The Employer says if the Union wished to exclude the Operations Analyst, it could have

made a list of included classifications, rather than using the general description of “warehouse employee”.

47 The Employer says the bargaining unit the Union applied for is responsible for managing product from the time it enters the Delta DC to the time it is delivered to customers. It says this group necessarily includes the Operations Analyst, who assists with optimizing the efficiency of the warehouse.

48 The Employer says the Application should be dismissed, because the bargaining unit is inappropriate if it excludes the Contested Drivers and/or Routers. Alternatively, the Union’s objections to the inclusion of the Contested Transfer Drivers and the Operations Analyst should be dismissed, and the votes of all individuals who voted should be counted.

B. The Union

49 With respect to the Employer’s argument that the Contested Transfer Drivers work at and from the Delta DC, the Union says the Board takes a flexible and substantive approach to a determination about which employees work “at and from” a location in a proposed bargaining unit. In this case, the Union says there are multiple groups dispatched from different addresses. It says accepting the Employer’s position would require the Board to accept that mobile employees work not only at and from the locations they are dispatched from, but also the locations where they spend time during their shifts.

50 The Union argues the circumstances of the Contested Transfer Drivers are akin to an employee in *Vitalaire Canada Inc.*, BCLRB No. B127/2013 (“*Vitalaire*”), who was found not to work “at and from” a location that they attended on a weekly basis to pick up supplies and paperwork.

51 The Union says the time the Contested Transfer Drivers spend at the Delta DC during their shift includes a break, so it is not possible to state with certainty how much work on average the Contested Transfer Drivers perform while at the Delta DC. The Union says the activities of the Contested Transfer Drivers at the Delta DC are not sufficient to render them “at and from” the Delta DC.

52 The Union says the Sunshine Coast Drivers should be assessed individually because they spend unequal amounts of time performing work as Transfer Drivers and only one of them is a full-time Transfer Driver.

53 The Union argues that the Employer’s post-Application evidence about cross-training of Routers to do warehouse and driving work should not be accepted. The Union says that for the Board to entertain post-application evidence, the facts need to have been crystalized by the date of the application and the relevant change(s) must be

planned for implementation shortly afterward. The Union says that did not occur in this case.

54 The Union says that from 2020 until at least the month prior to the hearing of this matter, Routers did not perform warehouse or driving/swamping work, with a few isolated exceptions. The Union submits that the routing department had also been understaffed for some time prior to the Application, and the Senior DoT testified that BC needed a head count of nine Routers to make sure the routing responsibilities would be covered. The Union says that is also consistent with the Routing Supervisor's evidence that he wanted to have nine fully-trained Routers in the department.

55 The Union says that prior to 2020, Routers reported regionally. They would sometimes assist with warehouse work or driving as assigned, based on operational needs. The Union says when the Senior DoT began to revise the reporting structure of the Routing Department in May 2023, the focus of the project was to return to regional reporting; there is no evidence that changes to Routers' duties were contemplated.

56 The Union says that while the Routing Supervisor's evidence was that he had long contemplated assigning Routers to do driving and warehouse work and had mentioned it often in meetings, he was unable to specify the time frame of, or participants in, these meetings. The Union submits the Routing Supervisor had no concrete plan to cross-train employees when the application for certification was filed.

57 The Union says, in any event, when the Employer transitioned the Routing Department back to a regional reporting structure in the fall of 2023, the Department was still months away from being fully staffed. It notes newly hired Routers require extensive training to be capable of performing all of the duties of their positions. Accordingly, the Union argues that even if I find that the Routing Supervisor's plan to have Routers perform warehouse and driving work was crystalized at the time the Application was filed, there is no present ability to bring that plan into effect and no certainty about when it would be possible.

58 The Union submits that the Routing Supervisor did not consult on or analyze operational needs in deciding to have Routers do loading and driving work; rather, he came up with a cross-training plan that has no demonstrable connection to the Employer's operational requirements. The Union submits the extent of any cross-training does not amount to functional integration.

59 The Union also says that the online messages Routers exchange with different employee groups to develop routes are *ad hoc* and involve small numbers of employees. It says the evidence of these communications reflects a functional relationship between departments, not a continuous team process. The Union says exchange of information between departments in a large organization is to be expected.

60 Concerning the other *IML* factors, the Union says Routers are office workers and work on computers, either at home or in a separate area of the Delta DC from the warehouse workers and drivers. It says Routers report to a different supervisor and, although they work at least some of their shifts at the Delta DC, the fact that a classification of workers is at the same geographic location as employees in a bargaining unit does not require that it be included.

61 The Union submits that a rational and defensible line can be drawn around the proposed bargaining unit without the inclusion of Routers.

62 Finally, the Union submits the Operations Analyst is not a warehouse employee, but an office worker who collects and analyzes data and is not directly involved in the movement of product. The Union says the Board should assess the status of the Operations Analyst based on the substance of the duties of that position, not what department he works in. The Union notes that unions face a disadvantage in organizing because they do not have perfect knowledge of the workplace. The Union says the Operations Analyst's ballot should not be counted.

C. The Employer's Reply

63 In reply, the Employer acknowledges that the Board found in *Vitalaire* that attending a worksite once per week to perform minor work does not amount to working at and from that worksite. However, it says its evidence about the work that Contested Transfer Drivers perform is far above that threshold, so *Vitalaire* does not assist the Union.

64 The Employer says it does not suggest the Contested Transfer Drivers work at and from every place they attend as part of their duties, because that would include customers' premises, brake check stations, etc. The Employer says a Contested Transfer Driver can be both "at and from" their home office, and "at and from" the Delta DC and that is not inconsistent with the Board's approach to bargaining unit appropriateness.

65 With respect to the Senior DoT's project to move Routers back into a regional structure, the Employer says it is true that the plan did not consider changes to Routers' duties but it rather focused on the big picture. The Employer says what it argues is that the project enabled local leaders to make changes they had wanted to make for some time.

66 With respect to the Union's argument about understaffing in the Routing Department, the Employer says it was proceeding with its plan to hire more Routers at the time the Application was filed and had already posted two positions. It says what had gotten in the way previously was that the Routing Supervisor could not get an

increase in head count for the Routing Department. The Employer says that had now changed and that is what is relevant for the purposes of this case.

67 The Employer further submits that the plan to integrate Routers with drivers and Loaders does not need to have a connection to operational needs on a given day because it is intended to improve efficiency over time. The Employer says, in any event, the evidence shows that when Routers have assisted drivers and Loaders, it is meaningful work that helps drivers and Loaders work faster.

68 The Employer agrees with the Union that it is not possible to determine precisely how much work the Contested Transfer Drivers perform at the Delta DC. However, the Employer says it is clear the Contested Transfer Drivers do plenty of work at the Delta DC and accordingly work at and from the Delta DC. It notes the Union did not call evidence about the length of the breaks that Contested Transfer Drivers take at the Delta DC.

69 With respect to the Sunshine Coast Transfer/Delivery Drivers, the Employer says that while only one of the three drivers always attends the Delta DC; the other two employees work regularly as Contested Transfer Drivers and therefore work at and from the Delta DC.

IV. ANALYSIS AND DECISION

70 The Union applies to be certified to represent a bargaining unit of employees of the Employer that includes drivers at and from the Delta DC.

71 The Employer raises as a threshold issue as to whether the Contested Transfer Drivers work “at and from” the Delta DC. The parties refer to *Vitalaire* and *Island Mack Truck Sales Ltd.*, IRC No. C240/89 with respect to what the Board has found “at and from” to mean.

72 The Board takes a flexible and substantive approach to looking at what a proposed bargaining unit description means where the parties disagree: *Red Chris Development Company Ltd.*, BCLRB No. B92/2019 (Leave for Reconsideration of BCLRB No. B162/2018) (“*Red Chris*”); *Burnaby Family Life Institute*, 2023 BCLRB 152. I have reviewed the evidence and the parties’ submissions with that approach in mind.

73 I am not persuaded that the Contested Transfer Drivers are analogous to the employee in *Vitalaire*, who attended at a work site once per week to pick up supplies and paperwork. It is not in dispute that the Contested Transfer Drivers (with the exception of two of the Sunshine Coast Drivers who are addressed below) attend the Delta DC on a daily basis and spend on average more time per shift at the Delta DC than the Delta Transfer Drivers do. The Contested Transfer Drivers do more than picking up supplies and paperwork at the Delta DC. They do vehicle inspections, refuel

tractors, and perform vehicle repairs. The Delta Transfer Drivers, and the Contested Transfer Drivers, perform similar tasks and are part of the same classification.

74 The Union says the Sunshine Coast Drivers should be assessed separately, since they do not spend an equal amount of time travelling to the Delta DC. However, it is not in dispute that in the fall of 2023, the Sunshine Coast Drivers who work part time as Transfer Drivers spent 26% to 32% of their shifts as Transfer Drivers and attend at the Delta BC. I am not persuaded that is sufficiently minimal attendance at the Delta DC to distinguish the Sunshine Coast Drivers who work part time as Transfer Drivers from the other Contested Transfer Drivers.

75 The Employer's second argument is that the Union's proposed bargaining unit is inappropriate because it excludes Routers.

76 In 2009, the Board considered the role of Routers in an application for certification by the Union for a bargaining unit of employees of the Employer's predecessor, in *Neptune Food Service Inc.*, BCLRB No. B40/2009 ("*Neptune*"). In *Neptune*, the Union applied for a bargaining unit of warehouse employees that excluded, among other classifications, Delivery Drivers, and Routers: para. 1. The Board concluded that Delivery Drivers and Routers were part of an "integrated, continuous work process" with warehouse employees and it would be inappropriate to exclude them: para. 71. The basis of the Board's finding in *Neptune* was that Delivery Drivers and Routers "perform[ed] warehouse duties on a frequent and consistent basis", as part of a consistent managerial policy: paras. 71-72.

77 I am not persuaded that the reasoning of *Neptune* applies to the Employer's operation as it is currently structured. The evidence established that, prior to 2020, there was a level of functional integration between Routers and drivers and Loaders that has not been present since. In 2020, the Employer centralized routing for all of Canada. While the Employer reverted to a regional routing structure in 2023, it did not resume having Routers perform any warehouse or driving duties by the date of the Application.

78 As the panel in *Highland Valley Copper* noted, the Board will not consider changes an Employer makes after the date of an application, unless they have crystalized prior to the date of the application and are to be implemented shortly afterward (para. 59). The panel in *Highland Valley Copper*, BCLRB No. B307/99 explained:

... Such an approach recognizes the need for certainty and predictability and ensuring a limitation on the mischief which might accompany a totally flexible concept of appropriateness. Such an approach reflects the purposes set out in Section 2(1)(a) and (d) of the Code.
(*ibid.*)

In any event, even as of the date of the hearing, Routers had only performed very minimal shifts in this capacity.

79 The Routing Supervisor's evidence was he had been thinking about implementing cross-training. He stated that he had conversations with other members of management about the idea but could not recall details of those conversations. The Routing Supervisor took no steps to implement cross-training until well after the Application was filed. Having considered the evidence, I am not persuaded that the Employer's plan to have Routers perform warehouse or driving duties had crystalized as of the Application.

80 Accordingly, I find I need to consider the Routers' duties as of the date of the Application, which was before the Routing Supervisor set up cross-training of the Routers on driving and loading duties. I therefore find that the Routers do not have overlapping job duties with drivers or Loaders.

81 The Employer says the *IML* factors of functional integration and geography support a conclusion that the proposed bargaining unit is inappropriate if it excludes Routers. The Employer notes that Routers communicate with individuals from the Warehouse and Transportation Departments about route plans, including via online chats and the Weekly Planner. The Employer further argues that the fact the Routers work at the same location as employees in the proposed unit weighs against the appropriateness of the proposed unit.

82 The Board's approach to unit appropriateness engages two fundamental Code principles: access to collective bargaining and industrial stability. In a first application for certification, as here, access to collective bargaining is the most important principle. The Board will consider whether employees in the proposed bargaining unit share a community of interest with regard to the first four *IML* factors such that a rational and defensible line can be drawn around the proposed unit: *IML*, p. 15.

83 The first four *IML* factors are: similarity in skills, interests, duties, and working conditions; the physical and administrative structure of the employer; functional integration; and geography.

84 With respect to the first factor, Routers' working conditions have some similarity to employees within the proposed unit, in the sense that they all work at, or at and from, the same location. However, I find that this shared location does not weigh against the proposed bargaining unit. I note that Routers also possess a distinct set of skills and duties from drivers and Loaders. With respect to the second factor, the Employer's operations are structured regionally, and the Routing Department has its own supervisor. I find the Employer's physical and administrative structure also does not weigh against the proposed unit. Concerning the third factor, I find the Routers interact with other employees in the Transportation and Warehouse Departments, in the sense that these groups exchange information and all contribute to the process of creating

routes and loading maps. However, I find these activities reflect a functional relationship between departments, not functional integration. Finally, with respect to the fourth factor, all but one of the Routers work at the same work site as employees in the proposed unit when they are in the office. However, they also work part time from home. Accordingly, I do not find the factor of geography weighs against the proposed unit.

85 Considering the *IML* factors as a whole, and with emphasis on the principle of access to collective bargaining, I find it is possible to draw a rational and defensible line around the proposed bargaining unit to the exclusion of Routers. I note that the Board must be satisfied that the proposed unit is an appropriate unit, not the most appropriate unit.

86 Finally, I am unable to conclude the Operations Analyst is included in the proposed bargaining unit. The Union has applied to include “warehouse employees”, among other classifications. The Union says that with this description, it intended to capture employees who perform work in the warehouse itself. The Operations Analyst is included in the Warehouse Department in the Employer’s organizational chart and analyzes data in relation to the warehouse. However, he primarily works from home, and does not perform work in the warehouse itself. I again note the Board will not take a formalistic approach to interpreting bargaining unit descriptions: *Red Chris*.

V. CONCLUSION

87 I find the Contested Transfer Drivers work “at and from” the Delta DC and are included in the proposed bargaining unit. The Employer’s other objections are dismissed. Accordingly, I order that the ballots be counted, including those of the Contested Transfer Drivers, and excluding ballots cast by the Operations Analyst, and another employee called K. Wade, who the parties agree does not fall within the proposed bargaining unit.

LABOUR RELATIONS BOARD



STEPHANIE DRAKE
VICE-CHAIR AND REGISTRAR