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IN THE SUPREME COURT OF IOWA

NO. 20-0837

IOWA DISTRICT COURT
FOR POLK COUNTY
CASE NO. CVCV058960

SIOUX CITY TRUCK SALES, INC., Plaintiff-Appellant,

v.

IOWA DEPARTMENT OF TRANSPORTATION and PETERBILT MOTORS COMPANY, Defendants-Appellees

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APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE JUDGE WILLIAM P. KELLY, PRESIDING

PLAINTIFF-APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

Cases presenting the application of existing legal principles, as in the instant matter, shall be transferred by the Supreme Court to the Court of Appeals. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

On August 18, 2017, Peterbilt applied to the Iowa Department of Transportation ("IDOT") requesting permission to appoint Allstate as a new franchisee-dealer in the Clear Lake area. (App. 1551). On February 26, 2018, consistent with Iowa Code 322A.4 and 322A.16, a contested case hearing occurred before a Department of Inspection and Appeals ALJ. (App. 1552). During the hearing, SCTS presented convincing facts on a possible conspiracy between Peterbilt witnesses and the President of Allstate, Jeff Vathournout. The ALJ considered four primary issues: (1) the definition of "community"; (2) whether good cause existed to allow Peterbilt to appoint an additional dealer in Clear Lake; (3) whether an additional dealer is in the "public interest"; and (4) whether Peterbilt acted in good faith. (App. 1553). The ALJ found that the relevant community at issue was the "Clear Lake area" and not SCTS' entire Area of Responsibility, that good cause existed to allow Peterbilt to appoint an additional dealer, and that Peterbilt did not act in bad faith during the years it tried to get SCTS to open a dealership in the Clear Lake area.

SCTS sought appeal to the Director of the IDOT. On August 26, 2019, the IDOT issued the Decision, which found ALJ's Proposed Decision was correctly decided and supported by the record. (App. 1555). The

Department found that Sioux City's alteration argument and "community" argument had not been argued before the ALJ, and if considered, the community argument was unavailing because "only 23 counties were encompassed in the area for which Peterbilt sought approval for a new franchise," not Sioux City's entire "AOR." (App. 1556).

On September 25, 2019, SCTS filed a petition for judicial review before the Iowa District Court in and for Polk County. (Petition for Judicial Review) The district court affirmed the decision of the IDOT granting Peterbilt's request to appoint a new motor vehicle dealership franchise in Clear Lake, Iowa. On the issue of whether community refers to the entire AOR or the 23 counties that made up of the Clear Lake area, the district court stated that "community" when "viewed as a whole, refers to its entire 71 county AOR referenced in the Dealer Agreement." (App. 1570). Despite the explicit definition of "community" in § 322A.1, the district court concluded that modifiers such as "any" and "that," used to qualify "community," narrowed the scope of the word; and that for the purpose of evaluating the statutory good cause factors, "community" means the "Clear Lake" area. After consideration, the district court found the agency's interpretation of provisions of Chapter 322A was not "irrational, illogical, or wholly unjustifiable." (App. 1588).

STATEMENT OF THE FACTS

I. Factual Background

Peterbilt is a truck manufacturer that distributes its products through a network of 55 dealership groups. (App. 1546). Sioux City Truck Sales ("SCTS") is one of such Peterbilt dealership groups, operating five locations across Iowa and Nebraska: Sioux City, Altoona, Council Bluffs, Lincoln and Norfolk. (App. 1546). Peterbilt and SCTS are engaged in a contractual franchise relationship, wherein Peterbilt is the franchiser and SCTS is the franchisee. (App. 1547). According to the terms of the contract (hereinafter "Dealer Agreement"), SCTS sells and services Peterbilt products in its assigned, nonexclusive area of responsibility ("AOR"). (App. 1546). The AOR for SCTS encompasses 71 Iowa counties. (App. 1546)

Bradley Wilson is the president and an owner of SCTS. He has been at the helm since 1994, with the business originally having been started by his father. (App. 1546) Over the course of their respective tenures, Bradley and his father directed SCTS to endeavor upon numerous capital projects in each and every one of the five locations. (App. 1546) In total, SCTS invested approximately $25,000,000. (App. 1546)

Peterbilt has historically felt underrepresented by the size of its dealer network footprint vis-à-vis its competitors. (App. 1131) Peterbilt's scheme

to ameliorate the perceived deficiency started in 2010, when it developed the proprietary "MX 13" Engine. (App. 1131) Peterbilt tied the introduction of this new "MX 13" engine to a significant push on dealers to open new locations, to increase Peterbilt's marketing gravitas. (App. 1131). As a part of this push, Peterbilt proposed that SCTS develop additional, brand-new dealerships in both Lincoln and Clear Lake. (App. 1131) While deliberating the merits of a Clear Lake location, SCTS acted on Peterbilt's Lincoln recommendation and established a new dealership there. (App. 1366).

Rather than permitting good-faith efforts by dealers to engage in an independent analysis of how and whether to expand, Peterbilt leveraged their control over distribution to compel dealer acquiescence. Among Peterbilt's tools to accomplish this end was the White Spot Report ("WSR"). (App. 1131). Near the end of 2014, Peterbilt prepared a WSR and sent it to SCTS in an apparent effort to pressure them to open a Clear Lake dealership. (App. 1131) Although the WSR was capable of showing some crude relationship to generalized 'need' in a particular market, it was incapable of capturing many of the market realities that would be of concern to a dealer considering whether to expand. (App. 1131) Peterbilt's reliance on qualitative – rather than quantitative – factors, along with Peterbilt's failure to supplement the

WSR's conclusions with statistical data upon request, bears out the notion that the WSR was pretextual. (App. 1131).

Clear Lake is indeed located along the I-35 interstate highway. *Sioux* (App. 1547). The WSR provided by Peterbilt points out that Peterbilt trucks have a substantial presence on and around this highway. (App. 1547). However, WSR could not identify a single instance of feedback from Peterbilt's customers actually indicating the necessity – much less a demand – for additional dealers inside the SCTS AOR. At the hearing, Peterbilt admitted that the intent of the report is merely to identify "where there's an opportunity to provide service," acknowledging that there exists no absolute necessity for franchisees to fulfill unsatisfied market demand for a new dealer location. (App. 1162).

In June of 2016, Peterbilt met with Bradley Wilson and issued a threatening warning to SCTS; if SCTS did not take action to establish the additional dealer location in Clear Lake, Peterbilt would appoint another dealer to do so by "dual assigning" the area. (App. 1376) In his response, Wilson notified Peterbilt that SCTS was already "pursuing another location in Clear Lake," specifically for a parts-only store. (App. 1549).

Peterbilt had – until Wilson's – never once rejected a parts-only store proposal. (App. 1393). "I'm saying to my knowledge, a parts store has not

been rejected, to my knowledge." (App. 1393). At the time of Wilson's proposal, a parts-only proposal rejection would have defied longstanding corporate precedent. (App. 1393) Despite prior threats of dual-assignment, Peterbilt's reaction to Wilson's parts-only plan for Clear Lake implied an intent to make Wilson secure in the (wrongful) belief that his proposal would be handled good faith, the same as each prior parts-only proposal. (App. 1393). Crisp – who received the Clear Lake parts-only application – testified: "[Mr. Harrell] did not tell me outright to put it on hold. He did say he would circle back with me when he had more time to discuss it." (App. 1393). According to Crisp, "at that point the proposal wasn't rejected." (App. 1393)

On March 14, 2017, Peterbilt issued a cease and desist letter claiming SCTS was in "material breach of [the] dealer agreement" because of the "unauthorized new location." (App. 1550). Surprised, SCTS replied that it would remove the items and requested Peterbilt reconsider. (App. 1550) On April 18, 2017, Peterbilt issued a second cease and desist letter. (App. 1550). On May 4, 2017, SCTS reached out to Peterbilt and requested a status update on the Clear Lake parts-only proposal. (App. 1551). Peterbilt again refused to grant the proposal, citing ongoing violations connected to the unauthorized parts-only store. (App. 1551). SCTS responded, stating it

removed the unauthorized materials and again, asked to move forward with the parts and service location proposal to ameliorate Peterbilt's underlying demand concerns. (App. 1551). In reply, Peterbilt re-iterated their intent to engage in the first-ever instance of a parts-only proposal denial. (App. 1551).

ERROR PRESERVATION

The issues disputed herein were raised on appeal to the DOT, on Judicial Review, and this appeal was timely filed.

SCOPE AND STANDARD OF REVIEW

"A district court engaged in judicial review under Iowa Code section 17A.19(8) acts in an appellate capacity to correct errors of law on the part of the agency. *IBP v. Al–Gharib,* 604 N.W.2d 621, 627 (Iowa 2000). When we review a district court's judicial review decision, we apply the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. Here, the issue involves a matter of statutory construction. Therefore, the standard we apply is whether the agency's action is in violation of statutory provisions. *See* Iowa Code § 17A.19(8)(a) (1999). If we determine that the agency's action was contrary to relevant statutory provisions, we must reverse the district court's decision. *See* Iowa Code § 17A.19(8)." *Holland Bros. Const. Co. v. Iowa State Bd. of Tax Review*, 611 N.W.2d 495, 499 (Iowa 2000)

ARGUMENT

1. The District Court erred by applying the Department's incorrect definition of "Community."

As a preliminary matter a review of the statutory framework is required. Iowa Code chapter 322A ("Chapter 322A" or "the Statute") is

Iowa's motor vehicle franchisers statute. The legislature passed the Statute to assure the public that motor vehicle franchisers would not, without good cause, terminate or discontinue dealerships or open additional dealerships in any Iowa community. *Beckman v. Carson*, 372 N.W.2d 203, 207 (Iowa 1985). The preamble to chapter 322 discloses that the statute was enacted "to provide for fair trade practices by motor vehicle franchisers." 1970 Iowa Acts ch. 1160, p. 206. *See* Iowa Code § 4.6 (1981) (in construing a statute we properly may consider its legislative history, including the object sought to be attained as reflected in the preamble or statement of policy. The Statute provides the exclusive legal provisions for motor vehicle franchise disputes. *See* Iowa Code §§ 523H.1(c); 537A.10(3). The IDOT administers, enforces, and regulates the Statute's provisions. *Id.* at § 307.27(6).

The legislature defined several relevant terms within Chapter 322A. Especially relevant to this case, "community" means "the franchisee's area of responsibility as stipulated in the franchise." Iowa Code § 322A.1(2). Drafters saw fit to include no subsections for the definition of "community." Additionally, a "franchise" refers to the contractual relationship "between two or more persons" meeting five requirement elements. *Id.* at § 322A.1(5)(a)(1)–(5). A "franchise" also includes separate written agreements entered into between those individuals or entities "which

materially affect[] the franchise." Id. at § 322A.1(5)(b). A "franchisee" is "a person who receives motor vehicles from the franchiser under a franchise and who offers and sells such motor vehicles to the general public." Id. at § 322A.1(6). A "franchiser" is "a person who manufactures or distributes motor vehicles and who may enter into a franchise as hereinafter defined." An "additional motor vehicle dealership" includes "a facility providing manufacturer-authorized or distributor-authorized service and warranty work for motor vehicles, except motor homes, of a line-make in a community in which the same line-make is represented." *Id.* at § 322A.1(1).

Iowa Code § 322A provides that a franchisee can object to four different types of conduct a franchiser may take. A franchiser may discontinue a franchise. *Id.* at § 322A.2. Second, a franchise may terminate a franchise. *Id.* Third, a franchiser may "alter a franchisee's community." *Id.* at § 322A.3A. Fourth, a franchiser may appoint an additional franchise in a community where a franchise of the same line-make is already represented, but only if the franchiser can show that there is "good cause" for appointing an additional dealership and that such appointment is in "public interest." *Id.* at § 322A.4.

Procedurally, Chapter 322A permits a franchiser to take any of the four proposed actions with the IDOT's approval. *Midwest Auto. III, LLC v.*

Iowa Dep't of Transp., 646 N.W.2d 417, 423 (Iowa 2002). To obtain such approval, the franchiser must first file an application with the IDOT. *See id.* All four proposed actions require a franchiser to prove, by a preponderance of the evidence that good cause exist for its proposed action. *See id*. Such needs to happen during the contested hearing, held after the application is submitted to the IDOT. *See id.* If one of the parties to the contested case is dissatisfied with the ALJ's decision following the hearing, they may appeal to the IDOT. Iowa Code § 322A.17. The Department's decision is then the final agency action and may be appealed to the district court. Iowa Code §§ 322A.10; 17A.19. An adversely affected party to the judicial review may obtain a final judgment of the district curt by appeal. Iowa Code § 17A. 20. The appeal shall be taken as in other civil cases. *Id.*

A. Under the relevant definition section, "community" refers to the entire 71-county AOR, not just the Clear Lake region.

In cases involving statutory interpretation, the analysis must always originate from the language of the statute itself. *State v. Shorter*, 935 N.W.2d 1, 7 (Iowa 2020). "Only when the terms of a statute are ambiguous do courts engage in an analysis of legislative intent by applying rules of statutory construction." *Garwick v. Iowa Dep't of Transp., Motor Vehicle Div.*, 611 N.W.2d 286 (Iowa 2000). In the absence of ambiguity – if the statute's

meaning is clear– the judicial inquiry is complete. *See id; see also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 16 (2012) (describing interpretive canon: "Definition sections and interpretation clauses are to be carefully followed"); *see also Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687, 697–98 & n.10 (1995) (invoking interpretive direction canon and ordinary meaning canon for definitional term "harm").

"When the legislature has defined words in a statute – that is, when the legislature has opted to 'act as its own lexicographer' – those definitions bind [the courts]." *State v. Fischer*, 785 N.W.2d 697, 702 (Iowa 2010); *see also Matter of Estate of Gantner*, 893 N.W.2d 896, 902 (Iowa 2017). On the contrary, only "when the legislature fails to include a statutory definition of a word . . . words in the statute are given their ordinary and common meaning by considering the context within which they are used." *Martinek v. Belmond-Klemme Cmty. Sch. Dist.*, 760 N.W.2d 454, 457 (Iowa 2009). Especially relevant to the instant dispute: "when identical language is used several places in an enactment, it is given the same meaning." *Beier Glass Co. v. Brundige*, 329 N.W.2d 280, 286 (Iowa 1983).

Because the statutory definition of "community" is unambiguous, the trial court should not have engaged in a definitional construction. The term

"community" is defined explicitly in 322A.1 as "the franchisee's area of responsibility as stipulated in the franchise." Reasonable minds cannot disagree on the meaning this definition, which clearly requires readers to carry out two specific tasks: (1) review the relevant franchise agreement, and (2) find and acknowledge the specific territory granted to the franchisee therein. In this case, the relevant franchise agreement between Peterbilt and SCTS specifically designates a broad, 71-county AOR as the territory assigned to SCTS. Therefore, "community" must refer exclusively to the entire 71-county AOR, rather than narrower context-dependent subsets.

Because the legislature has specifically defined "community" and acted as its own lexicographer, the judicial analysis should conclude there. It was wholly inappropriate for the Department to supplement this definition with its own conclusions drawn from the context in which "community" is used. In light of the definition, the District Court was incorrect to substitute context for plain meaning. Moreover, since courts give identical words the same meaning when they are used in several places in an enactment, it is not enough that the district court concedes that "SCTS' 'community,' when viewed as a whole, refers to its entire 71 county AOR," – though it is unclear what the district court meant by "when viewed as a whole." Instead, the unambiguous language suggests that the legislature meant for each

application of word "community," including the ones in § 322A.4 and § 322A.16, to refer to the entire 71 county AOR. To radically constrict the notion of "community" to a narrow geographic area, when a supplied definition plainly suggests otherwise, does violence to the notion of statutory construction.

The Department concluded that employing a definition of "community" provided by the legislature would lead to an illogical reading of Iowa Code § 322A.16. But, because the legislature's explicit definition of "community" is unambiguous, neither Peterbilt nor the Department had grounds to twist "community's" scope to serve independent business or policy goals. Contrary to the Department's assertion, it is the district court's endorsement of the Department's substitute definition of "community" which leads to the strained interpretation of § 322A.16.

B. The District Court's reading of modifiers "any" and "that" lacked sufficient basis to support its definition of "community."

The district court reasoned that the legislature used modifiers "any" and "that" before "community" to sharply qualify the meaning of "community" in § 332A.4 and "that community" in § 322A.16. Moreover, it asserted that those modifiers altered the "community" in those provisions to mean "portion of the franchisee's community that the franchiser is seeking

to appoint an additional dealer in." SCTS respectfully disagrees with this interpretation for two reasons. First, the modifiers "any" and "that" are used to specify "community" in a way different from that suggested by the district court. Second, the absence of a pattern for modifiers used before "community" made the district court's approach of singling out the two instances of § 322A.4 and § 322A.16 faulty.

i. The modifiers "any" and "that" are used to specify "community" in a way different from that suggested by the district court.

Iowa Code § 322A.4 states:

> No franchiser shall enter into any franchise for the purpose of establishing an additional motor vehicle dealership in any community in which the same line-make is then represented, unless the franchiser has first established in a hearing held under the provisions of this chapter that there is good cause for such additional motor vehicle dealership under such franchise, and that it is in the public interest.

Without sufficient justification for definitional interpretation, the District Court found that "[a]s used, 'any community' would refer to any portion of an area of responsibility assigned under a governing franchise agreement." The statute explicitly defines "community" as "the franchisee's area of responsibility as stipulated in the franchise." The district court here attempts to use context to substantially narrow "any community" to mean "*any portion of* the community" without providing any reasoning for doing so.

Intra-textual analysis of the *un*defined terms and their modifiers – as contrasted with those the drafters chose to define – helps to illuminate the district court's error. In § 322A.4, the modifier "any" is also used before "franchise." There, it is clear that "any franchise" is referring to any contract– not *any portion of* a contract – between two or more persons, according to § 322A.1(5).

Under the statutory guidelines regarding requests for appointing an additional franchisee, the legislature used the term "that community" within five of the six guidelines. In its entirety, the Iowa Code section 322A.16 states:

> In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department of inspections and appeals shall take into consideration the existing circumstances, including, but not limited to:
> 1. Amount of business transacted by other franchisees of the same line-make in that community.
> 2. Investment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the performance of their part of the franchises.
> 3. Permanency of the investment.
> 4. Effect on the retail motor vehicle business as a whole in that community.
> 5. Whether it is injurious to the public welfare for an additional franchise to be established.
> 6. Whether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicles of the line-make which shall include the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified service personnel.

The use of the qualifier "that" is inconsequential because the legislature specifically defined the term, as explained in the previous section of this brief. But even if the meaning of "that" does restrict and specify "community," it does not alter the meaning of "community" from what is defined, "the franchisee's *entire* area of responsibility," to "a *portion* of the franchisee's community that the franchiser is seeking to appoint an additional dealer in." Given that the legislature drafted its own definition of "community," it was unlikely that it meant to confuse readers by allowing "community" to also mean under certain context, "only a portion thereof." Instead, a more natural reading implies that when the legislature drafted § 322A.16 to include the modifier "that," they were repeatedly referring to same single entity: the 71-county SCTS AOR. If the Department is free to alter the scope of the relevant community to suit their ends, the factors enumerated in the section would lose all purpose.

If, for example, a Department official was examining the "[e]ffect on the retail motor vehicle business as a whole in that community," he or she could just as easily re-frame the community of reference as a city block or an entire nation. The magnitude and result of each individual statutory factor could be starkly different depending on where a particular individual chooses to locate the borders. If modifiers could alter the scope of a defined

term to this degree, an official could "gerrymander" – choosing different communities as the reference point for each individual factor within the list enumerated in §322A.16 – a circumstance the legislature clearly did not intend.

Had it contemplated individual discretion in this regard, the legislature would have refrained from drafting such a concrete definition for "community." The lack of subsections, or further interpretive guidance for its definition, point towards the drafters considering it self-evident. If the legislature intended otherwise, it could have foregone a definition altogether or provided a general dictionary term, such as "a group of interconnected people living within a certain geographic region." Instead, the act also defined "termination or noncontinuance" to "include[] a reduction of the geographic area of a community" to ensure a party could not then revise the entity of reference to suit its particular goal. If the geographic area of a particular "community" can be arbitrarily constricted by the interpreter, the definitions are rendered surplusage.

Had the legislature intended to subdivide individual communities across various portions of the Act, it could have easily done so. Instead, it could have indicated "that area of dual assignment," or "that portion of the community that the franchiser is seeking dual assignment in." However, the

legislature opted to employ the defined term "community." The term "community," as it appears in § 322A.16 still means the entire area of responsibility, as known as the Des Moines Area in this case; and the modifier "that" before "community" is used to emphasize that it is the AOR of specifically the very franchisee that is going to be impacted by the additional franchisee.

ii. The lack of a pattern in the modifiers used before "community" renders faulty the district court's singling-out modifiers in § 322A.4 and §322A.16

§322A seeks to regulate four types of conduct by manufacturer franchisors, including: (1) Termination/Noncontinuance; (2) Reduction of Territory; (3) Additional Dealership or Franchise; and (4) Alteration of Territory. Regarding additional dealerships, the drafters employ – in the same statutory provision – noun modifiers before "community." First, the drafters used the modifier "*any* community." (Section 322A.4) "*that* community" (twice) and then "*a* community." (Section 322A.6.) The third relevant provision uses the qualifiers "*franchisee's* community" and "*the affected*" community." (Section 322A.7), and uses the term "*franchisee's* community" in the fourth relevant provision (Section 322A.9), uses the term "*a* community", "*the* community" (twice), and "*dealership's* community" in the fifth relevant provision (Section 322A.11), and uses the term "*a*

community" in the sixth relevant provision (Section 322A.14), uses the terms "*that* community" (four times) in the seventh relevant provision (Section 322A.16), and uses the term "*the* community" (twice) in the eighth relevant provision, the definitional section (Section 322A.1.10) regarding "substantially detrimental."

Notably, Peterbilt failed to bring to the DOT's attention that Section 322A.1, the definitional section of the Statute, uses the term "a community" (not "that community") when describing the very issue it claims is in issue in this case: the "additional motor vehicle dealership."

In addition to the obvious conclusion that the Statute uses different noun identifiers in different sentences or provisions, many times in the same statutory provision, it is clear that there is no intentional pattern or significance evidenced by the seemingly random use of the noun identifiers for the term community; and, this is totally understandable given that the Legislature chose to explicitly define the noun, "community." And, again, as noted above, not one instance in the lengthy statute exists in which the Legislature used a limiting noun identifier for community, such as "part of [the community]." Further, and significantly, Section 322A.6 uses the phrase "that community" not only in connection to additional representation, but also with regard to termination, noncontinuance, and reduction of territory.

This provision by itself debunks DOT conclusion and Peterbilt's argument that the term "that community" somehow takes on a magical new legal meaning for purposes only of the additional representation process in Section 322A.16.

C. The District Court failed to use the Correct Community in Evaluating Section 322A.16 Additional Guidelines.

Factor 1: Amount of business transacted by other franchisees of the same line-make in that community. The District Court's Decision on this factor is defective in the general respect that it uses the incorrect community: it uses the Clear Lake community or area instead of the correct community as defined by statute. The District Court essentially adopts the ALJ's decision. The Decision on this factor is also flawed in several specific respects, most notably because it in part evaluates the operations of the very additional dealer that is in issue -- Allstate. Regardless the ultimate definition of 'other franchisees', it is clear that this phrase should not encompass the proposed new dealer, Allstate in this case. Unexplainably, the District Court as part of his analysis credits Allstate's historical independent business efforts in "the Clear Lake area" at the same time that it excludes the operations of SCTS, in whose community the new dealership is being sought.

The District Court adopted the very flawed reasoning of the ALJ in its ruling as described by SCTS in its Judicial Review Brief:

> After noting Allstate's historical efforts (which is totally irrelevant to this factor), and after failing to fully credit the full value of investment made by SCTS in the proper community as defined in the statute, the Decision unexplainably proceeds to base its conclusion on this factor directly on the unrelated issue of whether there is unmet demand in the sub-area of Clear Lake. (Again, while the issue of 'demand in the community' has some limited relevance to the overall case, it does not have any relevance whatsoever to this specific first factor – the business transacted by existing franchisees of the manufacturer's brand in the community. Here, since there is no dispute that Clear Lake falls within SCTS's community, the 'other franchisees' [other than the proposed new franchisee candidate] are SCTS. The fact that the ALJ claimed he was confused or "unclear whether this applies" merely evidences clearly the error made in the Decision.
>
> Last, the initial portion of Section 322A.16 refers to and discusses "an additional franchise"; thereafter, the provision focuses on "other franchisees in that community" – clearly this term refers to franchisees in the community 'other than the proposed additional franchise'. The artificially manufactured ambiguity concocted by Peterbilt based on the phrase "other franchisees" should be rejected; 'other franchisees' clearly has relevance in the additional dealership provision vis-à-vis only the posited "additional [proposed additional] franchise" which is the subject of the entire provision. In other words, abstractly, there are two classes: the first is "the additional franchise" being pushed by the manufacturer, and the second is the other franchisee or dealers in the community, here, SCTS. There are no logical or legal problems with figuring out who is whom, or what these values of expenditures or investments are.

Factor 2: Investment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the

performance of their part of their franchises. With regard to the second factor, the District Court makes the same error it did in applying factor one, as discussed above. And, again, the District Court adopts the ALJ's decision on this prong. Again, there would be nothing impossible or difficult about applying the correct statutory definition used by the Statute: in this case, the investment of SCTS of $25 million is recognized elsewhere as substantial and significant. Like the first factor, there is no logical impediment to recognizing the numbers associated with SCTS's 'amount of business' or 'investment' in the correct community, the entire area defined in SCTS's franchise agreement.

Factor 3: Permanency of the investment. Here the District Court clearly erred, by concluding that the ALJ was correct to rule that "Sioux City again chose to invest in other areas of its AOR and not the Clear Lake area." Again, the Decision used the incorrect and defective definition of "Clear Lake area" instead of the correct statutorily defined community in which to conduct its analysis. This is clear legal error.

Factor 4: Effect on the retail motor vehicle business as a whole in that community. With regard to this fourth factor, the Decision below again errs by using only the Clear Lake area in which to evaluate the factor. In agreeing with the ALJ who found that unmet market demand in the Clear

Lake area was sufficient to meet this statutory criterion, the District Court examined the "Clear Lake community" and "the market", but not the correct community under the Statute. This is reversible legal error, again.

Factor 5: Whether it is injurious to the public welfare for an additional franchise to be established. With regard to this factor, it appears again that the District Court approved of the ALJ's conclusion that prices would likely be lower as the result of the new location is conducted in the Clear Lake area; however, the District Court, like the ALJ, errs when it fails to make any finding on prices – the metric chosen by it to examine – that would prevail in the entire community, not just a selected area. This is because both the District Court and the ALJ used the incorrect definition of community. For this reason, the decision must be reversed.

Factor 6: Whether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicles of the line-make which shall include the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified service personnel. Here, again, the District Court explicitly carves the correct community into an impermissible sub-community, not provided for under the Statute. Interestingly, in committing this reversible error (by adopting the ALJ's decision on this point) the District Court did not comment on the evidence

below that "Peterbilt did not ultimately contest Sioux City's performance at its other dealer locations …" (App. 1373). In this regard, the ALJ found only that there was unmet demand in the small sub-territory of the created "Clear Lake market", which is not the correct community under the Statute.

Most important, this section of the District Court's decision shows the clear error and danger from using a contrived and wholly malleable definition of 'community' in conflict with the definition set forth in the Statute. The District Court states, in part, "... the ALJ reasonably inferred the "community" implicitly referred to as "that community" or in this case, the Clear Lake area." There is no support either in the statute, the legislative history or relevant case law to allow an ALJ or a large out of state truck manufacturer to "infer" or conjure up an undefined meaning of a statutorily defined term, or to conclude that the word "that" before the defined term "community" allows the ALJ, and agency, or a litigant to "reasonably infer" new and wholly contrived sub-areas to at will displace explicitly defined terms such as community.

Accordingly, because the District Court's Decision regarding application of the factors adopted the ALJ's erroneous rulings, and since the District Court and ALJ failed to use the correct community in evaluating Section 322A.16's additional guidelines, the Decision should be reversed.

CONCLUSION

For each of the foregoing reasons, Appellant seeks reversal of the District Court's decision.

REQUEST FOR ORAL SUBMISSION

Appellants ask to be heard on oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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/s/ Anthony P. Lamb November 4, 2020

CERTIFICATE OF SERVICE

I, Anthony P. Lamb, hereby certify that on the 4th day of November, 2020, I served Appellant's Final Brief on all other parties to this appeal by emailing one copy thereof to the following counsel for the parties at the following addresses:

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I, Anthony P. Lamb, further certify that I filed Appellant's Final Brief via EDMS on the 4th day of November, 2020.

/s/ Anthony P. Lamb

CERTIFICATE OF COST

It is certified that the actual cost paid by Appellant for submitting this brief was $0.00 as it was filed electronically by EDMS.