

ANG had a collective bargaining relationship with Northern California Media Workers, Local 39521 (the Union) covering all editorial department employees at all its facilities. The most recent collective-bargaining agreement expired July 12, 2007.

In August 2006, MNG acquired the Knight-Ridder newspaper chain, which included the Contra Costa News Groups/Hills newspaper group (CCN) and the San Jose Mercury News (SJMN). CCN was a newspaper chain made up of ten mastheads. The largest CCN newspaper was the Contra Costa Times, based in Walnut Creek.¹ Prior to August 2006, the ten CCN mastheads were produced out of five separate facilities. After the acquisitions, MNG "contributed" CCN and SJMN to CNP. Therefore, as of August 2006, CNP owned ANG, CCN, and SJMN.

MNG has had a longstanding practice of "clustering," whereby newspapers are grouped together to centralize a variety of functions, including production, advertising sales, business operations, and in some instances, editorial. As a result, MNG has been able to share costs and sell regional advertising which results in substantial cost-savings.

One example of MNG's clustering model involved the seven ANG mastheads. Prior to their acquisition by MNG in the mid-1990's, the mastheads had been separate newspaper operations. MNG clustered the mastheads into one integrated operation with a common management structure and sports department, which distributed ANG-byline news stories to all seven of the ANG newspapers.

Although clustering involves centralization of a number of production functions, a key feature to clustering requires the old local mastheads to continue to produce their own newspaper. This approach provides customers with their own unique local newspaper, instead of having one generic newspaper for the entire region.

When CNP purchased CCN in August 2006, it planned to "cluster" CCN and ANG newspapers because they had a significant degree of geographic overlap in the areas that they serviced. For example, ANG's Alameda Times-Star and CCN's Alameda Journal competed in the same geographic area, as did ANG's Tri-Valley Herald and CCN's Valley Times.

¹ It also contained the Valley Times, the West County Times, the San Ramon Valley Times, the East County Times, the Journal, the Berkeley Voice, the Montclarion, the Piedmonter, and the Alameda Journal.

Immediately upon acquiring CCN in August 2006, CNP began to discuss consolidating ANG and CCN.² As the large scale of the consolidation meant that not all operations could be integrated at once, CNP decided that the first departments to be consolidated would be finance, information technology, advertising, circulation, and production, because the changes in these "behind the scenes" departments would not affect the local individuality of the mastheads. Over the next several months, CNP completed the consolidation of the separate departments from ANG and CCN into single integrated departments.

The overall consolidation plan also provided for merging the copy editing departments into a single department located at CCN's Walnut Creek facility. Such consolidation, however, required new facilities, equipment, and training because ANG and CCN copy editors used incompatible computer systems. A committee was created to evaluate and select a new front-end computer system that would be constructed in Walnut Creek. The committee evaluated multiple systems and requested proposals from vendors, and CNP's Board of Directors approved \$7 million for the new system. The new facility is expected to be fully operational by May 2008, after equipment is installed and the copy editors are trained.

In June 2007,³ CNP began to develop a plan to consolidate other classifications in the editorial departments because significant duplication and inefficiencies had occurred since the 2006 acquisition. Photographers from ANG and CCN would frequently cover the same event, investigative teams continued to cover the same common beats with little or no coordination, and the sports, features, and business staffs were run by separate editors, which hindered coordinated coverage. The plan would combine the ANG and CCN staffs into a single news operation with a single production operation based in Walnut Creek.

The plan was presented with more detail on July 11 to MNG and CNP executives, including William Singleton, the founder and CEO of MNG, who officially approved the plan. A new newspaper group, Bay Area News Group East Bay, LLC

² We agree with the Region that CNP's decision not to consolidate and cluster SJMN with ANG and CCN newspapers was not motivated by anti-union animus.

³ All dates herein refer to 2007, unless otherwise noted.

(BANG-EB or the Employer), would be created as a result of the full consolidation and integration between ANG and CCN. There would be no separate ANG and CCN budgets, just a single BANG-EB budget. The two Human Resources departments would be consolidated into a single department, with a single payroll system, employee performance system, and a new employee handbook.

The plan called for the creation of a centralized management structure, along with a new middle-level management position called assistant managing editor (AME). There would be three News AMEs who would coordinate the daily and weekly coverage of all the reporters at all 17 mastheads. Additionally, the sports departments at all the newspapers would be consolidated into a single department, with one AME in charge. The same consolidation would also take place for the business and features departments. An online content department would be established with an AME overseeing the staff. A regional news department would be created with an editor who would supervise a team of regional reporters. An AME for production would be in charge of copy editing, graphics, and photography. The photography departments at all of the papers would be consolidated under one photography director, who would report to the AME for production. All photography requests would now go through the director, who would coordinate and make assignments to the all of the photographers, thereby utilizing former ANG and CCN photographers interchangeably.⁴

On July 25, CNP informed the Union of the consolidation plan and invited the Union to bargain over the effects of the decision. CNP told the Union that, as of August 13, ANG and CCN would be completely integrated into the new BANG-EB organization. Over the next two weeks, the Union and CNP held meetings and discussed the Employer's consolidation.

On August 10, CNP informed the Union that, effective August 13, BANG-EB was withdrawing recognition of the Union because the historical ANG bargaining unit would constitute significantly less than 50% of the newly consolidated editorial department. On August 13, 17 bargaining unit employees were involuntarily transferred from their former positions at various ANG newspapers to new positions as part of BANG-EB. The majority of these employees were sports, business, or features reporters. These employees were transferred to new departments in Walnut Creek, where a single AME was in charge of each department.

⁴ Before the consolidation, individual masthead editors would make photography requests directly to individual photographers.

The ANG Tri-Valley Herald facility was shut down, and its six sports and features writers were part of the above-described group who relocated to the Walnut Creek facility. The remaining Herald employees, two reporters, one clerk, and two photographers, relocated to the Valley Times facility. Although the Valley Times and Tri-Valley Herald are now located in the same building, they continue to function as two separate newspapers, with separate Editors and City Editors at each masthead.

On August 13, the Employer also established a centralized human resources department in Walnut Creek for all the former ANG and CCN employees. A Vice President of HR for BANG-EB now has complete authority for all human resources and employee relations matters. During the next two weeks, the Employer instituted a new employee complaint procedure, a single uniform performance review system (which was implemented in October, with raises retroactive to August), a new employee benefits package (impacting vacation, leave without pay, employee health benefits, and holidays),⁵ and a common e-mail system for all employees.

ACTION

We agree with the Region that the Employer did not violate the Act because the historical bargaining unit ceased to be an appropriate unit after the Employer consolidated unit employees into a larger group of other employees. In particular, we agree with the Region that the changes made by the Employer were entrepreneurial in nature and not subject to a decision bargaining obligation, and that the Employer did not violate the Act by withdrawing recognition from the Union on August 13 because the Employer's consolidation resulted in the historical unit losing its separate identity and the historical unit employees comprising less than 50% of the new BANG-EB editorial department. Furthermore, no remaining less-integrated subsections of the historical unit can be considered an appropriate unit because of the high degree of functional integration in the newspaper industry.

I. The Employer's Unilateral Changes

We agree with the Region that the Employer made a lawful entrepreneurial decision to change the scope and

⁵ The Employer postponed implementation of the new benefits package until January 2008 to coordinate with open enrollment of the new health care plan.

direction of its business enterprise.⁶ The Supreme Court in First National Maintenance held that bargaining over management decisions which directly affect employment, but have as their focus economic profitability, should be required "only if the benefit, for labor-relations and the collective-bargaining process, outweighs the burden placed on the conduct of the business."⁷

In the instant cases, the Employer made the decision to consolidate ANG and CCN newspapers in order to increase economic profitability, streamline operations, eliminate redundancies between the two operations, enhance news coverage, and realign its interactive presence with more resources. It is clear that labor costs did not underlie the consolidation decision as there were no reductions in labor costs as a result of the consolidation.⁸ As a result, the significant burden on the conduct of the Employer's business outweighs any benefit that might be gained from bargaining with the Union over the Employer's decision to consolidate ANG and CCN. Therefore, we agree with the Region that the Employer's consolidation decision "is not suitable for resolution through collective bargaining because it lies at the core of the [Employer's] entrepreneurial control and decision making,"⁹ and that the Employer was not required to bargain about the consolidation decision.

II. Appropriate Unit

The Board has recognized that following a merger or consolidation of two groups of employees where only one of the two groups had been previously represented by a union, an employer has no bargaining obligation with the representative of a historical unit if: (1) a minority of the new work force consists of employees from that

⁶ See First National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981).

⁷ Id., at 679.

⁸ Indeed, it appears that former ANG employee wages are likely to rise as result of the consolidation.

⁹ AG Communication Systems Corp., 350 NLRB No. 15, slip op. at 5 (2007), citing Fibreboard Paper Products v. NLRB, 379 U.S. 203, 223 (1964) (Stewart J., concurring).

historical unit; and (2) the historical unit loses its separate identity and ceases to be an appropriate unit.¹⁰

In the instant cases, the new BANG-EB editorial department consisted of 123 former ANG employees and 162 former CCN employees. Because the historical unit employees make up a minority of the new consolidated department, the Employer lawfully withdrew recognition from the Union only if the historical unit no longer maintained its separate identity. If the historical unit did still maintain its separate identity, the Employer had to continue bargaining with the Union as the representative of the employees in the historical unit.¹¹

In determining whether a preexisting bargaining unit remains a separate appropriate unit following a consolidation or merger, the Board performs a "community of interest" analysis and looks at several factors, including common supervision and organizational structure, functional integration, interchangeability and contact between the two groups of employees, similarity of skills, functions and duties, general working conditions, and bargaining history.¹² These factors are evaluated as of the time the Employer withdrew recognition from the Union.¹³

In the newspaper industry, "the Board has, as a rule, found primarily two types of units to be appropriate, a unit consisting of the employees of a single major department . . . or a unit comprising the employees of all the nonmechanical departments."¹⁴ While a single department

¹⁰ See e.g., Geo. V. Hamilton, Inc., 289 NLRB 1335, 1338-1340 (1988); Renaissance Center Partnership, 239 NLRB 1247, 1248 (1979).

¹¹ See, e.g., Comar, Inc., 339 NLRB 903, 903 (2003), enfd. 111 Fed.Appx. 1 (D.C. Cir. 2004) (Board held that even though the historical unit was a minority of the new work force, it maintained its separate identity and remained an appropriate unit after consolidation).

¹² See, e.g., Armco, Inc v. NLRB, 832 F.2d 357, 362 (6th Cir. 1987), cert. denied 486 U.S. 1042 (1987); Comar, 339 NLRB at 903.

¹³ Northland Hub, Inc., 304 NLRB 665, 677 (1991), enfd. mem. 29 F.3d 633 (9th Cir. 1994).

¹⁴ Bureau of National Affairs, Inc., 96 NLRB 673, 675 (1951). See also The Salt Lake Tribune Publishing Company, 92 NLRB 1411, 1412 (1951) ("[T]he Board has recognized that

may be an appropriate unit in some circumstances, a single unit of all nonmechanical employees is an optimum unit because of the high degree of functional integration in the newspaper industry.¹⁵ The Board has recognized that the newspaper industry is unique because "the end product is always the result of the close cooperation and joint efforts of all departments."¹⁶ It logically follows from this functional integration that the smaller the subsection of newspaper employees, the more unlikely it is that a separate identity will be found. Therefore, the Board will rarely, if ever, find an appropriate unit comprised of only a portion of the editorial department, e.g., the copy editors or the local reporters by themselves.

Even under general community of interest factors, however, it is clear that the historical bargaining unit is no longer a separate appropriate unit. Thus, the Employer created a single centralized organizational structure that oversaw the operations at all of the former ANG and CCN mastheads. This centralized structure consisted of a single Executive Editor; a single Managing Editor; a single Editorial Page Editor; and a single AME for each of the various editorial and production departments (with the exception of the news department, which had three AMEs). Each of the 17 individual mastheads retained their former Editors and City Editors but these Editors now report to the same three AMEs for News. The organizational structure appears to be consistent with the Employer's clustering efforts.

The photography, sports, features, business, regional news, and online content departments have been consolidated with the CCN employees and are fully integrated into BANG-EB. Each department has a common supervisor (AME, director, or editor) who oversees both ANG and CCN employees. While copy editors and local reporters also have common supervision from AMEs, these employees receive day-to-day supervision from different former ANG and CCN supervisors who have not changed as a result of the consolidation.

There is also significant functional integration between the two groups of employees. As discussed above, the newspaper industry generally is highly integrated. The

a single major department of a newspaper may constitute an appropriate unit").

¹⁵ Valley News and Green Sheet, 223 NLRB 455, 455 (1976).

¹⁶ Evening News, 308 NLRB 563, 567 (1992).

centralized specialized content departments are responsible for producing articles that appear in all 17 of the BANG-EB mastheads. Moreover, the reporters write the articles, the photographers take pictures of the subject of the articles, and the copy editors edit the articles, combine them with the work product of the photographers, and design the newspaper page where all the content is displayed. As a result of this integration, there is now a significant degree of sharing of copy -- the same "staff reporter" byline stories appear in all 17 mastheads.

There is substantial evidence of interchange and contact between the ANG and CCN specialized content employees. Nearly all specialized content employees are now located in the Walnut Creek facility. Indeed, the Employer unilaterally transferred 17 ANG employees to that facility. The former ANG and CCN employees working at the Walnut Creek facility share a common facility and work side-by-side.

All ANG and CCN employees have the same job skills and functions, with the exception of the copy editors. Thus, while the copy editors for ANG and CCN shared the same essential job functions of designing, editing, and producing copy for the local mastheads, their job skills were somewhat different because they were trained and worked on incompatible computer systems. This disparity will continue until the new consolidated copy editing facility is fully functional in May 2008.

On August 13, there was no immediate change to any employee's terms and conditions of employment. However, a centralized HR department was created to oversee and handle all employee relations matters for all editorial departments. In an effort to bring uniformity to the terms and conditions of employment of the former ANG and CCN employees, the Employer created a single employee handbook, a single payroll system, one employee benefits package, and a single performance review system.¹⁷ Although the handbook and the benefit plans were not supplied to the employees until January 2008, the decision to bring uniformity to the terms and conditions of employment was made before August 13 as part of the overall consolidation process.

¹⁷ In addition, while the Employer did not immediately equalize wages between ANG and CCN employees, it appears that the Employer is taking steps to bring ANG wages in line with CCN wages over time. For example, former ANG employees now have the same opportunities for merit increases tied into their performance review schedule as their CCN counterparts.

Lastly, bargaining history is not a significant factor here as, even though the Union and ANG have had a collective bargaining relationship since the late 1990's covering the historic ANG unit, ANG and CCN always operated as two separate corporations. As such, the parties' bargaining history does not help determine whether the historic ANG unit maintained its separate identity following the consolidation.

Weighing all these factors, it is clear that the historical ANG unit is no longer an appropriate unit. The majority of ANG employees now have the same supervision, skills, functions, and terms and conditions as their CCN counterparts. There is a high degree of functional integration between former ANG and CCN employees in the new BANG-EB editorial department, which is the goal of the Employer's clustering design. ANG and CCN employees interact on a daily basis and their work product is combined to produce tremendous amount of shared copy for all former ANG and CCN newspapers. Because of the complete integration of the photography, sports, features, business, regional news, and online content departments, these employees who were part of the historical unit ceased to have a separate identity as of August 13.

We similarly conclude that the copy editors and local reporters did not maintain a separate identity, and therefore do not constitute an appropriate unit, based on the functional integration of these employees.

The Board has made it clear that the changed nature of the employer's operations should be assessed at the time the employer withdrew recognition from the Union, unless there were "objective factors to establish that [the employer] was following some well-defined plan and/or timetable for full integration of its operations."¹⁸ For example, the Board has found a well-defined plan for full integration where the employer established an ongoing training program to equalize the skills between two groups of employees who had the same function pursuant to the employer's plan for full functional integration.¹⁹ In this regard, the Board has also found, regardless of any well-defined plan, that a smaller group of employees does not

¹⁸ Northland Hub, 304 NLRB at 677. See also Holly Farms Corp., 311 NLRB 273, 279 (1993), enfd. 48 F.3d 1360 (4th Cir. 1995), affd. 517 U.S. 392 (1996); AG Communication, 350 NLRB No. 15, slip op. at 5 fn. 8.

¹⁹ AG Communication, 350 NLRB No. 15, slip op. at 14-15.

constitute an appropriate unit where the employer has "a high degree of functional integration in its operations and [] the work performed by these employees is directly related to and integrated with the work of the majority, if not all, of the Employer's remaining employees."²⁰

In the instant cases, the Employer made a decision in August 2006 to consolidate and centralize all ANG and CCN departments into one entity, BANG-EB. The consolidation of the copy editing departments was a part of the overall decision and, while it was one of the last stages of consolidation, it was well underway by August 13. The Employer had already formed a committee to evaluate and select a new system, solicited proposals from vendors, and approved \$7 million for the purchase of a new front-end computer system.

In addition to already undertaking these concrete actions to implement the consolidation plan by the time withdrawal of recognition occurred, the Employer clearly had a well-defined plan for achieving full functional integration of operations, with a timetable of the necessary steps towards that end, as in Northland Hub, supra.²¹ Thus, the Employer's consolidation plan was originally discussed in August 2006. The Employer made the decision to consolidate the editorial departments, the last remaining unintegrated departments, the following June.²² The copy editing departments also were to be consolidated, but their consolidation required new equipment and training. The plan included a timetable that would allow the new integrated copy editing department to be fully functional by May 2008.

As in AG Communication, supra, further evidence of a well-defined plan for full functional integration of the copy editors was clear, because there was an ongoing process to equalize skills between two groups of employees

²⁰ Seaboard Marine, 327 NLRB 556, 556 (1999). See also Transverse Systems, 311 NLRB 766, 766 (1993), in which the Board held that a smaller petitioned-for unit of bicycle messengers did not have a sufficiently distinct community of interest to warrant separate representation from driver messengers because of "a high degree of functional integration in the performance of their jobs."

²¹ 304 NLRB at 677.

²² The finance, information technology, advertising, circulation, and production departments were fully consolidated by this point.

who have the same function.²³ In the instant cases, both the ANG and CCN copy editors perform the same function, but they have different skills because of their incompatible computer systems. The Employer is following a plan for full functional integration because the new equipment and facilities, along with training, will equalize the copy editors skills and allow them to be wholly consolidated. Once the consolidation is complete, the former ANG and CCN copy editors will have the same skills and functions, the same common supervision, and will have a high degree of interchange and contact because they will work at the same facility. Moreover, there is a high degree of functional integration with other editorial employees, especially local reporters and photographers, as described above. Therefore, the historic ANG copy editors had no separate identity and could not comprise an appropriate unit as of August 13, because the Employer's consolidation process was well underway.

Additionally, a smaller unit comprising of former ANG local reporters clearly would not have a sufficient separate identity to be an appropriate unit apart from the remaining editorial department employees. Applying the community of interest factors, each former ANG individual masthead was left intact after the consolidation, with each masthead retaining about five local reporters at their locations. Although new upper and middle management was created, these employees are still supervised by their individual editors, and have the same duties and functions as they had before the consolidation. There was no interchange among the local reporters as there was with the sports, features, business, and regional news reporters. Thus, while it appears that no substantial changes took place for local reporters, their work product is now functionally integrated within the larger BANG-EB organization. The local reporters work product cannot stand alone but, rather, needs to be integrated with the remaining employees' work product in order to produce each day's local masthead paper.

Thus, the work performed by the local reporters is directly related to and integrated with the remaining employees' work, similar to that in Seaboard Marine and Transverse Systems, supra. After local reporters finish writing their articles, copy editors edit those articles and integrate them with the photographers' work product into a finished newspaper page. The pages designed by the copy editors are then added with other pages that contain articles and photographs from the remaining employees in the sports, features, business, and regional news

²³ AG Communication, 350 NLRB No. 15, slip op. at 14.

departments. The end product of the entire staff is a newspaper that was a result of joint efforts of all editorial employees. As such, there is a high degree of functional integration within the editorial department that the local reporters cannot maintain a separate identity apart from the other editorial employees.

Additionally, there is centralized control of labor relations because there is a single HR department for the entire editorial department and personnel policies and practices are uniform for all employees. The duties and skills of the local reporters currently working at separate facilities are not sufficiently dissimilar to warrant separate representation. From the record, it appears that the former CCN local reporters have the same duties and skills as the ANG local reporters, and a high level of functional integration with other editorial employees. As the Board has stated, "it is simply inappropriate to carve out individual units without regard to the extensive functional integration and confluence of employees concerns" ²⁴ Therefore, given the Board's emphasis on the high degree of functional integration in the newspaper industry, a unit comprised of former ANG local reporters would not be appropriate. ²⁵

In sum, for the reasons listed above, we agree with the Region that the Employer did not violate the Act because the historical bargaining unit ceased to be an appropriate unit after the Employer consolidated unit employees into a larger group of other employees. Further, neither the copy editors or local reporters maintained a separate identity apart from the rest of the BANG-EB employees because "of the degree of functional integration in the newspaper industry." ²⁶

²⁴ Ramada Beverly Hills, 278 NLRB 691, 693 (1986).

²⁵ Compare United Operations, Inc., 338 NLRB 123 (2002) (Board found a smaller subsection of employees to be an appropriate unit because it was "a readily identifiable and functionally distinct group, with common interests distinguishable from the Employer's other field service employees . . .").

²⁶ Evening News, 308 NLRB at 567.

Accordingly, the Region should dismiss the charges in the instant cases, absent withdrawal.

B.J.K