

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

**VARSITY CONTRACTORS, INC.
DBA VARSITY FACILITY SERVICES**

Employer

and

Case 19-RC-111631

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 6**

Petitioner

DECISION AND ORDER

The above-captioned matter is before the National Labor Relations Board (the Board) upon a petition duly filed under § 9(c) of the National Labor Relations Act (the Act), as amended. Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.¹

I. SUMMARY

The Employer is a nationwide provider of janitorial services and, in Washington State alone, employs approximately 200 employees at multiple facilities. Petitioner filed the instant petition seeking to represent a unit (Unit) of 32 full and part-time janitors employed in nine counties.

Petitioner maintains the Unit is an appropriate unit for collective bargaining given the community of interest shared by Unit employees. The Employer asserts the Unit is inappropriate, as it constitutes an arbitrary grouping of employees employed at multiple facilities.

I have carefully reviewed and considered the record evidence and the arguments of the parties at both the hearing and in their post-hearing briefs.² Based on the evidence and the Board's well-established standards, I find, consistent with the

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

² The Employer and Petitioner filed timely post-hearing briefs.

Employer, that the petitioned-for Unit is not an appropriate bargaining unit. As Petitioner has declined to go forward to an election in any unit other than the petitioned-for Unit, I have not addressed units alternative to that sought by Petitioner.

Below, I have set forth the relevant record evidence from the pre-election hearing, followed by an analysis of Board law applicable to multi-facility bargaining unit determinations and to the record in this case. In conclusion I have issued my Order and addressed the procedures for requesting review of this decision.

II. RECORD EVIDENCE³

A. BACKGROUND

The Employer provides janitorial and maintenance services to commercial clients. The Employer's typical clients are national or regional corporations with a large number of small, widely dispersed locations, such as banks. Employer services provided range from basic cleaning to landscaping and pest control. Depending on the services provided, a client's facility may require several hours of work per evening, or as little as one visit per month.

Employees report directly to their assigned client facility/facilities rather than to a facility operated by the Employer. When employees arrive at their assigned facility, they use a phone or computer on-site to report their arrival for work. The employee, typically working alone, performs 1 – 2 hours of cleaning and then moves to the next location on their route, assuming they are assigned multiple facilities. When the employee's route is complete, they end their shift by again contacting the Employer by phone or computer.

The Employer maintains an office in Auburn, Washington, where a managerial and small administrative staff is employed. However, normally, employees do not visit this office. The Employer's front line supervisors, the Area Managers, spend the majority of their time at the Employer's clients' facilities, supervising employees and acting as a liaison between the employees and the Employer's Auburn office.

Petitioner seeks to represent a bargaining unit composed of janitors and floor technician classifications. While the petition only notes the inclusion of janitors, it is apparent from the record and the Employer's brief that the parties intended the general term of janitor to include not just employees performing janitorial work but employees also performing the work of floor technicians. The scope of the petitioned-for Unit covers nine Washington counties: Pierce, Clallam, Jefferson, Gray's Harbor, Mason, Kitsap, Thurston, Lewis, and Whitman.

Estimates in the record vary regarding the size of the petitioned-for Unit, ranging from 32 to over 40 employees. As detailed below, there is significant turnover among the Employer's employees. The Employer employs over 20 employees in Pierce

³ The Employer called Regional Vice-President Robert Ridge, Northwest Regional Manager Casey Killian, and District Manager Misker Arefeayne as witnesses. Petitioner did not call any witnesses.

County, which includes the Tacoma, Washington metropolitan area. The other eight counties covered by the petition do not contain a metropolitan area approaching the size of Tacoma. The Employer only employs a few employees in each of these other eight counties.

Petitioner currently represents a bargaining unit of the Employer's employees in King County, which contains the Seattle metropolitan area (the King County Unit). This King County Unit consists of approximately 50 employees in the classifications of janitor, floor technician (referred to as a waxer/shampooer in the King County Unit collective bargaining agreement), and foreperson classification. The instant record contains no evidence regarding including the foreperson classification in the petitioned-for Unit.

The Employer employs four Area Managers in Washington State, each of whom has a geographic area of responsibility. The Area Managers in turn report to District Manager Misker Arefeayne, who is responsible for all of Washington and who works at the Employer's Auburn office. Arefeayne reports to a Regional Manager, who is located in Salt Lake City, Utah, and who in turn reports to a Regional Vice-President, who is located in Eugene, Oregon.

B. RELEVANT FACTORS

1. Centralized Control of Management and Supervision

The Employer's organization is geographically defined. Each Area Manager is responsible for a portion of the state, with their territories delineated by county. The record does not specify which Area Manager is responsible for each of Washington's 39 counties, but the general parameters are identified. Area Manager Pablo Lizarras supervises the employees in the King County Unit, Area Manager Jim Norman supervises employees in the counties north of King County, Area Manager Alex Alvarez supervises employees in counties south and west of King County, and Area Manager Brian Hall supervises employees in eastern Washington.

In sum, other than Whitman County, the remaining eight counties covered by the petitioned-for Unit fall under the supervision of Area Manager Alvarez. However, Alvarez' managerial territory extends beyond the eight counties covered by the instant petition. While the record does not specify all the counties within Alvarez' managerial territory, the record reveals that his territory stretches as far south as Vancouver, located on the Oregon border. Therefore, Alvarez's territory also includes Clark County, Washington where Vancouver is located, and apparently Cowlitz County which is just north of Clark and just south of Lewis County. Further, based on the general descriptions of the Area Managers' respective territories in the record, Alvarez's territory likely also includes the remaining two counties in southwest Washington: Pacific and Wahkiakum, as they are adjacent to the counties previously mentioned (respectively Lewis and Cowlitz), the Pacific Ocean, and the Oregon border, and could not reasonably be seen as fitting in any other Area Manager's jurisdiction. As such, the record demonstrates a minimum of four counties under the supervision of Alvarez that

are not included in the petitioned-for Unit. The record also does not reflect how many employees are employed by the Employer in these four excluded counties.

A number of managerial or supervisory functions are handled by the Area Managers within their area of responsibility. The record reveals that Area Managers hire employees, and the parties stipulated that the Area Manager possesses indicia of supervisory authority within the meaning of § 2(11) of the Act. I find that this stipulation is supported by the record. After an employee is hired, the Area Manager conducts the employee's training on-site. Area Managers also establish the routes and schedules of employees in their territory and serve an intermediary role between the client work sites and the Employer's Auburn office. This role includes bringing payroll and other paperwork from the employees to the Auburn office, and bringing cleaning supplies and other materials from the Employer's Auburn office to the employees.

Area Managers Lizarras, Norman, and Alvarez occasionally report to the Auburn office to deliver paperwork, obtain supplies, or meet with District Manager Arefeayne. Because Area Manager Hall is located in Moses Lake, Washington, a drive of about 177 miles east of Auburn, Hall does not deliver paperwork but rather largely communicates with the Auburn office via phone and computer.

The Auburn office performs payroll duties, processes hiring paperwork for the corporate office, and performs other administrative functions. It is asserted in the record that Area Managers have the authority to discipline, although District Manager Arefeayne would have final approval on any terminations. The record contains no evidence of this disciplinary authority being exercised by Area Managers. Employer testimony discloses that Area Managers are held responsible for the performance of the janitors and floor technicians, yet the record contains no concrete examples of such accountability. Further, the record does not contain specifics regarding how Area Managers assign work or client facilities to employees.

The record contains little evidence of the day-to-day impact of decisions by District Manager Arefeayne or higher level managers on Unit employees. Indeed, it appears from the record that most decisions, including all day-to-day matters regarding employees' employment, are delegated to the Area Managers.

2. Employees' Skills and Duties

No employee or front-line supervisor testified regarding Unit employees' skills and duties. However, I glean from the record that janitors perform day-to-day cleaning such as trash removal, dusting, and/or vacuuming. Floor technicians strip and wax floors, as well as clean carpets, and have some additional training related to that function, although this training is not described in the record. While there is little information in the record regarding skills and duties, there is no contention that this community of interest factor differs among employees by location in Washington State. Indeed, the parties apparently agree that a janitor or floor technician in Tacoma has the same skills and duties as a janitor or floor technician working in Whitman County.

3. Terms and Conditions of Employment

The Employer's clients typically close for business by 6:30 p.m. Consequently, the Employer's employees are scheduled to commence work somewhere between 6:30 p.m. and midnight. The record suggests employees in urban areas such as Seattle and Tacoma may work at only one location per evening, or a small number of facilities in close proximity to each other. In less urban areas, employees perform nightly routes, travelling to a client's facility, performing 1 – 2 hours of work, and then travelling to another client facility. A non-urban route may be as short as one stop or may consist of several locations with significant travel time.

The record does not contain specific wage rate information except for the wage schedule contained in the King County Unit's collective bargaining agreement. There is general testimony in the record that wages vary throughout the state, as they are set by the Area Manager's assessment of the local labor market at the time of hire. However, the record reveals that the Employer's full-time employees, those working over 35 hours a week, are eligible for health insurance, a 401(k) benefit, and paid vacation. At hearing it was estimated that about a dozen of the petitioned-for employees are full-time employees. District Manager Arefeayne estimated that another 15 to 20 employees are part-time employees who work between 5 and 20 hours per week, and 3 or 4 employees who work less than 5 hours per week.

As noted above, the record reveals that the Employer's workforce turns over at a high rate. Specifically, District Manager Arefeayne testified that the Employer tends to retain full-time employees, but high turnover exists among the part-time employees, with fewer hours correlating to a higher likelihood of leaving employment. In sum, part-time employees, who represent a major portion of the Employer's workforce, apparently view their part-time jobs as an interim position until they are able to secure full-time employment, frequently with another employer.

4. Employee Interchange

There is no evidence of permanent or temporary interchange in the record. The record demonstrates that employees do not cover for other employees' absences, either by mutual agreement or by assignment. If an employee does not report for work or is otherwise absent, the Area Manager generally performs the absent employee's work.

5. Functional Integration

The record contains little or no evidence of functional integration among employees. Indeed, janitors and floor technicians report to their respective, assigned client facilities, independently perform duties at their assigned facility and then leave, all the while being isolated from the work being done at other locations by the other janitors and floor technicians. Further, most work locations require only one employee and, in some counties, the Employer employs a single employee. Where the record does contain evidence that multiple employees are employed in a single county, there is no evidence of employees having contact of any nature with each other, which undermines

the existence of any functional integration among Unit employees. Further, employees independently manage their own equipment and any contacts regarding equipment are through the Area Manager.

6. Geographic Proximity

The scope of the petitioned-for Unit covers the counties of Pierce, Clallam, Jefferson, Gray's Harbor, Mason, Kitsap, Thurston, Lewis, and Whitman. Pierce and Lewis Counties are located at the south end of Puget Sound. With the exception of Whitman, the other counties included in the petitioned-for Unit make up the Olympic Peninsula; all the area west of Puget Sound to the Canadian border. The ninth county included in the petition, Whitman County, is in southeastern Washington, bordering Idaho, and, again, falls within Area Manager Hall's range of counties. As noted above, Area Manager Alvarez' territory extends further south to include counties other than the eight Unit counties that he manages.

The record specifically identifies several locations in Washington State, where the Employer has clients and employees, and the distance between these locations. Tacoma, located in Pierce County, is about 90 miles from Sequim, located at the northern end of the Olympic Peninsula in Clallam County. Shelton, located in Mason County, is approximately 60 miles from Tacoma. Colfax, located in the single county sought in eastern Washington, Whitman County, is almost 300 miles from Tacoma. The record does not reveal distances between the other 30 counties in Washington State where the Employer has operations.

7. Bargaining History

The Employer began operations in Washington in approximately 2000. In 2005, the Employer recognized Petitioner as the bargaining representative of the King County Unit. Since 2005, the Employer has also been party to Petitioner's King County Master Agreement, a multi-employer agreement between Petitioner and nine employers in the janitorial services industry. No other labor organization seeks to represent any of the employees in the petitioned-for Unit.

III. ANALYSIS

A. COMMUNITY OF INTEREST STANDARD

The Act does not require that a unit for bargaining be the only appropriate unit or the most appropriate unit; it need only be *an* appropriate unit. *Barron Heating and Air Conditioning, Inc.*, 343 NLRB 450, 452 (2004), citing *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, in determining whether a unit is appropriate, the Board first examines the petitioned-for unit, and if the petitioned-for unit is *an* appropriate unit, the inquiry ends. *Barlett Collins, Co.*, 334 NLRB 484, 484 (2001). If it is not an appropriate unit, the Board then examines whether an alternative unit suggested by the parties or another unit not suggested by the parties is appropriate. *Overnite Transportation Co.*, 331 NLRB 664, 663 (2000). Here, Petitioner is unwilling to proceed to an election in any unit different

from the petitioned-for Unit. Thus, there is no need to consider alternative units in this case.

In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Bashas', Inc.*, 337 NLRB 710 (2002); *Alamo Rent A-Car*, 330 NLRB 897 (2000); *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986). Even though employees may share a community of interest with others in a petitioned-for multi-facility unit, that interest must be separate and distinct from that which they share with other employees at other facilities of the same employer, if the petitioned-for unit is to be appropriate. *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1081 (2004).⁴

B. WHETHER THE PETITIONED-FOR UNIT IS AN APPROPRIATE UNIT

Although the evidence in the record is not extensive, it is sufficient to establish that the employees in the petitioned-for Unit share some aspects of their employment. Specifically, the record indicates that Unit employees share similar skills and duties. Further, the record also discloses that there is little variance in the terms and conditions of employment among Unit employees. However, while Unit employees share similar skills, duties, terms and conditions of employment, the record also reveals that these same similarities are shared by other employees of the Employer working at other client facilities in the State of Washington. Thus, Unit employees' skills, duties, and terms and conditions of employment are neither separate nor distinct from the Employer's other employees excluded from the Unit. *Laboratory Corp. of America Holdings, supra*. Accordingly, the factors of skills and duties, and of terms and conditions of employment, weigh in favor of the Employer's position that the petitioned-for Unit is inappropriate.

Regarding the factor of bargaining history, the parties' current collective-bargaining relationship covering King County is defined by geographic scope, similar to the petitioned-for Unit. However, closer scrutiny reveals that the King County Unit covers the managerial territory of Area Manager Lizarras, whereas the petitioned-for Unit covers only a very small portion of Area Manager Hall's territory and a major but still incomplete portion of Area Manager Alvarez' territory. While no other labor organization seeks to represent any of the employees in the petitioned-for Unit, I do not find that the bargaining history surrounding the King County Unit supports Petitioner's position in this matter.

Two other factors also weigh against finding a community of interest among the petitioned-for employees. There is no evidence of functional integration or interchange among Unit employees. Rather, the work of these employees consists of routine tasks performed at client facilities, without assistance or discussion with co-workers. Indeed,

⁴ The Board has not reached the question of whether the Board's test in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) applies in cases where the parties, as here, dispute the appropriateness of a petitioned-for multi-facility unit.

in many instances, work locations require only one employee. Frequently the work is not even directly supervised by the Employer, as the Area Managers travel between many locations in their respective territories.

As for the factor of geographic proximity, Petitioner seeks a bargaining unit that includes employees in nine counties. Eight of these counties are located to the south and west of Puget Sound on the western side of the Cascade Mountain range. Although contiguous to a degree, the distances involved between locations in these eight counties are significant, as record evidence demonstrates distances of 60 and 90 miles between locations. The ninth county sought, Whitman County, is located almost 300 miles to the east, on the opposite side of the Cascade Mountains and on the Idaho border.

In addressing geographic proximity as a community of interest factor, in the single facility presumption context, the Board has found smaller distances weighed against finding a community of interest. See *New Britain Transportation Co.*, 330 NLRB 397 (1999) (6-12 miles); *Waste Management of Washington*, 331 NLRB 309 (2000) (42 miles); *Dattco*, 338 NLRB 49 (2002) (55 miles); *Hilander*, 348 NLRB 1200, 1204 (2006) (8 to 13 mile distance). While I recognize those Board cases dealt with the single facility presumption, an issue not presented in this case, the point regarding geographic proximity remains: large distances tend to diminish the community of interest shared by employees. Here, I find the distances involved are relatively large, particularly for the Whitman County portion of the Unit. As such, these distances weigh against finding the community of interest necessary to make the petitioned-for Unit an appropriate unit. See also *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 – 335 (2005) and *Laboratory Corp. of America Holdings*, 341 NLRB at 1083 which involved petitioned-for multi-facility units found inappropriate for, among things, failing to include other facilities at distances shorter than that involved here.

Regarding the factor of centralized control of management and supervision, the record demonstrates extensive authority is placed in the Area Managers. As such, the present case is not one where strong central control makes a subdivision sought inappropriate. Instead, the problem is that Petitioner seeks to combine a small part of one Area Manager's territory with portions of another Area Manager's territory. The Board's decisions in *Alamo Rent-A-Car*, 330 NLRB at 897, and *Bashas', Inc.*, 337 NLRB at 710, are illustrative of the problems with such an approach.

In *Alamo*, petitioner sought a bargaining unit of several classifications at two of the employer's four facilities in the San Francisco area. *Alamo Rent-A-Car*, 330 NLRB at 897. There, a Regional Director found geography, functional integration, and interchange supported a two-facility unit being appropriate. *Id.* at 898. The Board, in reversing the Regional Director's direction of election in the petitioned-for unit, found initially that functional integration and interchange did not support a two-facility unit, and highlighted that the two facilities were not separately supervised or otherwise connected. *Id.* The Board then stated in conclusion that the petitioned-for two-facility unit was not an appropriate unit because it did "...not conform to any administrative function or grouping of the Employer's operations." *Id.*

In *Bashas'*, a Regional Director directed an election in a unit consisting of employees at 17 of the employer's 26 locations on the basis the 17 locations were located in a single county. *Bashas', Inc.*, 337 NLRB at 710. The Board reversed, finding the 17-store unit sought was arbitrary and did "not conform to any administrative function or organizational grouping" of the employer. *Id.* at 711. In considering the community of interest factors, the Board also found the employees in the 17-store unit lacked common supervision, interchange, and functional integration. *Id.* See also *Laboratory Corp. of America Holdings, supra.*

Here, the record reveals the Area Manager hires an employee, sets their wage and schedule, trains them, and then is that employee's only regular contact with the Employer. Thus, an Area Manager possesses nearly all control over employees' employment in the territory, certainly all day-to-day control. Further, there is scant evidence of policies or guidelines that constrain the Area Manager's decision making. Recognizing the extent and nature of the Area Managers' authority over their respective territories and the manner in which the Employer divides the four territories in Washington State among that State's four Area Managers, I must conclude that the factor of centralized management and supervision does not favor Petitioner's position. In particular, Petitioner seeks to carve out a very small portion of Area Manager Hall's territory and combine it with only eight of approximately 12 counties falling within Alavarez' territory. In light of the above and the record as a whole, I find the factor of centralized control of management and supervision weighs against finding the petitioned-for Unit appropriate, as the Unit fails to conform to any administrative function or grouping of the Employer's operations.

Faced with the instant record, Petitioner argues on brief that it is the norm in the janitorial services industry for employees to work independently and without contact. Presumably, Petitioner's point is that the lack of functional integration or interchange should not be given controlling weight because the Employer's *entire workforce* lacks functional integration or interchange. Further, Petitioner notes Unit employees share a community of interest because there is no difference in the skills and duties or terms of conditions of employment of the Employer's entire workforce. However, Petitioner's arguments regarding these four factors, again, demonstrate the petitioned-for employees lack a community of interest among themselves separate and distinct from their excluded co-workers working in the other 30 counties in Washington State. *Laboratory Corp. of America Holdings*, 341 NLRB at 1081. In sum, Petitioner's arguments fail to support its position.

In light of the above and the record as a whole, I find that the petitioned-for Unit is not an appropriate unit in the circumstances of this case.

IV. CONCLUSION

Based on the foregoing, the entire record, and having carefully considered the parties' respective arguments, I find that the petitioned-for Unit is not an appropriate unit. Applying the factors the Board considers in multi-facility unit determinations to the record before me, I specifically find that even though employees may share a

community of interest with each other in the petitioned-for multi-facility Unit, that interest is not separate and distinct from that which they share with the Employer's other employees at other client facilities. Further, the record establishes that the petitioned-for Unit fails to conform to any administrative function or grouping of the Employer's operations. As Petitioner is unwilling to proceed to an election in any alternative unit, I have not considered units alternative to that which Petitioner sought. In view of the above and the record as a whole, I shall dismiss the petition, as it seeks a unit that is inappropriate.

V. ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **5:00 p.m. (ET) October 7, 2013**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.⁵

DATED at Seattle, Washington on the 23rd day of September, 2013.



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⁵ To file a request for review electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab.