

**Bottling Group LLC, d/b/a Pepsi Beverage Company, Employer-Petitioner and Local 406, International Brotherhood of Teamsters, Union-Petitioner.** Cases 07–UC–000638 and 07–UC–000639

March 12, 2015

DECISION ON REVIEW AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA,  
AND JOHNSON

The issue presented is whether the Regional Director properly granted the Union’s request to clarify the contractual bargaining unit at the Employer’s Grand Rapids, Michigan facility to include four Marketing Equipment Management (MEM) delivery and install employees after these employees were assigned, for reasons of convenience, to pick up their loads at the Grand Rapids parking lot instead of the Employer’s Flint, Michigan facility. The Employer seeks to exclude these same employees from the unit.<sup>1</sup>

On April 14, 2010, the Regional Director for Region 7 issued a Decision and Order granting the Union’s request to clarify the bargaining unit to include the four MEM drop & hook delivery and install employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board’s Rules and Regulations, the Employer filed a timely request for review of the Regional Director’s decision, contending that the Grand Rapids delivery and install employees are not part of the unit because they do not work *at* the Grand Rapids facility and thus are not covered by the collective-bargaining agreement’s recognition language, and that the Grand Rapids delivery and install employees cannot be found to be an accretion to the Grand Rapids bargaining unit because they have been historically excluded from the unit and do not share an overwhelming community of interest with the Grand Rapids service technicians. The Union filed a brief in Opposition.

The Employer’s request for review of the Regional Director’s Decision and Order is granted as it raises substantial issues warranting review. Having carefully con-

<sup>1</sup> Both the Union and the Employer filed unit clarification petitions.

The collective-bargaining agreement between the Employer and the Union, which has the effective dates of September 16, 2006, through September 15, 2010, provides:

The Employer recognizes and acknowledges that the Union is the exclusive representative in collective bargaining with the Employer of its Fleet Mechanics, Customer Representative, MEM and Warehouse employees, at its warehouse locations at 3700 Kraft Avenue SE, Grand Rapids, Michigan 49512 and 4900 Paul Court Road, Norton Shores, Michigan 49441, but excluding all office clerical employees, professional employees, guards and supervisors as defined by the National Labor Relations Act.

sidered the entire record, we find, for the reasons set forth below, that the four MEM employees cannot properly be clarified into the existing contractual unit at the Grand Rapids facility. Accordingly, we reverse the Regional Director’s decision, and clarify the unit to exclude the disputed employees.

I. FACTS

The Employer is engaged in the sale and distribution of beverages. Its operation consists of statewide and multistate business divisions. In Michigan, where the instant dispute arises, the Employer operates on the basis of one statewide group.

There are three types of MEM work: delivery and install, field service repair at customer locations, and shop repair. The delivery and install functions include delivering new, refurbished, or repaired vending, cooler and fountain equipment to customers; installing the equipment; and picking up other equipment from customers. The field service technicians repair the equipment at customer locations when customers report malfunctions, provide preventative maintenance, and educate customers on basic equipment repair and upkeep. Finally, “shop techs” repair equipment that is picked up from a customer for repair or refurbishing at an Employer facility. The Employer’s Flint facility is the only facility in Michigan with the shop equipment to do such repairs.

i. *The Grand Rapids Facility Pre-1997*: Until 1997, the Grand Rapids facility had a fully functioning MEM shop area, and 11 MEM employees would deliver and install vending and fountain machines and equipment *and* service and repair this same equipment at customer facilities. The customers they serviced were the Grand Rapids customer base. These employees were represented by the Union and covered by a collective-bargaining agreement.

At that time, *all* of the Grand Rapids MEM employees (including those who delivered and installed equipment) were classified as field service technicians, and were receiving the journeyman mechanic rate set forth in the operative Grand Rapids collective-bargaining agreement. Those employees were directly supervised by a Marketing Equipment supervisor who worked at the Grand Rapids facility.

ii. *1997–2009*: In 1997, the Employer centralized its delivery and install functions and relocated all employees performing that work at its 17 Michigan locations, including Grand Rapids, to a newly formed Market Equipment Operation Center (MEOC) in Lansing, Michigan, 70 miles from the Grand Rapids facility.<sup>2</sup> The de-

<sup>2</sup> In addition to centralizing the delivery and install functions in one location, the Employer also sought by this reorganization to separate

livery and install employees centralized in the MEOC operation were not represented by a union.

On February 24, 1997, when the Employer opened its new MEOC facility, all MEM delivery, install, and shop operations in Grand Rapids and in other Employer locations in the lower Peninsula of Michigan (other than Detroit<sup>3</sup>) were eliminated, and all of the equipment, tools, and parts related to the MEM shops were moved to the MEOC. The only MEM function that remained at Grand Rapids and the other affected locations was field repair service at customer sites.<sup>4</sup> As found by the Regional Director, despite the move, the delivery and install employees remained in the Employer's MEM department,<sup>5</sup> as did the field service technicians who repaired equipment and stayed in Grand Rapids.

To ensure that delivery and install work was separate from field service technician work when the MEOC opened, the Employer designed separate assignment procedures. For example, an inquiry about delivering a new piece of equipment was to be directed to the MEOC, which had procedures in place to schedule and organize the loads and deliveries. However, a call about malfunctioning equipment would be directed to the Employer's call center in Williamsport, Maryland. The call center would then access the customer's records and send the information directly to the hand-held computer of the appropriate field service technician.

All but four of the MEOC delivery and install employees started their workdays at the Lansing facility. The four exceptions were the delivery and install employees who were home based and started their workdays at a "drop & hook" location in Grayling, Michigan. The Employer created this arrangement because Grayling was so far from Lansing that, if the delivery and install employees servicing the Grayling area started every workday in Lansing, they would spend too much of their work days driving, rather than servicing customers in that area.<sup>6</sup> Although they worked remotely, the four delivery

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move activity (delivery and install) and shop activity (repair and refurbishment performed at an Employer facility) from field service technician activity, in order to speed up the performance time of these functions.

<sup>3</sup> The Detroit MEM operations were consolidated into the MEOC in 2001.

<sup>4</sup> With these changes, all of the Grand Rapids field service technicians started working out of their homes, albeit prior to 1997 some of the Grand Rapid MEM employees may already have been home based.

<sup>5</sup> Indeed, apparently all of the delivery and install employees, statewide, who were centralized in Lansing after MEOC was created, remained part of the MEM department.

<sup>6</sup> Under the drop & hook operation, employees would load a trailer with equipment in Lansing that would be needed at the Grayling location over the next few days. A driver from Lansing would then haul the trailer to Grayling, drop it in a parking lot rented by the Employer,

and install employees in the Grayling drop & hook operation were included on the Lansing seniority list, attended employee meetings and trainings at Lansing, and were treated as Lansing employees for all purposes.

When the MEOC was established, the four Grand Rapids delivery and install technicians transferred to Lansing in order to retain their jobs within the MEM classification. This left six MEM employees at Grand Rapids, all of whom were field service technicians getting paid at the journeyman mechanic rate.<sup>7</sup> None of the four who moved to the MEOC stayed in the MEOC work force for long—one retired, one died, and two moved back to Grand Rapids as field service technicians covered by the Grand Rapids collective-bargaining agreement when vacancies arose.

iii. *Since November 2009:* In November 2009, the Employer closed the Lansing facility and moved the MEOC to Flint, which is 113 miles from the Grand Rapids facility.<sup>8</sup> This meant that Flint-based delivery and install employees who serviced areas near the Employer's facilities in western Michigan—Grand Rapids, Muskegon, Coldwater, Kalamazoo, and St. Joseph—would be traveling greater distances and would spend about 2 additional hours a day driving.

In order to reduce that driving time, the Employer decided to establish a second "drop & hook" location in Grand Rapids. The Employer posted openings for four delivery and install employees for the Grand Rapids drop & hook operation at its soon-to-close Lansing MEOC, and included the Grayling drop & hook employees in the bidding process. When the Flint MEOC opened, the four successful bidders became home-based employees who began their workdays at the parking lot of the Grand Rapids facility, where they picked up their vehicles and equipment.

The establishment of the Grand Rapids drop & hook location was the only change in the Michigan MEM operations as a result of the relocation of the MEOC from Lansing to Flint. Otherwise, the four disputed Grand Rapids drop & hook employees continued to be a part of the Employer's statewide delivery and installation operations centered in Flint, continued to be directed and su-

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hook up a trailer that had been used by the Grayling drop & hook delivery and install employees in the past few days, and haul back to Lansing whatever equipment that had been picked up or parts that had not been used. The Grayling drop & hook delivery and install employees would then report to the Grayling parking lot each day to pick up the trailer to use in their work.

<sup>7</sup> One of the Grand Rapid MEMs retired about that time.

<sup>8</sup> The Employer moved the MEOC operation to Flint in order to be closer to its business activity in southeastern Michigan. Additionally, the lease on its Lansing facility was about to expire, and the Employer owned the Flint facility.

pervised by Flint personnel, and performed work that had been centralized on a statewide basis for 12 years.

Currently there are five home-based field service technicians in the unit working out of Grand Rapids, all of whom are covered by the collective-bargaining agreement.<sup>9</sup>

iv. *Community-of-Interest Factors: Supervision:* The Grand Rapids drop & hook delivery and install employees report to a different immediate supervisor from the Grand Rapids field service technicians. There is common higher-level supervision, as the Employer's business unit MEM operations manager, Erik Kline, who works out of Auburn Hills, Michigan, is responsible for the MEM in Michigan and thus ultimately oversees the Grand Rapids MEM service and repair technicians as well as the delivery and install employees.<sup>10</sup> The delivery and install employees also have a human resources manager different from the field service technicians in Grand Rapids.

*Wages and Benefits:* The classifications for the Grand Rapids MEM department are general vending, trainee mechanic, and journeyman mechanic. As of September 15, 2009, these employees earned \$19.50 per hour, \$19.60 per hour, and \$20.25 per hour, respectively. All of the current MEM employees covered by the Grand Rapids collective-bargaining agreement are classified as field service technicians and are paid the journeyman mechanic rate.

The Grand Rapids drop & hook delivery and install employees who install fountains earn 40 cents an hour more than the Grand Rapids service technicians who are covered by the collective-bargaining agreement, and the unit vending machine and cooler employees are paid 20 cents an hour less. The benefits paid to the Grand Rapids drop & hook delivery and install employees are the same as all other Flint MEOC employees. The delivery and install employees are eligible for disability insurance payments of \$550 per week whereas the Grand Rapids unit employees receive \$425 per week. The Grand Rapids drop & hook employees and the Grand Rapids field

<sup>9</sup> The unit consists of fleet mechanics, customer representative, MEM and warehouse employees employed at the Employer's Grand Rapids warehouse.

<sup>10</sup> The top MEM manager at the Flint facility is Jeff Griessel. Marketing Equipment Supervisor Matt Chatel, who is home based and reports to Griessel, supervises the field service technicians at Grand Rapids, Coldwater, St. Joseph, and Kalamazoo. The two Marketing Equipment supervisors for the Grand Rapids delivery and install employees (one for all delivery employees and another one for all fountain install employees) are located in Flint.

service employees have different work schedule options<sup>11</sup> and varied vacation and personal day benefits.<sup>12</sup>

*Seniority:* The Flint MEOC employees, including the Grand Rapids drop & hook delivery and install employees, operate under a single seniority system that is separate from the Grand Rapids field service technicians who are covered by a collective-bargaining agreement. This seniority is used for bidding on job vacancies, vacation coverage, and fifth-day overtime in the statewide, Flint-based delivery and install operation.

For example, when the Grand Rapids drop & hook delivery and install positions became available, they were posted in the Lansing MEOC for *MEOC employees only* (including Grayling). The four disputed employees bid for those positions; the most senior qualified employees were selected. Had the Employer not filled these positions through the MEOC posting, it would have then posted the position at all 17 sales locations in Michigan. Similarly, were a Grand Rapids drop & hook employee to resign, the vacancy would first be posted within the Flint MEOC operation, and then, if not filled, opened up to all 17 locations.<sup>13</sup>

Grand Rapids drop & hook delivery and install employees, unlike the field service technicians, can also bid to cover vacations or personal day absences by Flint delivery and install employees, including those at Grayling. Flint MEOC employees at Flint and Grayling are eligible to bid to cover vacations or personal day absences of Grand Rapids drop & hook employees. These openings are posted for bidding and the most senior qualified MEOC employee will get the work.<sup>14</sup>

<sup>11</sup> The collective-bargaining agreement allows MEM employees to work a flexible workweek, including Monday through Friday, Tuesday through Saturday, or Wednesday through Sunday, or a workweek consisting of 4 10-hour days. The delivery and install employees work a 4-day/10-hour schedule.

<sup>12</sup> Under the Grand Rapids collective-bargaining agreement, bargaining unit employees get 1 week vacation after 1 year of service; 2 weeks vacation after 2 years, 3 weeks after 6 years, and 4 weeks after 12 years. These employees are also entitled to personal days (3 after 1 year, 5 after 2 years, and 6 after 3 years). Grand Rapids drop & hook delivery and install employees, on the other hand, receive 1 week of vacation after 6 months of service, 2 weeks after 1 year, 3 weeks after 5 years, and 4 or 5 weeks after 10 years (current employees can receive up to 5 weeks; however, pursuant to national policy, new hires are limited to 4 weeks). The Grand Rapids drop & hook employees are each entitled to 7 personal days each year.

<sup>13</sup> Once a posting goes statewide, seniority for qualified individuals remains a relevant consideration but is not the deciding factor; it is considered along with work styles, preferences, performance history, attendance, and leadership skills. If the positions are not filled after the statewide posting, the Employer will then post it externally.

<sup>14</sup> The employees covering the absences do not pick up their loads at Flint, but, like the Grand Rapids drop & hook employees, begin their work every day by going to the Grand Rapids parking lot to get their vehicle and equipment.

Finally, Grand Rapids drop & hook employees work 4 10-hour days per week, Monday through Thursday. If there is a fifth day of overtime for delivery or install work at any location—Flint, Grayling, or Grand Rapids—all Flint employees, including the Grand Rapids (and Grayling) drop & hook employees, can bid on it and will receive it if they are the senior bidders qualified to deliver and install work and are available for the overtime. Grand Rapids field service technicians are not permitted to bid for this work because they are not on the Flint seniority list.

*Service Areas:* Since November 2009 when the MEOC was consolidated in Flint, the Flint MEOC has provided install and delivery service for the area east of Highway M-127, primarily centered around metropolitan Detroit in southeastern Michigan. The Grand Rapids drop & hook install and delivery employees have serviced the area west of M-127, from the Ohio border north to Muskegon/Mt. Pleasant, primarily centered around Grand Rapids up to Muskegon, and down to Kalamazoo. The four home-based Grayling delivery and install employees have serviced the northern Michigan area, above Mt. Pleasant.

These service areas are not exclusive, however, and there is overlap of service coverage, especially along M-127. Thus, Grand Rapids drop & hook employees do many of the deliveries and installs in the areas near the Employer's facilities in Grand Rapids, Norton Shores, St. Joseph, Kalamazoo, and Coldwater, but delivery and install employees who work out of the Flint location can and do make deliveries or installations in those same areas.

Indeed, Mathew Hilton, director of MEM operations, testified that while the Employer tries to keep the same employees in general areas that they are familiar with, they can be deployed elsewhere. The assignments are not based on defined geographic territories, but on age of order, priority of customer, type of equipment, and whether the equipment is in inventory.<sup>15</sup> MEM Operation Manager Eric Kline similarly testified that the Grand Rapids drop & hook employees are not the only ones performing MEM delivery and install work in areas around Grand Rapids, and that Flint-based employees can similarly perform this work.<sup>16</sup> However, the evi-

<sup>15</sup> It is possible, for example, that 1 day a delivery to a certain location could be delivered out of Grayling and 2 days later a delivery to the location point next door could be delivered out of Flint (or Lansing before that).

<sup>16</sup> For example, if a job is too big for a Grand Rapids drop & hook fountain team and the customer needed the job done right away, the Employer would schedule a team from Flint to meet the Grand Rapids drop & hook employees at the delivery site. Also, if a Grand Rapids

dence is not specific regarding whether any particular assignment of a Flint employee to the Grand Rapids service area is based on coverage for absences or other work needs.<sup>17</sup>

Further, the evidence shows that the Grand Rapids drop & hook delivery and install employees deliver to a significantly larger service area than the Grand Rapids field service technicians, notwithstanding that there is significant overlap in their service areas.<sup>18</sup>

*Contact and Interchange:* There is little contact and virtually no interchange between the Grand Rapids drop & hook delivery and install employees and the Grand Rapids field technicians.

Grand Rapids (and Grayling) drop & hook delivery and install employees attend meetings and trainings at the Flint facility, which are not attended by the Grand Rapids field service technicians.<sup>19</sup> Although the Regional Director found that the Grand Rapids service technicians have been invited to MEOC parties and have attended, the record contains only one example where the Grand Rapids field service technicians, along with every

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drop & hook employee is absent, a Flint employee might cover for that employee.

<sup>17</sup> Emp. Exh. 2 is a one-page map of a portion of Michigan that documents delivery and install activity from November 30, 2009, to March 10, 2010, originating from Flint, Grand Rapids, and Grayling, which shows that the Grand Rapids drop & hook employees have done most of the delivery and install work in and around the Employer facilities in Norton Shores, Grand Rapids, St. Joseph, Kalamazoo, and Coldwater. However, it also shows that Grand Rapids drop & hook employees have made deliveries or installs as far north as Cadillac and as far east as Standish, and that Flint-based employees have made deliveries or installs in and around Grand Rapids, Muskegon, Kalamazoo, Coldwater, and St. Joseph. As explained by MEM Manager Kline, the deliveries and installs made by Flint employees in the Muskegon area, part of the Grand Rapids service area, can be explained either by a Flint MEOC employee covering for a Grand Rapids drop & hook employee (due to absence), or a Flint MEOC employee leaving directly from Flint because of an assigned delivery. He testified, however, that the data on the map does not distinguish these types of assignments.

<sup>18</sup> Emp. Exh. 3 contains data for the November 30, 2009, to March 10, 2010 period and compares the areas that Grand Rapids delivery and install employees delivered to with the areas serviced by the Grand Rapids field service technicians (also including Norton Shores, the other facility covered by the collective-bargaining agreement). The exhibit also shows the location of customers serviced out of the Grand Rapids facility (including Norton Shores). Emp. Exh. 3 shows that the area serviced by the Grand Rapids drop & hook employees is significantly larger than the area serviced by the Grand Rapids field service technicians: the drop & hook deliveries extend much further south and east (although the field service representatives go further north than the drop & hook employees).

<sup>19</sup> The Grand Rapids drop & hook employees attended a health fair at Flint several weeks prior to the hearing in this case. The Grand Rapids field service technicians did not attend. About 5 weeks before the hearing, Grand Rapids drop & hook employees attended a training session in Flint.

other MEM employee in Michigan, were invited to an annual Tigers baseball outing.

A Grand Rapids drop & hook employee, like any other delivery and install employee, might call a field service technician for advice when there is a problem in connection with the installation of equipment, such as a leak.<sup>20</sup> However, if a Grand Rapids drop & hook employee is doing an installation in Grand Rapids or elsewhere, the employee does not have to call a Grand Rapids field service technician for advice, but could call any field service technician at any location.<sup>21</sup>

Regarding interchange, the record shows that after 1997, the Grand Rapids field service technicians no longer performed delivery and install functions but performed repair functions. The record contains generalized testimony that a field service technician might be asked to fill in for a sick or absent delivery and install employee as a last resort, but no specific examples were adduced. In this regard, MEM Operator Manager Kline testified that in such a situation, the drop & hook delivery and install employee could deliver the equipment the next day or a delivery and install employee from Flint might make the delivery, and that, in any event, a field service technician would not be asked to fill in as a delivery and install employee for the entire day, and any such substitution “would be very, very last case scenario.”<sup>22</sup> Further, the delivery and install employees would

<sup>20</sup> MEM Operation Manager Kline testified that if there was a leak, the Grand Rapids drop & hook employees would first call their supervisor, who would help troubleshoot. The employee might also call the Marketing Equipment manager, the supplier, or a field service technician for advice.

<sup>21</sup> The employee might call a field service technician with specialized knowledge about the problem or just call the nearest facility. Grand Rapids field service technician Terry Fishburn testified that if a Grand Rapids drop & hook employee needed parts or technical advice, the employee might call him at home, typically to discuss how to fix a machine or to inquire whether Fishburn might need to come to the delivery site with a part to fix the problem. Fishburn also testified, however, that he fielded such calls from MEOC delivery and install employees in his role as a field service technician even before the drop & hook program in Grand Rapids was created, and this practice remained the same after the Grand Rapids drop & hook program began.

<sup>22</sup> Field service technician Fishburn testified that since returning to Grand Rapids in 1998 after transferring to the MEOC in 1997, he has not delivered a vending machine or a fountain. In response to a question about whether he has delivered coolers, he testified that he has “had coolers in the back of my van, yes.” He thereafter clarified that at the Lansing MEOC he performed delivery and install functions with vending machines and coolers but he has not done so since returning to Grand Rapids. Mathew Hilton, director of MEM operations, testified that after the consolidation of the delivery and install equipment from all of the Michigan facilities at Lansing, “the likelihood of somebody [from another facility] having access to a piece of equipment and installing a piece of equipment is not very likely.” MEM Operator Manager Kline testified that if the Grand Rapids drop & hook employees have a problem and cannot get the equipment installed properly, the

not be asked to perform the functions of the field service technicians.

## II. THE REGIONAL DIRECTOR’S DECISION

The Regional Director found that this case does not involve “the placement of employees at a new facility who perform work that was never performed by employees in the existing bargaining unit,” and thus a traditional accretion analysis is not warranted. *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). Instead, relying on *Developmental Disabilities Institute, Inc.*, 334 NLRB 1166, 1168 (2001) (“[o]nce it is established that a new classification is performing the same basic functions as a unit classification historically had performed, the new classification is properly viewed as belonging in the unit rather than being added to the unit by accretion”), he found that the Grand Rapids delivery and install employees perform the same basic delivery and install functions that historically have been performed by unit employees at this same facility, in that MEM department employees at the Grand Rapids facility previously delivered and installed equipment as part of the unit work. He further found that the unit description in the collective-bargaining agreement covering the Grand Rapids facility has never been altered and continues to encompass the MEM work assigned to the delivery and install employees. According to the Regional Director, this MEM work has not changed such that it should be severed from the unit, and the delivery and install employees continue to share a sufficient community of interest with the field service technicians who also work under the MEM classification at the Grand Rapids facility to warrant inclusion in the unit. He found that the delivery and install work was not eliminated from the MEM department, but was merely relocated from Grand Rapids to Lansing, and then returned to Grand Rapids, and that the Board is reticent to overturn long-existing historical units. *Batesville Casket Co.*, 283 NLRB 795, 797 (1987).

## III. ANALYSIS

Contrary to the Regional Director, we do not find that the Grand Rapids drop & hook delivery and install employees belong in the contractual unit. For 12 years, the Grand Rapids delivery and install drop & hook employees have been part of the MEOC operation, now based in Flint, and not the Grand Rapids facility operation. Further, because the delivery and install employees have been historically excluded from the Grand Rapids collective-bargaining agreement for this 12-year period, accre-

Grand Rapids field service technicians would not typically back them up because “our system isn’t set up like that and our structure isn’t set up like that. But in the worst case scenario, it may happen, yes. But that’s not how our structure is set up.”

tion is not appropriate. Finally, the evidence fails to establish that the Grand Rapids delivery and install employees have little or no separate identity from, or that they share an overwhelming community of interest with, the Grand Rapids field service technicians.

As discussed above, since 1997, all delivery and install functions have been centralized in the MEOC operations, first in Lansing and then in Flint, and removed from the Grand Rapids facility as well as the other 16 locations. The Grand Rapids field service technicians have not performed delivery and install functions since 1997.<sup>23</sup> In November 2009, when the MEOC moved to Flint, it established the Grand Rapids drop & hook operation, modeled after the similar Grayling operation, and assigned the four disputed MEOC delivery and install employees to operate out of the Grand Rapids parking lot purely for convenience and efficiency purposes. The disputed employees remained part of the MEOC operations; kept the same supervisor, seniority opportunities, and wages and benefits; continued to receive their assignments through the MEOC (and not the call center, which routed the field service technician assignments); performed their functions in a larger geographical service area; and attended meetings as needed in the Flint location.<sup>24</sup> Under these circumstances, we find that these home-based drop & hook delivery and install employees did not become part of the Grand Rapids operation when they were assigned in November 2009 to pick up their loads at the Grand Rapids parking lot. See *ADT Security Services*, 355 NLRB 1388 (2010), enfd. 689 F.3d 628 (6th Cir. 2012) (home-based servicemen retained separate identity, as they were never employed “at” the Wyoming facility after the consolidation of operations at that facility, but worked in the field and only reported to that facility about once a week to obtain parts and supplies).<sup>25</sup> See

<sup>23</sup> As stated above, there was general testimony that they might be asked to fill in on an ad hoc basis for a delivery and install employee who was a last minute no-show, but the record contained no specific examples. Further, this would only occur as a last resort and would not constitute an entire day’s work.

<sup>24</sup> Although the Regional Director found that “[t]he Grand Rapids delivery and install employees record their time worked utilizing the same computer as the service technicians” and “report to the Grand Rapids facility at least twice a week to record their time,” the record shows that each employee uses a personal hand-held computer to record the employee’s hours, and there is no evidence that they go to the facility in order to record their time.

<sup>25</sup> In *ADT Security Services*, supra, the Board adopted the administrative law judge’s finding that the employer unlawfully withdrew recognition from the union as the representative of 14 servicemen at its facility in Kalamazoo, Michigan. The Board rejected the employer’s contention that the servicemen were merged into a group of 27 nonrepresented servicemen at the Wyoming facility after services were consolidated at that facility, and the union did not represent a majority of servicemen in the merged unit. In that case, the employer did not meet

also *AT Wall Co.*, 361 NLRB 695, 697–699 (2014) (finding no accretion where employees retained separate identity, distinguishing *Premcor, Inc.*, 333 NLRB 1365, 1366 (2001), and *Developmental Disabilities*, supra).

In addition, even assuming arguendo that the delivery and install work is now being performed at the Grand Rapids facility, this work has historically been excluded from the bargaining unit. The Board will not entertain a unit clarification petition seeking to accrete a historically excluded classification into the unit, unless the classification has undergone recent and substantial changes. See, e.g., *Bethlehem Steel Corp.*, 329 NLRB 243, 243–244 (1999). Here, as discussed, the delivery and install functions were centralized in the MEOC operations and removed from the Grand Rapids field service technician duties for 12 years. Even now, apart from generalized but unsubstantiated testimony that field service technicians might perform a delivery and install function as a last resort for an absent delivery and install employee, the record shows that the work of delivery and install employees and field service technicians is completely separate, unlike in the pre-1997 period when the field service technicians also performed delivery and install functions. Indeed, the Grand Rapids drop & hook delivery and install employees have remained part of the MEOC operations and the only change that has occurred is that these four disputed employees now pick up their loads in the Grand Rapids parking lot instead of at Flint.

Thus, unlike the Regional Director, we find this case to be similar to *Coca-Cola Bottling Co. of Wisconsin*, 310 NLRB 844 (1993), where the petitioner sought to clarify the existing unit of warehouse distribution, sales, drivers, mechanics, and vending machine repair employees to include recently hired production (bottling) employees. Contrary to the Regional Director in that case, the Board excluded the production employees from the unit, finding that it was immaterial that the production employees were included in the recognition clauses in successive collective-bargaining agreements.<sup>26</sup> The Board relied on the facts that the production employees were hired when the employer resumed production operations after a 12-

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its burden to establish that compelling circumstances were present to overcome the 29-year-old-bargaining relationship between the employer and the union. Even after the closure of the Kalamazoo facility, the employees in the unit continued to perform the same work in the same geographical area under largely unchanged terms and conditions of employment, receiving their assignments from a national dispatch center. The closing of the Kalamazoo facility was found by the Board majority to be of less significance than it would have been had the unit employees performed work at the Wyoming facility.

<sup>26</sup> The Regional Director alternatively found that the production employees should be included because of their close community of interest with unit employees.

year hiatus,<sup>27</sup> and the production employees had a community of interest separate and apart from the current bargaining unit employees. Although the Employer in the instant case did not eliminate the delivery and install functions and employees, the Employer centralized these functions in the MEOC operations and removed them from the Grand Rapids facility (and all of the Michigan locations) for 12 years, and they remained separate even after the Grand Rapids drop & hook delivery and install employees began picking up their loads at the Grand Rapids parking lot.<sup>28</sup>

Finally, we do not find that accretion is warranted in this case under a traditional accretion analysis. Under the well-established accretion standard set forth in *Safe-way Stores, Inc.*, 256 NLRB 918 (1981), “the Board has found a valid accretion only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted” (footnotes omitted). See also *NV Energy*, 362 NLRB 14, 16 (2015); *AT Wall*, supra, 361 NLRB 695, 697; *Milwaukee City Center, LLC*, 354 NLRB 551, 552–553 (2009); *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005), enf. 181 Fed. Appx. 85 (2d Cir. 2006). In determining whether a

new operation is an accretion, the Board has given weight to a variety of factors including integration of operations, centralization of management and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, degree of separate daily supervision, and degree of employee interchange. *NV Energy*, supra, 362 NLRB 14, 16–17. However, the Board has held that the “two most important factors”—indeed, the two factors that have been identified as ‘critical’ to an accretion finding—are employee interchange and common day-to-day supervision,” and therefore “the absence of these two factors will ordinarily defeat a claim of lawful accretion.” *Frontier Telephone of Rochester, Inc.*, supra, 344 NLRB at 1271 and fn. 7, quoting *E. I. Du Pont, Inc.*, 341 NLRB 607, 608 (2004). See also *AT Wall*, supra, at 695, 699.

Here, the evidence fails to show that the Grand Rapids drop & hook delivery and install employees have little or no separate group identity and share an overwhelming community of interest with the preexisting unit. On the contrary, the evidence shows that the Grand Rapids drop & hook delivery and install employees retain a separate identity by virtue of their 12-year, ongoing connection to the MEOC operation, their separate seniority and bidding rights for jobs and overtime not available to field service technicians, differences in their wages and benefits, and their larger geographic service area. Significantly, they have separate direct supervision (as well as a separate human resources manager) and evidence of interchange with field service technicians is practically nonexistent.

#### IV. CONCLUSION

Under these circumstances, we find, contrary to the Regional Director, that the four disputed home-based delivery and install employees who are assigned to pick up their loads at the Grand Rapids facility are part of the MEOC operation and were improperly included in the Grand Rapids bargaining unit.

#### ORDER

The Regional Director’s Decision and Order Granting Petition for Unit Clarification is reversed, and the unit is clarified to exclude the home-based delivery and install employees.

<sup>27</sup> The Board found that “[i]n representation cases in general and unit clarification proceedings in particular, the Board looks to the actual, existing composition of units and to employees actually working to determine the composition of units, not to abstract grants of recognition.” *Id.*

<sup>28</sup> Cf. *F & A Food Sales*, 325 NLRB 513 (1998), enf. 202 F.3d 1258 (10th Cir. 2000). In that case, the Board, distinguishing *Coca-Cola Bottling*, supra, found that the employer unlawfully refused to bargain with the union as the bargaining representative of its drivers and helpers, where the employer terminated its drivers and helpers in February 1994, closed its transportation department, subcontracted the work with the union’s agreement, and then in 1995 again took over the operation of the transportation department and hired drivers and driver’s helpers. In that case, the Board found that when the employer restored its transportation department and hired the subcontractor’s employees as drivers and helpers, the employees were covered by the unit description in the collective-bargaining agreement’s recognition clause and by the certification, particularly noting that the subcontracting of the work, the termination of the drivers and the driver’s helpers, and the return of the work and employees in the driver and driver’s helpers classifications to the respondent’s operations occurred during the period of a single collective-bargaining agreement, and within approximately 3 years of the certification of the unit.