

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
THIRTIETH REGION**

HB PERFORMANCE SYSTEMS, INC.

Employer-Petitioner

and

Case 30-UC-417

UNITED STEELWORKERS LOCAL 8149

Union

DECISION AND ORDER GRANTING UNIT CLARIFICATION

INTRODUCTION

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act (“Act”), as amended, a hearing was held before a hearing officer of the National Labor Relations Board (“Board”), to determine whether to clarify an existing bargaining unit of HB Performance Systems, Inc. (“Petitioner”) employees working at its Mequon, Wisconsin facility to not include, through accretion, certain employees working at a company (Sun Components, Inc.) that Petitioner’s parent corporation recently acquired and relocated to Milwaukee, Wisconsin.¹ Based upon a careful review of the record, I conclude that the employees at these two facilities lack the necessary community of interest for accretion to be appropriate and, therefore, grant Petitioner’s unit clarification petition.

¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. Petitioner, HB Performance Systems, Inc., a Delaware corporation, is engaged in the business of designing, manufacturing and assembling non-automotive brake systems. Petitioner’s principal place of business is located at 5800 W. Donges Bay Road in Mequon, Wisconsin. During the past calendar year, Petitioner has had gross annual revenues, from all sales, in excess of \$500,000, including gross revenues from sales directly outside the State of Wisconsin in excess of \$50,000. Petitioner is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Union is a labor organization within the meaning of the Act.
4. The Union is the exclusive bargaining agent for “all production and maintenance employees, including truck drivers, employed at the Company located at 5800 West Donges Bay Road, Mequon, Wisconsin for the purpose of collective bargaining in respect to rates of pay, hours of employment and other conditions of employment. Office clerical employees, professional employees, guards, and supervisors as defined in the Act are not in the collective bargaining unit and shall not be covered by this Agreement.”
5. Timely briefs from the Union and Petitioner have been received and duly considered.

FACTS²

Petitioner operates a production facility at 5800 W. Donges Bay Road in Mequon, Wisconsin, where it primarily designs, manufactures and sells brake systems for motorcycles, all-terrain vehicles, snowmobiles, certain specialty products (e.g., large tractors), and bicycles. The United Steelworkers Local 8149 (“Union”) currently represents a bargaining unit of approximately 225 employees at the Donges Bay Road facility. The current collective bargaining agreement between Petitioner and the Union covering these employees is dated February 24, 2003 to June 30, 2007 (“Agreement”).

On July 8, 2005, Petitioner’s parent corporation, HB Performance Holdings, LLC, acquired Sun Components, Inc., an Indiana corporation engaged in the production of aluminum wheels and rims for bicycles, motorcycles, wheelchairs, and lawn and garden equipment. At the time of the acquisition, Sun Components, Inc. had a manufacturing facility in Warsaw, Indiana, and a warehouse in Manchester, Indiana. There were approximately thirty employees working at these two Indiana facilities. Sun Components, Inc. also owned stock in Zhejiang Sun Metal Products, which operates a manufacturing facility in China, and Sun Sourcing, which operates a facility that sources parts and components in China. A majority of Sun Components’ products were/are made at these two facilities in China.

In the months following the acquisition, the two Indiana facilities were closed and most of the employees working there were laid off. Some of the manufacturing work that had been performed at these facilities has since been relocated to the China facilities, and some of the manufacturing work, primarily finishing work, has since been relocated to a recently opened facility at 6750 West Florist Avenue in Milwaukee, Wisconsin. There are approximately nine full-time and seven temporary employees working at this Florist Avenue facility.

² The Union’s primary argument in favor of accretion is based on its claim that Sun Components, Inc. and HB Performance Systems, Inc. are a single employer. Assuming for the purpose of this decision that the two entities are a single employer, such a finding does not require accretion where the employees working for the two entities constitute separate, appropriate units. As such, single employer status is not determinative in this case.

In early March 2006, the Union filed a grievance, claiming that the terms of the Agreement should be applied at the Florist Avenue facility. Petitioner denied the grievance and later filed this petition to seek clarification as to whether the Florist Avenue employees should be accreted into the existing bargaining unit.

DISCUSSION³

An accretion is the incorporation of employees into an already existing larger unit when such a community of interest exists among the entire group that the additional employees have little or no separate group identity. Thus, the additional employees are properly governed by the larger group's choice of bargaining representative. *NLRB v. Security-Columbian Banknote Co.*, 541 F.2d 135, 140 (3rd Cir. 1976); *Giant Eagle Markets Co.*, 308 NLRB 206 (1992); *Safeway Stores*, 256 NLRB 918 (1981). The fundamental purpose of the accretion doctrine is to "preserve industrial stability by allowing adjustments in bargaining units to conform to new industrial conditions without requiring an adversary election every time new jobs are created or other alterations in industrial routine are made." *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468, 473 (2nd Cir. 1985). However, because accreted employees are absorbed into an existing bargaining unit without an election or other demonstrated showing of majority status, the accretion doctrine's goal of promoting industrial stability places it in tension with the right of employees to freely choose their bargaining representative. The Board, therefore, follows a restrictive policy in applying the accretion doctrine. *Safeway Stores, supra*; *The Wackenhut Corp.*, 226 NLRB 1085, 1089 (1976). Accretion is appropriate "only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest

³ The Board does not permit clarification of a unit mid-contract when that unit is clearly defined by the parties' agreement. *Wallace Murray Corp.*, 192 NLRB 1090 (1971). However, the Board has consistently entertained unit clarification petitions to settle questions whether employees in new or newly acquired facilities are an accretion to an existing unit. *Super Valu Stores*, 283 NLRB 134, 135-136 (1987); *Pilot Freight Carriers*, 208 NLRB 853 fn. 8 (1974); *Germantown Development Co.*, 207 NLRB 586 (1973). Accretion determinations do not depend upon contract interpretation but involve the application of statutory policy, standards, and criteria and are matters for decision by the Board rather than an arbitrator. *Marion Power Shovel*, 230 NLRB 576, 577-578 (1977). In the instant situation, the issue presented is whether the existing unit should be clarified to exclude employees at a newly acquired facility. Accordingly, this determination is one for the Board to make. *Super Valu Stores*, 283 NLRB at 135.

with the preexisting unit to which they are accreted.” See *E.I. Dupont De Nemours, Inc.*, 341 NLRB 607, 608 (2004), quoting *Ready Mix USA, Inc.*, 340 NLRB 946, 954 (2003).⁴

In determining whether the requisite overwhelming community of interest exists to warrant an accretion, the Board considers many of the same factors relevant to unit determinations in initial representation cases, i.e., integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective bargaining history, degree of separate daily supervision, and degree of employee interchange. See *E.I. Du Pont*, *supra*, at 608; *Compact Video Services*, 284 NLRB 117, 119 (1987). However, as stated in *E.I. Du Pont*, *supra*, at 608, and reiterated in *Frontier Telephone of Rochester, Inc.*, 344 NLRB No. 153, at slip op. 2 (2005), the Board finds 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. See also *Super Valu Stores*, 283 NLRB 134, 136 (1987), citing *Towne Ford Sales*, 270 NLRB 311, 312 (1984).⁵

⁴ In *Frontier Telephone of Rochester, Inc.*, 344 NLRB No. 153, slip op. at 2, fn. 6 (July 29, 2005), the Board noted the different community of interest test that is to be applied in deciding accretion versus the test applied in deciding appropriate units in initial representation cases. In the initial representation context, the Board will certify any unit that is an appropriate unit, even if it is not the most appropriate unit. See *id.* citing *Bartlett Collins*, 334 NLRB 484 (2001). In the accretion context, however, the Board noted that “[a] group of employees is properly accreted to an existing bargaining unit when they have such a close community of interests with the existing unit that they have no true identity distinct from it.” See *id.* citing *NLRB v. St. Regis Paper*, 674 F.2d 104, 107-108 (1st Cir. 1982).

⁵ The Union relies on *John P. Scripps Newspaper Corp.*, 329 NLRB 854 (1999) (cited by the Board as “*The Sun*”) to support its argument. *The Sun* involved a unit clarification of employees working in the same facility performing work that arguably fell within the scope of the recognition clause defining the unit based on “work performed.” The Union relies on the *The Sun* to argue that because the evidence establishes that Sun Components, Inc. and HB Performance Systems, Inc. are functionally integrated, the burden shifts to Petitioner to prove that a combined unit of Petitioner’s production and maintenance employees and Sun Components’ production and maintenance employees is inappropriate. I reject this contention. The Board’s accretion analysis in *The Sun* is inapplicable because it involves a completely different fact pattern than the instant matter. In particular, unlike in the *The Sun*, and contrary to the Union’s claims, there is insufficient evidence of functional integration in the instant case. And, even if such evidence existed, Petitioner has presented adequate evidence to mitigate against finding accretion, including no employee interchange and no common day-to-day supervision.

In applying these factors, I find that accretion is not appropriate in the instant case.⁶ First, there is no employee interchange among the bargaining unit employees and those who would be accreted into the bargaining unit.⁷ In fact, it appears that few of Petitioner's bargaining unit employees have visited the Florist Avenue facility. The evidence of contact among the production and maintenance employees from these two facilities appears limited to a few training sessions that were held together at the Donges Bay facility. Second, although Petitioner's human resource department assisted in the initial relocation, staffing and set-up of the Florist Avenue facility, there is no common day-to-day supervision. Tom Porter, the Distribution Manager for Sun Components, Inc., supervises the production employees at the Florist Avenue facility, and he has no supervisory authority over employees working for Petitioner. Similarly, there is no evidence that the supervisors at the Donges Bay facility have any responsibilities toward the employees at the Florist Avenue facility. Third, while the employees arguably may have similar skills, there is no evidence the employees working at one facility have or could perform the job duties of the employees at the other facility. Fourth, there are several differences among the terms and conditions of employment, including insurance, retirement benefits, pay periods, overtime rules, wage increases, etc. Finally, in the thirty-four years that the parties have had a collective bargaining relationship, they have never extended the terms of their collective bargaining relationship to any other facility. Based on the foregoing, I find that there is not a sufficient community of interest to warrant accretion.

⁶ There are, of course, factors that favor accretion in this case. For example, there is commonality in upper management. Specifically, Rhonda Kirkwood is the Vice President and General Manager for both the Petitioner and Sun Components. Some of Petitioner's non-bargaining unit employees assisted in the relocation, step up, and start up of the Florist Avenue facility, including helping with human resources, information technology, and finances, and the Petitioner's corporate offices continue to provide assistance in these areas. Additionally, the Florist Avenue and Donges Bay Road facilities are approximately six miles apart. Finally, there is some degree of similarity between the two facilities as to how they produce, ship, and sell their products, as well as certain similar customers. These factors, however, are insufficient to overcome the evidence against finding accretion.

⁷ Some non-bargaining unit employees who worked for Petitioner have since accepted positions at Sun Components, Inc., primarily in management, sales, and engineering. As of the date of the hearing, no bargaining unit employees had sought positions at the Florist Avenue facility, and no Sun Components' employees had sought positions at the Donges Bay facility. There is no policy preventing the consideration of such applications if submitted for posted or advertised positions at either facility.

ORDER

It is hereby ordered that the petition for unit clarification is granted. The bargaining unit shall not include the employees working at the Florist Avenue facility.⁸

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **August 23, 2006**.

OTHER ELECTRONIC FILINGS

In the Regional Office's initial correspondence, the parties were advised that the Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the Board web site: www.nlr.gov.

Signed at Milwaukee, Wisconsin on August 9, 2006.

/s/ Irving E. Gottschalk
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⁸ The Decision and Order Granting Unit Clarification herein does not constitute a recertification of the Union.