

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

In the Matter of:

FORD MOTOR COMPANY

Respondent,

and

Case No. 07-CA-198075

LOCAL 324, INTERNATIONAL UNION OF  
OPERATING ENGINEERS (IOUE), AFL-CIO

Charging Party,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), AFL-CIO and its LOCAL 245

Intervenors.

**REPLY IN SUPPORT OF RESPONDENT’S EXCEPTIONS TO THE DECISION AND  
ORDER OF ADMINISTRATIVE LAW JUDGE DAVID I. GOLDMAN**

**I. INTRODUCTION<sup>1</sup>**

Respondent Ford Motor Company (“Ford”) hereby files this Reply Brief in Support of its Exceptions to the Decision and Order (“Decision”) of Administrative Law Judge David I. Goldman (“ALJ”). Because Counsel for the General Counsel (“GC”) has failed to effectively rebut the arguments set forth by Ford, the Company’s Exceptions should be granted.

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<sup>1</sup>Joint Exhibits, Respondent’s Exhibits, Intervenor Exhibits, and General Counsel Exhibits from the compliance hearing are parenthetically referenced as “JX-\_\_\_;” “RN-\_\_\_;” “IN-\_\_\_” and “GC-\_\_\_,” respectively. Transcript pages hearing are parenthetically referenced as “Tr. \_\_\_.”

## II. LAW AND ARGUMENT

### A. **Ford was not a Successor Employer to Jacobs Engineering.**

Ford was not a successor employer to Jacobs Engineering. First, there was not a substantial majority of former Local 324, International Union of Operating Engineers (“IUOE”) represented employees in an appropriate bargaining unit employed by Ford. Further, there was no continuity of operations between Ford and Jacobs Industrial Services, Inc. (“Jacobs”). See *GFS Bldg. Management, Inc.* 330 NLRB 747 (2000); *Sierra Realty Corp.*, 317 NLRB 832 (1995).

#### *a. There was no Substantial and Representative Complement of Jacobs Employees in an Appropriate Unit.*

In stating that there was a substantial and representative complement, the GC focuses on the fact that Ford assigned six of a projected ten employees to the drive testing facility (“DTF”). (GC Brief, p. 11.) The GC argues that this slim “majority” of employees constitute a representative complement such that successorship is a foregone conclusion. But, the reality is that out of greater than 500 employees, Ford assigned six employees to the DTF facility with the express expectation that at least another four would soon be assigned, and the remaining complement of employees needed at the DTF would be made up of other employees who would rotate in as needed. And indeed, it is uncontested that, since the transition, the skilled maintenance work at the DTF is performed by a *mix* of the six original tradespersons staffed at the DTF and a revolving mix of Ford-employed mobile tradespersons. By the GC’s own admission, 27 employees of Intervenor International Union, United Automobile Aerospace and Agricultural Implement Workers of America (“UAW” or “Local 245”), performed work at the DTF following the transition. (GC Brief, p. 16.) The GC dismisses these employees as only comprising 5% of the UAW bargaining unit. *Id.* The GC fails to recognize, however, that while those 27

employees may only be 5% of the UAW bargaining unit as a whole, they represent 450% of the employees who performed work at the DTF. Or, put another way, the four former Jacobs employees staffed by Ford at the DTF represent only 12% of the employees who performed work at the DTF under Ford's integrated staffing model. Those 12% of employees who performed work at the DTF, then, could not be considered a substantial and representative complement.

Further, it is uncontested that Ford initially staffed the DTF with only two job classifications: steam engineers and electricians. It is also uncontested that Ford has "always" intended to staff ten skilled tradespersons at the DTF, and that it specifically budgeted for that level of staffing. While, at the time of the hearing Ford was still deciding which skilled trades to assign to the DTF, (Tr. at 428:21–429:4), it is likely that the assigned tradespersons will include plumbers, millwrights, and possibly other classifications. (*Id.*; *see* Resp. Ex. 1.) Thus, although Ford has assigned six individuals in two classifications at the DTF, it has not placed anyone into the two to three other classifications of tradespersons who will be staffed at the site. As such, Ford has not yet assigned *anyone* into 50 percent or more of the skilled maintenance classifications to be staffed at the DTF. Accordingly, there is not yet a substantial and representative complement of the skilled tradespersons at the DTF.

***b. There is no Substantial Continuity Between Jacobs and Ford.***

Additionally, despite protestations by the GC, there is no "substantial continuity" between Jacobs and Ford. *Van Lear Equip.*, 336 NLRB 1059 (2001) at 1063 (quoting *Fall River Dyeing & Finishing Corp. v. N.L.R.B.*, 482 U.S. 27, 41–43 (1987)). Ford's insourcing of the maintenance function at DTF began on April 24, 2017. (Tr. at 384:4–5.) At that time, the skilled trades support work at the DTF was integrated into the long-standing (and only) support model Ford has ever used within the Research and Engineering Center ("R&E Center"). (Tr. at 361:1-

373:22, 570:7-17-572:9-25, 587, 592:8-24.) At that time, DTF went from a facility run by a company which provided maintenance personnel to a Ford owned-and-operated, integrated testing facility.

Because of that integration into Ford's model, Local 245 skilled tradespersons have been performing significant amounts of maintenance work at the DTF, including millwrighting, carpentry, plumbing/pipefitting, and truck repair – many of the same functions that Jacobs had to contract out.<sup>2</sup> (Tr. at 166:4–11, 209:23–210:7, 210:11–17, 395:16–396:4, 406:9–13, 488:9–14.) Additionally, among other tasks, mobile UAW tradespersons have revamped a rollup door to comply with Ford safety specs, fixed cranes, inspected floor hoists, maintained high-low vehicles, repaired a water main break, inspected refrigeration and cooling equipment, and maintained heating and cooling equipment. (Tr. at, 210:16–211:4, 211:5–12, 395:21–25, 408:13–25, 487:11–488:3, 501:2-16, 507:5-15, 509:16-17, 602:18–603:12.) (Tr. at 210:16–17, 487:19–23, 509:16–17.) (Tr. at 487:24–488:3, 505:2–16, 507:5–15.) UAW employees have also been instructed to train the former Jacobs employees on how to maintain heating and cooling equipment to Ford standards. (Tr. at 511:8–13; IN-17.) While the GC attempts to dismiss this work as somehow minimal, the facts speak for themselves.

Further, despite the GC's dismissal of Ford's safety initiative as a mere continuation of Jacobs' safety protocols, there has been a significant new emphasis on safety at the DTF since the transition. (Tr. at 396:1–398:10, 422:4–423:25, 454:4–15.) As a contractor, Jacobs was not held to Ford's stringent safety standards. (Tr. at 456:7– 10; *see also* Tr. at 512:20–513:7.) The former Jacobs employees now receive unit-wide emails from Ford advising them of Ford safety standards. (Tr. at 142:18–143:19, 215:21–216:6.) Further, two former Jacobs employees (50% of the Jacobs

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<sup>2</sup> There is no credible evidence that Ford continued to outsource work at the level prior to the transition as alleged by the General Counsel. (Brief, p. 14.)

employees hired by Ford) have received personalized, hands-on training on Ford combustion safety standards — information those employees had not previously received. (Tr. at 211:20–212:4, 218:1–8, 254:7–255:9, 514:12–15; IN-17.) Each former Jacobs employee also attended a roughly week-long new-hire orientation and training session during which safety issues were discussed in detail. (Tr. at 215:17–20, 266:25–267:2, 419:25–420:23.) They have also each received separate “arc flash” training on avoiding electrical arcs. (Tr. at 215:11–15, 267:8, 421:17–25.) Given the significant safety training provided by Ford, Ford’s safety initiative at the DTF was not a mere continuation of a Jacobs’ program – it was wholly new to the former Jacobs employees.

Additionally, as admitted by the General Counsel in his Brief, the Jacobs employees, prior to the transition, were multi-functional and worked “on pretty much anything” (Brief, p. 9), while after the transition employees primarily perform work within their trade. (Tr. at 271:22–273:11; *see also* Tr. at 262:11–22, 277:7–9.)

Nor can the former-IUOE represented employees claim they were unclear they were accepting employment with Ford as members of the UAW. During their interviews, Ford referred the former Jacobs employees to the Local 245 Chairman, Paul Vergari, for information about job benefits and practices and explicitly told the employees that, as Ford employees, they would be members of Local 245. (Tr. at 115:20–22, 116:12-13, 240:17–241:3, 406:15–407:6.) Each of the Jacobs employees were told that, if hired, they would lose their seniority, would be susceptible to being bumped from the DTF by higher-seniority members of their trade, and would be subject to overtime equalization. (Tr. at 134:6-13, 407:19–408:12; *see* 116:23–117:2, 135:7–18, 189:2–12, 257:3–11.) In fact, when the former Jacobs employees received their offer letters from Ford, the offers made no reference to DTF but, rather, were for employment “at the Ford Land/Research &

Engineering Center.” (GC-2-9.) Thus, prior to accepting a position at Ford, the interviewees had been informed that: (1) they would become members of the UAW; (2) they were likely to be displaced from the DTF, and (3) they should expect to work at many of the 58 buildings in the R&E Center. (See Tr. at 115:20–22, 116:12-13, 202:13–203:10, 240:17–241:3, 406:15–407:6.) Mr. Vergari again discussed shift-bumping, seniority, and overtime equalization with the former Jacobs employees during their new-hire orientation and training on their first day of work at Ford. (Tr. at 419:1–21.) The Jacobs employees, then, applied for and accepted employment as UAW members.

Finally, while true that the DTF-based staff’s first line-supervision comes from contractors who were also in the supervisory chain when Jacobs operated the DTF, these supervisors lack any significant authority over personnel policy, making their role less important to the successorship analysis than suggested by the GC. Most of the front-line supervisors are not skilled tradespersons and largely fulfill only a clerical function. (Tr. at 341:16–20.) Throughout the R&E Center, technical assistance and true job-based supervisory oversight comes from team leaders and fellow tradespersons – who are all Ford employees and/or members of the UAW. (Tr. at 343:10– 344:9, 490:15–24, 506:9–12, 527:14–20.)

Despite this, the GC argues that the Launch Agreement – which is revocable upon 90 days’ notice – somehow leads to a finding of continuity. The GC fails, however, to state a plausible explanation as to why that is the case. The “Launch Agreement” was intended to guide the transition process during its first year to promote industrial peace and stability. (Tr. at 385:1–12, 387:19–388:1; GC-28.) By its own terms, the Launch Agreement was to only apply for one year. (GC Ex. 28 at 1.) It was not intended to ensure continuity, but rather a smooth – *and*

*temporary* – transition. Ford’s attempt to foster industrial peace by taking careful, measured steps during a transition cannot, and should not, be used against it.

Put simply, the successorship factors make clear that the continuity of the former unit has been wiped out by merging that small unit into the 500+ person Ford maintenance ecosystem. The *four* former Jacobs employees work lives have already been transformed by becoming Ford employees, by a new emphasis of training and safety, additional overtime, employee interaction, and a different management structure. More changes will come. Under these circumstances, the law of successorship does not compel Ford to carve the DTF from the remainder of the R&E Center in an effort to preserve a continuity that no longer exists.

**B. A Single-Facility Unit is Inappropriate.**

The GC is also incorrect that the DTF should be viewed as a single-facility unit and somehow separate from Ford’s R&E Center. The R&E Center is responsible for the research and development of new Ford vehicles. (Tr. at 298:14– 299:1.) It consists of 58 buildings that belong to one of five core subdivisions, as well as a peripheral sixth subdivision that contains a variety of commercial buildings owned or operated by Ford Land Company (“Ford Land”).<sup>3</sup> (Tr. at 298:12– 299:5, 302:1-305:25, 308:3–309:8.) Ford Land Company is a separately incorporated division of Ford Motor Company that owns and/or operates Ford-owned commercial real estate. (Tr. at 302:4–7, 565:18–22, 626:21–24.)

The buildings in the R&E Center which are a part of the five core categories represent *all* of the Ford corporate buildings where research, design, and testing of new vehicles occurs. (Tr. at

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<sup>3</sup> The GC goes to great length to list every facility in the Ford Land area where Ford has a collective bargaining relationship with IUOE. (Brief, pp. 3-4.) Ford does not contest those relationships – just their relevance to the matter at hand. These bargaining relationships are not at the R&E Center. Further, it cannot legitimately be contended that collective bargaining agreements between IUOE and another entity – C.B. Richard Ellis – are relevant to the instant matter.

298:12–22, 302:10–305:1, 467:7–14.) The remaining buildings, on the other hand, are commercial buildings owned by Ford Land, that are leased to both Ford and non-Ford tenants, and, contrary to the GC’s implication, in which **testing is not performed**. (Tr. at 305:2–12, 445:17–446:1, 466:19–467:6; *see* IN-2, map of R&E Center.)<sup>4</sup>

For decades, Ford has provided the core skilled trades maintenance support for the entire R&E Center testing operation through its own employees organized as a single, integrated, and flexible support unit. (Tr. at 298:8–11, 583:7-584:8, 587:2-589:24, 596:1-597:20.) In this time, Ford has never varied in its singular approach to this maintenance unit: Ford employees working in Ford-owned buildings performing skilled trade maintenance support for R&E testing operations organized in a flexible, integrated, and mobile support unit. (Tr. at 583:7-584:8, 587:2-589:24, 596:1-597:20.)

It is clear, then, that the R&E Center is correctly classified as a multi-facility unit. Almost all R&E Center facilities are within a four-mile radius. (*See* IN-2.) The DTF, in particular, is within walking distance of three other R&E Center facilities where various skilled tradespersons, including other steam engineers and electricians, work. *See Jerry’s Chevrolet*, 344 NLRB at 960 (finding the ability to “walk from one [facility] to the next” to be a “salient factor” in rebutting the single-facility presumption).

Second, there is sufficient similarity of employee skills and working conditions for tradespersons across the entire bargaining unit. It is uncontested that the steam engineers and electricians at the DTF have the same licenses and skill sets as the electricians and steam engineers elsewhere in the DTF and receive the same training on the same kinds of systems. (Tr.

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<sup>4</sup> The GC tacitly recognizes that the DTF became a part of the larger R&E Center when he noted that “The Charging Party enjoyed a 17-year history of collective bargaining at the DTF facility with Respondent’s predecessor JIS and others **when DTF operated as a stand-alone unit.**” (GC Brief, p. 23) (emphasis added.)

at 136:2–137:2, 203:11–16, 214:2–12, 491:2–5, 533:20–24, 539:21–522:7, 526:5–9, 551:25–552:5.) There are no special tools or knowledge required to do the skilled maintenance work at the DTF, and the work is similar to the work in other testing facilities within the R&E Center. (Tr. at 391:22–392:6, 485:6–25, 527:21–528:5, 543:5–9, 553:3–9.) Put together, it is clear that the DTF is properly considered part of the Local 245 multi-facility unit and not a stand-alone facility as suggested by the GC.

**C. The Former Jacobs Employees Have Accreted to the Multi-Facility Local 245 Unit.**

Even if Ford is found to be a successor to Jacobs at the DTF – which it is not – the former Jacobs unit has accreted to the existing Local 245 unit. The GC argues against accretion and summarily dismisses the cases cited by Ford as distinguishable. Of course, the GC makes no effort to distinguish them. (GC Brief, p. 28.) Instead, he attempts to muddy the waters by pointing to *Bendix Transportation Corp.*, 300 NLRB 1170 (1990) as somehow controlling. *Bendix*, however, is not relevant to the case. In *Bendix*, the Company argued that because there was no transfer of assets between the former employer and the new employer, no successorship resulted. *Id.* at 1172. The Board, then, simply didn't address single facility units or accretion. And there can be no legitimate argument that the former Jacobs employees did not accrete to the Local 245 unit. Indeed, every factor recognized by the Board for a proper accretion is found here:

- Local 245 is overwhelmingly predominant
- There is significant interchange between DTF-based employees with other members of Local 245 elsewhere in the R&E Center.
- DTF-based employees have provided training to other Local 245 members.
- There is shared, substantive supervision across the R&E Center.

- There is an integration of operations between the DTF and other facilities in the DTF.
- There is centralized management and control.
- There is a similarity of working conditions, skills, and functions across the R&E Center.
- The long bargaining history between Ford and the UAW leans towards accretion.

While the instant case is an atypical accretion case, accretion is appropriate. To suggest that the four employees hired by Ford and placed at the DTF did not accrete to the much larger Local 245 ignores clear Board law and common sense.

### III. CONCLUSION

For the foregoing reasons, Ford's Exceptions should be granted, and the ALJ's Decision should be reversed.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2018 the foregoing was served via electronic filing to the National Labor Relations Board's Office of the Executive Secretary, located at 1015 Half Street SE, Washington, DC 20570-0001, with additional service copies sent as follows:

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