The Region submitted this case for advice as to whether Teamsters Locals 87, 386, and 43 (the Unions) violated Sections 8(b)(1)(A) and 8(b)(3) of the Act by pursuing grievances seeking to apply the terms and conditions of their master agreement with the Employer, pursuant to an after-acquired clause, to Employer-acquired facilities whose employees those locals had historically represented in single-location units with separate collective-bargaining agreements. We conclude that the charge should be dismissed, absent withdrawal.

Aramark (the Employer) operates facilities in California whose drivers are represented by Teamsters Locals 87 (Bakersfield), 386 (Modesto), 431 (Fresno), and other Teamsters locals (other cities). These drivers are covered by a regional Master Agreement, effective December 30, 2017 through January 28, 2022. Article 1.01 of the Master Agreement states: “[S]hould any new or additional depots, routes, or plants be established by the [Employer] within the jurisdiction of the Locals signatory to this Agreement within Joint Council 7 shall be covered by this Agreement.” On January 22, 2018, the Employer acquired three AmeriPride facilities whose drivers and customer service representatives were represented by Locals 87, 386, and 431, respectively, in single-location units. The recognition clauses in their respective contracts contained location-specific language, e.g., “at its Bakersfield, California Branch.” The Employer continued to recognize the unions following the facilities’ acquisition and assumed each facility’s extant collective-bargaining agreement. In late 2019 and early 2020, after the Employer began rebranding the former AmeriPride facilities and otherwise integrating the businesses, the Unions filed grievances under Article 1.01 of the Master Agreement alleging the Employer must place the former AmeriPride employees in the multi-location unit, whose contract had higher wages and pension benefits, instead of the historic single-location bargaining units at each facility. The Employer denied each grievance and has refused to arbitrate.

In the absence of mutual consent, one party may not insist on a change in the scope of an existing bargaining unit. Chicago Truck Drivers (Signal Delivery), 279 NLRB 904, 907 (1986); Emery Worldwide, A.C.F. Co. v. NLRB, 966 F.2d 1003, 1005 (5th Cir. 1992). However, when both parties agree to an after-acquired store clause, which requires an employer to recognize the union and apply their existing contract to employees at a newly-acquired store, the clause is valid. Houston Div. of Kroger Co., 219 NLRB 388, 389 (1975). This is so even if the clause does not condition recognition upon a showing of majority support, because the Board “will impose such a condition as a matter of law.” Id.

The Board has also long held that a union does not violate the Act by filing a grievance or attempting to enforce an arbitration award based on a colorable contract claim so long as it does not seek a result incompatible with Board law. For example, in Hotel & Restaurant Employees (Warwick Caterers), 282 NLRB 939, 940 (1987), the Board found lawful a union’s grievance seeking to apply an existing unit’s contract to a new group of employees, even though the Board ultimately found the union did not represent the new group, because when the grievance was being prosecuted, the question of representation had not yet been determined by the Board and it was not unreasonable for the union to maintain its position on single employer status and accretion before the arbitrator.
See also Stage Employees IATSE Local 695 (Vidtronics Co.), 269 NLRB 133, 133 (1984) (although questions of accretion are to be decided by the Board, union’s arbitration seeking to impose representation upon separate unit of employees who had not chosen union as representative sought only to determine contractual rights concerning that group of employees). A grievance has been deemed incompatible with Board law, on the other hand, where an arbitral ruling in favor of the union would on its face be unlawful or transform a facially lawful clause to an unlawful clause, see, e.g., I.U.E. Local 221 (Kidder, Inc.), 333 NLRB 1149, 1149 (2001) (if union’s interpretation prevailed, it would have transformed facially lawful clause into unlawful clause by giving union president superseniority for job classifications and wage protections), or where it seeks a result that conflicts with a previous Board ruling, see, e.g., Teamsters Local 776 (Rite Aid), 305 NLRB 832, 834-35 (1991) (union unlawfully sought enforcement of arbitration award requiring application of contract to facility that the Board had already determined was not part of unit), enforced, 973 F.2d 230 (3d Cir. 1992).

Here, applying the above principles, we conclude that the Unions’ grievances are lawful because they are based on colorable contract claims and lack illegal objectives. Article 1.01 of the Master Agreement, which applies when the Employer establishes “new or additional depots, routes, or plants,” is arguably applicable here. Although a union cannot enforce a Kroger clause without majority support absent a finding of accretion, and as yet the Unions have not made accretion arguments or offered any proof of majority support, this is not the typical Kroger case. Thus, Locals 87, 386, and 43 are already the Section 9(a) representatives of the affected employees in their respective single-location units, and at no time has their majority status either been challenged or otherwise questioned. We are aware of no Board precedent indicating that Kroger requires a union to obtain a fresh showing of majority support from employees at a newly-acquired facility if the union is already those employees’ Section 9(a) representative. Cf. International Brotherhood of Electrical Workers, Systems Counsel U-8 (Duke Energy Florida, LLC), Case 12-CB-200784, Advice Memorandum dated Apr. 19, 2018, at 7 (union’s grievance and demand for arbitration seeking to apply contract to employees at newly-acquired facility pursuant to contract’s after-acquired-facility clause had no colorable basis, where union did not make accretion argument and acknowledged it did not have majority support at newly-acquired facility). Given the Unions’ presumed majority status and the fact that the Board has not yet decided the representational issue in dispute, we conclude the Unions’ grievances do not have illegal objectives. We find Chicago Truck Drivers (Signal Delivery), 279 NLRB at 907, in which a union’s grievance seeking to combine historically separate bargaining units was found unlawful, to be distinguishable. Unlike here, Signal Delivery did not involve a Kroger clause agreed to by all parties.

Accordingly, we view this matter as contractual rather than statutory. Should the matter ultimately be arbitrated and the arbitrator rules in favor of the Unions, the Employer may obtain Board review of the representational issue by refusing to bargain with the Unions or by seeking a unit clarification. See, e.g., Teamsters Local 435 (Super Valu, Inc.), 317 NLRB 617 (1995), enforced, 92 F.3d 1063 (10th Cir. 1996). The Employer is also free to file a new charge if it believes the arbitrator’s decision is incompatible with Board law.

Based on the foregoing, the Region should dismiss the instant charge, absent withdrawal. This email closes the case in Advice. Feel free to let us know if you have any questions or concerns and if I am not available please contact my supervisor, Jeremy Belin, at 202-273-3821.
Although the Employer can be properly characterized as a successor to AmeriPride, it assumed each of the AmeriPride contracts and it does not appear either party requested that the other engage in contract negotiations, including for those AmeriPride contracts that had expired. Thus, the 6-month reasonable period of bargaining set forth in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011) is not applicable to this case.