PENSKE TRUCK LEASING CO., LP

Employer/Petitioner

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 957

Union

DECISION AND ORDER GRANTING UNIT CLARIFICATION

I. INTRODUCTION

Penske Truck Leasing Co., LP (Employer/Petitioner) filed the instant unit clarification petition seeking to clarify an existing unit of technicians and customer service representatives employed by the Employer at its Dayton, Ohio facility and represented by the International Brotherhood of Teamsters, Local No. 957 (Union) to exclude two technicians employed at the Employer’s Piqua, Ohio facility. The Employer opened the Piqua facility on or about January 4, 2021. The Employer contends that the unit should be clarified to exclude the technicians employed in Piqua because they do not share an overwhelming community of interest with the employees in the existing unit. The Union, on the other hand, argues the technicians in Piqua should be accreted into the existing unit because they have little to no separate group identity from the unit employees and share an overwhelming community of interest with the existing unit. In the alternative, the Union contends that the issue arises within the confines of the parties’ collective-bargaining agreement and should therefore be deferred to an arbitrator.

I take administrative notice of the Certification of Representative issued on November 13, 1961 certifying Sales Drivers, Sales & Service Local Union #176 (Local #176), International Brotherhood of Teamsters, Chauffeurs, Warehouse & Helpers of America as the bargaining representative of employees employed by The Hertz Corporation (Truck Leasing Division) at the Dayton, Ohio facility. The record is silent regarding the circumstances of the Employer’s acquisition of the Dayton facility or the Union’s assumption of Local #176’s jurisdiction over the existing unit.

1/ The Union’s correct legal name appears as stipulated by the parties at the hearing.
The Union has represented the existing unit since at least 1999, and the parties’ current collective-bargaining agreement (Agreement) is effective from March 1, 2019 to February 28, 2023. The parties stipulated that the existing unit is:

All full-time and regular part-time Technicians and Customer Service Representatives employed at 2519 Nordic Rd., Dayton, Ohio 45414, excluding Shop Forepersons, Supervisor and General Office Employees, Rental Representatives, Secretaries, and all employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

The Union asserts that the recognition provision of the Agreement, Article 1, Section 1, supports its contentions. The provision states as follows:

This agreement shall also apply to any future Penske operations commenced in the greater Dayton, Ohio area, where Penske is contracted to provide truck and maintenance and leasing services, however, such recognition is limited to Penske’s discretion to exclude any new facility or operation based on customer or operational requirements. The recognition shall in no way contravene the rights promulgated under the National Labor Relations Act, as Amended.

In further support of its position, the Union points to a Letter of Understanding dated March 5, 2012, attached to the Agreement which states as follows:

To the extent that a customer account assigned to Penske Truck Leasing Co., LP, ("Penske") at Dayton, Ohio, is serviced at or by employees represented by Teamsters Local Union No. 957, ("Local 957") the Collective Bargaining Agreement between Penske and Local 957 will apply in its entirety unless otherwise modified below.

Specific to any new Penske facility opened to service an account that was assigned to Penske at Dayton, Ohio, such new facility would remain on the Dayton master Seniority List for purposes of layoff, recall and job openings; however, shift, vacation and overtime considerations shall be addressed at the location level.

A hearing officer of the Board held a hearing in this matter by videoconference on September 2, 2021 at which time the parties were given the opportunity to present evidence and to state their respective positions on the record. Both parties filed post-hearing briefs. As explained below, based on the record and relevant Board law, I find that a question concerning representation exists and that the existing unit should be clarified to exclude the technicians employed at the Employer’s Piqua facility. The Union has failed to meet its burden to demonstrate that an accretion of the employees who are employed at the Piqua facility to the existing bargaining unit is appropriate. In addition, since the issues in this case involve a question of representation, accretion, and unit appropriateness, which are solely statutory issues that are not dependent on contract interpretation, deferral to arbitration is not appropriate.

2/ Hereinafter, all dates occurred in 2021 unless otherwise noted.
Accordingly, I am clarifying the unit to exclude the technicians employed by the Employer at the Piqua facility.

II. FACTS

A. The Employer’s operations and hierarchy.

The Employer operates a nationwide network of facilities that are engaged in the business of providing full-service leasing of trucks, tractors, and trailers; contract maintenance of such vehicles; as well as consumer and commercial rentals of vehicles. The Employer divides its operations into geographic areas and districts. The Midwest Area includes five districts: Cincinnati, Ohio; Columbus, Ohio; Louisville, Kentucky; Indianapolis, Indiana; and Elkhart, Indiana. The Cincinnati District includes the Employer’s facilities at issue herein, Piqua, Ohio and Dayton, Ohio, along with facilities in Sharonville, Ohio; Norwood, Ohio; Northern Kentucky; Richmond, Indiana; Monroe, Ohio; and on-site locations at three Cincinnati Bell facilities in the greater Cincinnati area and an ABF facility in Dayton.  

The Employer’s facilities are called either branches or locations. Within the Cincinnati District, Sharonville, Northern Kentucky, and Dayton are branches, which provide all of the Employer’s services to customers. Accordingly, Dayton provides customers with full-service leasing, where the Employer leases its vehicles to the customer and maintains and repairs the vehicles, and contract maintenance, where it maintains and repairs vehicles owned by the customer. It rents vehicles to commercial and consumer users. In addition, it has a fuel island, wash bay, service bays, and a rental counter. In contrast, Piqua is a much smaller facility that provides only maintenance and repair of equipment. The Piqua facility has a service bay for customers but does not have a fuel island, wash bay, or a rental counter.

There are approximately 47 employees who work at the Dayton facility, including approximately 22 unit employees, of which 15 to 16 are technicians and 6 to 7 are customer service representatives (CSRs). Technicians perform preventative maintenance, diagnostic work, and repairs of vehicles. The CSRs are in charge of fueling the vehicles that come to the fuel island, cleaning vehicles, and performing small jobs in the facility, such as spraying for weeds. The remaining 25 non-unit employees are rental employees, customer service coordinators, an operations coordinator, contract salesmen, a parts clerk, and 9 hikers. Hikers transport vehicles or parts from Dayton to customers or other facilities. In Piqua, aside from the two technicians at issue herein, the Employer does not employ any other employees.

Tim Burke, Area Vice President Midwest Area, is responsible for sales, maintenance, and finance for the Midwest Area. Ian Taylor, District Manager of the Cincinnati District, oversees the entire Cincinnati district and reports directly to Burke. Taylor supervises Ed Bales, District Service Manager; Eric Watts, Assistant Service Manager, and the contract sales team. Bales

---

3/ Cincinnati Bell and ABF are customers of the Employer. The Cincinnati Bell facilities are in the community of Evanston in Cincinnati, in Hamilton, Ohio, approximately 32 miles north of Cincinnati, and Florence, Kentucky, which is about 14 miles south of Cincinnati. These mileage numbers are based on mapping and mileage information publicly available via Google Maps.
oversees maintenance for the entire district and is the immediate supervisor of the two technicians employed in Piqua. Watts oversees the operations coordinator, rental employees, and hikers who work in Dayton. Each branch employs a branch service manager, who has overall supervisory responsibility over their respective branch and reports directly to Bales. Since around July, the branch service manager position in Dayton has been vacant. However, on or about September 1, the Employer made an offer to an applicant for the position. Each branch also employs maintenance supervisors, who directly supervise the unit technicians and CSRs and report to the branch service manager. While the branch service manager position at Dayton has been vacant, the maintenance supervisors have reported directly to District Service Manager Bales.

B. Day-to-day supervision.

The unit employees in Dayton are directly supervised by the maintenance supervisors, whose responsibilities include assigning and distributing the work on a daily basis and preparing annual performance evaluations. When there was a branch service manager in Dayton, the maintenance supervisors worked with the manager to prepare schedules, approve time off, discipline, discharge, train, and review payroll. The record is silent regarding the respective roles of the branch service manager and the maintenance supervisors in carrying out each of these functions. There is no specific evidence in the record regarding which, if any, of the above functions that District Service Manager Bales has performed while the branch service manager position has been vacant.

In Piqua, Bales is the immediate supervisor of the technicians and is responsible for assigning work, preparing performance evaluations, preparing schedules, approving time off, issuing discipline, determining discharge, training, and reviewing payroll. There is no evidence that the branch service manager or maintenance supervisors who work at the Dayton facility have ever supervised the technicians who work in Piqua.

With respect to hiring, job vacancy postings are specific to each facility. Applicants for employment are initially screened by a recruiter, employed by the Employer, who is responsible for both the Piqua and Dayton facilities. In Dayton, the branch service manager and maintenance supervisors then perform follow-up interviews of the applicants, and the branch service manager ultimately decides whether to hire an applicant. There is no evidence that District Service Manager Bales has hired any unit employees in Dayton during the period of time that the branch service manager position has been vacant. In Piqua, Bales performs follow-up interviews of applicants and makes the hiring decisions.

C. Centralized control of management and labor relations.

Cassandra Booms, a labor relations attorney, is responsible for labor relations matters for the entire Cincinnati district, including Piqua and Dayton. In Dayton, grievances filed under the Agreement are generally handled initially by the branch service manager; however, in May, when the Union filed a grievance seeking placement of the disputed Piqua employees in the unit, District Manager Taylor acknowledged such grievance on the Employer’s behalf. 4/ Complaints

4/ Contrary to the Union’s argument, there is no evidence that Bales has handled grievances filed in Dayton.
brought to management’s attention by employees in Piqua and Dayton are generally handled by local supervisors, but the complaint may be advanced to the district or area level. The same area human resources manager is responsible for the Piqua and Dayton facilities as well as other facilities.

D. Similarity of skills, functions, and working conditions.

The technicians who work in Dayton and Piqua are classified the same, have the same skills and perform the same work within their job classification. Technicians perform preventative maintenance, diagnostic work, and repairs of vehicles. Technicians are classified as Tech I, Tech II, and Tech III, depending on their level of experience. Tech III employees, which are entry-level technicians, perform preventative maintenance and minor repairs. Tech II employees perform more complex diagnostic and repair work, and Tech I employees perform the most complex diagnostics and repairs, including complex engine and transmission jobs. In Piqua, there is a Lead Tech I and Tech II. The Lead Tech I in Piqua has some additional duties, including ordering parts.

Technicians in Dayton and Piqua are not required to have any specific education to perform their work, and training is conducted separately at each facility. The Agreement states that the technicians in the existing unit must have a CDL license to perform their work. However, in practice, some technicians employed in Dayton do not have a CDL license. Piqua technicians are encouraged, but not required, to obtain a CDL license, and the record does not reflect whether or not the Piqua technicians have CDL licenses. Each facility provides employees with shop equipment to perform their work. In Dayton, the technicians use their own tools, but the record is silent as to whether the technicians in Piqua also provide their own tools.

With respect to wage rates, the Agreement sets forth wage rates for the unit employees employed in Dayton. Tech I employees are paid $29.50 per hour, and Lead Tech I employees are paid $30.50 per hour.5/ Tech II employees are paid $23.70 per hour; and Tech III employees are paid $20.10 per hour. CSRs are paid $18.55 per hour. The Lead Tech I employee in Piqua is paid $30.00 per hour, and the Tech II employee is paid $24.00 per hour. A centralized payroll department issues employees’ paychecks for all of the Employer’s facilities.

The work hours and work shifts differ somewhat for the technicians who work in Dayton and Piqua. In Dayton, employees can bid on shifts per the Agreement, and there are staggered start times. The Dayton facility is open 5:30 a.m. to 11:00 p.m., Sunday to Friday, and 7:00 a.m. to 3:00 p.m. on Saturday. There are two shifts at the Dayton facility, and unit employees can work 8-hour shifts, 5 days per week, or 10-hour shifts, 4 days per week. In contrast, the Piqua facility is open 7:30 a.m. to 6:30 p.m., Monday through Friday, and is closed on the weekends. The technicians in Piqua work staggered shifts, Monday through Friday, and do not work 10-hour shifts. The Lead Tech I works from 7:00 a.m. to 3:30 p.m., and the Tech II works from 10:00 a.m. to 6:30 p.m.

5/ The Agreement reflects that Tech I employees are paid $29.50 per hour and an additional $1.00 if they perform leadmen work.
The Employer’s employee handbook applies to both the unit employees in Dayton and non-unit employees in Piqua and all other unrepresented employees but does not supersede the Agreement for unit employees. Unit and non-unit employees are subject to many of the same rules and policies, including those policies regarding drugs and alcohol, cell phones, code of conduct, work rules, safety rules, and anti-harassment.

In Dayton, the Agreement provides for a layoff and recall procedure based on seniority, but there is no similar procedure in Piqua. However, there is no evidence that a layoff has taken place in Dayton or Piqua. The Agreement also establishes a grievance procedure for the existing unit, while employee complaints in Piqua are handled by the facility at the local level. The Agreement contains a just cause provision for suspension or discharge of the existing unit, and technicians in Piqua are subject to a progressive disciplinary policy.

Although the terms are slightly different, the unit and non-unit employees in Dayton are entitled to paid holidays, sick leave, vacation or personal days, and leaves of absences. Unit employees receive 7 paid holidays plus 2 optional holidays, whereas non-unit employees receive 6 paid holidays. Unit and non-unit employees receive approximately the same amount of sick leave, about 48-50 hours per year. Unit employees receive paid vacation in amounts commensurate with their length of employment. For example, a unit employee in Dayton with 7 years of employment receives 3 weeks of paid vacation. The non-unit technicians receive paid time off (PTO), and the amount of PTO is also based on the employee’s length of employment. For example, a non-unit employee with 5 to 9 years of employment receives 4 weeks of PTO.

With respect to fringe benefits, unit and non-unit employees can participate in the same health insurance plans offered by the Employer. In addition, unit and non-unit employees can participate in the Employer’s pension funds. Per the Agreement, the “Penske Truck Leasing Co., L.P. hourly Pension Plan has a monthly benefit for unit employees of $21.00 per year of credited service.” Unit employees can also participate in the Teamsters’ National 401(k) Plan, and the Employer contributes $2.30 per hour for each unit employee, up to a maximum of 40 hours per week. Both groups of employees are entitled to receive tool insurance.

E. Employee interchange and contact.

There is no evidence of temporary or permanent interchange of employees between the Employer’s facilities. On two separate occasions since the Piqua facility opened, precise dates unknown, Dayton technicians serviced a vehicle that was at a customer’s location in Piqua – this occurred either on the weekend or in the evening when the Piqua facility was closed. On those occasions, the unit employees were not instructed to report to the Piqua facility or have contact with the Dayton technicians who performed the work in Piqua on these two occasions.

F. Functional integration.

The Employer opened the Piqua facility in order to capitalize on new business opportunities in north and northwest Ohio that the Dayton facility could not handle due to the distance between the Dayton facility and potential customers. Since the Employer opened the Piqua facility, total revenue in Dayton has increased by 11 percent, and the Employer has begun
to implement plans to expand the facility, such as adding additional service bays. There have been no layoffs or reduction in employees’ work hours in Dayton since the opening of the Piqua facility.

The majority of the Employer’s revenue comes from full-service leasing and contract maintenance. Each facility has a different customer base and prepares a separate profit and loss statement. A customer account is “owned” or “domiciled” in a particular facility and this designation is used for accounting and business planning. Although, Dayton use to provide services to some customers in the north and northwest Ohio area that is now serviced by the Piqua facility, there is no evidence that the Employer has permanently “re-domiciled” any customers from Dayton to the Piqua facility. However, regardless of where a customer is domiciled, a customer can obtain service at any of the Employer’s facilities located throughout the United States. Accordingly, the Dayton facility services vehicles domiciled in Piqua, and vice-versa. Dayton and Piqua also service vehicles domiciled in other facilities nationwide. The Employer uses ServiceNet, a company-wide program that tracks repair orders at each facility. The repair orders generated from January to August show that about 13 percent of the repair orders completed in Piqua were for customer accounts domiciled in Dayton, and about .5 percent of the repair orders completed in Dayton were on customer accounts domiciled in Piqua.

Complex jobs are generally sent to outside vendors for repairs rather than transferred from one facility to another. In January or February, however, a technician from Dayton installed cameras on rental units for Proctor & Gamble, and the work was then sent to the Piqua facility for completion. However, none of the Dayton employees were sent to Piqua to perform this work, or vice-versa. As stated above, on two occasions, Dayton technicians have worked on vehicles for customers domiciled in Piqua, but when the Piqua facility was closed. Hikers, non-unit employees in Dayton, transfer vehicles from Dayton to other facilities or to customers. Hikers also transfer parts from one facility to another when such a transfer is urgent. Otherwise, parts are sent from Dayton to other facilities by UPS or FedEx. There is no specific evidence that hikers have transferred vehicles or parts from Dayton to Piqua.

G. Collective-Bargaining History.

The Union represents only the unit employees who work in Dayton and has never represented the technicians who work in Piqua. Mark Morell, Business Agent for the Union, testified that he heard rumors concerning the opening of the Piqua facility and sent an email to Labor Relations Attorney Booms regarding the issue. Morell testified that Booms never informed the Union that the Employer was exercising discretion under the Agreement not to recognize the Union as the representative of the employees in Piqua. However, the Employer did not agree to recognize the Union as the representative of the technicians in Piqua. The record does not reflect the dates of these communications between Morell and Booms. In or about May, the Union filed a grievance contending that the Piqua facility should be subject to the Agreement. On June 15, Business Agent Morell sent an email to District Manager Taylor informing the Employer that the Union intended to arbitrate the dispute.

A different union, the Cincinnati Machinists Union, represents a multi-facility unit of certain of the Employer’s employees who are employed at the Sharonville, Norwood, Northern
Kentucky, Cincinnati Bell, and Monroe branches and locations, and they are covered by a single collective-bargaining agreement. The record does not clearly disclose whether technicians and CSRs are included in the multi-facility unit represented by the Machinists. The Piqua, Richmond, and ABF Dayton employees are unrepresented.

H. Geographic proximity.

Dayton is located in Montgomery County and Piqua is located in Miami County, which are contiguous counties. The distance between the Dayton and Piqua facilities is approximately 26 miles.

III. ANALYSIS

A. Deferral.

The Board will only defer representation matters to arbitration “when resolution of the issue turns solely on the proper interpretation of the parties’ contract.” McDonnell Douglas Corp., 324 NLRB 1202, 1205 (1997). “The determination of questions of representation, accretion, and appropriate unit do not depend upon contract interpretation but involve the application of statutory policy, standards, and criteria. These are matters for decision of the Board rather than an arbitrator.” Marion Power Shovel, 230 NLRB 576, 577-578 (1977), citing Combustion Engineering, Inc., 195 NLRB 909 (1972) and Hershey Foods Corporation, 208 NLRB 452 (1974). In McDonnell Douglas, supra, involving an employer’s unilateral removal of bargaining unit employees from the unit, the Board decided to hold the unfair labor practice charge in abeyance pending arbitration because the issue, i.e., whether the work in question was unit work, was a matter of contract interpretation. Relying on such precedent, the Board in Appollo Systems, Inc., 360 NLRB 687 (2014), upon which the Union principally relies, dismissed the Employer’s unit clarification petition seeking to exclude residential electricians from an existing 8(f) agreement that covered commercial electricians on the basis that the issue “involved classic questions of contract” that were “not the unique province of the Board,” i.e., whether there was a valid agreement between the parties as to the residential electricians’ status. Id. at 688. In reaching this conclusion, the Board emphasized that it was not “abrogating [its] longstanding policy against deferral of representation issues that can be resolved only through the application of statutory policy” such as where community of interest between disputed employees and those in the existing unit is at issue. Ibid.

6/ In its brief, the Employer omits the Monroe facility as being subject to the multi-facility collective-bargaining agreement. However, the Employer’s organizational chart shows that the employees employed at the Monroe facility are also represented by the Cincinnati Machinists Union.

7/ Although the Union contends that I should defer this matter under the Board’s policies set forth in United Technologies Corp., 268 NLRB 557 (1984) and Collyer Insulated Wire, 192 NLRB 837 (1971), the Board has not applied the rationale articulated in those cases in the context of an accretion issue. See Hershey Foods Corp., supra, at 452.
The Board has rejected deferring to arbitration representational matters that can be decided only by the application of statutory policy. *Tweddle Litho, Inc.*, 337 NLRB 686 (2002) (Board refused to defer an accretion issue to arbitration holding that whether employees in a new facility should be accreted to the existing bargaining unit because they performed the same functions as the historical bargaining unit were matters for Board determination); *Ziegler, Inc.*, 333 NLRB 949, 950 (2001) (Board held that unit should be clarified to exclude the parts and warehouse employees that were historically excluded from the unit rather than defer to arbitration); *Williams Transportation Co.*, 233 NLRB 837 (1977) (Board refused to defer accretion issue of whether the historically excluded shop office clerk job classification should be excluded from the unit); *Hershey Foods Corp.*, supra, at 457 (1974) (Board held that deferral to an arbitrator’s decision regarding application of the collective-bargaining agreement to a newly acquired plant was inappropriate because the application of the accretion doctrine is a question solely for the board); See also, *Marion Power Shovel*, supra, at 576.

In the instant case, the issue of whether the technicians employed at the Piqua facility should be accreted to the existing bargaining unit turns on statutory application rather than contractual interpretation and should therefore be decided by the Board and not an arbitrator. This case is distinguishable from *Appollo Systems* because that case could be decided solely on the interpretation of an 8(f) agreement whereas resolution of the issue in this case necessarily requires the application of community-of-interest factors in a multi-facility context. While there may be a contractual dispute over whether the Employer violated the Agreement by failing to apply the parties’ collective-bargaining agreement to Piqua or to follow the terms of the Letter of Understanding, unlike in *McDonnell Douglas*, supra, the penultimate issue, i.e., whether it is appropriate to accrete the Piqua technicians into the unit at Dayton, is not susceptible to resolution under the contract. Therefore, it is not appropriate to defer this matter to arbitration.

B. Board law regarding accretion.

Under the Board’s accretion doctrine, employees are added to an existing bargaining unit without conducting a representation election. *Recology Hay Road*, 367 NLRB No. 32, slip op. at 3 (2019); *NV Energy, Inc.*, 362 NLRB 14, 16 (2015). “The 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.” *NV Energy*, supra, at 16 (quoting *NLRB v. Stevens Ford*, 773 F.2d 468, 473 (2d. Cir., 1985)). “However, because accreted employees are added to the existing unit without an election or other demonstration of majority support, the accretion doctrine’s goal of promoting industrial stability is in tension with employees’ Section 7 rights to freely choose a bargaining representative.” *Id.* Accordingly, the Board’s application of the accretion doctrine is restrictive. *Id.*; also see *CHS, Inc.*, 355 NLRB 914, 916 (2010); *United Parcel Service*, 303 NLRB 326, 327 (1991); *Super Valu Stores, Inc., Denver Division*, 283 NLRB 134, 136 (1987). The burden to show that accretion is appropriate is “heavy” and falls on the requesting party. *Id.*; see also *Bay Shipbuilding Corp.*, 263 NLRB 1133, 1140 (1982). 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, substantial changes. *Bethlehem Steel Corp.*, 329 NLRB 243, 244 (1999).
As set forth in *Safeway Stores*, 256 NLRB 918 (1981), it is well established that the Board finds “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.” See also, *E.I. Du Pont de Nemours, Inc.*, 341 NLRB 607 (2004). To determine whether this standard has been met, the Board considers several factors including the degree of employee interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, similarity of terms and conditions of employment, degree of separate daily supervision, centralized control of management and labor relations, and collective bargaining history. *Id.* Cases in which every factor favors accretion are rare, as the normal situation presents a variety of elements, some militating for and some against accretion, so that a balancing of factors is necessary. *Id.* The Board balances the factors recognizing that some factors may weigh in favor of and other factors against accretion. *E.I. Dupont*, supra, at 608; *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005), enf’d. 181 Fed. Appx. 85 (2d Cir., 2006); *Compact Video Services*, 284 NLRB 117, 119 (1987). However, the Board has found that employee interchange and common day-to-day supervision are the two most important factors and “the absence of these two factors will ordinarily defeat a claim of lawful accretion.” *Frontier Telephone*, supra, at fn. 7.

C. Application of the law to the facts regarding accretion.

For the reasons that follow, I find that the Union has failed to meet its burden that an accretion is appropriate. Although the factors of skills and functions, and terms and conditions of employment weigh in favor of accretion, the record evidence fails to show that the employees who work at the Dayton and Piqua facilities share an overwhelming community of interest or that the sought-after technicians who work in Piqua have little or no separate group identity. Most critically, there is no showing in the record of interchange between the existing unit and the sought-after employees or common day-to-day supervision. See, *Frontier Telephone*, supra.

The technicians in Dayton and Piqua generally have the same skills and training, perform the same type of work, and use the same type of equipment. Although the Agreement requires that unit technicians have a CDL license, the Employer does not strictly enforce this requirement. The Employer contends that the Lead Tech I perform some additional duties at the facility, such as ordering parts, that are not performed by the technicians in Dayton. However, the ordering of parts is ancillary to the technician’s primary job of diagnosing and repairing vehicles, which is the same for technicians in Dayton and Piqua.

The wage rates of the unit and non-unit technicians are comparable. Although the technicians in Piqua are eligible for merit increases, the technicians in the existing unit also receive wage increases each year by virtue of the Agreement. There is no evidence on the record that such merit increases are greater than the increases in wage rates given year-to-year under the Agreement. The work shifts of the technicians in Dayton and Piqua differ for some employees due to the operating hours of each facility.
Under the Agreement, the Employer follows a “just cause” provision for unit employees, while non-unit employees are subject to a progressive disciplinary policy. Many of the provisions in the employee handbook apply to both unit and non-unit employees. Unit and non-unit employees can participate in the same health insurance plans provided by the Employer and other benefits, including the 401(k) plan. Most differences exist by virtue of the Agreement for the existing unit. Accordingly, I find that the similarity of skills, functions, and working conditions weigh in favor of accretion.

With respect to day-to-day supervision, in Dayton, technicians report directly to the maintenance supervisor on their shift, who assigns their work and prepares their performance evaluations. In contrast, in Piqua, technicians report directly to District Service Manager Bales. There is common supervision up the hierarchical chain in that the maintenance supervisors who supervise unit employees in Dayton also report directly to Bales; however, there is no record evidence that Bales directly supervises the technicians in Dayton. Moreover, the filling of the vacant branch service manager position places an additional level of supervision between the Dayton unit employees and Bales, as the new branch manager will be responsible for the Dayton facility. Although, the Employer has a human resources manager and labor relations attorney, who are responsible for both the Dayton and Piqua facilities, as well as other facilities, this type of centralized control is not as important as common day-to-day supervision, which is practically non-existent. Towne Ford Sales, 270 NLRB 311 (1984). The separate day-to-day supervision at each facility weighs heavily against accretion. E.I. Dupont, supra, at 609; Frontier Telephone, supra, at 1273; Towne Ford Sales, supra, at 311 (1984); Save-It Discount Foods, 263 NLRB 689 (1982); Weatherite Co., 261 NLRB 667 (1982).

There is no evidence of temporary or permanent interchange or contact between the employees who work at the Employer’s facilities. Contrary to the Union’s argument, the fact that work has been transferred from Dayton to Piqua for completion or that technicians employed at Dayton have worked on vehicles at customer locations on Piqua domiciled accounts does not establish interchange. Towne Ford Sales, supra, at 311. (Board held that “actual” interchange was not established by virtue of mechanics occasionally working on cars in the facility where the unit employees worked given that there was no contact between the mechanics at the two locations). Moreover, there is no evidence that hikers, non-unit employees, in Dayton have had contact with the technicians in Piqua. Accordingly, the lack of interchange and contact among the employees weighs heavily against accretion.

The Dayton and Piqua facilities are somewhat functionally integrated by virtue of the fact that customers can go to any facility nationwide for service, and the facilities perform some work on each other’s domiciled accounts. Moreover, on two occasions, Dayton technicians have performed work for the Dayton facility at locations in Piqua on evenings or weekends when Piqua was closed. However, on these limited occasions, there was no contact among the

---

8/ Although the Employer contends that unit employees do not participate in the Employer’s retirement plan, the Agreement states that unit employees can participate in both the Penske Truck Leasing Co., L.P. Hourly Pension Plan and the Teamsters’ National 401(k) Plan.

9/ There is no record evidence supporting the Union’s contention that accounts formerly domiciled in Dayton were transferred to Piqua. Rather, the evidence shows that Dayton retained ownership of the accounts in the north and northwest Ohio area that are close to the Piqua facility.
employees. Cf. Budget Rent A Car Systems, 337 NLRB 884 (2002). In addition, there is no evidence that any Dayton employees lost their jobs or that their work hours were reduced as a result of the opening of the Piqua facility in January. Accordingly, under the circumstances, the functional integration factor does not weigh in favor of accretion.

Contrary to the Union’s argument, the parties’ collective bargaining history does not weigh in favor of accretion. There is no evidence that the Agreement has been applied to any facilities other than Dayton. Although, the Agreement contains a provision regarding the application of the Agreement to new facilities opened by the Employer in the “greater Dayton Ohio area,” there is no record evidence that the parties agreed that this provision would automatically apply to new facilities opened by the Employer. Although, I am not deciding any contractual issues in this case, for purposes of considering the collective bargaining history, I note that the Agreement states that “such recognition is limited to Penske’s discretion to exclude any new facility or operation based on customer or operational requirements.” I find that the collective bargaining history is a neutral factor.

With respect to geographic proximity, the Employer argues that the distance between the facilities weighs against accretion. The Employer opened the Piqua facility to acquire new business that it was not able to handle due to the distance from the Dayton facility. The record shows that on two occasions technicians in Dayton performed work on Piqua-domiciled accounts at a customer’s facility; and on one occasion, a vehicle was transferred from Dayton to Piqua to complete a job. On the other hand, Labor Relations Attorney Booms handles collective bargaining matters for the entire district, and as such, the distance between the locations does not appear to be an impediment to collective bargaining. I also take administrative notice of publicly available mileage information from Google Maps indicating that the Monroe, Ohio facility is approximately the same distance from Dayton as the Piqua facility. There is no evidence in the record concerning when the Monroe facility opened or if there was ever any claim that the Monroe employees should be included in the Teamsters Dayton bargaining unit. Accordingly, I find that the factor of geographic proximity is neutral to a determination of the appropriateness of accretion. Rollins-Purle, Inc., 194 NLRB 709, 710 (1972); Super Valu Stores, et al., supra, at 136. Cf. Arizona Public Service Co., 246 NLRB 400 (1981).

Finally, two additional factors upon which the Union relies in support of accretion – the small size of the sought-after Piqua group and the fact that Piqua is located within its territorial jurisdiction – are unavailing. In Safety Carrier, Inc., 306 NLRB 960, 969 (1992), cited by the Union, the Board considered the small size of the unit but found that an accretion was not warranted because the petitioned-for employees and existing unit had separate management, day-to-day supervision, different working conditions, and there was no interchange. Similarly, in this case, while there are only two technicians employed in Piqua, the lack of interchange and day-to-day supervision of the employees in Piqua and the existing unit do not support accretion. In addition, there is no evidence that the Piqua facility lacks a separate identity from the Dayton facility. Indeed, the two technicians could constitute a separate appropriate unit.

Based on the foregoing, there is insufficient evidence that the employees who are employed in Piqua have little or no separate group identify or share an overwhelming community of interest with the existing unit employees who are employed in Dayton. While some factors
weigh in favor of accretion, the absence of significant employee interchange and common day-to-day supervision, which are the two critical factors, do not support accretion. Recology, supra, slip op. at 4; NV Energy, supra, at 17.

IV. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I am clarifying the unit to exclude the technicians employed at the Piqua facility from the existing unit and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, 10/ and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

ORDER

IT IS HEREBY ORDERED that the petition for unit clarification is granted. The existing bargaining unit in Dayton shall not include the employees working at the Piqua facility.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board’s Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board’s Rules and Regulations and must be filed by October 18, 2021.

A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

10/ The parties stipulated, and I find, that the Employer, a Delaware corporation, with a facility located in Dayton, Ohio, is engaged in the business of leasing, renting and maintenance of consumer and commercial trucks. In conducting its business operations, during the most recent calendar year, the Employer purchased and received goods valued in excess of $50,000 directly from points outside the State of Ohio.
serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Cincinnati, Ohio this 1st day of October 2021.

Matthew T. Denholm, Regional Director
National Labor Relations Board, Region 09
Room 3-111 John Weld Peck Federal Building
550 Main Street
Cincinnati, OH 45202-3271