FRUIT AND FLOWER CHILD DEVELOPMENT CENTER

Employer

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 5

Petitioner

and

WILLAMETTE VALLEY CHILD CARE FEDERATION, AFT LOCAL 3432, AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Fruit and Flower Child Development Center (“Employer”) operates two preschools in Portland, Oregon, where it provides childcare and developmentally appropriate curriculum for children six weeks to six years of age. For at least the last 40 years, the Willamette Valley Child Care Federation, AFT Local 3432, AFL-CIO (“Intervenor”), under the umbrella of the American Federation of Teachers Oregon (“AFT Oregon”), has represented a unit of employees, including lead teachers, teachers, aides, kitchen assistants, housekeepers, and janitors (“existing unit”), at the Employer’s main campus location (“Main Campus”).

In September 2019, the Employer opened a second location on Portland Community College’s Rock Creek Campus (“Rock Creek Campus”), which closed in March 2020 due to the COVID-19 pandemic and then reopened in September 2021. On December 7, 2021, International Longshore and Warehouse Union, Local 5 (“Petitioner”) filed the instant petition seeking to represent all full-time and regular part-time lead teachers, teachers, aides, and kitchen assistants employed by the Employer at its Rock Creek Campus.

The Employer and Intervenor raise multiple arguments contesting the appropriateness of the requested election. First, at the hearing, the Employer and Intervenor contended that the existing collective-bargaining agreement (“CBA”) between Intervenor and the Employer covering unit employees at the Main Campus also applies to employees at the Rock Creek Campus and thus
serves as a contract bar to the instant election. Second, the Employer and Intervenor argue that the petitioned-for employees at the Rock Creek Campus have already been accreted into the existing unit, and thus that no election is needed. Third, the Employer and Intervenor contend that the petitioned-for single facility Rock Creek Campus unit is inappropriate and that any unit found to be appropriate must also include unit employees at the Main Campus. Finally, the Employer and Intervenor argue that any election in the unit sought must be a self-determination election, allowing the petitioned-for employees at issue to vote as to whether they wish to be included in the existing unit.

Petitioner takes the position that the CBA does not bar the instant petition with respect to the Rock Creek employees, that the petitioned-for employees have not been accreted into the existing unit at the Main Campus, that a single-facility unit consisting solely of employees at the Rock Creek Campus is presumptively appropriate and the Employer and Intervenor failed to meet their burden to show otherwise, and that a self-determination election is inappropriate.

A Hearing Officer of the National Labor Relations Board (“Board”) held a videoconference hearing on January 6, 7, and 10, 2022, and Petitioner, Intervenor, and the Employer filed post-hearing briefs. As set forth below, based on the record, the parties’ briefs, and relevant Board law, I determine that the CBA does not bar the instant election. I further find that the petitioned-for employees do not constitute an accretion into the existing unit and that accretion is not appropriate in the instant circumstances. I also conclude both that the petitioned-for single-facility unit at the Rock Creek Campus is appropriate for separate representation and that employees in the petitioned-for unit possess a sufficient community of interest with employees in the existing unit represented by the Intervenor to warrant inclusion in a single overall unit if the petitioned-for employees so choose. Accordingly, as set forth in greater detail below, I will order an election in which the petitioned-for employees may select either representation by Petitioner in a stand-alone unit at the Rock Creek Campus, representation by Intervenor in a combined unit with employees in the existing unit at the Main Campus, or no representation.1

I. FACTS

A. Bargaining History

The Employer was founded in 1906. In 1974, the Employer moved into the Main Campus building, which it now owns. From 1974 until September 2019, when the Rock Creek Campus first opened, the Employer solely operated at the Main Campus.

For at least the last 40 years, if not longer, Intervenor has represented employees of the Employer. The Employer deducts dues from unit employees employed at the Main Campus who have signed dues authorization forms, prints out an excel spreadsheet for the secretary of the Intervenor, and then processes a check and mails it to Intervenor every month.

In about late July or early August 2019, Intervenor and the Employer reached a tentative agreement with respect to their current CBA, which covers the period of July 1, 2019, through June 30, 2023, and includes the following recognition language:

The Employer recognizes [Intervenor] as the exclusive bargaining representative for all non-supervisory employees of the Employer, except for the bookkeeper, administrative assistant, secretary-receptionist, and development director.

The CBA also includes an article governing union membership, which requires members to pay union dues and non-members to pay fair share fees associated with representation or, if applicable, pay an equivalent sum to a charitable organization. The Employer agrees under this article to deduct dues or the equivalent amount from employee paychecks once it receives the necessary authorization from unit employees to do so and to report such payment to Intervenor. Under this article, Intervenor may demand the discharge of employees who are delinquent in payment.

At the time of the contract negotiations, the Employer had already submitted a bid to Portland Community College (“PCC”) to operate the Rock Creek Campus, which caters to children of PCC faculty and students, but had not yet learned whether PCC had selected its bid. The Employer and Intervenor never discussed the Rock Creek Campus during bargaining.

The record is clear that at no point has Intervenor or AFT Oregon ever explicitly asked the Employer for recognition as the representative of employees at the Rock Creek Campus based on the recognition language of the CBA.

1. **September 2019 Rock Creek Campus Opening through the March 2020 Start of the COVID-19 Pandemic**

   Around the last week of August or the first week of September 2019, PCC notified the Employer that it had won the contract to operate the Rock Creek Campus. Per the executive director, the Employer then had five days to begin operations.

   On September 6, 2019, the Employer signed the CBA. On September 10, 2019, Intervenor signed the CBA. The Employer and Intervenor engaged in no subsequent discussions, and specifically did not engage in any discussions about the Rock Creek Campus, between reaching a tentative agreement in August and signing the CBA in September.

   The record does not reveal exactly when in September 2019 employees started working at the Rock Creek Campus, however it is clear that some employees worked in advance of opening the facility to students and families in order to set up the new classrooms. Approximately six employees worked at the Rock Creek Campus at the time it opened in September 2019.

   On September 23, 2019, the Rock Creek Campus began regular operations. Initially, the Rock Creek Campus had fewer students and eventually started ramping up capacity.
On September 25, 2019, the newly hired representative for AFT Oregon ("Intervenor’s AFT representative"), who was assigned to work with Intervenor, had his first meeting with the Intervenor’s local president 1, who was president at the time the Rock Creek Campus opened, about the existing unit. According to the meeting notes of Intervenor’s AFT representative, they discussed, among other issues, the fact that unit employees do not want to move between the Main Campus and the Rock Creek Campus and that employee transfers are a mandatory subject of bargaining. Intervenor’s AFT representative admitted that Intervenor never made a demand to bargain over transfers between the Main Campus and the Rock Creek Campus or filed any grievance over transfers.

Per local president 1, sometime in the early months in fall 2019 after the Rock Creek Campus opened, while she still served as local president, she spoke to the Employer’s executive director about the Rock Creek employees rolling into Intervenor’s representation. The executive director told her that Rock Creek employees need to make their choice if they want that location to come under Intervenor’s representation. Local president 1 testified that she believes she told Intervenor’s AFT representative about her conversation with the executive director. Then-local president 1 testified that while she was president, Intervenor’s AFT representative called the Rock Creek operations director, who informed Intervenor that the Employer did not want the Rock Creek employees to be part of the existing bargaining unit. Intervenor’s AFT representative did not testify about these conversations.

Also, around the time the Rock Creek Campus initially opened, then-local president 1 worked in the same classroom on Main Campus with a teacher who subsequently served as Intervenor local president 2/Petitioner organizer. Per subsequent Intervenor local president 2/Petitioner organizer, then-local president 1 told her that when the Rock Creek Campus opened, they had discussed unionizing them, but AFT Oregon felt that it would be too much of a hassle and a financial burden to unionize the Rock Creek Campus so AFT Oregon opted not to.

The executive director testified generally that in September 2019, she had a discussion with Intervenor about the fact that she could not force staff to go back and forth between locations and that interchange between locations must be voluntary. The executive director provided no additional details regarding this conversation.\(^3\)

On October 4, 2019, Intervenor’s AFT representative held another meeting with Intervenor’s local president 1. At this meeting, the representative learned from local president 1 that no dues were being deducted at the Rock Creek Campus and specifically mentioned one

---

2 The record discusses three different local presidents for Intervenor between 2019 and 2021, all of whom were employed by the Employer at the Main Campus and in the existing unit at the time they served as president. In an effort to avoid using employee names in the instant Decision, I will designate them as: local president 1, who served as president from about 2019 through sometime in 2020; Intervenor local president 2/Petitioner organizer, who served as president from about January or February 2021 until she transferred to the Rock Creek Campus in approximately early September 2021 and subsequently began organizing the Rock Creek Campus on behalf of Petitioner; and local president 3, who served as acting local president at some point in 2020, including around the beginning of the COVID-19 pandemic, and again beginning in September 2021.

3 The executive director also testified generally that since the opening of the Rock Creek Campus, the Employer has had constant communication with Intervenor about that location. However, I find this broad testimony to be vague and accordingly only include specific examples of communication as set forth above.
employee that indicated she was not having dues deducted. Intervenor’s AFT representative admitted that after learning about this, he did not speak to the employee who dues were purportedly not being deducted and never tried to confirm with AFT Oregon or Intervenor whether dues were being deducted for Rock Creek employees.4

From the time the Rock Creek Campus opened in September 2019 to the time of the start of the COVID-19 pandemic in March 2020, the Employer never deducted dues on behalf of the Intervenor from Rock Creek employees. Likewise, the Intervenor never sought to have dues deducted from Rock Creek employees’ paycheck and never filed a grievance or sought other contract enforcement with respect to applying the dues provisions of the CBA to Rock Creek employees during that time. Specifically, from the time of the October 4 meeting between Intervenor’s AFT representative and local president 1 to the March 2020 COVID-19 closure, the Intervenor had no discussions with the Employer about the union status of Rock Creek employees.

Immediately before the COVID-19 closure in March 2020, the Rock Creek Campus still did not operate at full capacity and employed somewhere between nine and 13 employees in classifications that fall within the petitioned-for unit.5 There was no kitchen assistant employed at the Rock Creek Campus at that time.

2. Rock Creek Campus COVID-19 Pandemic Closure from March 2020 through Summer 2021

Then, in March 2020, both the Main Campus and the Rock Creek Campus closed due to the COVID-19 pandemic and the Oregon governor’s stay-at-home order.

On March 16, 2020, the Board of Directors sent an email to families stating that it had decided to close the Main Campus and the Rock Creek Campus effective immediately until March 31, 2020, due to the COVID-19 pandemic and noting that the Board of Directors would reconvene prior to that date to make a decision regarding the safety of reopening.

On March 17, 2020, the executive director sent an email to employees about the Employer closing for the next two weeks. The email noted that the Employer would pay employees through March 31, 2020, and that employees should be prepared to return to work on March 30, 2020, in anticipation of children returning on April 1, 2020. The email stated that employees from both locations could pick up their paychecks at the Main Campus or have their paychecks mailed to them. This email was forwarded to Intervenor’s AFT representative, who in turn had a short phone conversation with the executive director about the fact that it looked like “the center” would be closing. Intervenor’s AFT representative clarified on the record that they did not discuss the situation at the Rock Creek Campus.

4 Intervenor’s AFT representative testified generally that he was unsure as to whether dues were being deducted from Rock Creek employees’ paychecks. However, I note that he was clearly on notice of an issue and could have ascertained whether the Employer was deducting dues.

5 One witness testified that at the time of the COVID-19 closure in March 2020 there were about nine employees, excluding the kitchen manager, employed at the Rock Creek Campus, whereas another witness testified that there were five lead teachers, five teachers, and two or three aides.
On March 23, 2020, the president of the Board of Directors sent an email to employees informing them that while they had hoped to reopen by April 1, 2020, it had become clear that the Employer needed to remain closed for a longer period to slow the spread of COVID-19. The email indicated that the Employer planned to remain closed until May 1 and would continue to reassess this date under the evolving circumstances. The email noted that in order to continue providing benefits to employees, the Board of Directors had decided to place teachers, staff, and most administrators on furlough and that while on furlough healthcare premiums would be waived. The email concluded that the Employer intended to rehire staff in order of seniority as soon as it could reopen.

On March 26, 2020, Intervenor’s AFT representative sent an email to the executive director demanding to bargain about the Employer’s decision to furlough employees at the end of March. The email noted that the Intervenor was willing to work with the Employer, but that his calls to the Employer had gone unanswered. The representative first noted the contract provisions regarding emergency closures and leaves of absence applicable to “the center.” The representative highlighted that the Intervenor shared the Employer’s interest in avoiding layoffs, maintaining health insurance coverage, and allowing access to unemployment benefits, and requested that the email be considered a demand to bargain the imp acts of the Employer’s plan to impose furlough days on employees. Finally, the email raised some questions and concerns regarding the assignment of 10 hours of training from home. At no point does the email mention the Rock Creek Campus or otherwise refer to the Employer as having multiple centers or campuses.

On March 27, 2020, the executive director sent an email to Intervenor’s AFT representative reminding him that they had spoken the prior week. The email noted that several CBA provisions allow the Employer to make the decision to furlough employees, and that as they discussed the furlough allowed the Employer to keep employees on the health insurance plan. The email also indicated that the representative’s information about training costs is inaccurate, specifically that any cost to employees for required training has always been reimbursed by the Employer, many trainings are free, and no training will be done during the furlough. This email to the Intervenor did not specifically mention the Rock Creek Campus or Rock Creek employees.

On March 29, 2020, the Employer furloughed its employees but continued to pay their health insurance premiums.

On April 1, 2020, the executive director sent an email to Intervenor’s AFT representative stating that she was available for the next several hours and would like to talk about the July 4th vacation closure, the December holiday closure, and the return-to-work process. This email to the Intervenor did not specifically mention the Rock Creek Campus or Rock Creek employees. The record suggests that later in April, Intervenor’s AFT representative and the executive director spoke on the phone. Per the representative’s limited notes, they discussed that the executive director indicated that the Employer was unsure about pay after April, that there would be no copay during furlough, and that training was suggested not mandated. Although Intervenor’s AFT representative testified generally that there was “no distinction made” between the Main Campus and the Rock Creek Campus and that he understood this discussion would be applied across the board to all locations, he presented no specific testimony or other evidence indicating that the Employer and the Intervenor specifically discussed the Rock Creek Campus or why the Employer
might consider the Intervenor to be bargaining on behalf of Rock Creek employees at that time when Intervenor had not previously been treated as their representative.

On April 6, 2020, Intervenor’s AFT representative sent an email to the executive director indicating that his team was ready for an 11 a.m. call. The email contained no mention of the Rock Creek Campus or Rock Creek employees.

Later on April 6, 2020, the Intervenor and the Employer met telephonically. Per the extremely limited notes of Intervenor’s AFT representative, the Intervenor and the Employer discussed using order of seniority for reopening the center, the holiday closures around July 4th and Christmas, returning on May 1, a special sunset license and classroom capacity, and stimulus checks. The representative testified that there was no discussion regarding how seniority would be applied to Main Campus employees vis-à-vis Rock Creek employees and specified that the sunset license did not relate to Rock Creek. The representative provided no other specific testimony or other evidence demonstrating that this discussion related to the Rock Creek Campus.

Shortly after the April 6 meeting, the executive director sent an email to Intervenor’s AFT representative summarizing their discussion. The email stated that the Employer had paid employees through March 27 then furloughed employees on March 29, which allowed employees to continue receiving health insurance without paying premiums, including premiums for spouses and dependents. The email noted that upon return to work, the paid time off bank and accruals would continue. The email indicated that the Employer hoped to reopen on May 1 and that they would conference again as that day approached to determine the next steps moving forward. The Employer’s email to the Intervenor summarizing their discussion did not specifically mention the Rock Creek Campus or Rock Creek employees.

On April 22, 2020, the executive director sent an email to all employees of the Employer explaining that while the Employer had hoped to reopen on May 1, Oregon’s governor had not yet formalized her plans to lift the stay-at-home order, and that as a result the Board of Directors had decided to remain closed through the month of May 2020.

That same day, the executive director sent this same email message to the Intervenor’s AFT representative. Also on April 22, 2020, Intervenor’s AFT representative responded by email, stating that as they move forward towards June they will have to sit down together to reach another memorandum of understanding addressing layoffs, paid time off payout, and sick time. The Employer’s and Intervenor’s April 22nd emails do not specifically mention the Rock Creek Campus or Rock Creek employees.

On April 27, 2020, the executive director met with Intervenor’s AFT representative and then-local president 3. According to the representative’s very limited notes, they discussed staffing issues relating to teacher-qualified employees, the number of non-teacher qualified employees at the Main Campus and at the Rock Creek Campus, and lead teachers from the Rock Creek Campus. The representative testified that the executive director told the Intervenor that there were lead teachers at the Rock Creek Campus that the Employer did not want to lose, but that Intervenor expressed concern from unit employees that there was a difference in pay between lead teachers and regular teachers that could create issues for lead teachers coming into existing classrooms at
the Main Campus. The representative specified that unit employees were in favor of Rock Creek employees moving over to the Main Campus but expressed objection to Rock Creek employees getting paid the same as the employees working as lead teachers at the Main Campus. The executive director did not testify specifically about this meeting.6

On May 12, 2020, the Rock Creek operations director sent an email to employees that the Paycheck Protection Program government funding had been approved and that employees were now on payroll and could no longer claim unemployment. The email noted that as of that time only the Main Campus location was reopening and that the Rock Creek Campus “is looking at reopening at a later date.” The email explained that because they were on payroll they would likely be asked to come into work and requested that those who do not want to or were unable to work to send an email providing her with a status update.

Later in May 2020, the Main Campus reopened to employees. The Rock Creek Campus remained closed. Upon the Main Campus’s reopening, Rock Creek employees came to work at the Main Campus alongside unit employees.

On June 18, 2020, the executive director met with the Intervenor’s AFT representative and local president 3. According to the representative’s limited notes, they discussed the leads from the Rock Creek Campus, bumping, rate increases, and teacher-qualified staff. The representative specified in his testimony that they discussed the lead teachers from the Rock Creek Campus coming to work at the Main Campus and that unit employees at the Main Campus still expressed concern they would be bumped, however the Employer assured them in this meeting that no bumping would occur. The executive director did not testify about this meeting.

On June 25, 2020, the executive director and the Main Campus operations director met with Intervenor’s AFT representative and local president 3. According to the representative, they discussed an upcoming Board of Director’s meeting, layoffs, and tuition increases to families. With respect to the Rock Creek Campus, the representative testified that in the meeting, the Intervenor stated that it would make sense to reduce the pay of those lead teachers from Rock Creek who came to work as teachers at the Main Campus after the COVID closure, and to pay them as teachers instead of lead teachers, since they were working as teachers at the Main Campus. Per the representative, the Employer said it would be willing to pay the Rock Creek lead teachers at the teacher rate even though the Employer had originally wanted to pay them as lead teachers. Additionally, Intervenor and the Employer also discussed the belief that the Rock Creek Campus would be reopening in September 2020; the record contains no additional information as to the reopening or the union status of Rock Creek Campus. The executive director testified but did not discuss this conversation in her testimony.

6 The executive director testified generally that in discussions with the Intervenor in spring 2020, they were discussing employees at both locations, because they are employees of the Employer and this was what the Employer was going through. However, the executive director provided no specific evidence indicating that both the Employer and the Intervenor explicitly understood any negotiations to cover all employees regardless of location or ever specifically mentioned the Rock Creek Campus or Rock Creek employees. In fact, the executive director later testified that while the Employer and Intervenor talked about many general issues concerning employees, they did not specifically discuss the Rock Creek Campus until summer 2021 when PCC notified the Employer that it might reopen the Rock Creek Campus in fall of 2021.
On July 6, 2020, Intervenor’s AFT representative sent an email to the executive director demanding to bargain over a proposed change to four, ten-hour shifts.

On July 7, 2020, the executive director met with Intervenor’s AFT representative and local president. Per the representative, they discussed issues related to staffing and needing additional teacher-qualified staff. They discussed the Employer’s decision not to take new infants due to staffing shortages and that the Employer envisioned that employees would only need to work four, ten-hour shifts through August. The executive director did not testify about this meeting. The record does not contain any evidence that the Intervenor and the Employer discussed the Rock Creek Campus at this meeting.

By July 2020, it became clear that PCC was not going to reopen the Rock Creek Campus. Accordingly, at that point, the Employer completed internal, formal paperwork to permanently transfer the former Rock Creek employees to the Main Campus. On about July 20, 2020, the Employer had those employees signed dues deduction authorization forms for the Intervenor and began deducting dues for the Intervenor. As a result of this, after these permanent transfers to the Main Campus in July 2020, the Intervenor represented all employees of the Employer.

On July 8, 2020, Intervenor’s umbrella labor organization, AFT Oregon, held an organizing meeting to discuss organizing targets. Per an email summarizing that meeting, Intervenor’s AFT representative suggested that with the Employer having Rock Creek Campus, it may be good to have an organizer with a background in childcare spend some time there, if needed, and “should they even open in the fall.” Intervenor’s AFT representative testified that as of this date it was “unclear” whether Intervenor represented Rock Creek employees, but admitted that as of that meeting in July 2020, AFT Oregon considered the Rock Creek Campus to be an organizing campaign.

On August 12, 2020, AFT Oregon held another organizing meeting, for which the agenda included a check in about the Rock Creek Campus.

On August 16, 2020, the Intervenor met with the Employer. The handwritten notes of Intervenor’s AFT representative are difficult to decipher, and the representative did not know what his notes meant; no Employer representative testified about this meeting. The handwritten meeting notes list different pay rates, note “5 [Rock Creek] 18.75,” “8 lead teachers → 5 [Rock Creek] teachers,” and state “1:10 ratio.” The notes lack additional detail.

In August 2020, the Employer issued a discipline to an employee who had previously worked at the Rock Creek Campus and permanently transferred to the Main Campus and become part of the existing unit. The Intervenor bargained with the Employer with respect to the discipline. Although Intervenor’s AFT representative prepared a grievance on the matter, he never filed it due to the resolution reached with the Employer.

On December 18, 2020, the Intervenor and the Employer held another labor management conference. According to the notes of Intervenor’s AFT representative, they discussed the longevity bonus, parents giving cards to staff, and childcare workers getting early vaccinations.
The executive director did not testify specifically about this meeting but testified generally that during the conversations about COVID-19 vaccinations, the Intervenor was speaking on behalf of all employees, including Rock Creek employees working at the Main Campus. However as noted above, by that time, there were no longer any Rock Creek employees; all former Rock Creek employees had permanently transferred to the Main Campus and become part of the existing unit represented by Intervenor.

Also on December 18, 2020, Intervenor’s AFT representative sent an email to the president of AFT Oregon requesting to be put in touch with the public relations team because both the Employer and the Intervenor wanted the employees to be in line for COVID-19 vaccines with other first responders.

On January 15, 2021, the Intervenor and the Employer held a meeting. According to the handwritten notes of Intervenor’s AFT representative, they discussed, *inter alia*, licensing, a vaccine advisory committee, the date that employees would be able to access vaccines through their healthcare provider, and the fact that the Rock Creek Campus would not open until September.

During the winter that the Rock Creek Campus was closed, Intervenor’s AFT representative filed a grievance about a snow day at the Main Campus. This is the only grievance that the representative filed at the Main Campus since the Rock Creek Campus initially opened in September 2019; the representative never filed any grievances regarding the Rock Creek Campus.

In March 2021, Intervenor local president 2/Petitioner organizer, who at that time was serving as Intervenor’s local president, discussed representing Rock Creek employees with Intervenor’s AFT representative even though they were not sure if PCC was going to reopen the Rock Creek Campus. However, due to the uncertainty around the Rock Creek Campus’s reopening, Intervenor’s local president 2/Petitioner organizer did not start discussing the union status of the Rock Creek Campus with the Employer until August 2021, discussed below.

In about May 2021, Intervenor’s local president 2/Petitioner organizer learned that the Rock Creek Campus would be reopening, and she reached out to Intervenor’s AFT representative to talk about having a meeting to unionize the Rock Creek Campus.

On June 14, 2021, the Employer and the Intervenor exchanged emails about a memorandum of understanding regarding a paid time off policy for “staff” and a pay grade adjustment for the kitchen assistant and the night janitor. Intervenor’s AFT representative testified that the memorandum was intended to affect staff wherever they might be located but pointed to no specific statements or writings that supported this contention. Additionally, Intervenor’s AFT representative acknowledged that he did not know if the night janitor ever worked at the Rock Creek Campus and was not sure if there was a kitchen manager and kitchen assistant at the Rock Creek Campus. At this point the Employer solely employed employees at the Main Campus and the memorandum makes no mention of a future reopening of the Rock Creek Campus.
Intervenor local president 2/Petitioner organizer testified that while she was president of the Intervenor from early 2021 through about August or early September 2021, her understanding was that the Intervenor did not represent employees at the Rock Creek Campus.

3. The Reopening of the Rock Creek Campus

On June 11, 2021, the Employer and Intervenor met. According to the meeting notes, the Employer and Intervenor discussed updated COVID protocols, employee schedules, and exceptions to the standard paid time off accrual rules due to COVID. Additionally, the notes state “interviews for PCC Rock Creek will begin June 14, 2021.”

On August 9, 2021, Intervenor local president 2/Petitioner organizer sent an email on behalf of Intervenor to the Employer and Intervenor’s AFT representative with the items she wanted to see on that week’s meeting agenda, including “PCC [Rock Creek] campus opening and where we are with its union status.”

Then on August 13, 2021, the Employer, represented by the executive director and the Main Campus operations director, and Intervenor, represented by Intervenor’s AFT representative and Intervenor local president 2/Petitioner organizer, held the planned labor management meeting. Intervenor’s AFT representative did not present any notes about this meeting but testified that with respect to the Rock Creek Campus, the Employer stated that it was not opposed to Intervenor representing Rock Creek employees. Intervenor’s AFT representative admitted that at this meeting there was no discussion about whether the CBA would apply to the Rock Creek Campus or whether dues would be deducted from Rock Creek employees. Per Intervenor local president 2/Petitioner organizer, at this meeting the executive director said that the Employer was not going to stand in the way of whatever choice employees made.7

In August or the first week of September 2021,8 Intervenor local president 2/Petitioner organizer sent a message to Intervenor’s AFT representative saying that she wanted to talk about a few things, including unionizing the Rock Creek Campus. Per Intervenor local president 2/Petitioner organizer, she met with Intervenor’s AFT representative at a restaurant down the street from the Main Campus. She gave him a list of items that she believed needed to get done, including having a plan for organizing the Rock Creek Campus. Intervenor local president 2/Petitioner organizer testified that Intervenor’s AFT representative told her that he did not know what the unionizing process would look like and he had to contact an AFT Oregon organizer. She highlighted that at that meeting she very clearly told Intervenor’s AFT representative that if the items on her list did not happen she would not work with him to organize the Rock Creek Campus.

---

7 The executive director did not testify about this meeting specifically but testified generally that she spoke with the Intervenor about the process for a union at the Rock Creek Campus and told Intervenor it was not her “job to do that” but that she hoped Intervenor would “let [her] know what needed to be done.” The executive director underscored she had “open conversation” with Intervenor, regarding issues such as “communicating with staff” at the Rock Creek Campus and having Rock Creek employees sign cards. Additionally, the executive director broadly claimed that she “was not” sure if Intervenor represents employees at the Rock Creek Campus.

8 Intervenor local president 2/Petitioner organizer first testified that this occurred the first week of September 2021, but later that it occurred in August 2021. However, she was still Intervenor’s local president at the time of the meeting, so it occurred before her permanent transfer to the Rock Creek Campus.
and instead would work on unionizing with another labor organization, specifically Petitioner. Intervenor’s AFT representative did not testify about this meeting.

Shortly thereafter, possibly later that same day, Intervenor held a Zoom call, which included Intervenor’s AFT representative and an AFT Oregon organizer, that consisted partially of steward training and partially of union organization. The record contains a slide from Intervenor’s internal presentation, entitled “Rock Creek Organizing Campaign,” which shows that at the meeting AFT Oregon reviewed the background, noted that the Employer claimed it would not interfere with Intervenor’s organizing effort, and stated that it would “have organizing conversations” and “gauge support” amongst Rock Creek employees, attempt to get the Employer to voluntarily recognize Intervenor, collect cards, and seek an NLRB election if the Employer would not agree to voluntarily recognize Intervenor. Intervenor’s AFT representative testified at the hearing but did not discuss this training.

When the Rock Creek Campus reopened in September 2021, two teachers who previously worked at the Main Campus, including Intervenor local president 2/Petitioner organizer, permanently transferred to the Rock Creek Campus as lead teachers.

At no point since the Rock Creek Campus reopened in September 2021 has the Employer deducted dues on behalf of the Intervenor for Rock Creek employees, and at no point has the Intervenor sought to enforce the dues provision of the CBA with respect to Rock Creek employees.

Intervenor local president 2/Petitioner organizer testified that she stopped being Intervenor’s local president when she moved to the Rock Creek Campus because the executive director told her that since the Rock Creek Campus was not represented by Intervenor, she would no longer hold that position. Once Intervenor local president 2/Petitioner organizer transferred to the Rock Creek Campus, a new acting local president 3 took over responsibility for Intervenor.

In September 2021, after she had transferred to the Rock Creek Campus and was no longer Intervenor’s local president, Intervenor’s local president 2/Petitioner organizer began to organize the Rock Creek Campus on behalf of Petitioner.

On October 15, 2021, Intervenor’s acting local president 3 sent a text message to prior Intervenor local president 2/Petitioner organizer asking if she would be available to chat with Intervenor’s AFT representative and an AFT organizer about unionizing the Rock Creek Campus.

---

9 The finance director testified that, on advice of counsel, the Employer did not deduct dues from former Main Campus employees once they began working at the Rock Creek Campus. Moreover, the Rock Creek operations director testified that when the Rock Creek Campus reopened in September 2021, either the executive director or the finance director verbally instructed her that dues were not going to be taken out until employees had decided what was going to happen with union representation.

10 Intervenor’s AFT representative testified that when Intervenor local president 2/Petitioner organizer transferred to the Rock Creek Campus he lost touch with her, but that she never resigned her status and that her status as the local president was unclear. Conversely, Intervenor local president 2/Petitioner organizer testified that Intervenor’s AFT representative knew that she was resigning from her position as local president and that she had multiple conversations with him about needing to make choices about what was going to happen with the Rock Creek Campus when she left because she would not have the same ability to do the job when she was not president anymore.
Intervenor local president 2/Petitioner organizer responded that she had no interest in working with Intervenor’s AFT representative or AFT Oregon moving forward.

On October 26, 2021, Intervenor’s AFT representative sent an email to the executive director with sample voluntary recognition language for the Rock Creek Campus and a draft neutrality agreement. The email asked the Employer to take the language to their attorney to review and to let the Intervenor know what they think. The email explained that the neutrality agreement “is more a statement that [Intervenor] and the Employer are moving forward” and the voluntary recognition agreement would come into effect once Intervenor has collected cards, “but knowing [the Employer] would be open to recognizing [Intervenor] once [it has] shown support would be a huge shot in the arm for [Intervenor’s] organizing effort and a sign of faith in [their] working relationship.” Intervenor’s AFT representative admitted that this was the first time he had asked the Employer for recognition as the bargaining representative of employees at the Rock Creek Campus.

The Employer never responded to the Intervenor’s October 26 email about a voluntary recognition agreement and a neutrality agreement. Intervenor’s AFT representative never followed up with the Employer about his October 26 email. The record is clear that the Employer never signed either a voluntary recognition agreement or a neutrality agreement with Intervenor.

On December 1, 2021, Intervenor local president 2/Petitioner organizer sent an email on behalf of Petitioner to the executive director saying that she had collected a majority of authorization cards for Petitioner and requesting voluntary recognition. The email noted that Petitioner planned to file a petition with the NLRB at the end of that week. Later that same day, the executive director responded asking Petitioner to delay the filing of the petition until she could have a conversation with the entire Board of Directors. Petitioner responded that it could delay filing the petition until the following Tuesday.

On the morning of December 3, 2021, Intervenor’s AFT representative called a representative of Petitioner to make sure that Petitioner understood that Intervenor already represents the Employer’s facilities. Later that day, Petitioner’s representative sent an email to Intervenor’s AFT representative to follow up on their conversation. In the email, Petitioner’s representative noted that Petitioner had previously reached out to Intervenor about organizing this industry, but never received a response to their communications. Petitioner’s email also stated that while Intervenor’s AFT representative has stated AFT Oregon was interested in organizing the Rock Creek Campus, Petitioner understood that Intervenor had never represented Rock Creek employees either before COVID or since the Rock Creek Campus reopened, in that no Rock Creek employees paid dues or had representation from Intervenor. The email stated that Petitioner understood that although Intervenor initially thought that the CBA covered the location, when the Employer asserted that it did not, that decision was not formally challenged. The email concluded that Petitioner already had majority support and had requested voluntary recognition from the Employer. Intervenor’s AFT representative admitted that he never responded to Petitioner’s email.

On December 7, 2021, the Tuesday after Petitioner sent its email to the Employer requesting voluntary recognition, Petitioner filed the instant petition seeking to represent employees employed at the Rock Creek Campus.
B. Geographic Proximity

The Main Campus is located approximately 12 miles from the Rock Creek Campus, which equals about 22 minutes of driving. The record reveals that the Main Campus is easily accessible by public transportation. Conversely, the Rock Creek Campus is only accessible by car, which prevents numerous employees from being able to work at that facility.

C. Central Control of Daily Operations and Labor Relations

1. Managerial and Supervisory Hierarchy

The Board of Directors provides oversight to and directly supervises the executive director, writes and approves policies, approves budgets and program fees, approves the contracts that the executive director negotiates, and signs legal documents and checks. The Board of Directors’ authority extends to both the Main Campus and the Rock Creek Campus.

Reporting to the Board of Directors is the executive director, who is responsible for all operations, including fundraising, compliance with regulatory agencies, finance, and vision planning.

The executive director oversees the Employer’s entire operations and management team, including the finance director, human resources director, and the community development director.

Also reporting to the executive director are the Main Campus operations director and the Rock Creek operations director, who each oversee day-to-day operations at their respective campus. The lead teachers,11 teachers, and aides in turn report to the operations director for their location. Each location also employs a program director who assists with curriculum.

Float teachers and substitutes report to the human resources director. However, the record reveals that they also report to the operations director of the facility at which they perform work.

The finance director supervises the kitchen managers at both locations,12 who in turn oversee their respective kitchen assistants. The finance director also supervises the janitor and housekeeper employed at the Main Campus.

2. Daily Operations

a. Facilities

The Employer owns the Main Campus facility, which consists of a 20,000 square foot two-story building and four playgrounds. The majority of the square footage at the Main Campus is

11 Lead teachers oversee how their classroom is run. However, there is no indication that they possess any supervisory authority within the meaning of Section 2(11) of the Act. Moreover, the parties have stipulated that any unit should include the lead teachers.

12 The parties stipulated that the Rock Creek kitchen manager is a manager within the meaning of Section 2(12) of the Act but did not reach any agreement with respect to supervisory status.
the downstairs portion of the building, which houses the Employer’s primary administrative offices, including the executive director, human resources director, finance director, community development coordinator, and operations director for the Main Campus. The Main Campus hosts eight classrooms, six upstairs and two downstairs. Additionally, the Main Campus includes a kitchen, a conference room, and a teacher workroom. Pursuant to Oregon regulations, the Main Campus has its own licensing number and permits. The Employer serves approximately 140 families at the Main Campus. The Employer makes all decisions regarding the operational status of the Main Campus, such as inclement weather.

PCC owns the Rock Creek Campus, located 12 miles from the main campus, which was newly finished right before the Employer began operations there in September 2019. The Employer leases the Rock Creek Campus from PCC on a three-year term and at the end of the lease PCC can determine if it wishes to renegotiate the lease with the Employer or terminate the lease and contract with another childcare provider to run the facility. The Rock Creek Campus consists of approximately four or five classrooms and two playgrounds, one of which is used solely for the infant room and the other of which is shared by the five remaining classrooms. The office area of the Rock Creek Campus includes the Rock Creek operations director and office manager; the executive director does not have her own office at the Rock Creek Campus. Additionally, the Rock Creek Campus includes a small kitchen, a multipurpose room, a conference room, a small workroom for teachers, and a storage room. Pursuant to Oregon regulations, the Rock Creek Campus has its own licensing number and permits. The Employer serves approximately 65 families at the Rock Creek Campus. PCC makes all decisions about whether the Rock Creek Campus is open and operational, ranging from inclement weather closures to determining when to reopen after the initial COVID closure.

The executive director’s name is on the licenses for both the Main Campus and the Rock Creek Campus.

b. Supervisory Functions

i. On Site and Remote Supervision

Under Oregon regulations, each location is required to have a director on duty. At the Rock Creek Campus, the director on duty is usually either the Rock Creek operations director or the office manager. However, in one instance during fall 2021, though it is unclear for how long, the finance director came to the Rock Creek Campus to serve as the director on duty when COVID-19 forced them to close a specific classroom.

The operations directors for the Main Campus and the Rock Creek Campus are responsible for the day-to-day oversite of their respective locations and do not in any way supervise the other location. This includes scheduling families for tours and visits, working on enrollment rosters, and troubleshooting issues. Lead teachers also submit their weekly lesson plans to the operations director or program director for their campus.

With respect to the Rock Creek Campus, the Rock Creek director of operations supervises the petitioned-for lead teachers, teachers, and aides at their respective locations by observing
employees in classrooms, creating schedules, mentoring employees, and handling disciplinary matters. The petitioned-for kitchen assistant reports to the Rock Creek kitchen manager and is supervised by the finance director. The Rock Creek operations director prints out memos and guidance that come from the Main Campus for distribution in employee mailboxes.

The sole individual from the petitioned-for unit to testify in this matter, 13 Intervenor local president 2/Petitioner organizer, who worked as a lead teacher at the Rock Creek Campus, testified that the Rock Creek operations director supervises the lead teachers, who in turn oversee their classrooms, 14 and the float teacher. She also noted that as lead teacher she is in constant contact with the Rock Creek operations director about issues that arise throughout the day, ranging from emails with parents, to child injury or illness, to scheduling; she estimated that 99 percent of their interactions were face-to-face. Intervenor local president 2/Petitioner organizer testified that the Rock Creek operations director handles employee and family grievances, creates the schedule, interviews candidates and hires employees, and addresses discipline. However, she acknowledged that she was not aware of what, if any, communications occurred between the Rock Creek operations director and the executive director before the Employer made any final decisions.

The operations directors for each facility report to the executive director, who is ultimately responsible for overseeing both locations. The executive director testified that issues at the Main Campus and the Rock Creek Campus are reported to her by phone, text, or email. The executive director noted that she is in “constant communication” with the Main Campus and the Rock Creek Campus, though clarified that this relates specifically to the operations directors for each location. The executive director noted that she talks regularly to the teachers at the Main Campus, but only talks to the lead teachers when she is visiting the Rock Creek Campus.

The executive director and the Rock Creek operations director generally speak on the phone multiple times per day and are in additional communication via email. Each morning the executive director calls the Rock Creek operations director while commuting to work, and the other conversations are more sporadic throughout the day.

The executive director primarily works at her Main Campus office four or five days per week. The record contains conflicting evidence as to the nature, duration, and frequency of the executive director’s visits to Rock Creek. On the one hand, the executive director testified that she goes to the Rock Creek Campus at least once per week, though it could be as simple as delivering paychecks or supplies or filling in as a teacher in a classroom. The executive director estimated that the first few weeks after the Rock Creek Campus reopened in September 2021, she went there every day to set up, get supplies, and to help situate everyone. However, the executive director is only occasionally there for more than four hours at a time, usually when she has to substitute in a class, which has occurred about once per month since September 2021. On the other hand, Intervenor local president 2/Petitioner organizer testified that when she worked as a lead teacher at the Rock Creek Campus, she only saw the executive director at the Rock Creek Campus once or twice a month, usually to drop off toys or materials.

---

13 The former lead teacher was in the petitioned-for unit at the time of filing but had since separated her employment and was no longer employed by the Employer at the time of the hearing.

14 Again, there is no contention that lead teachers are supervisors within the meaning of Section 2(11) of the Act.
ii. Hiring

The human resources director coordinates hiring for both the Main Campus and the Rock Creek Campus. The applications for lead teachers, teachers, and aides at each facility go to the operations director for the respective facility, who in turn selects candidates in which they are interested. Then, the human resources director generally interviews those candidates with the campus’s operations director, sometimes via Zoom. In fall 2021, the finance director interviewed a candidate for the kitchen assistant position at the Rock Creek Campus, as she supervises that position. The executive director participates in interviews when she is able to do so, which has only been “a handful” of times. All interviews utilize standard interview questions created by the human resources director.

After the interview, the operations director for the location brings the information about the candidate and a recommendation to the executive director, who has the final say on hiring at both the Main Campus and the Rock Creek Campus. The Rock Creek operations director testified that if she recommends hiring the candidate, the executive director generally agrees to hire. However, the Rock Creek operations director noted that there have been a few times where she told the executive director that she did not believe the candidate would be a good fit, but where the executive director decided to give the candidate a try and hire them despite the Rock Creek operations director’s negative recommendation.

The former lead teacher from the Rock Creek Campus testified that she saw the Rock Creek operations director interview and hire two teachers “on the spot,” though the record does not reveal exactly what this means or reveal whether any prior discussions had occurred between the executive director and the operations director.

iii. Discipline and Discharge

With respect to discipline and discharge, the operations directors at each location bring disciplinary issues to the attention of the human resources director and the executive director, who has final authority with respect to discipline and discharge. The Rock Creek operations director testified that she does not discipline employees without first getting advice from the human resources director and the executive director and any action serious enough to warrant termination would result in an immediate call to the executive director.

The record contains limited examples of disciplinary action or employee performance concerns at the Rock Creek Campus.

In 2019, a lead teacher had raised concerns with the Rock Creek operations director about the performance of an assistant teacher in an infant classroom. The Rock Creek operations director then discussed the situation with the executive director, who suggested that the lead teacher and the assistant teacher complete an evaluation to assist with the issue. The lead teacher elected to complete the evaluation on her own without the Rock Creek operations director. Then, after the evaluation occurred, the Rock Creek operations director followed up with the executive director about the outcome. The record does not indicate whether this evaluation was considered disciplinary.
In fall 2021, the Rock Creek operations director and the executive director had an in-person conversation with a Rock Creek teacher. Neither the Rock Creek operations director nor the executive director, who both testified in the instant proceeding, discussed this conversation. Instead, Intervenor local president 2/Petitioner organizer testified that she spoke with another teacher immediately after that teacher’s meeting with the executive director and the Rock Creek operations director. Per Intervenor local president 2/Petitioner organizer, the teacher had been in the meeting for a long time and was crying in the conference room. The record does not contain evidence of any discipline that issued as a result of this meeting.

iv. Staffing and Scheduling

The Rock Creek operations director writes the schedule by hand for the Rock Creek lead teachers, teachers, and aides. Each morning when the executive director calls the Rock Creek operations director, the Rock Creek operations director verbally goes over the schedule for the day; at no point does the Rock Creek operations director submit a written schedule to the executive director. Per the Rock Creek operations director, the executive director’s approval of the schedule is verbal. If the Rock Creek operations director is struggling with how to adapt the schedule, the executive director makes suggestions during these calls. The record does not reveal who creates the schedule for the petitioned-for kitchen assistant.

If a Rock Creek Campus employee calls out sick, they notify whoever opened Rock Creek that day and may also send a message to the human resources director or inform the Rock Creek operations director. If a Main Campus employee calls in sick, they contact the human resources director or leave a voicemail at the Main Campus, which is then picked up either by the office manager, the operations director, or the executive director.

For time off requests, employees initiate the request process through the online payroll system. At the Rock Creek Campus, the Rock Creek operations director works with the human resources director to jointly approve or deny the decision. The decision to grant paid time off depends on having enough staff to cover an absence. The record does not indicate that the Employer has denied requests for paid leave.

When Rock Creek employees are absent, the Rock Creek operations director makes a determination as to whether she can move employees around to achieve sufficient staffing ratios with employees on site or if she needs to contact the Main Campus to see if anyone can assist. Sometimes the Rock Creek operations director will determine that the easiest way to cover an absence is by asking an employee already working to do overtime; she always asks the executive director for permission before requesting that employees work overtime and has no authority to do so on her own.

c. Administrative Functions

The executive director makes all non-food purchases for both the Main Campus and the Rock Creek Campus. When the Rock Creek Campus initially opened and then reopened, the executive director made numerous supply purchases to get the facility established. On a more day-
to-day basis, the operations director or office manager loads a request into the Amazon basket, then the executive director reviews it to determine if it is a good use of resources and, if appropriate, purchases the item through a vendor. The executive director also approves all reimbursement if employees spend their own money on classroom items.

Payroll for both the Main Campus and Rock Creek is processed by the finance director and then approved by the executive director. The finance director also handles bills, health benefits, unemployment benefits, retirement paperwork, and student scholarship applications out of the Main Campus. The finance director testified that she goes to the Rock Creek Campus once per week to pick up money, to check in with billing, to see parents, especially those families on scholarship, and to work with the office manager. The finance director also went to the Rock Creek Campus to support the office manager handling parent concerns when a COVID-19 case forced the shutdown of a classroom and to substitute for the kitchen manager.

Mail for both locations is sent to the central office at the Main Campus.

Personnel files for all employees are stored at the Main Campus. The Rock Creek Campus maintains copies of the personnel files of employees employed at that facility.

At the Rock Creek Campus, classroom phones serve to dial other extensions at that location. Only the phones in the office and the conference room can dial outside numbers, including those at the Main Campus or the executive director.

d. Employee meetings and contact

Before the initial March 2020 COVID-19 closure, the Employer held all-staff planning days once or twice a year at the Main Campus. Since the Rock Creek Campus reopened in September 2021, the Employer has not held any required meetings for all staff.

The record contains no evidence of contact between employees in the petitioned-for unit and employees in the existing unit beyond during the limited instances of interchange set forth below. The record reveals that the petitioned-for employees at the Rock Creek Campus have no reason to contact their counterparts at the Main Campus during work time for work-related purposes. The Rock Creek operations director admitted that the petitioned-for Rock Creek employees “don’t have a lot of contact” with unit employees at the Main Campus.

3. Labor Relations

The executive director is responsible for labor relations at both the Main Campus and the Rock Creek Campus.15

---

15 Intervenor maintains a union bulletin board at the Main Campus for unit employees. Although the executive director testified that the Employer put up a bulletin board for Intervenor’s use at the Rock Creek Campus, the record reveals that Intervenor was completely unaware of this.
D. Employee Skills and Functions

Lead teachers are responsible for the care and education of a group of children and serves as team leader of the teaching team. The lead teacher job description, skills, required training, and job functions are the same at both the Main Campus and the Rock Creek Campus. According to the job description, the lead teacher establishes and maintains a safe and healthy environment, advances motor and intellectual competence, supports social and emotional development, establishes positive and productive relationships with families, and ensures a well-run, purposeful program responsive to participant needs. All lead teachers must meet licensing requirements established by the State of Oregon. At the time of the hearing, the Employer employed eight lead teachers at the Main Campus and about four lead teachers at the Rock Creek Campus.¹⁶

Teachers are also responsible for the care and education of a group of children as part of a teaching team, and support and help the designated lead teacher carry out the program designed by the program director and lead teachers. The teacher job description, skills, required training, and job functions are the same at both the Main Campus and the Rock Creek Campus. Teachers must also meet licensing requirements and be teach-qualified, which means having a sufficient number of work hours and training. At the time of the hearing, the Employer employed 20 teachers at the Main Campus and six teachers at the Rock Creek Campus.

Aides support and carry out the program designed by the lead teacher and work with children in the classroom and on the playground to provide a safe, loving, and developmentally appropriate program. The aide job description, skills, required training, and job functions are the same at both the Main Campus and the Rock Creek campus. This is considered an entry-level position for the Employer that requires the lowest amount of skills and training, and must only demonstrate sufficient education or experience with the age group and need not meet Oregon licensing requirements. At the time of the hearing, the Employer employed six aides at the Main Campus and three aides at the Rock Creek Campus.

For the purposes of maintaining specific teacher to student ratios established by Oregon State regulations, all lead teachers and teachers are “teacher qualified.” Some aides may be teacher qualified but need to meet specific qualifications and submit necessary paperwork to be considered teacher qualified. For non-teacher qualified aides, the aides may work alongside a teacher qualified employee for the purposes of maintaining ratio but may not work independently.

The remaining non-teaching positions at issue vary between the two locations, in part due to the size of each facility. At the Main Campus, the Employer employs: a kitchen assistant, who supports the kitchen manager in food preparation and clean up; a housekeeper, who does laundry, stocks common areas with supplies, and cleans designated areas; and a janitor, who cleans certain designated areas, vacuums, sweeps, and mops floors, dusts, and cleans bathrooms, and empties trash. However, at the Rock Creek Campus, the sole kitchen assistant performs the kitchen assistant duties and also serves as the janitor.

¹⁶ The Employer generally employs five lead teachers at the Rock Creek Campus, however Intervenor local president 2/Petitioner organizer, who worked as a lead teacher, had recently separated her employment with the Employer.
E. Interchange

1. Permanent Interchange

When the Rock Creek Campus first opened in September 2019, the Employer employed approximately six employees. As part of this initial opening, one employee from the Main Campus chose to move to the Rock Creek Campus to work.

In March 2020, both the Main Campus and the Rock Creek Campus closed due to the COVID-19 pandemic. At the time of the COVID-19 closure, the Rock Creek Campus employed somewhere between nine and 13 lead teachers, teachers, and aides.

In May 2020, the Employer reopened its Main Campus. However, as PCC’s operating status, which remained uncertain, determined whether the Rock Creek Campus could reopen, the Employer could not reopen the Rock Creek Campus at that time. Accordingly, the Rock Creek employees who did not resign their employment moved from the Rock Creek Campus to the Main Campus.17 Of the two aides from the Rock Creek Campus who transferred to the Main Campus when it reopened in May 2020, one left employment shortly thereafter and the other was one of two individuals who were permanently laid off prior to July 2020.

Initially, the Employer considered the Rock Creek Campus closure to be temporary as the Employer expected PCC to resume in-person operations and reopen the Rock Creek Campus in the fall of 2020. In fact, the Employer wanted to reopen the Rock Creek Campus in September 2020. However, PCC, which owns the building, remained closed for in-person learning and would not allow the Employer to access the Rock Creek Campus.

In July 2020, when it became clear that PCC would not reopen the Rock Creek Campus in that timeframe, the Employer considered the remaining employees who had moved to the Main Campus from the Rock Creek Campus to be permanent transfers based at the Main Campus.18

The Rock Creek Campus remained closed from March 2020 until September 2021.

In summer of 2021, PCC notified the Employer that the Rock Creek Campus could reopen in September 2021. During that time, two teachers from the Main Campus, including Intervenor local president 2/Petitioner organizer, applied to become and were hired as lead teachers at the Rock Creek Campus. In about late August 2021, the two teachers from the Main Campus began working at the Rock Creek campus. Also during the reopening, an employee from the Main Campus transferred to become an assistant teacher at Rock Creek.

In September 2021, a teacher from the Main Campus came to work temporarily at the Rock Creek Campus for a several week period and decided to permanently transfer to work at the Rock Creek Campus.

17 It is unclear how many employees moved from the Rock Creek Campus to the Main Campus in summer 2020.
18 Based on the dues deductions authorization cards in the record, at least four former Rock Creek employees permanently transferred to the Main Campus in July 2020.
2. Temporary Interchange

All temporary interchange between the Employer’s locations is voluntary. The Employer did not present comprehensive records that accurately track all temporary interchange, as some timecards note when an employee works at a different location, whereas other timecards do not, and the Employer maintains no system for tracking such information.\(^{19}\)

As noted by the operations director of Rock Creek, many employees who live in Portland do not drive, so cannot come out to the Rock Creek Campus, which does not have any public transit options. As a result, if the operations director of Rock Creek calls to see if someone can assist from the Main Campus, typically the executive director or the human resources director comes to Rock Creek.

a. September 2019 to March 2020

For the period from September 2019 to the COVID-19 closure in March 2020, the record contains specific evidence about the following temporary interchange\(^{20}\):

- In September 2019, one teacher from the Rock Creek Campus volunteered to work at a parents’ night out event, sometimes referred to as date night, at the Main Campus where children could remain at the Main Campus in the evening so parents could go on a date. As noted below, approximately three or four date nights occurred between the opening of the Rock Creek Campus in September 2019 and the March 2020 COVID-19 closure and no date nights have taken place since the start of the COVID-19 pandemic. Working on date night was always voluntary for employees.
- In November 2019, one teacher from the Rock Creek Campus worked a full shift at the Main Campus as a teacher.

The executive director testified generally that before the COVID-19 pandemic there were examples of Rock Creek employees coming over to the Main Campus during the day and that in fall of 2019 there was a staff shortage at the Main Campus that prompted employees from Rock Creek to work at Main Campus. However, the executive director failed to provide specific details about the nature, frequency, or duration of such interchange and no documentary or other testimonial evidence supports this claim.

Per the finance director, the facilities employee\(^{21}\) based at the Main Campus assisted with opening logistics at the Rock Creek Campus by assisting with compliance for classroom regulations, such as by bolting bookshelves to the wall, hanging up bulletin boards properly, setting up the kitchen, and preparing the playground. The finance director testified that there were “many days” that the facilities employee started work at the Main Campus then went to work at the Rock

---

\(^{19}\) The finance director testified that temporary interchange happens more frequently than what appears in the Employer’s records, but that she could not find any specific examples beyond those provided.

\(^{20}\) To the extent that the record includes evidence about interchange into positions outside of the petitioned-for unit or the existing unit, such as the kitchen manager, I do not include that evidence.

\(^{21}\) There is no indication that the Employer employs a “facilities” employee in the existing unit, as the described tasks performed by the facilities employee do not match the jobs performed by employees in the existing unit. The list of all employees also does not list a facilities employee.
Then, after the Rock Creek Campus closed in March 2020, though it is unclear when, the facilities employee brought certain items from the Rock Creek Campus to the Main Campus. However, the finance director’s testimony did not reveal over what time frame these days occurred or how much time the facilities employee spent at the Rock Creek Campus. Significantly, although the finance director indicated that this was a unit position, the existing unit does not include a “facilities” classification, the employee in question is not listed as part of the existing unit, and the petitioned-for unit does not include a “facilities” classification.

The record contains no evidence from aides working at a different campus for the period of September 2019 to the March 2020 COVID-19 closure.

b. September 2021 to the January 2022 Hearing

For the period from September 2021 to the January 2022 hearing, the record contains specific evidence about the following temporary interchange:

- In September 2021, a float teacher from the Main Campus agreed to temporarily work at Rock Creek for several weeks to cover staffing shortages. Then, as noted above, she elected to remain at the Rock Creek Campus and permanently transferred to that location.

- On one day in December 2021, a lead teacher from the Main Campus went to work at the Rock Creek Campus for one day. The finance director testified generally that this interchange occurred to cover staffing needs. However, Intervenor’s local president 2/Petitioner organizer, who at the time worked as a lead teacher from the Rock Creek Campus, testified that on the day this individual came over from the Main Campus, the Rock Creek Campus was fully staffed and the individual, who is also the local secretary for the Intervenor, only worked in a classroom for part of the day and spent the rest of the day walking through the Rock Creek Campus talking to teachers about signing authorization cards for the Intervenor. Neither the Employer nor the Intervenor presented rebuttal evidence about staffing levels that day or otherwise rebutted the claims that the individual spent part of the day collecting authorization cards.

- In early January 2022, a lead teacher from the Rock Creek Campus volunteered to work at the Main Campus on the first day after the holiday break, a day that the Rock Creek Campus was closed and for which the Rock Creek teachers did not receive a paid holiday.

- In early January 2022, a float teacher from the Main Campus worked two days at the Rock Creek Campus. On these same days, per the finance director, a second employee from the Main Campus also worked at the Rock Creek Campus; however,}

22 Conversely, the Executive Director testified generally that she did not believe that the Employer had sent employees between the two campuses in a single day but that she would need to check.

23 In late August and early September 2021, the facilities employee from the Main Campus worked at least portions of three shifts, though it is unclear how long, at the Rock Creek Campus. The finance director testified that the facilities employee worked “a lot” at both locations, but the Employer did not track it. The record does not reveal specific hours or any dates beyond the three days mentioned above. Again, as noted above, there is no “facilities” classification either in the petitioned-for unit or the existing unit.
the record contains no documents supporting this second interchange on those same dates.

- On the third day of the hearing, January 10, 2022, approximately 15 or 16 employees who normally work at the Rock Creek Campus instead worked at the Main Campus because a positive COVID-19 case from a Rock Creek employee who had worked in all of the classrooms shut down the entire center. The Employer sent two employees into quarantine with the option of doing tasks online to be paid while in quarantine and offered the remaining employees the option of working their shift at the Main Campus. This assignment to the Main Campus was voluntary, as the Employer did not require any Rock Creek employees to report to the Main Campus.

Intervenor local president 2/Petitioner organizer, who worked as a lead teacher at the Rock Creek Campus from August through December 2021, testified that she never worked at the Main Campus during that time. She noted that during the last week of December 2021, the Rock Creek operations director came around to ask Rock Creek employees if they wanted to help move furniture at the Main Campus one day during the winter holiday closure; this is the only occasion on which she was asked to work at the Main Campus.

Since September 2021, no aides or kitchen assistants have worked at their non-designated location.

F. Terms and Conditions of Employment

Both the Main Campus and the Rock Creek Campus operate Monday through Friday from 7 a.m. to 6 p.m. Additionally, prior to the COVID-19 pandemic, approximately once per month the Main Campus offered a date night, where children could stay from 6 p.m. to 9 p.m.

On a given day, employees generally work either the opening shift, beginning at 7 a.m., or the closing shift, beginning at 9 a.m. Teachers within a classroom often alternate their work schedules. Due to understaffing, employees at Rock Creek currently receive a reduced lunch break and work 15 minutes of overtime per day.

Generally, both locations follow the same school calendar. However, the record reveals that on days that PCC is closed, either because of weather or regular scheduling, the Employer’s Rock Creek Campus must also close as a result of not having access to the facility.

The Main Campus only enrolls students on a full-time basis. However, under the contract with PCC, which gives priority to students and faculty at PCC and accommodates their schedules, the Rock Creek Campus allows students to enroll on a part-time basis, such as certain mornings or full days per week.
The Employer pays employees at both locations on the same wage scale: lead teachers earn $21 per hour; teachers earn $18 per hour; aides earn $14 per hour; and the kitchen assistant, housekeeping, and janitor earn $18 per hour.24

All employees use the same online system for time and attendance. Employees have their own account, through which they clock in and out and make time off requests. Employees may either log into a device at the facility at which they are working or may log on remotely. Employees do not note anything different in the payroll system if they work at a facility other than their regular campus and the Employer does not regularly make such notes in the time and attendance system.

Main Campus employees may elect to pay for a parking pass to allow them to park on the street in a restricted zone. Rock Creek employees may purchase a parking pass through PCC.

The Employer’s parent handbook is essentially the same for the Main Campus and the Rock Creek Campus, with the exception of staff information and emergency evacuation procedures, both of which are location dependent. Due to the fact that the facilities have separate licensing numbers, Oregon regulations mandate that employees must have an orientation reviewing the handbook and guidelines before working at any location; the Employer completes forms with orientation records that it places into the employee’s file.

The record does not contain an employee handbook. However, the executive director testified that the same workplace policies apply to both locations.

The petitioned-for employees at the Rock Creek Campus and unit employees at the Main Campus have the same medical and dental benefits, paid time off, and access to leaves of absence and short-time disability.

Lead teachers and/or teachers at the Main Campus and Rock Creek Campus receive designated time to prepare for their classes during class times if operational ratios can be met, however currently prep time at Rock Creek is limited due to staffing issues.

Annual employee evaluations are scheduled for July 1 each year at the Main Campus and at the Rock Creek Campus. However, the Employer has never conducted general evaluations at the Rock Creek Campus because it has never been open in July.25

While certain Employer witnesses testified that some similarities in working conditions exist because the Employer applies the CBA at the Rock Creek Campus, the record is clear that the entire CBA does not in fact apply at Rock Creek. For example, the Employer does not apply Article 20 governing union membership and deduction of dues or fair share fees to the petitioned-for employees at Rock Creek.

24 The CBA states that housekeeping, janitorial, and the assistant cook earn $14 per hour. However, the Employer and Intervenor agreed to an addendum to the CBA increasing the wage rates for those classifications to $18 per hour. The Employer also applied this wage rate to the kitchen assistant at the Rock Creek Campus.

25 The record contains examples of at least two evaluations having occurred at the Rock Creek Campus, but not as part of the regularly scheduled evaluations for all employees.
II. ANALYSIS

As a preliminary matter, I find that the CBA does not serve as a contract bar in this matter and that the petitioned-for employees have not been accreted into the existing unit. Then, turning to the appropriateness of the petitioned-for unit, I also conclude that both a single-facility stand-alone unit and a self-determination election to include the petitioned-for employees in the existing unit are appropriate.

A. Contract Bar

1. Board’s Legal Standard

When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining contract, the Board must decide whether the asserted contract exists, fulfills certain requirements, and constitutes a bar to an election. Hexton Furniture Co., 111 NLRB 342 (1955). The burden of proving that a contract is a bar is on the party asserting the doctrine. Roosevelt Memorial Park, Inc., 187 NLRB 517 (1970).

If the contract terms clearly encompass the employees involved in the petition, then the contract will serve as a bar. See, e.g., Airway Cleaners LLC, 362 NLRB 760 (2015) (finding that the collective-bargaining agreement covered the petitioned-for classifications at John F. Kennedy airport, who worked in the same terminal and in the same classifications as represented employees, and concluding that an accretion analysis was inappropriate as the contract barred the petition); United Telephone Co. of Ohio, 179 NLRB 732 (1969) (finding employees at issue were covered by the contract). However, the contract will not serve as a bar if it does not clearly, by its terms, encompass the employees involved in the petition. See, e.g., Moore-McCormack Lines, 181 NLRB 510 (1970) (strike settlement agreement did not clearly include clericals in the contract); Plimpton Press, 140 NLRB 975 (1963) (contract entered into when employer did not employ any employees in the petitioned-for classifications and the record contained no evidence that coverage of future employees was contemplated at the time of the contract’s negotiation, therefore petitioned-for employees not covered by the contract and the contract did not bar the petition); Houck Transport Co., 130 NLRB 270 (1961) (found that collective-bargaining agreement between employer and intervenor executed before the new location was acquired did not cover the petitioned-for employees at the new location and thus did not serve to bar the election); Bargain City, U.S.A., Inc., 131 NLRB 803 (1961) (no evidence that the employer ever considered its contract with the intervenor to apply to the petitioned-for employees and intervenor only attempted to apply the contract to the petitioned-for employees after the petition was filed, therefore contract did not bar the petition).

The parties’ intent regarding employee coverage may be elucidated by their bargaining history. RPM Products, Inc., 217 NLRB 855 (1975); Trade Wind Taxi, 168 NLRB 860 (1968); Hyatt House Motel, 174 NLRB 1009 (1969).
2. Analysis

I conclude that the Employer and Intervenor failed to meet their burden of establishing that the CBA bars the instant petition as the record fails to clearly establish that the CBA applies to the petitioned-for employees at the Rock Creek Campus.

While the recognition language is broad, in that it does not specify the work location of the employees involved and thus could in theory be applied to the Rock Creek Campus, no evidence of the Employer’s or Intervenor’s intent at the time they entered into the CBA or their subsequent application and enforcement of the CBA supports such a broad reading of the recognition clause.

At the time the Employer and Intervenor reached a tentative agreement on the CBA, the Employer only operated the Main Campus and had no information or certainty as to whether PCC would accept the Employer’s bid to operate the Rock Creek Campus. Neither the Employer nor Intervenor presented any evidence that the parties to the CBA discussed or otherwise contemplated the future possibility of the Employer operating the Rock Creek Campus, or indeed any additional facility, during the course of their negotiations. The record is also clear that no subsequent discussions or negotiations occurred between reaching a tentative agreement and signing the CBA. Thus, like in Plimpton Press, 140 NLRB 975 (1963), and Houck Transport Co., 130 NLRB 270 (1961), I cannot find that the CBA bars the instant petition.

The subsequent bargaining history of the Employer and Intervenor also corroborates this conclusion. I agree with Petitioner that the Board’s rationale from Tri-State Transp. Co., 179 NLRB 310 (1969), is applicable here. In Tri-State Transp. Co., the rival union and the employer did not treat a contract as applying to the petitioned-for employees, in that the employer did not, inter alia, pay employees contractual benefits, provide employees with contractual vacation and holidays, or apply the union-security provision. In fact, prior to the petitioner filing the petition in that matter, the rival union had never sought to administer the contract or have it enforced with respect to the petitioned-for employees. Only after the filing of the petition did the rival union seek to institute arbitration proceedings to force the employer to apply the contract to these employees and the arbitrator eventually required the employer to apply the contract to the petitioned-for employees. The Board concluded that it was clear that “any effort by [the rival union] to apply its contract to these employees occurred only after the [p]etitioner sought to represent them, and that they were not, in fact, represented when the petition was filed.” Id.

Both the Employer and Intervenor treated the Rock Creek employees as unrepresented and therefore not covered by the CBA. With respect to the Employer, the record reveals that it never deducted dues, that it told employees that Rock Creek Campus was not unionized, and that it repeatedly informed Intervenor that Rock Creek employees could make their own decision with respect to unionization. As to Intervenor, the record shows that Intervenor treated the Rock Creek Campus as an unrepresented location from the outset, determined early on that it was not interested in organizing that facility, and then later decided to treat the Rock Creek Campus as an organizing

Both the Employer and Intervenor argued generally at the hearing that a contract bar existed. On brief, both the Employer and Intervenor mentioned in passing the existence of a contract bar in context of their analyses on accretion, but neither specifically discussed a contract bar theory on brief nor otherwise cited to specific cases in support of a contract bar.

---

26 Both the Employer and Intervenor argued generally at the hearing that a contract bar existed. On brief, both the Employer and Intervenor mentioned in passing the existence of a contract bar in context of their analyses on accretion, but neither specifically discussed a contract bar theory on brief nor otherwise cited to specific cases in support of a contract bar.
target. Intervenor’s October 2021 request for voluntary recognition undercuts its own argument, since if the Employer and Intervenor had in fact treated Rock Creek employees as part of the existing unit and covered by the CBA, a request for voluntary recognition would not be necessary. In fact, at the June 25, 2020, meeting with the Employer, Intervenor advocated for a pay decrease for certain Rock Creek employees who transferred to the Main Campus because Intervenor’s members in the existing unit expressed concerns about pay fairness; such are hardly the actions of a labor organization that purportedly represents those employees.

Finally, the record is clear while that the Employer chose to apply certain provisions of the CBA, such as wages and benefits, to employees at the Rock Creek Campus, the Employer did not apply the CBA as a whole to that location. Specifically, the Employer never applied the CBA’s dues provision to Rock Creek employees and Intervenor never sought to apply or seek to enforce the CBA’s dues provision, despite being on notice that no dues were being deducted since fall 2019, shortly after the Rock Creek Campus first opened.

In sum, I find that the Employer and the Intervenor failed to meet their burden of establishing that the CBA bars the instant petition.

B. Accretion

1. Board’s Legal Standard

“An accretion is the addition of a relatively small group of employees to an existing unit. Under the Board’s accretion test, the Board will accrete employees to an existing bargaining unit without an election when the employees sought to be added ‘have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted.’” E.I. DuPont de Nemours, Inc., 341 NLRB 607, 608 (2003) (quoting Ready Mix USA, Inc., 340 NLRB 946, 954 (2003)). See also Frontier Communications Corp., 2017 WL 4743975 (2017) (“the Board described its test for accretion as requiring that the group to be accreted have ‘little or no separate group identity’ and ‘have an overwhelming community of interest with the unit’) (quoting Safeway Stores, 256 NLRB 918 (1981)).

The overwhelming community of interest test in accretion cases differs from the traditional community of interest test applied in initial representation matters, where the “Board will certify any unit that is an appropriate unit, even if it is not the most appropriate unit.” Frontier Communications Corp., 2017 WL 4743975 (citing Barlett Collins, 334 NLRB 484 (2001)). See also Ringsby Truck Lines, Inc., 211 NLRB 280, 282 (1974). “If the employees sought to be accreted constitute an appropriate unit by themselves, it is the Board’s practice to find no accretion and to allow the employees affected the opportunity to choose their collective-bargaining

27 I find it unnecessary to rule on the Intervenor’s argument that the Employer maintained similar wages at both locations due to specific Oregon statutes. As the record is clear that the entire CBA did not apply to the Rock Creek Campus, the reason, if any, for the Employer’s decision to use the same wage scale at both locations is not determinative to my analysis.

28 As I find that no contract bar exists, I need not address Petitioner’s argument that any contract bar should be waived in the interest of employee free choice.
representative through a Board-conducted election.” \textit{Ringsby Trucking Lines, Inc.}, 211 NLRB at 282.

Conversely, in the context of accretion, “[a] group of employees is properly accreted to an existing bargaining unit when they have such a close community of interest with the existing unit that they have no true identity distinct from it.” \textit{NLRB v. St. Regis Paper}, 674 F.2d 104, 107-108 (1st Cir. 1982). “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.” \textit{In re Milwaukee City Center, LLC}, 354 NLRB 551, 552-53 (2009) (citing \textit{Archer Daniels Midland Co.}, 333 NLRB 673, 675 (2001)). The Board has identified employee interchange and common day-to-day supervision as the two most important factors critical to an accretion finding. \textit{E.I. Du Pont}, 341 NLRB 607, 608 (2004); \textit{Super Valu Stores}, 283 NLRB 134, 136 (1987); \textit{Towne Ford Sales}, 270 NLRB 311, 312 (1984). Thus “the absence of these two factors will ordinarily defeat a claim of lawful accretion.” \textit{Frontier Telephone of Rochester, Inc.}, 334 NLRB 1270, 1271 (2005).

The Board applies a restrictive policy with respect to accretion, since such a finding infringes upon employees’ basic right to select their own bargaining representative. \textit{See, e.g., Towne Ford Sales}, 270 NLRB 311 (1984); \textit{Melbet Jewelry Co.}, 180 NLRB 107 (1970). Specifically, “the Board normally permits employees of a new operation to decide whether or not they wish to be separately represented.” \textit{Houck Transport Co.}, 130 NLRB 270 (1961) (citing \textit{Miratile Manufacturing Co., Inc.}, 124 NLRB 48, 48 (1959)).

2. Analysis

I conclude that the Employer and Intervenor have failed to meet their burden of showing that the petitioned-for employees at the Rock Creek Campus have little or no separate identity from and share an overwhelming community of interest with the employees in the existing unit at the Main Campus. Therefore, I find that the instant facts do not justify finding the petitioned-for employees at the Rock Creek Campus to be an accretion to Intervenor’s existing unit or imposing representation on the petitioned-for employees that is not of their own choosing.

As a preliminary matter, and as discussed in detail below, I find that the petitioned-for employees constitute an appropriate stand-alone unit. In such circumstances, I thus follow the Board’s practice of declining to find accretion and allowing the petitioned-for Rock Creek employees to vote with respect to representation. \textit{See Ringsby Trucking Lines, Inc.}, 211 NLRB at 282.

Moreover, and again as discussed in greater detail below with respect to the appropriateness of the petitioned-for unit, the record reveals that there is: essentially no contact between these groups of employees; minimal interchange between locations; no functional integration, as each location serves completely separate groups of children and families; and no shared bargaining history, as the Intervenor and the Employer always treated the Rock Creek Campus as a separate, unrepresented location. Similarly, I find that in this case since the distance,
when combined with the related lack of public transit options to access the Rock Creek Campus that in turn impacts ease of interchange, weighs against finding that the Employer and Intervenor have met their burden of establishing an overwhelming community of interest. I find these differences significant enough that the Employer and Intervenor have failed to meet their burden of showing that an overwhelming community of interest exists, especially given that interchange, one of the two significant factors in assessing accretion, is not meaningfully present in this matter.

While I acknowledge that the petitioned-for employees and unit employees have identical skills, training, and job functions, similar working conditions, and work under centralized operations, I do not find this sufficient to overcome the significant burden in the context of accretion. See, e.g., In re Milwaukee City Center, LLC, 354 NLRB at 554 (Board acknowledged that centralized control over management and labor relations, common terms and conditions of employment, geographic proximity, similar skills and functions, and bargaining history all weighed in favor of accretion, but concluded “the factors do not outweigh the countervailing factors […] particularly the ‘critical’ factors of lack of interchange and common day-to-day supervision”). Although supervision is somewhat split, as the Rock Creek operations director oversees the Rock Creek employees on a day-to-day basis but is in regular contact with the executive director about supervisory decisions such as discipline, discharge, and overtime, this does not support finding that an overwhelming community of interest exists.

I reject the Employer’s argument on brief that a separate unit of Rock Creek employees cannot survive on its own, including the Employer’s contentions that it depends on the interchangeability of staff between its two locations, that it would have to shut down classrooms or even the entire Rock Creek Campus if it had to delineate the two locations as separate entities, and that there is no reasonable way to act as if the two locations could remain functionally separate. This argument is hypothetical at best. Should Petitioner be selected as the Rock Creek employees’ collective-bargaining representative, a question which has yet to be decided by employees, the Employer is free to prioritize its concerns regarding interchange between facilities as a primary area of interest in collective bargaining. Nothing in the record, including the dearth of evidence regarding interchange, leads me to conclude that this Employer is any different than other multi-facility employers where the Board has allowed employees at a new location to vote with respect to their own representation.

To the extent that the Employer also argues that Petitioner presented no testimony that current Rock Creek employees do not want the Intervenor to represent them, this contention is misplaced. At no point in the accretion analysis must I examine the preferences of the employees at issue. Instead, Board law mandates that I focus on whether the parties arguing in favor of accretion have met their burden of proof; here I find that they have not done so.

29 While I acknowledge that the Employer must maintain state-mandated teacher to child ratios in its classrooms, I do not find this to be dispositive. Moreover, the Employer operated the Main Campus as a stand-alone facility for at least 40 years, including the year and a half that the Rock Creek Campus remained closed, and there is no reason to believe that the Employer could not operate these facilities separately if it so chose, even if it might be a little more complicated.
In sum, I conclude that the petitioned-for Rock Creek employees retain a separate identity as employees employed at the Rock Creek Campus and that the Employer and the Petitioner have failed to meet their burden of establishing that accretion is warranted in the instant matter.

C. Appropriateness of the Petitioned-For Unit

I. The Appropriateness of the Petitioned-For Single Facility Unit

a. Board’s Legal Standard

When an employer has multiple locations, the Board has stated that a petitioned-for single-facility unit is presumptively appropriate,30 see, e.g., Hilander Foods, 348 NLRB 1200 (2006), as is an employer-wide unit. Greenhorne & O’Mara, Inc., 326 NLRB 514, 516 (1998). However, both presumptions are rebuttable because the scope of the unit sought by the petitioner, while relevant, cannot be determinative of the unit. It is the burden of the party seeking to deviate from the presumptively appropriate unit to rebut the presumption. See Hilander Foods, 348 NLRB 1200 (2006); Greenhorne & O’Mara, Inc., 326 NLRB 514, 516 (1998).

When a petitioner seeks a single location unit, the “single-facility” presumption can be rebutted by a showing that the petitioned-for unit has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. Hilander Foods, 348 NLRB 1200 (2006). To determine whether the presumption has been rebutted, the Board examines factors such as central control over daily operations and labor relations, similarity of employee skills, functions, and working conditions, the degree of employee interchange, the distance between locations, and bargaining history, if any. J&L Plate, 310 NLRB 429 (1993).

b. Application

I find that a single-facility presumption exists in the instant matter, as Petitioner seeks to represent employees at one of the Employer’s two facilities. As set forth below, I conclude that the Employer and Intervenor have failed to meet their burden of rebutting the single-facility presumption.

i. Central Control Over Daily Operations and Labor Relations

The Board has made clear that “the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption.” Sutter West Bay Hospitals d/b/a California Pacific Medical Center, 357 NLRB 197 (2011). Thus, “centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their

30 The Board made clear in AT & T Mobility Svcs., LLC, 371 NLRB No. 14, slip. op. at 1 (2021), that its decision in PCC Structurals, Inc., 365 NLRB No. 160 (2017), applies to additional classifications and does not apply to the inclusion of additional locations. See also Cazanove Opici Wine Group, 371 NLRB No. 30, slip. op. at 1 (2021).
grievances and routine problems.” *Hilander Foods*, 348 NLRB 1200, 1203 (2006). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees’ day-to-day working lives.

I find that while the Rock Creek operations director has significant involvement in the daily operations at the Rock Creek Campus, the executive director’s regular interactions with and control over most of the significant decisions taken by the Rock Creek operations director supports rebutting the single facility presumption. For example, it is clear that the Rock Creek operations director does not have authority to discipline, hire, or fire employees, or even ask employees to work overtime, without approval from the executive director. To the extent that the Rock Creek operations director sets Rock Creek employee schedules, she does so within the confines of the scheduling parameters that apply to the Employer’s operation as a whole. Moreover, the human resources director and finance director both handle centralized operations for the Main Campus and the Rock Creek Campus. Because of the high degree of involvement from high-level managers based at the Main Campus in the daily operations of the Rock Creek Campus, I conclude that centralized control over daily operations supports the Employer and Intervenor rebutting the single-facility presumption.

Likewise, the executive director, in consultation with the Board of Directors, clearly handles all labor relations for both the Rock Creek Campus and the Main Campus, which also weighs in favor of the Employer and Intervenor meeting their burden to rebut the single-facility presumption.

**ii. Similarity of Employee Skills, Functions, and Working Conditions**

The similarity or dissimilarity of work, qualifications, working conditions, wages and benefits among employees at the facilities the Employer contends should be in the unit has some bearing on determining the appropriateness of the single-facility unit. However, this factor is less important than whether individual facility management has autonomy and whether there is substantial interchange. See, e.g., *Dattco, Inc.*, 338 NLRB 49, 51 (2002) (“This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions and working conditions is sufficient to rebut the presumptive appropriateness of the single-facility unit.”).

I find that employee skills and functions weigh in favor of a shared community of interest, as the petitioned-for lead teachers, teachers, aides, and kitchen assistant at the Rock Creek Campus share identical skills and functions to their counterparts in the existing unit at the Main Campus, even if due, in part, to regulations by the State of Oregon.

Working conditions are generally similar, in that the petitioned-for employees and unit employees are paid on the same wage scale, receive the same benefits, and work under the same work rules. While some location-specific differences exist, such as the Rock Creek Campus having part-time students and fewer playgrounds, this does not offset the similarities in other working conditions.
Thus, taken as a whole, I find that this category tips in favor of finding that the Employer and Intervenor having rebutted the single-facility presumption.

iii. Interchange

Employee contact is considered interchange where a portion of the work force of one facility is involved in the work of the other facility through temporary transfer or assignment of work. However, a significant portion of the work force must be involved and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. New Britain Transportation Co., 330 NLRB 397, 398 (1999). For example, the Board found that interchange was established and significant where during a one-year period there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the terminal where the work was being performed. Dayton Transport Corp. 270 NLRB 1114 (1984). See also Alamo Rent-A-Car, 330 NLRB 897, 898 (2000) (a single temporary transfer between facilities when a new facility opened insufficient to establish interchange).

On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. Cargill, Inc., 336 NLRB 1114 (2001); Courier Dispatch Group, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. New Britain Transportation Co., 330 NLRB 397.

I conclude that the Employer and the Intervenor failed to meet their burden of showing that interchange weighs in favor of rebutting the single-facility presumption.

Permanent interchange weighs against a shared community of interest. I give less weight to the one instance of permanent transfer from September 2019 when the Rock Creek Campus first opened and the three instances of permanent transfer from fall 2021 when the Rock Creek Campus reopened, as historically the Board has given little weight to transfers to a newly opened facility. Alamo Rent-A-Car, 330 NLRB at 898 (citing Red Lobster, 300 NLRB 908, 911 (1990); J.L Hudson Co., 155 NLRB 1345, 1348 n.9 (1965)). See also In re Milwaukee City Center, LLC, 354 NLRB 551, 553 (2009). I likewise give little weight to the permanent transfers that occurred in summer 2020, because I find that PCC’s determination to keep the Rock Creek Campus closed, contrary to the desires of the Employer, was an extraordinary action by PCC to which the Employer responded by allowing any remaining Rock Creek employees to permanently transfer to the Main Campus if they so chose. Under such unusual circumstances, I cannot find that the transfers that occurred after the March 2020 COVID-19 closure support a community of interest. Even assuming these examples did weigh in favor of a community of interest, I nevertheless conclude that, taken as a whole, permanent interchange fails to support overcoming the single-facility presumption, since “the Board generally considers permanent transfers to be less indicative of multifacility integration.” Alamo Rent-A-Car, 330 NLRB at 898. See also Bashas’ Inc., 337 NLRB 710 (2002).
Temporary interchange weighs clearly against a shared community of interest. Significantly, all temporary interchange between the Main Campus and the Rock Creek Campus is voluntary, which the Board accords a lesser weight. Moreover, the Employer’s failure to maintain accurate records with respect to temporary interchange undercuts its broad, generalized statements regarding interchange and weighs against the Employer and Intervenor meeting their burden.

Turning to the specific instances of temporary interchange in the record, I find that these are insufficient to overcome the single-facility presumption.

In the approximately six months the Rock Creek Campus was initially open prior to the March 2020 COVID-19 shutdown, the record contains only one instance of voluntary temporary interchange during the regular workday, where a teacher from the Rock Creek Campus worked a full shift as a teacher at the Main Campus. I do not afford any weight to the single instance of a Rock Creek employee assisting at date night at the Main Campus, as this is beyond the scope of regular duties for all employees and voluntary. Likewise, to the extent the Main Campus facilities employee may have assisted with the set up and close down of the Rock Creek Campus in September 2019 and March 2020, even assuming this position was in the unit, which is not clear from the record, the finance director’s vague testimony combined with the lack of documents renders this insufficient to support the Employer meeting its burden of proof.

The record evidence regarding temporary interchange during the approximately four months from the reopening of the Rock Creek Campus in September 2021 until the hearing in early January 2022 likewise fails to overcome the single-facility presumption. The limited evidence that weighs most strongly in favor of temporary interchange is the float teacher from Main Campus who agreed to temporarily work for several weeks at the Rock Creek Campus, and then ultimately decided to permanently transfer to that location, as well as one, possibly two, float teachers from Main Campus who worked two days at the Rock Creek Campus shortly before the hearing, as both of those occurred during regular work days for both locations.

I find the other evidence regarding temporary interchange to be less compelling and at times deeply flawed. The evidence regarding the facilities employees from Main Campus assisting with the reopening of the Rock Creek Campus lacks specificity and it is unclear that this individual was in the existing unit at the time of the interchange. The evidence regarding the lead teacher in the existing unit, who also serves as Intervenor’s secretary, coming to work one day at the Rock Creek Campus likewise appears self-serving, as Petitioner presented evidence that the Rock Creek Campus was fully staffed that day and the teacher in question spent a significant amount of time collecting authorization cards and neither the Employer nor Intervenor presented any specific evidence to the contrary. The one day in early January 2022 that a Rock Creek employee worked at the Main Campus, she elected to do so because the Rock Creek Campus was closed and she would otherwise not have been paid for that day. I find the example from the third day of the hearing, when approximately 15 or 16 Rock Creek employees worked at the Main Campus because a COVID-19 exposure caused all classrooms at the Rock Creek Campus to close, to be self-serving as it occurred after the Employer sought to demonstrate extensive interchange in the instant matter and it is unclear why the Employer would suddenly need such a huge number of additional staff at the Main Campus. Even assuming arguendo these other examples were not flawed, I would
nevertheless find that temporary interchange weighed against a shared community of interest due to the limited number of total examples, the Employer’s poor record keeping, and the voluntary nature of all temporary interchange.

On balance, I find that interchange weighs against the Employer and Intervenor rebutting the single-facility presumption.

**iv. Distance Between Locations**

While significant geographic distance between locations is normally a factor in favor of a single-facility unit, it is less of a factor when there is evidence of regular interchange between the locations, and when there is evidence of centralized control over daily operations and labor relations with little or no local autonomy, particularly when employees at the facilities otherwise share skills, duties, and other terms and conditions of employment, as well as are in contact with one another. *Trane*, 339 NLRB 866 (2003)

The Board has found varying distances to weigh in favor or against rebutting a single-facility presumption, depending largely on what other factors are present. *See, e.g., Allways East Transp., Inc.*, 365 NLRB No. 71 (2017) (finding 54 miles to be geographically distant); Exemplar, *Inc.*, 363 NLRB No. 157, slip op. at 6 (2016) (distance of 2.1 miles between two locations in densely populated San Francisco not significant and favored a shared community of interest); Kroger Limited Partnership, 348 NLRB 1200 (2006) (Board found, in disagreement with the Regional Director, that distances ranging from 8 miles to 13 or 14 miles did not favor a multilocation unit and ultimately determined that employer did not rebut the single-facility presumption); Bashas’, *Inc.*, 337 NLRB 710, 711 (2002) (facilities within a 30-mile area, but located within the same county, failed to establish geographic proximity); Waste Management of Washington, *Inc.*, 331 NLRB 309 (2000) (employer rebutted single facility presumption despite a 42-mile distance between the two facilities); New Britain Transportation Co., 330 NLRB 397 (1999) (finding that geographic separation of 6 to 12 miles between facilities, while not determinative, gains significance where other factors support the single-facility unit); Red Lobster, 300 NLRB 908, 911 (1990) (found that restaurants in question were not physically proximate to one another, where an average distance of 7 miles existed between restaurants, with all restaurants located within a 22 mile radius, thus favoring the single facility unit); Lipman’s, 227 NLRB 1436, n.7 (1977) (finding that a 2 mile distance between a downtown store and a shopping mall store supported single-facility unit where each store had its own identity and was a distinct economic unit).

I find that the 12-mile distance between the Main Campus and the Rock Creek Campus, while not in and of itself determinative, fails to support the Employer and Intervenor rebutting the single-facility presumption in the circumstances of this case. While in some situations 12 miles may not be insurmountable, the distance is more problematic where, such as here, the record lacks extensive evidence of contact or interchange between employees at these locations.

Accessibility of the Rock Creek Campus poses another concern, as numerous employees from the Main Campus utilize public transportation for work and have no access to the Rock Creek Campus, which can only be accessed by car. In light of this, and as discussed further below, I will
permit the employees at the Rock Creek Campus to decide whether they wish to be included in the existing unit for the purposes of engaging collectively in union activity, despite the distance between the facilities and the lack of access to the Rock Creek Campus via public transportation. However, I cannot rely on a distance of 12 miles to find that the Employer and Intervenor have met their burden of showing that the Rock Creek Campus has been so effectively merged into the Main Campus that it has lost its separate identity and to impose a multi-facility unit on the petitioned-for employees.

v. Bargaining History

As discussed in detail above, I conclude that the bargaining history weighs against a shared community of interest. Contrary to any arguments, at no time have the Employer and Intervenor treated Rock Creek employees as represented by Intervenor, and in fact they specifically treated Rock Creek employees as being unrepresented. Likewise, as discussed above, the record is clear that while the Employer chose to apply certain portions of the CBA, such as wages and benefits, to Rock Creek employees, the CBA as a whole did not apply to employees at the Rock Creek Campus.

vi. Conclusions

In sum, I find that two factors, central control of day-to-day operations and labor relations as well as employee skills, functions, and working conditions, weigh in favor of a shared community of interest. I find that two factors, interchange and bargaining history, weigh against a shared community of interest. I find that distance between facilities, though not determinative, fails to support the Employer and Intervenor meeting their burden in this matter. Accordingly, I determine that the Employer and the Intervenor have failed to meet their burden of showing that the presumptively appropriate single-facility unit consisting solely of the Rock Creek Campus has been so effectively merged or so functionally integrated into the Main Campus as to lose its separate identity. This is especially true given the lack of record evidence of functional integration between the facilities, in that the petitioned-for employees at the Rock Creek Campus care for an entirely distinct group of children and families than do the unit employees at the Main Campus, and given that the lack of contact between the groups of employees. I therefore conclude that the petitioned-for employees constitute an appropriate single-facility unit.

2. The Appropriateness of a Self-Determination Election

a. Board’s Legal Standard

Under the Board’s Armour-Globe doctrine, Armour & Co., 40 NLRB 1333 (1942), and Globe Machine & Stamping Co., 3 NLRB 294 (1937), employees sharing a community of interest with an already represented unit of employees may vote whether they wish to be included in the existing bargaining unit. NLRB v. Raytheon Co., 918 F.2d 249, 251 (1st Cir. 1990). When an incumbent union seeks to add a group of previously unrepresented employees to its existing unit, the Board conducts a self-determination election provided that the employees to be added constitute an identifiable, distinct segment and share a community of interest with unit employees. See, e.g., Warner-Lambert Co., 298 NLRB 993, 995 (1990); Capital Cities Broadcasting Corp.,

When a petitioner seeks such an election the first consideration is whether the voting group sought is an identifiable, distinct segment of the workforce. St. Vincent Charity Medical Center, 357 NLRB 854, 855 (2011) (citing Warner-Lambert, 298 NLRB at 995). Whether a voting group is an identifiable, distinct segment is not the same question as whether the voting group constitutes an appropriate unit; the analysis if a petitioner was seeking to represent the employees in a standalone unit. St. Vincent, 357 NLRB at 855. Instead, the identifiable and distinct analysis is merely whether the voting group sought unduly fragments the workforce. Capital Cities Broadcasting Corp., 194 NLRB 1063 (1972).

If the voting group sought is an identifiable and distinct segment of the workforce, the question then is whether the employees in that voting group share a community of interest with the existing unit. See St. Vincent, 357 NLRB at 855. This inquiry requires application of the Board’s traditional community of interest test. United Operations, Inc., 338 NLRB 123, 123 (2002). The Board has found that in the self-determination context, differences in employment terms that result from collective bargaining do not mandate exclusion. Public Service Co. of Colorado, 365 NLRB No. 104, slip op. at 1, n.4 (2017).

b. Application

i. Identifiable and Distinct Segment

In St. Vincent, the Board concluded that a petitioned-for group of employees in a single classification constituted an identifiable and distinct group, appropriate for an Armour-Globe election, because the employees were employed in a single department, worked in the same physical location, and shared the same supervision. St. Vincent Charity Medical Ctr., 357 NLRB at 855-856. The Board reached the opposite conclusion in Capital Cities Broadcasting Corp., 194 NLRB 1063, 1064 (1972), finding the voting group sought was arbitrary, and inappropriate for an Armour-Globe election, because the employees in the voting group were scattered across various unrepresented departments and lacked such similarities.

I conclude that the petitioned-for Rock Creek employees constitute a distinct and identifiable group of the Employer’s employees as they constitute all employees based in classrooms or the kitchen31 at the Rock Creek Campus; all remaining individuals working at Rock Creek are supervisors, managers, and/or are based in the front office. Moreover, the petitioned-for employees are administratively grouped at the Rock Creek Campus. This is a logical, non-arbitrary grouping of employees and meets the initial threshold for the Warner-Lambert test.

31 To the extent that the kitchen assistant is somewhat of an outlier from the petitioned-for lead teachers, teachers, and aides, who all work in classrooms, the kitchen assistant is the sole employee in the kitchen and the Main Campus kitchen assistant is grouped with employees in the existing unit, thus Intervenor and Employer have already tacitly deemed such a grouping appropriate.
ii. Community of Interest

Once it has been determined that the employees in the voting group are an identifiable and distinct group the question is then whether they share a community of interest with employees in the existing unit. *St. Vincent*, 357 NLRB at 855. This inquiry requires application of the Board’s traditional community of interest test. *United Operations, Inc.*, 338 NLRB 123, 123 (2002). The Board has found that in the self-determination context, differences in employment terms that result from collective bargaining do not mandate exclusion. *Public Service Co. of Colorado*, 365 NLRB No. 104, slip op. at 1, n. 4 (2017). When the addition of a petitioned-for voting group may result in a multi-facility unit, the multi-facility community of interest analysis is appropriate. *See, e.g.*, *Freshpoint Southern California, Inc.*, 2020 WL 3403098 (June 18, 2020).

As discussed above, I find it borderline as to whether the petitioned-for employees at the Rock Creek Campus share a community of interest with the unit employees at the Main Campus. However, given the unusual circumstances of this case, I determine that a sufficient community of interest exists to allow employees to vote as to whether they wish to be represented by Intervenor in conjunction with employees in existing unit, to be represented by Petitioner in a stand-alone unit, or to have no representation at all. This is especially true given that, as noted above, employees at both locations share essentially identical skills, duties, and working conditions and both labor relations and upper-level supervision are centralized. While I determined above that the distance between facilities did not support finding that the Employer and Intervenor had rebutted the single-facility presumption, I conclude that in the context of this self-determination this distance is neutral and that employees may freely choose as to whether they believe distance should be a factor in their representation.

Contrary to Petitioner’s argument, I do not find that the Board’s decision in *Martin Marietta Co.*, 270 NLRB 821 (1984) warrants a different outcome. That case involved a distinguishable set of circumstances in which the employer created an entirely new operation that merged two groups of employees who had been previously represented by different unions; such is simply not the case here.

iii. Conclusion

I determine that the petitioned-for Rock Creek employees constitute an identifiable and distinct segment of the Employer’s workforce and that they share a sufficient community of interest to proceed in a self-determination election.

III. CONCLUSIONS

I have determined that the CBA does not bar the instant election. I further find that the petitioned-for employees have not already been accreted into the existing unit and that accretion is not appropriate in the instant circumstances. I also conclude both that the petitioned-for single-facility unit at the Rock Creek Campus is appropriate and that the petitioned-for employees also constitute an appropriate voting group under the Board’s standard for self-determination elections. Accordingly, as set forth in greater detail below, I will order an election in which the petitioned-
for employees may choose between representation by Petitioner in a stand-alone unit at the Rock
Creek Campus, representation by the Intervenor in a combined unit with employees in the existing
unit at the Main Campus, and no representation.\textsuperscript{32}

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf
of the Board. Based on the entire record in this matter and in accordance with the discussion
above, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are
affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will
effectuate the purposes of the Act to assert jurisdiction herein.\textsuperscript{33}

3. Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of
the Act and claim to represent certain employees of the Employer.

4. A question concerning representation 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.

5. The following employees of the Employer constitute an appropriate unit for the
purposes of collective bargaining within the meaning of Section 9(b) and also constitute
an appropriate voting group:

   Included: All full-time and regular part-time lead teachers, teachers, aides, and
   kitchen assistants employed by the Employer at its Portland Community College
   Rock Creek facility located in Portland, Oregon.

   Excluded: All other employees, employees employed at other locations of the
   Employer, all volunteers, parents receiving reduced tuition, bookkeepers,
   administrative assistants, secretary-receptionists development director, office
   clerical employees, managerial employees, confidential employees, and guards and
   supervisors as defined in the Act.

There are approximately 15 employees in the appropriate unit and appropriate voting group.

\textsuperscript{32} Petitioner argues that Intervenor should not appear on any ballot unless Intervenor has submitted cards expressing
interest on behalf of at least 30 percent of the unit. However, the showing of interest is purely an administrative matter
not subject to litigation as part of a representation hearing. See Casehandling Manual, Part II, Section 11021
Administrative Matter. Therefore, based on an internal administrative investigation, I have determined that Intervenor
has a sufficient showing to appear on the ballot.

\textsuperscript{33} The Employer, Fruit and Flower Child Development Center, a State of Oregon non-profit corporation with two
facilities located in Portland, Oregon, is engaged in the business of providing childcare services. During the past fiscal
year, a representative period of time, the Employer in the conduct of its operations derived gross annual revenues in
excess of $250,000 and purchased and received at its Rock Creek and Main Campus facilities located in Portland,
Oregon, goods valued in excess of $50,000 directly from points outside the State of Oregon.
IV. DIRECTION OF ELECTION

The Board will conduct a secret-ballot election among the employees in the unit and voting group found appropriate above. Employees will vote on whether they wish to be represented by International Longshore and Warehouse Union, Local 5; Willamette Valley Child Care Federation, AFT Local 3432, AFL-CIO; or no representation.

If the majority of the employees in the petitioned-for unit cast their ballots for International Longshore and Warehouse Union, Local 5, they will be taken to have indicated their desire to constitute a separate appropriate unit, and I will issue a Certification of Representation to International Longshore and Warehouse Union, Local 5, for this unit, which I find to be appropriate for the purposes of collective bargaining. If the majority of the petitioned-for employees cast their ballots for Willamette Valley Child Care Federation, AFT Local 3432, AFL-CIO, they will be taken to have indicated their desire to be included in the existing unit at the Employer’s Main Campus facility currently represented by Willamette Valley Child Care Federation, AFT Local 3432, AFL-CIO, and I will issue a certification to that effect. If the majority of the petitioned-for employees cast their ballots for neither of the above-named labor organizations, then I will issue of Certification of Results of Election to that effect.

A. Election Details

The election will be conducted by United States mail. 34

The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit by a designated official of the National Labor Relations Board, Subregion 36, 1220 SW 3rd Avenue, Suite 605, Portland, OR 97204 on Tuesday, March 8, 2022, at 4:30 p.m. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, March 15, 2022, should communicate immediately with the National Labor Relations Board by either calling the Subregion 36 office at 503-326-3085 or our national toll-free line at 1-866-762-NLRB (1-866-762-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Subregion 36 office by 4:30 p.m. on Tuesday, March 29, 2022. Pursuant to the parties’ stipulation, no ballots will be counted that are received after the due date and the parties waive their rights to file objections based upon any untimely received ballots. The mail ballots will be comingle and counted by an agent of Subregion 36 of the National Labor Relations Board on Wednesday, March 30, 2022, at 2:00 p.m. with participants being present via electronic means. No party may make a video or audio recording or save any image of the ballot count. If, at a later date, it is determined that a ballot count can be safely held in the Subregion 36 office, the Region will inform the parties with sufficient notice so that they may attend.

34 The parties stipulated to a mail ballot election.
B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the Regional Director and the parties by **Wednesday, February 23, 2022**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

The list must be filed electronically with Region 19 and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency’s website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.
Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election attached to this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

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. 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 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.

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision...
and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at Seattle, Washington this 18th day of February, 2022.

[Signature]

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 Second Avenue, Suite 2948
Seattle, WA 98174