

**AT Wall Company and New England Joint Board
UFCW/RWDSU Petitioner.** Case 01–UC–081085

October 6, 2014

DECISION ON REVIEW AND ORDER

BY MEMBERS HIROZAWA, JOHNSON, AND SCHIFFER

The issue presented is whether the Board should clarify an existing collective-bargaining unit to include new classifications established by the Employer after it acquired the operations of another company. The Acting Regional Director issued a Decision and Clarification of Bargaining Unit on August 30, 2012, granting the Union's petition for clarification and including the disputed classifications within the unit. The Employer filed a request for review, contending that the Acting Regional Director erred in applying *Premcor, Inc.*, 333 NLRB 1365, 1366 (2001), and determining that the employees perform the same basic function as the employees in the existing unit. The Petitioner filed an opposition brief, asserting that the Acting Regional Director had ruled correctly. On November 21, 2013, the Board granted review. The Employer has filed a brief on review, reiterating its prior arguments.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record, including the brief on review, we find, contrary to the Acting Regional Director, that the unit should not be clarified to include the new classifications. We disagree with the Acting Regional Director's finding that the circumstances warrant application of *Premcor*, *supra*, and we will instead apply the Board's traditional accretion standard. Under that standard, we find that the classifications at issue should not be added to the unit, because the employees in those classifications have retained their separate group identity and do not share an overwhelming community of interest with the employees in the existing unit. Accordingly, we reverse the Acting Regional Director's decision and dismiss the underlying petition.

I. BACKGROUND

AT Wall Company, the Employer, manufactures metal products at its facility in Warwick, Rhode Island. The Employer and the Union have been in a collective-bargaining relationship since at least 1960, when they entered into their first agreement. Section 3 (entitled Union Recognition) of their most recent agreement, effective June 1, 2011–December 1, 2012, defined the bargaining unit as consisting of the classifications listed in

section 17 (Employee Classifications). That section lists 21 classifications in 6 different departments:¹

<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
Inspection	Inspector C Inspector Quality Technician
Maintenance	Maintenance Assistant Maintenance Maintenance Mechanic Maintenance Electrician
Tubing	Annealer Operator Assistant Tubing Operator Cutting Machine Operator Tubing Department Coordinator
Materials Handling	Materials Administrator Material Handler
Stamping/Finishing	Packer Operator Set-up Operator
Toolroom	Machinist Machinist (CNC) Toolmaker Master Toolmaker

Article 18(h) requires the Employer to bargain with the Petitioner over the wages of any newly created classifications or departments within the unit.² Each department has its own manager or supervisor.

In December 2011, the Employer acquired the Metalform Company of New Britain, Connecticut, and moved that company's production of gun magazines to the Warwick facility. The 13 nonsupervisory employees in the Employer's Metalform department work in four classifications: Metalform Toolsetter, Metalform Assembler, Metalform Machine Operator, and Metalform Welding Operator. None of the employees currently working in

¹ Contrary to the list in sec. 17 of the collective-bargaining agreement, the Employer's organizational chart shows only 5 departments—Materials, Quality, Stamping, Tubing, and the recently added Metalform. It shows the Toolroom as part of Stamping, and Inspection as part of Quality. Maintenance is not shown.

² It does not appear that either party sought to negotiate the status of the four Metalform classifications or to seek the deferral of the current case to the arbitration process.

those classifications had been employed by Metalform, but were all hired by the Employer.³

The Warwick facility currently carries out three manufacturing processes--tubing, stamping, and gun magazines--all of which take place on its production floor. The production floor consists mostly of open work areas marked off by yellow lines painted on the floor, but it also has a few walled-off areas used for finishing processes, including a "dirty room" for tumbling and an area for annealing (a heating process used to correct internal imperfections in certain materials, including metals). The Employer hires employees to make a single product and does not cross-train them in the making of other products. Nonetheless, with a few minor variations, the Employer hires employees with the same general qualifications for each production process: high school graduates with manual dexterity, the ability to read micrometers, basic math skills, familiarity with the relevant manufacturing process, and the ability to lift up to 50 pounds. Once an employee is hired, the Employer provides on-the-job training and a 90-day probationary period. The production employees for the three processes mainly stay in separate work areas, except to use the common areas (bathrooms, cafeteria, and locker room) or, in the case of the Metalform and Stamping employees to finish products, in the "the dirty room."

The parties' collective-bargaining agreement specifies the wages for unit employees. The Metalform supervisors set the wages for that department's employees at the end of their probationary period. The Metalform employees work different hours from the unit employees, are paid different premiums for working a longer shift, and have different terms governing holidays, vacations, and medical insurance. The collective-bargaining agreement sets out the unit employees' terms and conditions of employment; the Employer issues the Metalform employees their own handbook setting forth their unique benefits.

Each manufacturing process begins with a material handler moving the appropriate starting material to an inspection area where an inspector verifies that it is ready to be placed in inventory for use. All three processes end with a material handler moving the finished product to the Employer's shipping area.

The *Tubing* department makes sheet metal tubes used in microwave communications, primarily "wave guides" that collect microwave signals and direct them to a receiver. Six unit classifications collaborate in making the tube: material handler, inspector, operator, operator assis-

tant, cutting operator, and annealer. After obtaining the starter tube, an operator assistant compresses it on a press to the right size. An operator then draws (stretches) it on a draw bench. The operator assistant straightens, cleans, and cuts the tube. The annealer takes it to the annealing area where it is heated to remove any stresses. After the tube is inspected, the cutting operator cuts it to the right length.

The *Stamping* department makes small metal discs used in electronics. Five unit classifications collaborate in making the stamping products: material handler, inspector, toolmaker, setup operator, and stamping operator. After obtaining the starter discs, a toolmaker or a setup operator loads the appropriate die tool onto the press machine. The stamping operator and the set up operator feed the starter disc into the press and use it to stamp the disc into the desired form. They then clean and tumble the disc in the "dirty room" to remove burrs and shavings before it is moved to the shipping area.

The *Metalform* department primarily makes ammunition magazines for the Colt "Model 1911" pistol.⁴ Six job classifications collaborate in making the ammunition magazines: material handler, tumbling operator,⁵ and the new classifications of Metalform toolsetter, Metalform machine operator, Metalform welder, and Metalform assembler. The Metalform toolsetter loads a die tool onto a press and punches holes into a test piece of metal. Machine operators then punch holes into production pieces and use other press machines to bend the flat pieces into a U shape. After degreasing, a welding operator welds two of the pieces to form a single magazine. It is then shipped out to a subcontractor for annealing. After the subcontractor returns it, an operator adds a "feed lip" to enable bullets to travel from the magazine into the pistol for firing. A Metalform assembler welds a butt piece to the magazine and then takes it to the dirty room for finishing. The assembler then inspects it and inserts the magazine's internal mechanism.

II. THE ACTING REGIONAL DIRECTOR'S DECISION

The Acting Regional Director declined to apply the Board's traditional accretion analysis. He found that under *Premcor*, supra, newly created classifications should be included within an existing unit if they perform the same or similar work historically performed by unit employees. Applying the *Premcor* standard, the Acting Regional Director found the four Metalform classifications to be "newly created classifications that effec-

³ The Employer offered the former Metalform Company employees the opportunity to transfer to the Warwick facility, but they all declined.

⁴ The Metalform employees also make heavy metal cans.

⁵ The Employer and Petitioner agree that the material handler and tumbling operator positions are currently part of the contractual bargaining unit.

tively perform the same or similar work that is historically performed by unit employees in the Stamping and Tubing Departments.” He defined the common work function of both sets of employees as feeding a starting material through a press machine that either compresses it or stamps it into a product and then cleaning and processing the final product. The Acting Regional Director characterized the Metalform classifications as production and maintenance employees who simply work on a different product line, albeit making a “somewhat more complex product” than those put out by the other departments. He also pointed to the Metalform and unit positions as having similar requirements and performing similar job tasks that were basic enough to be learned through on-the-job training, without any prior experience, special skills, or expertise.⁶ Based on that analysis, the Acting Regional Director concluded that the Metalform classifications belonged within the existing unit and that the unit should be clarified to include them.

III. EMPLOYER CONTENTIONS

In its brief on review, the Employer contends that the Acting Regional Director erred in applying *Premcor*, supra, instead of the Board’s standard accretion analysis. The Employer argues that the *Premcor* standard is inapplicable to this case because the Metalform employees use different machines, tools, and manufacturing techniques from those used by the unit employees to make an entirely different and new product. It further argues that the Acting Regional Director should have applied the accretion analysis. Under that test, the Employer asserts, the Metalform employees cannot be accreted to the unit because they do not share an overwhelming community of interest with the unit employees. *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005). In support, the Employer asserts that the Metalform employees have separate day-to-day supervision and different training and working conditions, that there is no employee interchange or contact between the two groups, and that its operations are not functionally integrated.

IV. ANALYSIS

Unit clarification is the appropriate method “for resolving ambiguities concerning the unit placement of individuals who . . . come within a newly established classification of disputed unit placement.” *Union Elec-*

tric Co., 217 NLRB 666, 667 (1975). The Board will view a new classification as already belonging in the bargaining unit (rather than being added to the unit by accretion) if that new classification performs the same basic work functions historically performed by unit employees. *Premcor*, supra; *Developmental Disabilities Institute, Inc.*, 334 NLRB 1166 (2001). If, on the other hand, the Board finds that the *Premcor* test is not satisfied, it will add or “accrete” the new classification to the unit “only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted.” *CHS, Inc.*, 355 NLRB 914, 916 (2010), quoting *Frontier Telephone*, supra (internal quotation omitted). In making this determination, the Board analyzes the standard community-of-interest factors: interchange and contact among employees, degree of functional integration, geographical proximity, similarity of working conditions, similarity of employee skills and functions, common supervision, and collective-bargaining history. *E. I. Du Pont, Inc.*, 341 NLRB 607, 608 (2004), citing *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). The Board usually views as “critical” the factors of employee interchange and common day-to-day supervision, and their absence will “ordinarily” defeat an accretion claim. *Frontier Telephone*, supra. Nonetheless, the Board also recognizes that “the normal situation presents a variety of elements, some militating toward and some against accretion, so that a balancing of factors is necessary.” *E. I. Du Pont*, supra, citing *The Great Atlantic & Pacific Tea Co.*, 140 NLRB 1011, 1021 (1963). The Board generally follows “a restrictive policy in finding accretions to existing units because the Board seeks to insure that the right of employees to determine their own bargaining representatives is not foreclosed.” *Archer Daniels Midland Co.*, supra, 333 NLRB at 675.

Contrary to the Acting Regional Director, we find that the facts do not indicate that the employees in the four Metalform classifications perform the same basic function as employees in the classifications within the existing bargaining unit, and thus should not be treated under *Premcor* as being part of the unit. In making this finding, as explained below, we observe that the collective-bargaining agreement contains a narrow unit description that defines the unit by listing 21 specific job classifications that are labeled by department (and sometimes by product). Given this restrictive definition of the unit, the Metalform employees’ function of producing an entirely different product using different processes under different working conditions is not sufficiently related to the functions of employees in the other departments to quali-

⁶ The Acting Regional Director acknowledged that the Employer trains the Metalform employees longer than the unit employees and at a different location. He also observed that manufacturing the gun magazines requires several more steps than for the stamping and tubing products, as well as the performance of basic welding tasks. He found that these differences in the production process were not so substantial as to render *Premcor* inapplicable.

fy the Metalform employees to be part of the unit under *Premcor*. Having decided the case under *Premcor*, the Acting Regional Director did not address whether the Metalform classifications should be added to the unit under the Board's traditional accretion test. Applying that test here, we find that the two sets of employees do not share an overwhelming community of interest that has subsumed the Metalform employees' separate identity. Accordingly, we will dismiss the petition for clarification.

A. *Premcor*

It is apparent to us that the employees in the four Metalform classifications do not perform the same basic functions as employees in the classifications comprising the bargaining unit. Section 17 of the collective-bargaining agreement narrowly defines the bargaining unit by the listed classifications, grouped by department (and sometimes work product).⁷ In order to be accreted to the unit, the Metalform employees would have to be shown to perform the same basic functions as employees in a classification or classifications listed as within the unit. For example, in *Developmental Disabilities Institute*, supra, the unit was defined as including all "instructional employees" and historically included only teachers and assistant teachers. The Board found that employees in a new classification, therapy assistant/psychology, who provided one-on-one instruction for disruptive children, should be included within an existing bargaining unit of teachers and teachers assistants because they performed the same basic work function of teaching mentally disabled children to modify their behavior in order to attain the school's educational goals.

In finding that the Metalform employees belonged in the unit under the *Premcor* standard, the Acting Regional Director found that they were simply working on a different product line within a production and maintenance unit. In *Premcor*, the Board found that a new classification, process control coordinator, performed the same basic control room functions previously performed by unit employees classified as "operator 1s," and thus was properly viewed as remaining within the historical production and maintenance bargaining unit. The Board clarified the unit to include the new position.

Here, the only unit employees whose work might be comparable to that of the Metalform employees are those in the two production departments, Tubing and Stamping. It is clear, however, that the Metalform employees do not perform any of the functions of the employees in those departments. They make substantially different

products, using different machinery and processes that require significantly different training. The Metalform employees cannot reasonably be viewed as performing the same basic functions as the Tubing or Stamping employees.

We also find significant the fact that no Metalform employees have either displaced any unit employees or performed their work. Compare *Brockton Taunton*, 174 NLRB 969, 970-971 (1969) (the gas load supervisors are part of the unit since they performed the same basic functions that have been historically performed by bargaining unit employees). In fact, the Employer here brought in entirely new equipment from a different factory, installed it as a separate line from its traditional production, and maintained separate work hours, training, and other work terms for the employees operating this equipment.

Based on these circumstances, we find that the employees in the Metalform classifications do not perform the same basic functions as unit employees. Therefore, we conclude that our decision in *Premcor* does not support clarifying the unit to include these employees.

B. General Accretion Analysis

Having found that the petitioned-for employees are not already part of the unit under *Premcor*, supra, we will apply the Board's accretion analysis and determine whether the Metalform employees should be added to the unit because they have little or no separate identity and share an overwhelming community of interest with the preexisting unit. *CHS, Inc.*, supra; *E. I. Du Pont*, supra. Based on our review of the record, we find that the Metalform employees have retained their separate group identity and do not share an overwhelming community of interest with the existing bargaining unit. First, the Metalform employees constitute a separate department, work exclusively in the manufacture of the Metalform products (primarily gun magazines) and largely stay in their own work areas. As for daily supervision, the Metalform, Tubing, and Stamping departments each have their own director or supervisor who directly oversees the employees in their respective departments. We also find that the other community-of-interest factors, on balance, support a finding that there is no overwhelming community of interest between the two sets of employees. The Metalform employees have minimal contact during working time because of their separate (although contiguous) work areas, with the exception of the material handlers who move starting materials to the work areas and the finished product to the shipping area. While the Metalform and unit employees use the same common areas (including the bathroom, cafeteria, and locker room), their interactions in these areas are necessarily limited by their different shifts and breaktimes. Their

⁷ It also provides for bargaining to include in the unit additional classifications or departments.

functional integration is also limited by their specialization in a single product, although the material handlers and inventory inspectors work with all three sets of manufacturing employees and two product lines use the same “dirty room” for tumbling, polishing, and finishing the products. Their bargaining histories are dissimilar because the unit employees have been represented by the Petitioner since at least 1960 while the Metalform employees are unrepresented. On the other hand, we find that a few community-of-interest factors do support accretion: the employees share geographic proximity, similar working conditions, and similar skills and functions.

Weighing all of these factors, we conclude that the Metalform employees’ identity has not merged with those of the bargaining unit employees so that they have lost their separate identities and now share an overwhelming community of interest with unit employees. As discussed above, the Metalform employees do not satisfy the two critical factors of interchange with unit employees or common day-to-day supervision and we find that most of the other factors—largely indicating different work functions and conditions—also weigh against finding an overwhelming community of interest between the Metalform and preexisting unit employees. See, e.g., *Paper Manufacturers Co.*, 274 NLRB 491, 496–497 (1985), *enfd.* 786 F.2d 163 (3d Cir. 1986) (where company bought and relocated separate process to represent-ed plant, new employees not accreted since they maintained their separate identity). Compare *Special Machine & Engineering*, 282 NLRB 1410, 1410 (1987) (accretion of a unit of unrepresented employees into an existing unit justified where the two sets of employees were “merged

into a single productive entity” as both groups of employees used the same equipment and machines, required the same skills, worked on the same projects under common supervision, and worked under the same terms and conditions of employment.) While the Employer has not gone as far as to physically alter the workplace to keep the Metalform employees and the existing unit employees separated, we find, for the reasons discussed above, that the two sets of working conditions are sufficiently distinct to prevent their merger into “a single productive entity” as in *Special Machine & Engineering*, *supra*.⁸ We conclude that the employees in the Metalform classifications have maintained a separate identity and do not share an overwhelming community of interest with the unit employees, and therefore may not be accreted to the bargaining unit.

ORDER

The Acting Regional Director’s Decision and Order clarifying the unit is reversed, and the unit clarification petition is dismissed.

⁸ We also note that under Board law, “[i]t is well settled that the doctrine of accretion will not be applied where the employee group sought to be added to an established bargaining unit is so composed that it may separately constitute an appropriate bargaining unit.” *Passavant Retirement & Health Center, Inc.*, 313 NLRB 1216, 1218 (1994) (quoting *Hershey Foods Corp.*, 208 NLRB 452, 458 (1974), *enfd.* mem 506 F.2d 1052 (3d Cir. 1974)). Although we need not decide the issue—since we find no accretion here based on our traditional analysis—it appears from the record that a separate Metalform unit might be appropriate. Moreover, the current unit in the remaining departments constitutes an appropriate unit, notwithstanding the exclusion of Metalform employees.