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Audio Visual Services Group, LLC and IATSE Local 611, International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States & Canada, AFL-CIO.
Case 32-RC-257578

October 26, 2020

DECISION AND ORDER

BY MEMBERS KAPLAN, EMANUEL, AND MCFERRAN

On March 6, 2020, the Petitioner filed a petition to represent a unit of employees working at four of the Employer's jobsites in or near Monterey, California (collectively, the petitioned-for jobsites, or Monterey jobsites). The Employer contends that any appropriate unit must include not only the employees at the 4 Monterey jobsites, but also employees at 16 other jobsites in San Jose, Santa Clara, and Half Moon Bay, California (collectively, the excluded jobsites). On June 2, 2020, the Regional Director issued a Decision and Order, finding that any unit limited to the Monterey jobsites would be inappropriate. Because the Petitioner was not willing to proceed to an election in an appropriate alternative unit,¹ the Regional Director dismissed the petition. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, as amended, the Petitioner filed a request for review. The Employer filed an opposition.

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

The Petitioner's Request for Review of the Regional Director's Decision and Order is granted as it raises substantial issues warranting review. Having carefully examined the record,² and for the reasons explained below, we find, contrary to the Regional Director, that the petitioned-for multifacility unit of employees at the four Monterey jobsites is an appropriate unit for bargaining. Accordingly, we reverse the Regional Director's dismissal, reinstate the petition, and remand this case to the Regional Director for further appropriate action consistent with this Decision.

¹ The Petitioner indicated that it would be willing to proceed to an election in a unit limited to the Monterey jobsites and the Half Moon Bay jobsites, but the Regional Director determined that such a unit would also be inappropriate.

² See Sec. 102.67(d) of the Board's Rules and Regulations (the Board may, in its discretion, examine the record in evaluating the request for review).

I. FACTS

The petitioned-for Monterey jobsites are all located in the Employer's Northern California Region, which is overseen by the Employer's Regional Vice President (VP) of Venues, Ross Gimpel. The Northern California Region includes about 33 jobsites, including the 4 petitioned-for Monterey jobsites; the 16 jobsites in San Jose, Santa Clara, and Half Moon Bay; and additional jobsites in locations such as Sacramento, Sonoma, Napa, and Lake Tahoe.³ The Employer's Monterey jobsites are all within a 5-mile radius of one another. In contrast, the Employer's San Jose jobsites are approximately 72 miles from Monterey; its Santa Clara jobsites are approximately 71 to 77 miles from Monterey; and its Half Moon Bay jobsites are approximately 91 to 110 miles from Monterey.

Each jobsite has its own Director of Event Technology (DET) who supervises all the employees at that jobsite. The DETs report to the Regional Director of Venues for the Northern California region, Jeff Hendrick, who reports to Regional VP of Venues Gimpel. Although each employee is assigned to a "home jobsite," the employee can be assigned to work at any Employer-contracted jobsite, depending on staffing needs. While working away from their home jobsites, employees report to and take direction from the DET at the jobsite they are visiting. The DET has some authority to discipline any employee working at their jobsite, with the assistance of the Employer's assigned human resources (HR) manager, who oversees all jobsites in the Northern California Region and some jobsites outside of the Northern California Region. The record does not provide any meaningful information about how this disciplinary process works, the role of the HR manager in issuing discipline, or the level of authority allotted to the DETs.

Every Tuesday, the DETs at the four petitioned-for Monterey jobsites have a conference call to discuss and determine staffing for the four Monterey jobsites and to prepare a tentative schedule. The Monterey DETs endeavor to fill as many openings as possible with employees based at the four Monterey jobsites, so as not to require staffing by employees with home jobsites outside of the Monterey area. On Wednesdays, the Employer holds another conference call, dedicated to staffing the 4 Monterey jobsites and the 16 other jobsites in San Jose, Santa Clara, and Half Moon Bay. During these calls, employees are assigned to address the staffing needs of all of the jobsites on the call and to ensure adequate coverage—for example, if some jobsites have extra employ-

³ There are also jobsites in the San Francisco area, but they constitute their own distinct San Francisco Region.

ees, they will be sent to jobsites that need additional help, based on their tentative schedules. Regional VP of Venues Gimpel testified that this second call is limited to the petitioned-for and excluded jobsites, and does not include additional jobsites in the Northern California or San Francisco Regions, because the petitioned-for and excluded jobsites are closer together and therefore more likely to share employees on a frequent basis, even though sharing can and does occur across the entire Northern California Region. On Thursdays, the Monterey jobsite employees receive finalized schedules for all the petitioned-for Monterey jobsites, but not for any of the excluded jobsites, unless they are scheduled to work at an excluded jobsite.

Most of the time, the Monterey jobsites can meet their staffing needs without assistance from any of the excluded jobsites. Over a 2-year period, approximately 94.9 percent of the hours worked at the Monterey jobsites were worked by the petitioned-for employees, with only 0.57 percent of the hours of work performed by employees based at the excluded jobsites. The petitioned-for employees spent approximately 68 percent of their hours working at their home jobsites; 22 percent of their hours working at a Monterey jobsite that is not their home jobsite; and only 4.6 percent of their hours working at the excluded jobsites (1.3 percent at the San Jose or Santa Clara jobsites, and 3.3 percent at the Half Moon Bay jobsites). In contrast, employees at the excluded jobsites worked only 0.17 percent of their hours at the Monterey jobsites. The petitioned-for employees who testified stated that they tend to have a lot of interaction with employees from the other Monterey jobsites—describing them as a “tight-knit group” due to the high level of employee sharing between these jobsites—and that it was rare for them to work with employees from the excluded jobsites.

There is no dispute that the employees at the petitioned-for jobsites and excluded jobsites perform the same work and have the same skills. They are also subject to the same terms and conditions of employment, including the Employer’s Employee Guidebook, which sets forth the Employer’s policies, such as disciplinary and time-off policies; the same entitlements to medical, dental, vision, life, and disability insurance; and the opportunity to participate in the Employer’s 401(k) plan. Employees at the petitioned-for jobsites and excluded jobsites are also subject to the Employer’s Northern California Parking & Transportation Reimbursement Policy, which applies to the entire Northern California region and provides for reimbursement for public transportation, parking, cab, Uber, Lyft, and mileage, as well as travel

time for employees who drive more than 60 miles to their assigned jobsite.

There is no bargaining history between the Employer and Petitioner with respect to the petitioned-for and excluded jobsites, although the Employer and Petitioner have negotiated occasional “one-off” agreements for the Petitioner to provide additional, hiring hall labor to the Monterey jobsites when the Employer has exhausted all of its internal resources for a particular show.

II. ANALYSIS

“In determining whether a petitioned-for multifacility unit is appropriate, the Board evaluates the following factors: employees’ skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history.” *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1081–1082 (2004). An appropriate multifacility unit is one that has a “distinct” community of interest from the excluded facilities. *Id.* at 1082; see also *Acme Markets, Inc.*, 328 NLRB 1208, 1209 (1999). It is well settled that a petitioned-for unit need only be *an* appropriate unit; it need not be the *most* appropriate unit. See *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 12 (2017).

In concluding that the petitioned-for unit was inappropriate, the Regional Director found that, while the factor of bargaining history was neutral, the remaining factors weighed against finding that the petitioned-for employees shared a community of interest distinct from the excluded jobsites. We find, however, that the petitioned-for unit is appropriate, relying predominantly on the significant level of interchange and functional integration among the petitioned-for Monterey jobsites, as well as their close geographic proximity.

The Board has found that the factors of employee interchange and functional integration weigh in favor of a petitioned-for multifacility unit where the petitioned-for employees have substantially more contact and interchange with each other than they do with excluded employees. See *Verizon Wireless*, 341 NLRB 483, 485, 490 (2004); *Panera Bread*, 361 NLRB 1236, 1236 fn. 1 (2014). In contrast, the Board has generally been disinclined to find a multifacility unit appropriate when the petitioned-for facilities have no more functional interchange with each other than they do with the excluded facilities. See, e.g., *Bashas’, Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000).

Here, there is substantially more interchange among the Monterey jobsites than there is between the Monterey jobsites and the excluded jobsites. The Monterey employees spend approximately 22 percent of their hours

working at other Monterey jobsites, as opposed to only 4.2 percent of their hours at the excluded jobsites; and employees at the excluded jobsites work only 0.17 percent of their hours at the Monterey jobsites. The high level of employee sharing among the Monterey jobsites is due to the high level of functional integration among those facilities. Every Tuesday, the Monterey jobsite DETs endeavor to strategically share employees among the four petitioned-for jobsites in order to ensure that they do not need to rely on the excluded jobsites to cover their staffing needs. As the above numbers demonstrate, this endeavor is largely successful: the petitioned-for jobsites cover almost 95 percent of their own staffing needs and receive only 0.57 percent of their staffing hours from employees who work at the excluded jobsites.

It is true that the Monterey jobsite DETs also join a second conference call on Wednesdays to coordinate additional employee sharing with the excluded jobsites. However, as the numbers reveal, there is minimal employee sharing between the petitioned-for and excluded jobsites, especially compared to the sharing that occurs among the petitioned-for jobsites themselves. Thus, this case is distinguishable from those where the Board has found that more frequent interchange and regular contact between petitioned-for and excluded facilities weighed in favor of a broader unit, or where multiple facilities on the same production line relied on one another in order to manufacture a product. See, e.g., *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005); *Mid-West Abrasive Co.*, 145 NLRB 1665, 1667–1668 (1964); *Barber-Colman Co.*, 130 NLRB 478, 479 (1961). Here, the Monterey jobsites are usually able to operate as an independent cluster, and rarely share employees with the excluded jobsites. Accordingly, we find, contrary to the Regional Director, that the factors of employee interchange and functional integration support a finding that the petitioned-for unit is appropriate.

We further find, contrary to the Regional Director, that the factor of geographic proximity weighs in favor of the petitioned-for unit. The petitioned-for jobsites are all within five miles of one another, and the excluded jobsite closest to any of the Monterey facilities is located over 70 miles away. The Board has found the factor of geographic proximity to favor petitioned-for units in similar circumstances. See *Panera Bread*, 361 NLRB at 1236 fn. 1; *Verizon Wireless*, 341 NLRB at 485. While the Board has found that geographic proximity weighs against petitioned-for units when the distances between petitioned-for and excluded facilities are roughly equivalent to the distances between some of the petitioned-for facilities (thus rendering the exclusions somewhat arbi-

trary) that is not the case here. Cf. *Stormont-Vail Healthcare, Inc.*, 340 NLRB 1205, 1208 (2003); *Bashas', Inc.*, 337 NLRB at 711. And although the Regional Director cited cases in which large geographic distances between the petitioned-for and excluded facilities were overcome by additional community-of-interest factors, see, e.g., *Capital Coors Co.*, 309 NLRB 322, 325 (1992), those cases did not conclude that the factor of geographic proximity *itself* weighed in favor of the petitioned-for units—merely that it was outweighed by other considerations.

We agree with the Regional Director that the factors of employee skills, duties, and terms and conditions of employment weigh in favor of a broader unit, as it is largely undisputed that there is no difference between the petitioned-for and excluded employees in these respects,⁴ and that the factor of bargaining history is neutral. Moreover, there may be some degree of centralized management, but the record evidence is too insubstantial to accord this factor meaningful weight.⁵ On balance, however, these considerations are insufficient to overcome the high level of functional integration and employee interchange among the petitioned-for jobsites, as well as the strong geographic cohesion of the petitioned-for unit. See, e.g., *Verizon Wireless*, 341 NLRB at 485; *Weis Markets, Inc.*, 142 NLRB 708, 710 (1963); *Panera Bread*, 361 NLRB at 1236 fn. 1. We accordingly find that these factors establish a “distinct” community of interest among the petitioned-for Monterey jobsites, and that the petitioned-for unit is therefore appropriate.

III. CONCLUSION

For the foregoing reasons, we find that the petitioned-for unit of four Monterey-area jobsites is an appropriate unit for bargaining. Accordingly, we reinstate the peti-

⁴ In this regard, we are not persuaded by the Petitioner’s argument that the Employer’s travel-reimbursement policy is used more frequently by the Monterey employees and therefore represents a significant difference between the petitioned-for and excluded employees with respect to their terms and conditions of employment. As an initial matter, the travel-reimbursement policy applies equally to all employees in the Employer’s Northern California Region. And, practically speaking, there is no evidence that the Monterey employees regularly seek significant reimbursement under that policy—while they travel long distances to the excluded jobsites more frequently than the excluded employees travel to the Monterey jobsites, this still represents only approximately 4 percent of the Monterey employees’ working hours.

⁵ The record contains a few conclusory statements that DETs have the authority to “direct” and “discipline” visiting employees, although any discipline is seemingly imposed with some assistance from an HR representative that oversees at least all of the Employer’s Northern California Region. However, without additional details about the disciplinary process and the role of the Employer’s HR department, it is difficult to conclude exactly how much authority either the DETs or the centralized HR department have with respect to discipline, much less other personnel matters such as hiring, evaluations, scheduling, etc.

tion and remand this case to the Regional Director for further appropriate action.

ORDER

The Regional Director's Decision and Order is reversed, and the case is remanded to the Regional Director for further appropriate action consistent with this Decision.

Dated, Washington, D.C. October 26, 2020

William J. Emanuel, Member

Lauren McFerran, Member

Marvin E. Kaplan, Member

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