P015

CSMCS 90-3-086
Oct 8, 1993

RECEIVED
OCT 14 1993
NEYHART, ANDERSON, REILLY & FREITAS

In the Matter of a Controversy

between

Southern California Rapid Transit District Metro Lines

and

Local 889, International Brotherhood of Electrical Workers; Local 1277, Amalgamated Transit Union

Final Decision and Order of the Director of the Department of Industrial Relations

RE: Petition for Certification of Representative and Unit Clarification Petition

SUMMARY OF DECISION

On December 12, 1992, the hearing officer in this case issued a proposed decision to dismiss both of the Petitions at issue. Exceptions to the proposed decision were filed by Local 889, International Brotherhood of Electrical Workers ("IBEW") and Local 1277, Amalgamated Transit Union ("ATU") pursuant to 8 California Code of Regulations ("CCR") §15855. Upon review of the Exceptions filed and the existing record, and for the reasons set forth herein, I have determined that the Proposed Decision should be adopted.

SUMMARY OF PROCEDURAL HISTORY

On August 22, 1990, IBEW filed a petition to represent six maintenance classifications of the Southern California Rapid Transit District ("RTD" or "District") on the Blue Line, Los Angeles's newly-opened light rail system. In response, ATU, which had represented all RTD streetcar and bus maintenance workers for over 30 years, petitioned to have the unit clarified to include the same workers in what it alleged was the "more appropriate" ATU unit.

At the time of hearing before hearing officer Raoul Thorbourne, IBEW amended its petition to include the same job classifications on the Red Line (RTD's heavy rail system) which had not yet been operating "revenue service" at the time of hearing. A four day evidentiary hearing was held on the matter, followed by extensive post-hearing briefing by all parties.

On December 8, 1992, the hearing officer issued a proposed decision, to which exceptions were filed by IBEW and ATU. In his decision, the hearing officer found that the IBEW's petition was not contract barred by either of the ATU's 1988-91 or 1991-94 bargaining agreements with RTD because the Blue Line workers were "noncontract employees" and thus not covered by any collective bargaining agreement at the time the petition was filed. He further found that the 13(c) agreement between the federal government and RTD for the benefit of the ATU members did not bar the Red Line workers from potential inclusion in the proposed unit, as the agreement represented only an intent to bargain and thus did not set working conditions for Red Line workers.

The hearing officer found that the unit petitioned for by IBEW was inappropriate and that the classifications more properly constituted an accretion to the existing ATU maintenance unit. This finding was based on the organizational structure of RTD, the fact that NLRB precedent favors system-wide units in public utilities, the conclusion that the Blue/Red Line maintenance workers had a community of interest with their counterparts in the ATU "bus" unit; and, a conclusion that there was an absence of such a community of interest among the Blue/Red Line workers. The hearing officer dismissed the IBEW petition. On the basis that NLRB precedent provides for a determination only of the *appropriate* unit, not for the *more* or *most* appropriate unit, he also dismissed the ATU petition. Thereafter, exceptions to the proposed decision of the hearing officer were filed by both labor organizations.

THE POSTIONS OF THE PARTIES

1. ATU Exceptions

(a) The decision did not address ATU's argument that PUC section 30750(b) bars the Director from even considering any bargaining unit other than those determined by Archibald Cox in his 1959 unit determination and certification decision on behalf of the Mediation and Conciliation Service ("Service").

(b) ATU's Petition for Unit Clarification is not barred by being filed mid-contract.

2. IBEW Exceptions

(a) By not applying tests for internal community of interest first, the hearing officer failed to articulate and apply the appropriate legal standard for determining whether the classifications in the Petition for Certification constituted an appropriate unit for collective bargaining.

(b) The job classifications in the proposed unit share a sufficient community of interest to constitute an appropriate bargaining unit, in that the work is integrated; the workers share similar duties, skills and working conditions; the proposed unit corresponds to employer's supervisory and administrative structure; the employees in the proposed unit work in close geographical proximity to each other; and, the proposed unit is consistent with the desires of the affected employees and petitioner.

(c) The petitioned-for job classifications do not share an overwhelming, or significant community of interest with the employees in the ATU unit, in that bus and rail operations are not integrated; skills, duties and working conditions of the two groups are dissimilar; there is no interchange between bus and rail employees; rail employees geographically

are isolated; bus and rail maintenance employees share no common day to day supervision; and, ATU's "brief and ineffective" bargaining history is not entitled to great weight.

(d) Whether a proposed unit might also be an accretion is irrelevant once the proposed unit is found to be appropriate.

3. RTD Position

RTD opposed the IBEW's exceptions, but filed none of its own. In its brief and response to IBEW's exceptions, the District consistently maintained that the only appropriate unit is one that is system-wide and would include both bus and rail maintenance workers; that the hearing officer had addressed the issue whether the petitioned-for unit was appropriate; and, that the finding of a separate unit is not a precondition to a finding that the proposed unit constitutes an accretion.

ISSUES TO BE DECIDED

1. Whether Public Utilities Code § 30750(b) bars IBEW's Petition for Certification of Representative.

2. Whether there is a contract bar to ATU's Petition for Unit Clarification.

3. Whether the job classifications at issue share a sufficient community of interest such that they represent an appropriate bargaining unit, or whether they constitute an accretion to the existing maintenance bargaining unit.

DISCUSSION

1. Public Utilities Code § 30750(b) does not bar IBEW's Petition for Certification of Representative.

PUC § 30750 (b) states in relevant part:

"Upon the acquisition by the district of the property of the Los Angeles Transit Authority..., the district shall assume and observe all existing labor contracts and shall recognize the labor organization certified to represent the employees in each existing bargaining unit as the sole representative of the employees of each such bargaining unit. Any certification of a labor organization previously made under the provisions of the Los Angeles Metropolitan Transit District Act by the State Conciliation Service to represent or act for the employees in any collective bargaining unit shall remain in full force and effect and shall be binding upon the district. Such certifications and any certifications made hereunder shall not be subject to challenge on the grounds that a new substantial question of representation within such collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later; provided, that no collective bargaining agreement shall be construed to be a bar to representation proceedings for a period of more that two years."

This language was enacted in 1964 when RTD succeeded the Los Angeles Metropolitan Transit District. In its post-hearing brief and in its exceptions, ATU argues that the above language means that, although the representation for each collective bargaining unit could be challenged on the time schedule provided, the conformation of the units themselves cannot be varied from those specified by Archibald Cox in his capacity as hearing officer for the Service in 1959. While the ATU has indeed represented the maintenance workers since elections were first held following the Cox decision certifying bargaining units, there were no rail maintenance workers in ATU units by the enactment date of the above statute, as by that time rail service had been entirely phased out of Los Angeles public transportation.

A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. Dubois v. WCAB, ___ C. 4th ___, 20 Cal.Rptr. 2d 523 (1993) "In

construing a statute, our first task is to look at the language of the statute itself. When the language is clear and there is no uncertainly as to the legislative intent, we look no further and simply enforce the statute according to its terms." Ibid. at 525. The Court in Dubois also stated that each sentence of a statute must be looked at in the context of the entire statute and the statutory scheme of which it is apart. The Court reiterated that statutes must be evaluated according to the usual, ordinary import of the language in framing them, keeping in mind the nature and obvious purpose of the statute when they appear considering the particular clause or section in the context of the statutory framework as a whole. Ibid. at 526.

PUC § 30751, enacted at the same time as § 30750, states:

> "Any question which may arise with respect to whether a majority of the employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the Director of the Department of Industrial Relations. In resolving such questions of representation including the determination of the appropriate unit or units, petitions, the conduct of hearings and elections, the director shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended, and for this purpose shall adopt appropriate rules and regulations...." (emphasis added).

The plain language of the phrase, "...including the determination of the appropriate unit or units..." indicates that the legislature contemplated the possibility of reconfiguration of the appropriate bargaining units back in 1964 when the statute was enacted.

Although ATU claims that PUC § 30751 applies only to "new representative questions not already covered by 30750(b)", there is nothing in the language of either statute which would support such a distinction. Read together, the language of Sections 30750 and 30751 do not indicate that the legislature intended to create a distinction between pre- and post-1959 employees as to the permissible method for unit determinations.

In conjunction with a contextual examination of the statute, a review of the legislative history provides additional assistance in determining the legislature's intent. Despite many amendments to other sections of this chapter, from their introduction on March 6, 1964 as part of SB 41, the bill creating Southern California Regional Transit District, until final passage on May 4, 1964, not a word was changed in what later became PUC Sections 30750 and 30751 .

Tracking the evolution of the bill that created RTD's predecessor, the Los Angeles Metropolitan Transit Authority is more revealing. When AB 1104 was introduced on January 17, 1957, only four lines in the general powers and duties section of the bill mentioned that management "may contract" with employees in the appropriate bargaining units on issues "not limited to" wages, hours and working conditions. At its first amendment in the Assembly on March 11, 1957, extensive additions were made to Section 3.6(c),(d), and (e), establishing for current employees the right to maintain their present benefits and working conditions and delineating their right to elect bargaining representatives through the office of the State Conciliation Service. An amendment in the Senate on May 2, 1957 added to Section 3.6(d) the following language:

> "No craft, class or classification of employees for which a labor organization has previously bargained with the system or any part of it prior to or after its acquisition by the authority shall be deemed to be inappropriate unless a majority of the employees in the proposed class, craft, or

> classification unit vote against separate representation."

In the same set of amendments, the jurisdiction of the Service to provide elections for representation and to certify the results was underscored. The Senate also mandated the Authority: to assume all existing labor contracts as it acquired facilities within the region; to provide to the employees the minimum protections given by the current bargaining agreement between the Pacific Electric Railway Company and the Brotherhood of Railroad Trainmen; and, to continue the employee protections provided by the Public Utilities Commission and other administrative agencies. However, by the date of the bill's final amendment on May 23, 1957, all the above language had been removed. The portion delineating the powers of the Service to determine representation was amended to read:

> "(to) determine the unit or units appropriate for the purposes of collective bargaining. In making such determination and in establishing rules and regulations governing petitions, the conduct of hearings and elections, the State Conciliation Service shall be guided by relevant federal law and administrative practices, including but not limited to the self determination rights accorded crafts or classes in the Labor Management Relations Act, 1947, and the Railway Labor Act."

This is the current language of PUC § 30750. Neither the current statute nor its predecessor precludes employees hired into newly-created positions from participating in unit and bargaining representation determinations, particularly given the application of NLRB precedent.

The certification of 34 years ago does not bar the filing of a petition to certify a new unit when the language of the relevant statutes do

not support such an interpretation and the workplace itself has fluctuated radically over the intervening years. Accordingly, ATU's position that PUC section 30750(b) bars the Director from even considering any bargaining unit other than those determined in Archibald Cox's 1959 unit determination is without merit.

2. There is no contract-bar to ATU's Petition for Unit Clarification.

The hearing officer held that ATU's petition for unit clarification was barred because it was filed "mid-term, during the pendency of the contract". To support his position, the hearing officer cited Massachusetts Teachers Association, 236 NLRB 1427. The Mass. Teachers case held that although there is generally a bar against mid-term petitions for clarification which upset an agreement or an established practice of the union and employer with respect to unit placement of employees, an exception exists. The exception is permitted solely to resolve disputes concerning the unit placement of employees who fall within newly established job classifications or whose duties and responsibilities have undergone recent substantial changes such that there exists some real question as to whether their positions continue to fall in the category that they occupied in the past. ATU argues that the Massachusetts Teachers case supports the timeliness of its unit clarification petition.

The present case does appear to be one of those exceptions because the positions at issue involve "newly established" job classifications. Both Blue and Red line jobs were created since the last unit certification election in the late 1950's and at least the Red line positions were filled after the most recent bargaining agreement came into effect for rail employees in September 1991. Blue line classifications were filled in 1989, but not incorporated into the agreement until the arbitrator's award to that effect was enforced in 1991. It would thus appear that both groups fall

440

within the above-described "newly established job classifications" that would justify a mid-term unit clarification decision.[1]

The lack of a contract bar to ATU's unit clarification petition, however, is immaterial here, in light of the previous and unchallenged finding that the petition is denied on the ground that the request for a "more appropriate" unit is not consistent with Board precedent.

3. The job classifications at issue represent an accretion to the existing maintenance unit.

As all of the Exceptions filed by the IBEW concerning this issue are duplications of the arguments already addressed by the hearing officer, they will not be discussed in detail here. From my independent review of the record, I find that the hearing officer's conclusions are supported by the evidence.

The record reflects an integrated public transit system comprised of both bus and rail vehicles operated under a centralized administrative control. While the employees for whom the IBEW petitioned all perform electro-mechanical maintenance work on the new rail systems, other ATU-represented employees are also assigned to rail facilities and/or equipment, e.g. Air Conditioning Technicians, Cabinetmakers, Camera

---

[1] Assuming that ATU is correct, for the reasons discussed in section A.2, above, that its petition for clarification filed mid-term of the contract would not be contract-barred, it is ironic that the same union claims change in the workplace sufficient to justify consideration of its own petition for clarification, while asserting that the IBEW should not challenge units deemed appropriate in 1959. If Mass. Teachers supports reevaluation of the appropriate unit mid-contract on the basis of sufficient workplace change, an at-best ambiguous California State PUC statute cannot preclude consideration of IBEW's petition for certification in the face of federal labor precedent applied to a changed workplace and the fact that the latter petition was filed before any collective bargaining agreement applied to the affected workers.

Operators, Digital System Technicians, Digital Technicians, Electricians, Electrician's Helpers, Electronic Communication Technicians, Property Maintainers, Laborers, Plumbers and Locksmiths. While the petitioned-for employees all have rail-only immediate supervisors, the next levels of management supervise both bus and rail work groups. Some employees have transferred from bus to rail maintenance and, though a small amount of specific training was required, the tools and skills employed by both groups are similar. Labor relations for both groups are handled by the same personnel section of RTD and, although specific job positions may be assigned to separate buildings, both the rail and bus maintenance employees operate out of the same yards and are thus in close geographical proximity.

Under the LMRA, system-wide units are regarded as optimum in public utilities, and in particular, public transportation systems, because of the integrated and interdependent nature of the services they perform. New England Telephone and Telegraph 242 NLRB 940, St. Louis Public Service 77 NLRB 749 Exceptions to this rule have been found where unusual circumstances exist, such as a clearly defined and separate geographic area, no contact between groups of employees, no interchange between branch offices, no effect on the rest of the system as a result of a work stoppage at the location in question, lack of a bargaining history and no labor organization seeking to represent the employees in question in a larger unit. Michigan Bell 192 NLRB 1212, Colorado Interstate Gas Co. 202 NLRB 847 Applying the above tests to the facts presented here, the case for a separate unit has not been made. For all the reasons described in the decision of the hearing officer, the job classifications constitute an accretion to the existing maintenance bargaining unit.

FINDINGS

1. PUC Section 30750(b) does not bar IBEW's Petition for Certification of Representative.

2. ATU's Petition for Unit Clarification is not contract-barred, but stands dismissed on other grounds by the previous unchallenged findings of the hearing officer.

3. The job classifications at issue do not share a sufficient community of interest so as to constitute a separate bargaining unit; said classifications represent an accretion to the existing maintenance unit.

DETERMINATION

For the foregoing reasons, it is ordered that the Petition for Certification of the IBEW and the Petition for Unit Clarification of the ATU be dismissed. Except as otherwise indicated herein, the Proposed Decision of the Hearing Officer is hereby adopted pursuant to 8 CCR §15865.

Dated: 10/8/93

LLOYD W. AUBRY, JR.
Director of the
Department of Industrial Relations

PROOF OF SERVICE BY MAIL
(Code Civ. Proc., §§ 1013a, 2015.5)

I am employed in the City and County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is 455 Golden Gate Avenue, Room 3220, San Francisco, California 94102.

On October 12, 1993, I served the within Final Decision and Order of the Director of the Department of Industrial Relations re: Petition for Certification of Representative and Unit Clarification Petition on all parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Francisco, California addressed as follows:

WILLIAM J. FLYNN
NEYHART, ANDERSON, REILLY & FREITAS
600 Harrison Street, Suite 535
San Francisco, CA 94107

D. WILLIAM HEINE
SCHWARTZ, STEINSAPIR, DOHRMANN & SOMMERS
3580 Wilshire Blvd., Suite 1820
Los Angeles, CA 90010-2594

Kenneth Ristau
Gunnar B. Gooding
GIBSON DUNN & CRUTCHER
4 Park Plaza, Suite 1700
Jamboree, Center
Irvine, CA 92714

Victoria L. Bor
Martin J. Crane
SHERMAN, DUNN, COHEN, LEIFER & YELLIG
1125 Fifteenth Street, N.W.., Suite 801
Washington, D.C. 20005

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on October 12, 1993.

MILAGROS L. DIADULA-Declarant

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR - LEGAL UNIT
455 Golden Gate Avenue, Room 3220
San Francisco, CA 94102

PETE WILSON, GOVERNOR

ADDRESS REPLY TO:
Office of the Director - Legal Unit
P.O. Box 420603
San Francisco, CA 94142
(415) 703-5850
FAX No.: (415) 703-5480

RECEIVED
DEC 23 1992
NEYHART, ANDERSON, REILLY & FREITAS

December 18, 1992

Kenneth E. Ristau, Jr.
Gunnar B. Gooding
Gibson, Dunn & Crutcher
4 Park Plaza, Suite 1400
Irvine, California 92714-8557

William J. Flynn, Esq.
Neyhart, Anderson, Reilly & Freitas
600 Harrison Street, Suite 535
San Francisco, CA 94107

D. William Heine
Schwartz, Steinsapir, Dohrmann
& Sommers
3580 Wilshire Boulevard, Suite1820
Los Angeles, CA 90010-2594

Victoria L. Bor
Martin J. Craine
Sherman, Dunn, Cohen, Leifer
& Yellig
1125 Fifteenth Street, N.W., Suite 801
Washington, D.C., 20005

In Re: Long Beach Metro Rail Blue Line
C.S.M.C.S. Case Nos. 90-3-086 and 91-1-830

Dear Parties:

Enclosed please find the proposed decision and order of the Hearing Officer which I adopt as the proposed decision and order of the Director of Industrial Relations in the above-referenced matters. Under the procedure set forth in 8 California Code of Regulations 15860, any party may file exceptions to this proposed decision and order.

Sincerely,

Lloyd W. Aubry, Jr.
Director

cc: Peter Lujan, Supervisor
State Mediation and Conciliation Service

Enc.

VLH/gd:LB BlueLine(PW)

Dec 8, 1992 Proposed
Dec 8, 1992 Final

RECEIVED
DEC 23 1992
NEYHART, ANDERSON, REILLY & FREITAS

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
BEFORE THE STATE MEDIATION AND CONCILIATION SERVICE

RECEIVED
DEC 23 1992
NEYHART, ANDERSON, REILLY & FREITAS

IN RE:

LONG BEACH METRO RAIL BLUE LINE
PETITION FOR CERTIFICATION
C.S.M.C.S. CASE NO. 90-3-086 and
91-1-830

PROPOSED DECISION
OF HEARING OFFICER

I.

INTRODUCTION

Upon petitions being duly filed under Section 30751 of the Public Utilities Code a hearing was held on April 8 and 9, and August 11 through 14, 1992 before this Hearing Officer designated by the Director of Industrial Relations under section 15830 of Title 8 of the California Code of Regulations. In Case 90-3-086, Local 889 of the International Brotherhood of Electrical Workers ("IBEW") seeks to represent a specific group of employees who perform electro-mechanical maintenance work associated with the Southern California Rapid Transit District (hereinafter the "District" or "RTD") rail systems. More specifically the IBEW seeks to represent employees in the following classifications:[1]

[1] The petition, as initially filed, was geographically limited by its terms to employees employed on the District's Long Beach Metro Rail or "Blue Line" system. At the hearing the IBEW indicated that it also seeks to represent employees in the above classifications without regard to where they are employed. IBEW thus made it clear that it also sought to represent individuals employed in these classifications in the District's Red Line subway system for which staffing had not begun at the time the representation petition was filed. Notwithstanding arguments to the contrary, the above "clarification" constitutes an amendment to the original petition given the fact that an entirely different group of employees employed at completely different locations was added to the unit originally sought. ATU contends that the amendment operates as a bar to

Maintenance Specialist
Maintenance Assistant
Track Inspector
Signal Inspector
Traction Power Inspector
Rail Electronic Communications Inspector

The Amalgamated Transit Workers Union Local 1277 ("ATU"), which represents a unit of maintenance employees performing a variety of mechanical/electrical and related work associated with the District's bus operations, (hereinafter "the ATU unit" or the "existing unit"), contends that IBEW's petition should be dismissed because it is contract barred by both the 1988-1991 and the 1991-1994 collective bargaining agreements between itself and the District covering the ATU unit. The ATU further contends that the petition is also barred by its agreement with the District under the provisions of Section 13(c) of the Federal Transit Act (hereinafter "the 13(c) agreement")[2] , under which transit systems accepting federal funds for the construction of capital projects are required to offer existing employees certain job protections.

Alternatively, ATU contends that the petition should nonetheless be dismissed because the petitioned-for unit is inappropriate. In this regard the ATU contends that the only appropriate unit of maintenance employees is a system-wide unit including bus and rail employees, and that the proposed unit constitutes an accretion to the unit it already represents.

---

the petition. However, as will be discussed infra, the amendment does not bar consideration of the petition.

2 49 U.S.C. Section 1609.

Similarly, it is the District's position that only a system-wide unit of maintenance employees is appropriate, that on that basis the proposed unit is therefore inappropriate, and that the petition should be dismissed.

In case 91-1-830, the ATU petitions the State Mediation and Conciliation Service ("Service") to "clarify" the existing unit[3] by finding or declaring that the current contractual unit is "the most appropriate" or the "only" appropriate unit of maintenance employees employed by the District.

For the reasons discussed below it is concluded that processing of the IBEW's petition is not barred by either of the ATU's collective bargaining agreements or by the 13(c) agreement. It is further concluded that under applicable community of interest criteria developed under the Labor Management Relations Act, as amended, ("LMRA") the petitioned-for unit is inappropriate for collective bargaining purposes inasmuch as it constitutes an accretion to the existing ATU unit. It is concluded that consideration of the ATU unit clarification petition is inappropriate. It is recommended, therefore, that both petitions be dismissed.

II

FACTUAL BACKGROUND

In 1958 the Los Angeles Metropolitan Transportation Authority ("LAMTA") was created to assume the operating responsibilities of various private and public transit systems in the Los Angeles area.[4] After the creation of LAMTA, Archibald Cox, acting as Hearing Officer for the Service,

---

[3] The bargaining unit covered by the current ATU-District agreement includes the employees sought by the IBEW. (See ATU Exhibit 1).

[4] These systems, the Los Angeles Railway, its successor the Los Angeles Transit Lines, and the Los Angeles Motor Coach Co., which was jointly owned and operated by the LA Railway and the Pacific Electric Railway, included bus, trolley and rail systems.

conducted a hearing for the purpose of determining appropriate bargaining units among the various employee classifications now employed by LAMTA.

One of the five units found appropriate by Cox, Group 2, also known as the Maintenance Unit, consisted of:

> "all employees in the Equipment Maintenance Department, all employees in the Electrical Department (including Laborer A), all employees (including janitors) in the Department of Way and Structures, all utility men in Zones and Stops; excluding all watchmen, shop clerks, janitors at 6th and Main Street, steno-clerks and supervisors".

The Maintenance unit included all non-supervisory maintenance employees who performed work on both bus and rail equipment and on bus and rail facilities of LAMTA. After prevailing in a Service-conducted representation election, the ATU was certified as the collective bargaining representative of the employees in Group 2 on May, 20, 1959. Following the certification, ATU and LAMTA entered into successive collective bargaining agreements covering the employees in one, overall maintenance unit. The record reflects that in the early 1960's, as the District began to phase out its rail operations, a number of ATU represented employees transferred over to the now-growing bus operations[5].

In 1964, the District was created by the Legislature to succeed LAMTA. (PUC Code section 30000 et. seq.). As part of the enabling legislation, the District was required to recognize all currently certified labor organizations and to assume all of LAMTA's existing collective

[5] The record reflects that LAMTA discontinued rail service approximately in 1961.

bargaining agreements, including the then-current LAMTA-ATU contract. Significantly, beginning with the 1964 agreement, and continuing until the 1988-1991 agreement, the ATU contracts did not include any rail job classifications inasmuch as the District did not operate a rail system during most of that period.

In 1981, sometime after the District had applied for federal funds for the construction of a rapid rail transit system, the District and the ATU entered into the 13(c) agreement which gave ATU unit employees employment priority for all future rail positions. Also in 1981, the ATU and the District agreed in writing that future employees hired to work in rail positions would be incorporated into the ATU unit. Thereafter, sometime in 1988, as the District prepared to staff the Blue Line, the ATU and the District began negotiations to implement the 1981 agreements viz a viz rail employees.

For a variety of reasons not relevant here, negotiations stalled and by the time the first employees were hired to work on the Blue Line no agreement had been reached on the terms and conditions under which these rail maintenance employees would be incorporated into the ATU unit. As a result, the bargaining unit covered by the 1988-1991 agreement between the District and then ATU, executed on June 30, 1988, did not cover any rail maintenance employees in the classification sought by IBEW. At that time the District took the position that it had not agreed to recognize ATU as the representative of the its rail maintenance employees and the dispute was submitted to an arbitrator for decision.[6]

---

6 The matter was arbitrated only after ATU obtained a court order compelling the District to submit the recognition issue to arbitration. As a result, the arbitration hearings were not convened until August, 1990, and the arbitration award itself did not issue until June 10, 1991, when negotiations for the current 91-94 agreement were already under way.

Meanwhile, beginning in October, 1989, the District began hiring employees in the classifications sought herein. Because of the on-going labor dispute these employees were unrepresented. Their initial terms and conditions of employment were either unilaterally determined by the District or were set through individual negotiations between the employee and the District's personnel department.[7] It was on August 22, 1990, during the non-contract period, more specifically , when the IBEW filed the instant petition to represent the rail maintenance employees. [8]

Thereafter, on June 10, 1991, Arbitrator Philip Tamoush issued a decision and award. He found that the District had agreed to recognize the ATU as the exclusive collective bargaining representative of "all current and future rail and metro rail employees" and he ordered the District to negotiate with the ATU over their specific terms and conditions of employment. The District subsequently complied with the Tamoush award and agreed to recognize the ATU as the representative of the rail maintenance employees at issue here. On September 2, 1991, that agreement was formalized as part of the current collective bargaining agreement, (ATU Ex. 1), which incorporated these employees into the existing ATU unit.

---

[7] This "non-contract" period came to a close in 1991, after the arbitration award issued, when the ATU and District entered into an agreement pursuant to which these employees were folded into the existing ATU unit.

[8] Due to a procedural defect the petition was re-filed on February 6, 1991, and again on March 5, 1991, at the request of the Service. The unit sought in the original petitions consisted of "Signals Division, Traction Motor Division, Track Division, Rail Equipment Maintenance Specialists, and Rail Equipment Maintenance Assistants". As part of the amendment described in footnote 1, supra, the job titles in the petitioned-for unit were changed to reflect the titles then in use.

III

THE ALLEGED BARS TO CONSIDERATION OF THE PETITION

The ATU argues that consideration of this petition is barred by:

(1) the amendment adding the Red Line employees to the petitioned-for unit;

(2) both the 1988-1991 and 1991-1994 collective bargaining agreements; and,

(3) the 13(c) agreement.

Each objection will be considered in turn.

A. The Amendment Adding the Red Line employees.

The ATU argues that adding the Red Line employees to the unit sought enlarges the size and character of the unit such that, for contract bar purposes, the filing date should be April 8, 1992, (the date of the amendment) and not the original filing date of August 22, 1990 (or February 6, or March 5, 1991). If this argument prevails the petition would be barred by the current collective bargaining agreement.

In Deluxe Metal Furniture Company (1958) 121 NLRB 995, the NLRB held that when a petition is amended, if the employers and the operations or employees involved were contemplated under the original petition, and the amendment does not substantially enlarge the character or size of the unit or the number of employees covered, the filing date of the original petition is controlling. Because the District had not begun staffing the Red Line at the time the petition was filed, the employees added through the amendment could not have been specifically included in the originally requested unit. However, since the amendment involves the same employer and the identical job classifications, it can reasonably be said that the additional employees were contemplated by the original

petition under Deluxe Metal, supra. Moreover, the amendment resulted in the addition of a relatively small number of employees (29) to a unit of approximately 80 employees. In these circumstances it is found that the amendment did not substantially alter the character or size of the unit so as to make the date of the amendment controlling[9].

B. The Contract Bar Contentions

In order for there to be a contract bar to an election petition there must exist a written, signed contract setting forth the terms and conditions of the employees in the proposed unit. Appalachian Shale Products, 121 NLRB 1160; Southern California Gas Company, 178 NLRB 607. The contract must contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship. Appalachian Shale, supra.

In the instant case, the Arbitrator found only that during the 1988 negotiations the District had agreed to recognize the ATU as the collective bargaining representative of the rail maintenance employees and that their specific terms and conditions of employment were to be negotiated at a later date. He specifically rejected ATU's contention that there had been an agreement to apply that contract to the rail maintenance employees. An agreement to recognize does not constitute a collective bargaining

---

[9] It is further noted that under Section 11204 of the NLRB Representation Case Handling Manual, Hearing Officers are authorized to grant amendments to petitions made during hearings. If an amendment is made at the hearing, and it is concluded that it radically alters the character of the petition, the Hearing Officer has the discretion to adjourn the hearing if he or she determines that due process considerations require that the opposing parties be afforded additional time to prepare their cases. As discussed above, however, the amendment at issue here did not represent a "radical change" of the petition. Moreover, the opposing parties had ample time to prepare or adjust the presentation of their cases in light of the amendment, given the fact that, partly because of the amendment having been made, the hearing was adjourned for approximately four months in order to permit the ATU to pursue an Article XX proceeding under the AFL/CIO Constitution.

agreement. Such agreement cannot stabilize the collective bargaining relationship since terms and conditions of employment are not specifically stated. As noted above, the 1988 ATU contract did not contain any provisions governing the employment terms and conditions of the employees in the proposed unit because none had been hired in 1988 when the agreement was negotiated and signed. The 1988 agreement cannot, therefore, act as a bar to the instant petition.

It is contended that the 1988 agreement bars the petition because it at least "partially" covered the employees in the proposed unit as provided in section 15805(a) of the Service's regulations[10]. The 1988 contract contains no provisions covering these employees in whole or in part. Accordingly, it cannot serve as a bar to a lawfully filed petition by a rival union seeking to represent those employees. Under the National Labor Relations Act "pre-hire" agreements, entered into before an employer has any employees in the proposed unit, cannot act as a bar to an otherwise valid election petition. Western Freight Association, 172 NLRB 303; General Extrusion Company, 121 NLRB 1165.

C. The 13(c) Agreement

For these same reasons the 13(c) agreement does not bar the petition. That agreement was nothing more than a promise by the District to give ATU unit employees a placement preference when and if rail maintenance employees were hired. Executed in 1981 and reaffirmed in 1984, the 13(c) agreement did not, and could not, have specified, either in whole or "in part," the terms and conditions of employment for a group of employees who were hired almost seven years later. For these reasons, and contrary to ATU's contention, the 13(c) agreement was not a collective

[10] 8 California Code of Regulations section 15805(a).

bargaining agreement viz a viz the employees in the unit sought herein and it cannot serve as a lawful basis upon which to bar the IBEW's petition.[11]

The 1991-1994 collective bargaining agreement between the ATU and the District cannot bar the petition either. This is because that agreement was signed in September, 1991, several months after the IBEW's resubmitted petition had been accepted by the Service. Under the NLRA a collective bargaining agreement entered into after the filing of a valid representation petition cannot serve as a bar to the petition. Hotel Employees Association of San Francisco, 150 NLRB 143. Accordingly, ATU's contention that the 1991 contract is a bar is rejected as well.

Having concluded that the representation petition is not barred, I now proceed to discuss the appropriate unit/accretion issue. [12]

IV.

THE APPROPRIATE UNIT

A. The District's Organization Structure

The record reflects that the District has three major departments, each one with a director and two assistant directors. These are Transportation, Equipment Maintenance and Facilities Maintenance. All

[11] In addition to the reasons discussed above, the recognition agreement and the 13(c) agreement do not bar the petition for another reason. Under Section 8(a)(2) of the LMRA it is unlawful for an employer to extend, and for the labor organization to accept, recognition in the absence of a showing that the union represents a majority of the employees in the unit. There is no evidence that any of the employees in the unit sought here, much less a majority of them, had expressed a desire to be represented by the ATU in any manner at the time these agreements were signed. Nor could there be any such evidence since, as noted, no rail maintenance employees had been hired at the time these agreements were reached. Therefore, neither the recognition agreement nor the 13(c) agreement can act as a bar.

[12] The conclusions reached regarding the contract bar issue would be the same whether the petition is deemed officially filed on August 22, 1990, February 6, 1991, or March 5, 1991.

drivers and train operators are part of the transportation department. In the case of the Facilities and Equipment Maintenance Departments the record reflects that their Directors, assistant directors and most first and intermediate level supervisors have responsibilities encompassing both bus and and rail operations.

The Equipment Maintenance Department oversees the maintenance and repair of all revenue service vehicles, i.e., motor coaches (or buses) and rail cars, from repair facilities scattered throughout its area of operation. Although some of these repair facilities are dedicated only to rail operations, the overwhelming majority of these locations service both bus and rail operations. There is no separate rail equipment maintenance department. In this regard it is noted that the District maintains a Central Maintenance Facility (CMF) from which major bus and rail vehicle overhaul and rebuilds are performed. Also at CMF all vehicle painting is performed (bus and rail), as is all procurement and warehousing for the bus and rail systems. CMF also contains a materials dispatch center supporting both bus and rail maintenance operations. The record reflects that all equipment used in rail is machined at CMF by ATU unit employees.

The Facilities Maintenance Department includes buildings, grounds, landscaping, bus stop and rail station sign painting, terminals, layovers for bus stations, and overhead wire maintenance as well as track maintenance and station maintenance work for rail. All maintenance operations, whether bus or rail, are the responsibility of the Facilities Maintenance Department Director who has supervisory authority over all but two of the classifications at issue in this proceeding. They have been part of the Facilities Maintenance Department since 1989.

Under section 30000, et. seq. of the Public Utilities Code it is contemplated that the District will operate bus and rail systems. The record further reflects that since at least the late 1960's it has been District policy to develop an integrated bus and rail system (designated as a Uniform Integrated Multi-Modal System), involving trolley coaches, light rail vehicles (such as the Blue Line) and heavy rail (such as the Red Line).[13]

Scheduling for both bus and rail are made by employees in the same department, Operations Planning. In establishing the Blue Line and developing its train schedules, the District extensively considered existing bus system routes and operations. In this regard it is noted that, in order to avoid service duplication, over 60 different bus lines were modified, truncated or even dropped altogether after the Blue Line became operational, and that it is anticipated that similar changes in bus routes will occur when the Red Line comes on line in early 1993. As a result of this coordination, bus ridership has decreased on certain routes as patrons substitute light rail service instead. Additionally it is noted that all District maps include both bus and rail routes and that by making one telephone call, customers receive information about both bus and rail schedules and connections.

The record further reflects that the District maintains a uniform system-wide hiring system pursuant to which all job applicants, whether from within or outside an existing bargaining unit, must pass a written examination and a qualification appraisal interview before being hired.

---

[13] See District Exhibit 6. In addition to the foregoing, evidence was introduced establishing that it is the District's intention to eventually integrate a new trolley coach system into the existing light rail, heavy rail and bus systems.

Employees accrue seniority in two different ways: on a departmental basis (facilities maintenance department, equipment maintenance department, etc.), and on a District-wide, or overall basis. Some personnel decisions, such as certain promotional decisions and work shift preferences, are determined by departmental seniority. Others, such as vacation accrual, are governed by the employee's total length of employment with the District, without regard to the department(s) in which he or she may have worked. Significantly, departmental seniority is not broken down into sub-categories of "bus" and "rail" seniority dates. An employee's departmental seniority date would, if applicable, include periods when they performed both bus maintenance and rail maintenance work. Thus, for example, seniority for an employee in the Facilities Maintenance department would include periods when that employee worked in an ATU classification on the bus side, as well as any period worked on the rail side within that department. Employees acquire a new seniority date only when they move from a facilities maintenance to an equipment maintenance position, or vice versa.

B. The Employees in the Proposed Unit.

(1) Maintenance Specialist

The Maintenance Specialists are located within the Equipment Maintenance Department. They are primarily responsible for diagnosing rail car vehicle malfunctions, determining their probable cause, and making the necessary repairs to the rail car systems and subsystems. They also test newly acquired equipment, respond to system emergencies, and overhaul and tune traction power motors. Significantly, the record reflects that several employees who were formerly classified as "Mechanics," an ATU unit classification, transferred to become Maintenance

Specialists and that employees in both classifications work with virtually the same tools. Thus, in performing their mechanic duties, ATU unit employees develop the skills and experience which qualifies them for the position of Maintenance Specialist.

(2) Maintenance Assistants

The Maintenance Assistants are also situated within the Equipment Maintenance Department. Their primary duty is to clean the interior and exterior of the rail cars using high pressure steam, hot water or air pressure. The record reflects that several Maintenance Assistants were formerly bus system Service Attendants where they cleaned buses using virtually the same equipment and processes they now use on the light rail vehicles. In addition, the Maintenance Assistants sweep and mop the Maintenance shop, the pits, offices, yard areas and restrooms, work which is also very similar to the duties they performed on the bus side. In addition, and to a lesser degree, they may operate non-revenue vehicles (cars and pickups) in support of the maintenance operations, or load and unload supplies and other materials.

(3) Traction Power Inspectors

The Traction Power Inspectors are located within the Facilities Maintenance Department. They maintain the overhead wire on the Blue Line and the electric third rail on the Red Line. In this regard they inspect, test, install, maintain, replace and repair a wide range of electrical power equipment, including distribution systems, overhead catenary systems, contact rail, transformers, and direct current switch gear. They also respond to equipment failures, determine their cause and restore the equipment to service. The record reflects that approximately 8 of the 22 Traction Power Inspectors currently employed by the District transferred

over from positions in the ATU existing unit, (primarily the Electrician classification), during the non-contract period. Because the knowledge and skills they developed as ATU Electricians qualified them for positions as Traction Power Inspectors, these formerly ATU unit members did not receive any additional training or instruction beyond that given to the Traction Power Inspectors hired from outside the District during the non-contract period. Traction Power Inspectors carry radios which are maintained and repaired at CMF by ATU unit employees. Finally, it is noted that the Traction Power Inspectors work out of Vernon Yard, a repair facility where several ATU classifications, including for example the Electronic Communication Technicians or ECTs, work.

(4) Rail Electronic Communication Inspector.

The Rail Electronic Communication Inspectors come within the Facilities Maintenance Department. They repair and maintain electronic equipment used in the District's rail operations, including ticket vending machines, public address equipment, voice and data communication devices, intercom, fiber optic, CATV, CCTV, security alarm, fire detection and suppression, digital microwave and computer systems. Although the Rail Electronic Communication Inspectors work exclusively on rail operations, because the District operates an integrated communications system, most of the equipment the RECIs work on also support bus operations. Additionally, there is one supervisor for both bus and rail communication employees. It is also noted that should they be unable to repair a piece of communications equipment, the RECIs take the equipment to CMF where ATU-represented ECTs repair them. Five of the current RECIs were formerly ECTs, and two of them transferred over to their current position during the non-contract period. Further, it is noted that

training and experience developed by these employees as ECTs was transferable to their current position as Rail Electronic Communication Inspectors. Finally, the record reflects that the RECI's have very little, if any, contact with employees in the other classifications sought through this petition.

(5) Signal Inspectors

The Signal Inspectors come within the Facilities Maintenance Department. They are responsible for inspecting, testing, and performing corrective and preventive maintenance on wayside and audio signals, traffic control and automatic train control devices, grade crossing protection devices, switch and relay equipment, and electro-mechanical signal devices. They report for work at Vernon Yard.

(6) Track Inspectors

The Track Inspectors are located within the Facilities Maintenance Department. They are responsible for repairing and maintaining the tracks on which the trains run. In this regard they supervise the installation and repair of the track and switches by the track crews, and they identify faulty track and other related maintenance problems. They also report for work at Vernon Yard.

C. The Role of ATU unit employees in the District's Rail Operations.

In addition to the examples described in the preceding section, the record reflects that from the time the District began preparations to bring the Blue Line system into operation, ATU unit employees in many different classifications have played a significant supporting role in the District's rail

operations. [14] The same is true for the Red Line which will begin operations in 1993.

Thus, for instance, ATU cabinet makers, who maintain doors, tabletops and counters, also perform this work for the District's rail facilities. ATU camera operators, who work in the District's sign shop, produce signs for both bus and rail operations. ATU-represented Digital System Technicians and Digital Technicians perform work on computer systems for both bus and rail operations.

Also, ATU Electricians and Electrician Helpers, who maintain vehicle support maintenance equipment, (hoists, cranes, rail car and bus washes) and install lighting and power systems, also perform work on the cranes used to lift rail cars and buses for repairs. The record reflects that currently three of these electricians are assigned to work on the Red Line, where they maintain hoists, lighting and power systems and generally troubleshoot the equipment. ATU locksmiths, working out of CMF, repair and replace locks anywhere in the system, including rail facilities. ATU millwrights perform "truing" work on the rail cars, grinding the wheels to match a certain profile on the light rail track. Power Yard Sweepers, represented by the ATU, use power equipment to sweep out district facilities such as parking lots at both rail and bus locations.

Additionally, the record establishes that ATU Air Conditioning Technicians respond to problems related to the air conditioning in both bus and rail facilities. ATU Plumbers perform work at all District facilities, both bus and rail. The District's microwave communications system, which interfaces and controls communications on a District-wide basis, is maintained and repaired by System Electronic Communications

[14] This includes periods before, during and after the non-contract period.

Technicians, an ATU classification. The record also establishes that ATU Machinists were involved in performing some of the design and modification work on approximately 40 rail panographs, (the poles that protrude from the light rail cars and connect them to the electrified overhead wires), before these were cleared for revenue generating use. In addition, these same Machinists also maintain and repair the hydrolic lifts used to raise the light rail vehicles for maintenance and repair in the shop. ATU mechanics and other classifications perform repairs on rail-related equipment at the request of the Maintenance Specialists.

The District employs two individuals designated as Facilities Inspectors.[15] Although these employees are part of the existing ATU unit, they work exclusively on rail operations under the jurisdiction of the Facilities Maintenance Department. There is one Facilities Inspector for each rail system, i.e. one for the Blue Line and one for the Red Line. They are primarily responsible for maintaining the buildings and grounds at each rail station. In this regard they perform general maintenance and repair work such as maintaining the non-electronic parts of irrigation systems, making repairs on walls and on broken water lines, putting up signs, repairing loose or broken tile and sealing concrete. In order to perform some of the more complex repair tasks, the Facilities Inspectors will, from time to time, require the assistance of ATU electricians. In addition, they will also occasionally work with the Property Maintainers,

[15] The IBEW petition does not include the Facilities Inspectors. However, at the hearing, the IBEW indicated that they would not object to the inclusion of Facilities Inspectors in the petitioned-for unit in the event it is determined they share a sufficient community of interest with the employees in the classifications sought. However, given the final conclusions reached herein with regard to the legal relationship between the existing ATU unit and the petitioned-for unit, a specific finding concerning the unit placement of the Facilities Inspectors is unnecessary.

an ATU classification, who are responsible for building maintenance on the bus side of the District's operations. [16]

D. Employee Interchange

As discussed supra, under the 13(c) agreement the District committed to give ATU unit employees a preference in hiring for rail positions. The record reflects that the District lived up to its part of the bargain by transferring a number of ATU unit employees into the classifications sought here during and after the non-contract period. (See, e.g., the discussion above concerning Maintenance Specialists, Maintenance Assistants, Rail Electronic Communication Inspectors, and Traction Power Inspectors). In addition to the examples cited above, several other examples of employee interchange bear note.

For instance, with respect to the Red Line, although most of the employees initially hired to staff it were formerly Blue Line employees, several employees transferred to work on the Red Line directly from ATU bus systems classifications. (See e.g. ATU Exhibit 51 showing that at least three Electricians and two Property Maintainers transferred directly from an ATU classification on the bus side directly to the Red Line). Also, the record further reflects that at least one Track Inspector and one Signal Inspector transferred from ATU positions on the bus side directly to the Red Line.

V.

THE PETITIONED-FOR UNIT CONSTITUTES AN ACCRETION TO THE EXISTING ATU-REPRESENTED UNIT.

Under the LMRA accretions to an established bargaining unit are regarded as additions to the unit and therefore as part of it. Employees

[16] It is noted that both Facilities Inspectors previously worked as Property Maintainers.

found to have been accreted into an existing bargaining unit are not accorded a self-determination election. The Goodyear Tire and Rubber Co, et. al., 147 NLRB 1233. A petition for certification of a group of employees found to be an accretion is dismissed. Granite City Steel Company, 137 NLRB 209.

In determining whether a group of employees constitutes an accretion to an existing unit, the NLRB examines several factors, including but not limited to, the degree of employee interchange, the commonality of supervision and similarity of conditions of employment, the similarity of job classifications, the functional integration of the units, their geographic proximity, the role the new employees play in the operations of the existing unit, the degree to which the two groups share a community of interest, bargaining history and the similarity of skills and education between the two groups of employees.

Based on the record as a whole as detailed above, it is concluded that the petitioned-for unit is not appropriate for collective bargaining purposes and that the employees sought constitute an accretion to the existing ATU-represented unit. These employees are, therefore, a part of that unit. In reaching this conclusion several factors bear note, most significant among them the high degree of functional, operational, and organizational integration of the District's bus and rail operations. Thus, the District has established an Integrated Multi-Modal Transit System, which incorporates bus, light rail, and heavy rail systems into one, coordinated transit system. Rail and bus timetables are coordinated to avoid service duplication, the existence of the Blue Line has caused the District to modify, truncate or eliminate over 60 different bus lines and ridership on certain bus lines has decreased as ridership on the Blue Line

has increased. All District maps include bus and rail systems and with one phone call patrons can receive information concerning both bus and rail lines.

It is further noted that the District's organizational structure does not include separate bus and rail divisions. Two of the District's major divisions, Facilities Maintenance and Equipment Maintenance, each headed by a department head, simultaneously support and are responsible for both bus and rail operations. As detailed above at pps. 10-12, the District operates one primary maintenance facility, (CMF), where repairs are made on equipment used in both bus and rail operations. Moreover, employees in ATU classifications have always played a critical support role in the District's rail operations, before, during and after the so-called non-contract period. Significantly, several ATU-represented employees (for instance Facilities Inspectors and Red Line Electricians) work exclusively on rail operations.

There is substantially common supervision between the employees in the petitioned-for unit and those in the existing units. Thus, because of the high degree of operational integration, with only a few exceptions, the first line supervisors of the rail maintenance employees in the petitioned-for unit also supervise ATU-represented bus maintenance employees; at the higher supervisory levels there is total common supervision between these two groups.

In addition, the two groups of employees possess similar skills as established by the fact that a number of employees in ATU classifications (for instance Electronic Communication Technicians and Electricians) developed skills and experience in those positions which qualified them for positions in classifications in the requested unit. Because of this similarity

in skills and experience, the record establishes that there is a significant degree of interchange between the two groups of employees as reflected by the number of employees who transferred into positions in the petitioned-for unit directly from ATU unit positions. Moreover, employees in the two units come into frequent contact with each other, not only at CMF where rail maintenance employees deliver equipment to employees in ATU classifications for repair, but also throughout rail system facilities where employees in ATU classifications are called upon to perform a variety of repair and maintenance tasks. (See pages 16-19 above). In the circumstances of this case, and contrary to the IBEW's contention, the evidence is overwhelming that the employees in the petitioned-for unit are not sufficiently separate and distinct to properly constitute a separate appropriate unit. The same functional integration and employee interchange factors which were pivotal to the certification of a combined bus and rail maintenance unit in 1958 are present today and argue very strongly in favor of the accretion finding reached herein.

In support of its contention that the petitioned-for unit is appropriate, the IBEW contends that these employees share similar skills, duties and working conditions. While knowledge of electronics is a desirable qualification for most of the classifications sought, the record reflects, and the IBEW concedes, that such knowledge is not a prerequisite for all classifications in the proposed unit. Thus, for example, Maintenance Assistants, whose primary job is to clean and wash the rail cars, do not work at all with any electrical systems. Moreover, although the IBEW has gone to great pains in an attempt to establish that the employees in the requested unit possess rather sophisticated and highly specialized knowledge of electrical systems and components, the record reflects

otherwise. First, it is noted that not all the employees in the proposed unit work with direct current. For instance, Track Inspectors, Maintenance Specialists, and Maintenance Assistants, do not work with direct current. Additionally, an IBEW witness admitted that several employees have been hired to work in classifications in the proposed unit (including employees hired from outside sources as well as employees who transferred over from ATU unit classifications) with no experience working with electrical systems. They received a brief period of orientation or of on-the-job training before being considered fit to work on their own. Moreover, as stated above, the record reflects that ATU-represented employees, (Mechanics, Electricians, System Electronic Communication Technicians, Digital Technicians Property Maintainers, Electricians Helpers), have always worked on electrical components associated with the operation of the District's rail and bus systems. The similarity in the skills and knowledge of electrical systems and components possessed by these ATU unit employees, and the skills and knowledge of the employees in the proposed unit explains why employees in these electronic-related ATU job classifications have transferred into positions in the proposed unit and are able to perform the work competently with little or no additional training. This evidence seriously undercut the contention that the employees in the proposed unit possess so unique and distinct a set of electronic-related skills as to justify a separate unit.[17]

---

[17] The fact that the District conducted a nationwide search to fill some positions in the proposed unit and has offered employees a monetary reward for referring successful candidates to some of these jobs does not alter this conclusion. Richard Hunt, the District's assistant director of Facilities Maintenance, testified that there are several ATU Electricians who possess the knowledge and experience necessary to perform the duties of a Traction Power Inspector, for instance, but who for reasons of personal preference chose not to apply for these positions. Thus, contrary,

Neither can a separate rail maintenance be justified by the supervisory structure under which these employees work. As noted, the District does not have a separate Rail Maintenance Department. Therefore, seniority is accrued on a departmental, rather than on a "bus or rail work" basis. Both bus and rail maintenance operations are the responsibility of the Facilities and Equipment Maintenance Department Managers. Additionally, the common supervision of bus and rail maintenance employees is not limited to the higher echelons of the District's organizational structure. Although there is a separate first line supervisor for most of the classifications in the proposed unit, above that first level all the employees in the proposed unit work under the direction of managers and supervisors who are responsible for both bus and rail operations.

Similarly unavailing is the contention that the employees in the proposed unit work in close geographic proximity with each other so as to justify a separate unit. Although this appears to be true of the Traction Power Inspectors, Track Inspectors and Signal Inspectors who spend a considerable amount of time working together out in the field responding to overhead wire and track propulsion problems, such is not the case with the other employees in the proposed unit. Thus, for example, there is substantial evidence establishing that the Maintenance Specialists and Maintenance Assistants have very little contact with the other employees in the proposed unit. Similarly, because they work primarily on radios and other communications equipment and do not work out on the tracks themselves, the record reflects that Rail Electronic Communication

---

to the IBEW's contention, the nationwide search and the referral reward are not indications that ATU unit employees are not qualified to work in the classifications at issue. The record evidence suggests that the opposite is true.

Inspectors have virtually no contact with the other employees in the proposed unit. Moreover, the significant involvement of ATU unit employees in the District's rail operations necessarily results in very frequent and recurring contact between ATU unit employees and employees in the proposed unit. This significant degree of contact undermines the IBEW's argument that geographic location considerations support a finding that the proposed unit is appropriate.

It is argued that the IBEW-proposed unit is appropriate because of the manner in which the wage and benefit package was determined during the non-contract period. Whatever strength this fact might have added to the IBEW's position herein is undermined by the fact that the record is devoid of any evidence that there was anything distinct or unique about the manner in which these employees were paid. Rather, the record reflects that since the employees in these classifications were unrepresented during this period, their wage and benefit package was determined in accordance with the policies and procedures outlined in the District's Non-Contract Employee Handbook, (IBEW Ex. 40), a compendium of personnel rules and policies that apply to all unrepresented employees. Thus, during the non-contract period the employees in the proposed unit were subject to the same set of rules that governed the working conditions of several hundred other non-union District employees. No wage and benefit package solely applicable to rail maintenance employees ever existed. Although it is conceded that this was not the manner in which ATU unit employees were paid during that time, this difference was temporary. When the record here is viewed as a whole, the overwhelming weight of the evidence supports a finding that the employees in the proposed unit represent an addition to the ATU unit.

As correctly noted by the ATU and the District, under California law the Southern California Rapid Transit District is a public utility. (See P.U.C. Code Section 30000 et. seq.). Under the LMRA, system-wide units are regarded as optimum in public utilities, precisely because of the integrated and interdependent nature of the services they perform.[18], see New England Telephone and Telegraph, 242 NLRB 940; Colorado Interstate Gas Company, 202 NLRB 847, and in public transportation systems in particular, St. Louis Public Service, 77 NLRB 749. All the necessary factors regarding common supervision, interchange, contact, similarity of skills, etc., are present in the record herein [19] to conclusively establish that there should be one overall maintenance unit. These were the same factors which led the Service to find appropriate and certify an overall maintenance unit in 1958. Essentially, all that has happened here is that, as a result of the District's resumption of rail service, the existing ATU maintenance unit has expanded and now includes the employees engaged in rail maintenance. Nothing less, nothing more. The IBEW's attempt to

---

[18] Significantly, both the United Transportation Union, which represents the bus and train operators, and the Transportation and Communications Union, which represents clerical and janitorial employees, do so on a system-wide basis.

[19] The IBEW contends that the the appropriate unit determination should be limited to an examination of the facts as they existed during the so-called non-contract period. It is arguable that such an analytical approach may be appropriate with respect to the Blue Line system since the petition was filed during the period the District was gearing up to begin operations on that line. The IBEW correctly notes that post-petition changes adopted by an employer should generally not be considered in making unit determinations. However, as discussed in more detail in section IV above, factors relating to the integration of the District's operations, common supervision, and employee interchange and contact were present to a sufficient degree during the non-contract period so that the result reached herein would be the same even if only that period is considered. Moreover, such a limitation could not be observed as to the Red Line inasmuch as staffing of that system began after the petition was filed thereby necessitating the consideration of post petition events. These factors also support the conclusion that the petitioned-for unit is not appropriate for collective bargaining purposes.

break off a fraction of the employees engaged in rail maintenance for the purpose of assembling them into a separate group is an artificial construct, inconsistent not only with the District's organizational and operational structure,[20] but also with established community of interest principles developed under the LMRA and as applied in the public utility industry. To the contrary, the record clearly demonstrate that these employees share a strong community of interest with the employees in the existing ATU unit so as to compel a finding that they should accreted into that unit. Had the employees in this unit existed at the time the unit was originally certified they definitely would have been included in one overall maintenance unit. (See Radio Corporation of America, supra, "(accretion found where employees in question would have been included if their classifications had been in existence at the time of the original proceeding and certification.")

The IBEW's contention that the proposed unit is not an accretion to the existing unit fails for several reasons. First, since the proposed unit is not appropriate for collective bargaining purposes, the cases relied upon by the IBEW, and which purport to stand for the proposition that an accretion cannot be found where the proposed unit is appropriate, are inapposite. In addition, their persuasive value in the instant proceeding is

---

[20] As noted, the petitioned-for unit excludes a number of employee classifications involved in rail maintenance, (the Facilities Inspectors and the various ATU classifications who perform rail maintenance work). Additionally, it is noted that the employees in the proposed unit represent less than 6% of the combined total of employees in the Facilities and Equipment Maintenance Departments. Both these factors, in addition to the others discussed, indicate that what the IBEW proposes here is the improper severance and fragmentation of an existing bargaining unit. See Mallinckrodt Chemical Works, Uranium Division, 162 NLRB 387; (improper to sever one group of employees from an existing broader unit where employees to be severed are not part of a functionally distinct department and there is substantial integration of employer's production processes).

further limited by the fact that none of the primary cases cited, Pacific Airlines v NLRB, 587 F. 2d 1032 (C A 9, 1978), TRT Comms. Corp 230 NLRB 139 and Melbet Jewelry, 180 NLRB 107, involve a public utility or a public transit system. These cases deal with an issue which is of no relevance to this proceeding, i.e., whether a new plant opened by an employer who already operates one or more free-standing, geographically distinct plants, is an accretion to a unit of employees in the existing facilities. The instant case does not involve a multi-plant or location operation.

The IBEW argues that the District's operations are not integrated because, while the transit system may be integrated, the work processes at issue here are not because the work of one group of employees is not dependent on the work performed by the other, i.e. the shutdown of the bus operations would not result in the shutdown of the rail system. But examining only whether one shutdown of operations would cause another shutdown to determine integration is too narrow a focus. Functional integration is a much broader and relevant concept which involves an assessment of the overall impact of one operation or function upon another. United Gas Inc., 190 NLRB 618; Southwest Gas Corporation 199 NLRB 486. Therefore, the fact, conceded by the IBEW, that the shutdown of the bus or rail system would result in an increase in ridership in the other strongly supports the proposition that the District operates an integrated transportation system. Also supporting a finding of integration is the fact the District modified or eliminated several bus lines to avoid duplication of service with the Blue Line.

IBEW correctly points out that one primary focus of the accretion analysis should be the relationship between the work performed by the two groups of employees at issue here. Contrary to the IBEW's contention,

however, there is abundant evidence (see sections IV C and D above) establishing that the work processes of the employees in the two groups are also integrated. Because ATU-represented employees are heavily involved in rail support functions as explained supra, it is certain that if the ATU employees do not perform their rail maintenance support functions, the employees in the proposed unit would be unable to perform their duties.

To conclude, the record clearly establishes that the District operates a functionally integrated transportation system. The proposed unit is not appropriate for collective bargaining purposes as it constitutes an accretion to the existing ATU-represented bargaining unit.

VI

THE UNIT CLARIFICATION PETITION

The ATU has requested that the Service "clarify" the existing unit it represents by declaring that it is "more appropriate" (than the proposed unit) or that it is the "most appropriate" unit. However, under the LMRA, there is no such thing as the "most appropriate" or "only" appropriate bargaining unit. The National Cash Register Company, 166 NLRB 173. The relevant inquiry is only whether a bargaining unit is "an" appropriate unit. Moreover, clarification of a contractually established unit is improper where the petition is filed mid-term, during the pendency of the contract. Boston Cutting Die Company, 258 NLRB 771; Massachusetts Teachers Association, 236 NLRB 1427. In these circumstances the ATU unit clarification petition should be dismissed.

VII

CONCLUSION

For the foregoing reasons, it is recommended that the petitions filed in cases 90-3-086 and 91-1-830 be dismissed[21].

Dated: 12/8/92

RAOUL THORBOURNE, HEARING OFFICER FOR THE STATE MEDIATION AND CONCILIATION SERVICE

21 ATU Exhibit 55 is hereby rejected as irrelevant and because it was filed after the close of hearing. ATU Exhibits 56-59, whose late submission was arranged for and approved before the close of the hearing, are admitted.