

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

GILES AND RANSOME, INC.

Employer-Petitioner

and

Case 6-UC-411
(Formerly 4-UC-361)

LOCAL 542, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

Union

DECISION, ORDER AND CLARIFICATION OF BARGAINING UNIT

Upon a petition¹ duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before Patricia Garber, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record in this case,³ the Regional Director finds:

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

¹ The petition in this matter was duly filed in Region Four of the Board and captioned as Case 4-UC-361. Following the closing of the hearing in this matter, the General Counsel, by Order dated December 21, 1999, transferred this case, now captioned as Case 6-UC-411, to Region Six of the Board for, inter alia, the preparation of the Decision in this matter. The Order further provides that upon issuance of the Decision, to the extent further processing is appropriate to effectuate the issued Decision, the case will automatically transfer back and continue in Region Four as Case 4-UC-361.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St., NW., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by February 11, 2000.

³ Both the Union and the Employer timely filed briefs in this matter which have been duly considered by the undersigned.

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

3. Local 542, International Union of Operating Engineers, AFL-CIO (herein called “the Union”) is a labor organization within the meaning of Section 2(5) of the Act.

The Union is the collective-bargaining representative of a single unit comprised of certain mechanical and maintenance employees employed by Giles & Ransome, Inc. (herein called “the Employer”) in its Construction Equipment, Engine Power and Lift Divisions. The Employer and the Union have been parties to successive collective-bargaining agreements since the 1960’s, the most recent of which is effective by its terms from June 3, 1997 through June 2, 2001.⁴

By the instant petition, as amended, the Employer seeks to clarify the existing unit to exclude from it all employees employed by the Employer in its Ransome Rents Division (hereinafter, “Ransome Rents”) facilities located in Allentown, Pennsylvania; Wilmington, Delaware; and Atlantic City, New Jersey. In support thereof, the Employer contends that the Ransome Rents employees should not be accreted into the existing unit, as urged by the Union,

⁴ The unit is presently described in the parties’ collective-bargaining agreement, at Article I, Section III, in the following manner:

For Giles & Ransome, Inc., Construction Equipment Division: Technical Field Specialists, Technical Welder Specialists, Technical Shop Specialists, Field Service Mechanics, Welder-Mechanics, First and Second Class Mechanics, Mechanic Apprentices, Helpers, Tool Room Attendants, First and Second Class Welders, First and Second Class Painters, Bore/Welder Specialists, Welder Machinists, Technical Field Welder/Machinists, Sentinel Service Apprentice, Sentinel Service Second Class and Sentinel Service First Class.

Additionally, pursuant to Addendum No. 4 of the parties’ contract, the Employer has the option to further divide the Construction Division into a Heavy Equipment Division and a Building Construction Products Division (hereinafter, the “BCP Division”), at which time it will recognize the Union as the exclusive representative of the above-described classified employees employed in both divisions.

For Giles & Ransome, Inc., Ransome Engine Power Division: Technical Field Specialists, Technical Welder Specialists, Technical Shop Specialists, Field Service Mechanics, Welder-Mechanics, First and Second Class Mechanics, Mechanic Apprentices, Helpers, Tool Room Attendants, First and Second Class Welders, and First and Second Class Painters.

For Giles & Ransome, Inc., Ransome Lift Division: Field Journeymen, Journeymen, Mechanics, Mechanics Second Class, Mechanic Apprentices, Helpers and Welders.

inasmuch as they have an insufficient community of interest with unit employees, share no common supervision and do not interchange with them.

The Union, contrary to the Employer, seeks to have the petition dismissed on the ground that the employees whom the Employer seeks to exclude from the existing collective-bargaining unit are already properly part of that unit, in accordance with Addendum 4⁵ of the parties' collective-bargaining agreement (see footnote 4).⁶ More particularly, noting that a grievance is currently pending against the Employer, alleging a violation of the Addendum 4 provision, the Union asserts that this matter is exclusively contractual, warranting dismissal of the Employer's petition herein and deferral of the underlying grievance to the parties' contractual grievance/arbitration procedure.⁷ Alternatively, the Union argues that those Ransome Rents employees who perform maintenance and repair work, as well as those who perform yard work, constitute an accretion to the existing unit.⁸ In support of this contention, the Union asserts that

⁵ The parties first negotiated Addendum 4 in 1995, in anticipation of Caterpillar Inc.'s plan to introduce a new product line of smaller, lighter equipment. The provision, renegotiated by the Union and the Employer in 1997, contains a list of the equipment to be used in the Employer's BCP Division. At the time the parties negotiated Addendum 4, neither the BCP Division nor the Employer's Ransome Rents Division was in existence.

⁶ Based on this contention, the Union has filed an unfair labor practice charge, in Case 4-CA-28306, alleging that the Employer violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union concerning the employees whom the Employer seeks to exclude from the unit by filing its petition herein. The Union's charge has been held in abeyance, pending resolution of this matter.

⁷ The Union's motion in this regard has been thoroughly reviewed and is hereby denied. The Board has consistently held that representation, accretion and unit determination issues are exclusively within its purview, and that, even in situations in which an arbitrator has made findings on matters of contract interpretation related to accretion issues, it is the Board's obligation to determine whether, absent consent of the employees, the employees constitute an accretion to an existing bargaining unit. Accordingly, the Board will not defer to an arbitrator's award delineating the appropriate scope of a unit under a collective-bargaining agreement. St. Mary's Medical Center, 322 NLRB 954 (1997); Chauffeurs, Teamsters & Helpers Local 776 (Rite Aid), 305 NLRB 832 (1991); Magna Corporation, 261 NLRB 104 (1982); Marion Power Shovel Company, Inc., 230 NLRB 576 (1977); and Germantown Development Co., Inc., 207 NLRB 586, 587 (1973). Having determined that deferral of the issue underlying this matter would be inappropriate, and having denied the Union's motion to dismiss, I shall consider the instant accretion question on its merits.

⁸ The record is unclear as to the correct job titles for the Ransome Rents employees whose positions are at issue herein. While the petition merely references "employees" of the Employer, the record indicates that the Employer refers to all of the employees of Ransome Rents whom it seeks to exclude as "rental specialists," with particular areas of assignment. Thus, there exists the "rental specialist/working

the targeted Ransome Rents employees share a community of interest and some degree of common management with the unit employees and that the Ransome Rents employees handle some of the same equipment as the unit employees.

There are approximately 275 employees in the existing collective-bargaining unit and there are currently between seven and 10 Ransome Rents employees⁹ whom the Employer seeks to have excluded from the existing unit.¹⁰ There is no history of collective bargaining with respect to the unit placement of the positions at issue herein.¹¹

The Employer is a Pennsylvania corporation engaged in the sale and repair of heavy construction equipment. Its corporate offices are located in Bensalem, Pennsylvania. The Employer is the authorized Caterpillar equipment dealer for sales, service and parts in southern New Jersey, southeastern Pennsylvania and northern Delaware; one of 63 such authorized dealers in North America. Its operations are comprised of five business divisions: the Construction Division (referred to as the "Construction Equipment Division" in the parties'

supervisor," the "rental specialist/maintenance and repair," the "rental specialist/truck driver" and the "rental specialist/yardperson." The Union, however, refers to the targeted employees in separate classifications of "rental specialists," "maintenance and repair employees" and "yardpersons." While the Union does not specifically argue that the Ransome Rents drivers should be accreted into the unit, it introduced record evidence concerning their duties and the Employer explicitly seeks to exclude them. Further, the record is unclear as to whether the Union contends that the working supervisors whom the Employer employs at its Ransome Rents stores should be accreted into the unit. For purposes of consistency, I shall adopt the Employer's nomenclature herein and I shall consider the unit placement of the rental specialist/drivers and working supervisors as part of the group of employees the Employer seeks to exclude, regardless of whether the Union considers them an accretion.

⁹ The record is unclear as to the exact number of employees whose accretion status is to be determined herein, as the Employer refers to seven rental specialists and the Union refers to a group of 10 employees who constitute an accretion to the unit. It appears that this discrepancy in numbers is related to the lack of record clarity with respect to job classifications, described above in footnote 8.

¹⁰ The record indicates that the Employer intends to enlarge its Ransome Rents Division in the future, by opening more Ransome Rents stores, beginning in 2000. The Employer does not anticipate, however, that the current staffing complement of each Ransome Rents store, discussed infra, will be enlarged.

¹¹ There is no indication that the Ransome Rents employees have sought to be represented by the Union. To the contrary, the record evidence establishes that in about August 1998, representatives of the Union visited the Ransome Rents employees to solicit their signatures on union initiation cards, but that the Union's overtures were not "well received."

contract); the Lift Division; the Engine Division (referred to as the “Engine Power Division” in the parties’ contract); Atlas Used Parts;¹² and the Ransome Rents Division.

The Employer conducts its business operations at 11 facilities located in Pennsylvania, Delaware and New Jersey. The Union represents the existing collective-bargaining unit at eight of those facilities: Bensalem, Pennsylvania (Construction Division and Engine Division);¹³ Bear, Delaware (Construction Division and Engine Division);¹⁴ Whitehall, Pennsylvania (Construction Division); Toms River, New Jersey (Construction Division); Hammonton, New Jersey (Construction Division and Engine Division); Bristol, Pennsylvania (Lift Division); Allentown, Pennsylvania (Lift Division); and West Chester, Pennsylvania (Lift Division).

The Employer operates its Ransome Rents Division from three stores located in Atlantic City, New Jersey; Wilmington, Delaware; and in Allentown, Pennsylvania. The Employer additionally maintains a Lift Division facility in Lemoyne, Pennsylvania, located near Harrisburg, Pennsylvania. The employees who report to the Lemoyne, Pennsylvania facility, including mechanics akin to those in the existing unit, are unrepresented by any labor organization.

The record reveals that the Employer’s light equipment BCP Division, referred to in Addendum 4 of the parties’ collective-bargaining agreement, is not yet operational. In this regard, the Employer has hired four sales representatives who are responsible for soliciting business for the light equipment product line, but no other employees have been hired for the

¹² Atlas Used Parts engages in the disassembly of used Caterpillar equipment into individual parts and the direct sale of those parts to customers. A prior NLRB unit clarification proceeding in the 1980’s resulted in the exclusion of Atlas Used Parts employees from the existing unit. Approximately eight non-unit employees report to the Atlas Used Parts facility.

¹³ As noted, the Employer’s corporate offices are located at the Bensalem facility. Additionally, the Employer employs about eight maintenance employees at the Bensalem facility who are not represented by any union and approximately 17 drivers/warehousemen who are represented by International Brotherhood of Teamsters, AFL-CIO.

¹⁴ The Employer’s Bear, Delaware facility is also home to Atlas Used Parts, a non-union division of the corporation.

new division and no facilities have been designated as BCP Division locations. The four BCP sales representatives are considered employees of the Employer's Construction Division.

Wayne Bromley serves as the Employer's President and Dennis Runyen is the Executive Vice-President. Each of the Employer's separate divisions has its own vice-president, all of whom report to Runyen. Ken Bryant is responsible for corporate labor relations activities throughout all divisions and Richard Smith serves as the Employer's corporate Director of Human Resources. There is a single payroll supervisor for all of the Employer's facilities.¹⁵

The Employer's Operation of the Construction, Lift and Engine Divisions

The Employer's Construction, Lift and Engine Divisions deal almost exclusively with the sale and service of large, heavy-duty Caterpillar equipment. The Construction Division is primarily responsible for the sale and repair of earthmoving equipment.¹⁶ The Lift Division handles Caterpillar lift trucks as its main product, while the Engine Division is involved in the sale and repair of Caterpillar engines, including marine engines and power generation engines. These three divisions of the Employer are authorized to perform warranty repairs and service on Caterpillar equipment.¹⁷

Within the Construction Division, Ken Bryant has oversight responsibility for the Employer's parts operations and John Cerkenick serves as the Employer's General Manager with respect to parts and services. There are also three sales managers who oversee the sales

¹⁵ The payroll supervisor oversees the payroll activities of all employees of the Employer, including unit employees, non-union clerical and management employees, the unrepresented employees of Atlas Used Parts and the Ransome Rents employees whose status is in dispute.

¹⁶ Currently, 99.9 percent of the equipment handled by the Employer's Construction Division is manufactured by Caterpillar. The equipment that the Employer's Construction Division sells and services is used by construction contractors, for example, for clearing sites, digging basements and highway construction.

¹⁷ The Employer's Construction Division facilities also occasionally rent equipment to customers, in the form of rent-to-purchase agreements. In these circumstances, the customer rents a piece of equipment for a fixed term, with the intent to purchase it, much like an automobile lease. The rental price charged by the Construction Division is higher than the price charged by Ransome Rents, as the customer who enters into the rent-to-purchase agreement is actually building equity in the equipment.

activities of the dealership operations. The Lift and Engine Divisions each have a general parts and services manager, who reports to the vice-president in charge of that division. Each of the Employer's Construction, Lift and Engine Division facilities also has its own branch manager.¹⁸ The branch managers report directly to the vice-presidents of their respective divisions.¹⁹

Each of the Employer's facilities maintains its own budget. While some labor relations policies are established at the corporate level, and therefore applicable to all facilities, day-to-day supervision and discipline are handled at each individual facility by supervisory and management personnel at that location. Supervisory personnel within the separate Construction, Lift and Engine facilities are only responsible for directing and overseeing the work of employees at their respective facilities and none of the supervisors or managers within these divisions have any responsibility for oversight of work within the Ransome Rents Division.

The unit employees' job duties vary according to their respective classifications. Generally, the majority of unit employees are assigned to perform work related to the preventative maintenance and repair of equipment, including welding. Such work involves major and minor repairs, as well as actually rebuilding equipment. Unit employees also have responsibility for inspecting the equipment and for diagnosing problems with it. It is not uncommon for the unit mechanics to go out into the field to make repairs on the equipment, including, on occasion, to the Ransome Rents facilities, to make such repairs.²⁰ Additionally, there are unit employees who work as painters in the Construction and Engine Divisions. The

¹⁸ The exception is the Employer's Bensalem facility, which is managed by Jeff Spear, the Employer's Vice-President of the Construction Division.

¹⁹ None of the branch managers in the Construction, Lift and Engine Divisions report to Vice-President Ken Bryant, the Employer's labor relations representative who is also responsible for overseeing the operations of Ransome Rents.

²⁰ As described more fully infra, the unit mechanics' on-site repair calls to Ransome Rents stores are treated as a fee-for-service transaction between the two divisions and Ransome Rents is billed for the visits.

record evidence indicates that the unit employees have some level of customer contact in the performance of their work.²¹

Job skill levels of unit employees within the Construction, Lift and Engine Divisions vary according to classification, as well.²² Thus, the first and second class mechanics possess significant technical skills, while those who are classified as helpers and tool room attendants do not. Generally, the record evidence indicates that the unit employees who perform complex repairs on the Caterpillar equipment must be highly skilled in order to perform that work.

The terms and conditions of employment for the unit employees in the Construction, Lift and Engine Divisions are established by the parties' collective-bargaining agreement. In this regard, the wage range for unit employees is approximately \$10.59 to \$21.39 per hour. All Unit employees in the Construction, Lift and Engine Divisions normally work 40 hours per week and the contract provides for a shift differential. Unit employees receive nine paid holidays per year and are eligible for vacation based on their length of service with the Employer (e.g., employees with one year service receive five days of vacation, while those with 18 years of service receive 20 days of vacation). The employees in the bargaining unit have the benefit of a self-insured short-term disability plan, with maximum compensation set at \$285.00 per week, for a six-month period. Additional contractual benefits for unit employees include life insurance; medical insurance coverage; long-term disability; 401(k) plan participation; and pension plan benefits.

The Employer's Ransome Rents Division

Ransome Rents, whose employees are at issue herein, is engaged in the rental of light-duty construction, lift and generator equipment. The Employer's Ransome Rents Division was established in early 1998 as part of a national equipment rental program initiated by Caterpillar under the name "Cat Rental Store." The program represents Caterpillar's attempt to enter the

²¹ The record does not indicate, however, the nature or frequency of such contact.

²² The record is silent as to the educational or training requirements for the employees occupying unit positions.

small equipment rental industry.²³ Ransome Rents' customers include commercial businesses, schools, municipalities, as well as electricians and plumbers in the building trades.

Currently, Caterpillar-manufactured products account for 17 percent of the equipment handled by Ransome Rents stores. Such items include small track loaders, very small bulldozers, small wheel loaders and small backhoe loaders. The remaining 83 percent of Ransome Rents' equipment inventory is not made by Caterpillar, and includes items such as air compressors, jackhammers, concrete saws, small mortar mixers, portable heaters, drills, post hole diggers, sanders, grinders and pressure washers.

Ransome Rents purchases its Caterpillar equipment from the Employer's Construction Division and, at the end of its usefulness, eventually re-sells the used equipment back to the Construction Division (presumably, for parts). The sales transactions are made pursuant to formal sales agreements, although Ransome Rents obtains the equipment at a favorable price.²⁴ During its year and a half of existence, Ransome Rents has purchased approximately 110 of its 600 to 700 pieces of equipment from the Employer's Construction Division.

Unlike the Employer's Construction, Lift and Engine Divisions, Ransome Rents does not sell any equipment to its customers. Rather, customers rent the equipment for an open term, without any intention to purchase it. Should a Ransome Rents customer seek to purchase Caterpillar equipment, the customer is referred to one of the Employer's other divisions.

Employees of the Ransome Rents stores perform minor repairs (e.g., damaged door handles) on the equipment that Ransome Rents maintains, but they do not repair any non-rental equipment of the Employer's other divisions. Further, Ransome Rents is not authorized to perform any warranty repairs or service on Caterpillar equipment. Instead, the Employer's

²³ When established, Ransome Rents was not intended to be, or to become, the BCP Division referenced in Addendum 4 to the parties' collective-bargaining agreement. According to the Employer, when it is established, the BCP Division will not be a rental operation.

²⁴ These business transactions are handled through internal accounting mechanisms.

Ransome Rents stores must send the Caterpillar equipment to manufacturer-authorized service agents for all but the most minor repairs.

With respect to the Caterpillar equipment carried by Ransome Rents, the authorized service agents are the Employer's Construction, Lift or Engine Divisions (depending on the equipment involved). Otherwise, the non-Caterpillar equipment is referred to authorized dealers and service agents for other manufacturers. When one of the Employer's three dealership divisions performs repair or warranty work for Ransome Rents equipment, the Ransome Rents store receives a standard invoice and the cost of servicing the equipment is charged against that store's budget.

As previously noted, the Employer's Ransome Rents stores are located in Allentown, Pennsylvania; Atlantic City, New Jersey; and Wilmington, Delaware. Each of the Employer's three Ransome Rents stores has its own complement of rental equipment. Each store also has a separate budget, prepared by its branch manager and approved at the corporate level, as well as its own bank account.

The Employer's Allentown, Pennsylvania Ransome Rents store first began operating in about June 1998. The Allentown store is adjacent to a Lift Division facility, occupying one half of an 18,000 square foot multi-tenant building.²⁵ The Allentown Ransome Rents store and the Allentown Lift Division maintain separate customer and employee entrances, separate work areas, business offices and locker rooms. The Allentown store is physically partitioned from the Lift Division operation by racks and a wall down the middle of the building. The Lift Division and the Ransome Rents store each maintain a separate portion of the outside yard for storage of larger equipment.

The Allentown Ransome Rents store has its own branch manager, who is responsible for recruiting and hiring applicants, as well as discipline, training and dismissal of employees.

²⁵ The building is owned by a third party and leased separately to the Ransome Rents and Lift Division operations.

There is also a rental coordinator, who deals directly with customers and generates rental agreements. There are two rental sales representatives working at the Allentown store, who call on customers in the field and develop business on a commission basis.²⁶

Additionally, Ransome Rents employs a working supervisor at its Allentown store, who is responsible for ordering parts, contacting vendors and overseeing the equipment.²⁷ There is a rental specialist/truck driver who reports to the Allentown store, as well. According to the Employer's job descriptions, this individual is responsible for loading and unloading equipment at delivery locations and at the Ransome Rents yard; for getting rental agreements signed when equipment is delivered to the customer; for providing on-site basic training to the customer with respect to proper use of the equipment; making sure that the equipment is clean; checking equipment for damage; and performing "other branch duties as needed."

Finally, the Allentown store, like the other two Ransome Rents locations, employs the rental specialists whose unit placement is in issue herein. The rental specialist/yardperson is assigned to clean, fuel and inspect the equipment, to check the equipment for damage and to perform "other branch duties as needed." The rental specialist/maintenance and repair persons, two of whom are employed at the Allentown facility, are assigned to perform repairs and preventative maintenance on the rental equipment; complete paperwork; order and pick up parts; and "perform other branch duties as needed." All rental specialists are trained to deal directly with customers, whether by telephone or in person.

²⁶ The Ransome Rents sales representatives have no responsibility for sales in the Employer's other divisions and no responsibility for selling the equipment that will become part of the Employer's new BCP Division, described infra.

²⁷ The record reveals that the working supervisor makes effective recommendations to the Employer with respect to hiring applicants, but that he also works with his tools. According to the Employer's job description for this position, the working supervisor must, inter alia, maintain the stock of parts and supplies; dispatch rental specialists for field repairs; and wash, load and unload equipment, as needed. The record contains no stipulation from the parties regarding the supervisory status of the working supervisor.

The Employer's second Ransome Rents store, located in Wilmington, Delaware, is a stand-alone facility. Situated in northern Delaware, the Wilmington Ransome Rents store is located approximately 8 to 9 miles from the Employer's Bear, Delaware dealership (Construction and Engine Divisions). Having opened in about October 1999, the Wilmington Ransome Rents store employs one branch manager; one rental sales representative; one working supervisor; one rental specialist/truck driver; one rental specialist/yardperson; and one rental specialist/maintenance and repair.

The Employer's Ransome Rents store in Atlantic City, New Jersey has identical staffing as the Wilmington store, with the exception of an additional rental sales representative. First opened in July 1999, the Atlantic City Ransome Rents store is a stand-alone facility located in southern New Jersey.

Ken Bryant, a Vice-President with the Employer, is responsible for upper-level management of the Ransome Rents Division.²⁸ Day-to-day supervision within the Ransome Rents stores is performed by the branch manager of each respective facility. The Ransome Rents branch managers and working supervisors have no authority or responsibility for supervising employees at other Ransome Rents stores, or at other facilities of the Employer. As noted previously, payroll for Ransome Rents employees is coordinated through the Employer's central payroll office, a corporate function of its Human Resources department.

As set forth above, the rental specialists perform a wide range of tasks. While these tasks do not appear to require skills of a highly technical nature,²⁹ the rental specialists must be versatile in their abilities to balance a wide range of duties. Thus, in filling the rental specialists

²⁸ Bryant also oversees the Employer's non-union Atlas Used Parts Division and, as previously noted, handles corporate labor relations matters for all divisions.

²⁹ There is record evidence indicating that rental specialist/maintenance and repair employees may have skills that are comparable to those possessed by helpers and apprentices in the bargaining unit.

positions at its three Ransome Rents stores, the Employer specifically seeks applicants with skills and experience in the rental services industry.³⁰

With respect to the terms and conditions of employment for the Ransome Rents rental specialists, the record evidence establishes that they generally work 40 hours per week. The rental specialists/drivers earn between \$10.00 and \$17.00 per hour, while the rental specialists/yard workers earn between \$8.00 and \$12.00 per hour. The repair/maintenance rental specialists earn between \$14.00 and \$18.00 per hour.

The Ransome Rents rental specialists have eight holidays per year (one less than the unit employees).³¹ They enjoy the same health benefits package as the other non-bargaining unit employees of the Employer throughout all of its divisions.³² Similarly, the Ransome Rents rental specialists participate in a pension plan that the Employer offers for all non-unit employees, as well as a 401(k) plan and a profit-sharing plan. The rental specialists have a self-insured short-term disability plan, which compensates employees at a maximum of \$200.00 per week, for six months. Ransome Rents employees have an additional benefit of intermediate term disability, through which employees are paid the difference between their \$200.00 per week short-term allotment and their pre-illness wage, based on length of service. The Employer's long-term disability plan for Ransome Rents rental specialists who have been employed for more than six months provides employees with a maximum of \$2,000.00 per month in benefits until retirement. Finally, the Ransome Rents employees have access to the same internal grievance mechanism for processing employee complaints that the Employer offers to all of its non-bargaining unit employees.

³⁰ The record is silent as to the educational or training requirements for the Ransome Rents employees in dispute.

³¹ The record does not indicate what, if any, vacation benefits the rental specialists have.

³² It appears that the health benefits plan for rental specialists and other unrepresented employees of the Employer is like the plan for its unit employees, with the exception that unit employees make no contribution toward the coverage.

Functional Integration of the Employer's Operations and Employee Interchange

The record evidence establishes that, notwithstanding common ownership, the Ransome Rents stores are functionally discrete from the Employer's Construction, Lift and Engine Divisions. Indeed, the three Ransome Rents stores operate separately from each other, with only minimal contact among branch managers of the stores.

As noted, each Ransome Rents store maintains its own budget, bank account, personnel complement and inventory. Further, the rental facilities are physically separate from the Construction, Lift and Engine Division facilities. Although labor relations representative Ken Bryant oversees corporate labor relations for all of the Employer's five divisions, there is no record indication that Bryant is involved in the day-to-day administration of labor relations policies at the Ransome Rents stores. Further, there is no common direct supervision either among the three rental stores, or between the Ransome Rents Division and the Construction, Lift and Engine Divisions.

While the record establishes that 40 percent of Ransome Rents customers have also engaged in business with the Employer's other divisions, Ransome Rents provides a separate and distinct service to those customers: the open-term rental of small Caterpillar equipment and non-Caterpillar equipment. There has been no transfer of work from the Construction, Lift or Engine Divisions to Ransome Rents stores, as the Ransome Rents stores provide a discrete service and are not capable of performing the sales/warranty work of the other divisions.³³ Not only has there been no loss of bargaining unit jobs to the Ransome Rents stores, but the size of the bargaining unit has actually expanded by as much as 25 percent since the Employer began operating the Ransome Rents facilities.

³³ Nor is there any indication that the Employer intends to transfer the Ransome Rents inventory of Caterpillar equipment to the Employer's Construction Division when the new light equipment BCP Division becomes operational.

Although bargaining unit mechanics occasionally visit the Ransome Rents stores to make on-site repairs, those repairs are performed through the Construction Division as a service function to Ransome Rents. The performance of such on-site repairs is consistent with the Construction Division's role as a service department for hire, as such repairs are performed for all of the Employer's customers. To the extent that the Ransome Rents stores send equipment to the Construction Division unit employees for repair or warranty work (in part, because Ransome Rents is not authorized by Caterpillar to perform warranty repairs), Ransome Rents is billed for the work as any customer would be, with a written description of the work performed, parts used and labor charges. Similarly, when Ransome Rents purchases its Caterpillar equipment or parts from the Employer's Construction Division, Ransome Rents is billed for the purchase and payment comes from the individual store's budget.

Common advertising between the Ransome Rents stores and the Employer's Construction, Lift and Engine Divisions is minimal. In this regard, an Internet website link for Ransome Rents appears on the Employer's Internet advertisement for the Employer's Caterpillar dealerships. Customers who telephone the Employer's Lift Division facility in Allentown, Pennsylvania, may also hear a recording for the Allentown Ransome Rents store.

With respect to the Employer's Allentown facilities, the record establishes that, although equipment for the Lift Division and the Ransome Rents store is physically separated in different areas of the yard, the Lift Division occasionally lends forklifts to the Ransome Rents store for the store's usage. Similarly, if a customer of Ransome Rents needs a forklift, Ransome Rents enters into a rental arrangement with the Lift Division for the equipment, and then rents it to the customer.

Some of the equipment listed in the Employer's catalog for its Construction Division also appears in the Ransome Rents catalog and some of the equipment found in the Ransome Rents Wilmington, Delaware store is the same type of equipment handled by bargaining unit employees. In addition, to the extent that the Ransome Rents stores handle Caterpillar

equipment, some of the equipment found in the stores is mentioned in Addendum 4 of the parties' collective-bargaining agreement with respect to the Employer's right to further divide the Construction Division to create the BCP (light equipment) operation. As noted above, only 17 percent of the equipment that Ransome Rents handles is manufactured by Caterpillar.

The record establishes that there is minimal employee contact between Ransome Rents and the Construction, Lift and Engine Divisions, and that there is no actual employee interchange. In this regard, employees who transport equipment from the Ransome Rents stores for repair by the Employer's Construction Division, and those who return such equipment to the stores, have minimal contact that may include telephone contact for arranging service appointments, transfer of paperwork, or discussion concerning problems with the equipment. These instances of employee contact are consistent with the arms-length, customer-dealer relationship that the Employer's Ransome Rents Division stores have with the Employer's other divisions.

The geographic and physical separation of Ransome Rents stores from the Employer's Construction, Lift and Engine facilities limits the opportunity for employee contact between divisions. With respect to the Allentown facility, which houses both a Lift Division operation and a Ransome Rents store, such contact is restricted by the separate employee and customer entrances the Employer maintains for the Ransome Rents store and the Lift Division, as well as by the separate locker rooms, business offices, work areas and parking lots. Indeed, while the potential for greater employee contact might exist as to the Allentown facility, the record contains no evidence that the Allentown Lift employees actually co-mingle with the Allentown Ransome Rents employees.

The record similarly reveals no evidence, or even suggestion, that employees from the Employer's Ransome Rents stores gather with the unit employees for any company-wide social events. Further, there is no indication that the unit employees and the Ransome Rents employees are joined for corporate in-service training or other types of employee meetings.

The employees of Ransome Rents are employed solely in that division and they perform no functions whatsoever in any of the Employer's other divisions. Importantly, there has been no transfer of unit employees to the Ransome Rents stores, or vice-versa, during the entire existence of the Ransome Rents Division. Nor is there any evidence that unit employees and Ransome Rents employees fill-in for each other on a temporary basis, in the event of absence. None of the disputed Ransome Rents employees worked in the Employer's Construction, Lift or Engine Divisions prior to accepting employment with Ransome Rents; rather, they were hired "off the street," based on experience in the rental services industry.³⁴

Analysis

Recognizing that the accretion doctrine "deprives employees of the opportunity to express their desires regarding membership in the existing unit," the Board has consistently followed a very restrictive policy regarding accretion. Beverly Health & Rehabilitation Services, Inc., 322 NLRB 968, 972 (1997); See also, Compact Video Services, Inc., 284 NLRB 117, 119 (1987) and Super Valu Stores, Inc., 283 NLRB 134 (1987). Accordingly, the Board will find an accretion "...only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted [footnotes omitted]." Compact Video Services, Inc., supra, quoting Safeway Stores, 256 NLRB 918 (1981). See also, Giant Eagle Markets Company, 308 NLRB 206 (1992) and Dennison Manufacturing Company, 296 NLRB 1034 (1989).

The Board has identified certain factors that are critical for assessing whether a group of employees should properly be accreted into an existing unit. These factors include the degree of employee interchange; the extent of common day-to-day supervision of employees; similarity

³⁴ The rental specialists' prior employers include, for example, Hertz, Modern Rentals and Trico Rentals. Only one of the Employer's three Ransome Rents Branch Managers held a prior position in another of the Employer's divisions. The record indicates that this individual was specifically chosen for the Ransome Rents position because of his experience in the rental services industry as a former employee of Hertz.

of employees' skills and job duties; similarity of employees' terms and conditions of employment; the physical, administrative and functional integration of operations; and bargaining history. Compact Video Stores, Inc., supra, and the cases cited therein. Further, although all of these factors may be relevant, the Board has given special weight to two of the accretion factors: employee interchange and common day-to-day supervision. Notably, no weight is given to the fact that employee interchange is feasible when there has been no actual interchange of employees. Towne Ford Sales and Town Imports, 270 NLRB 311, 312 (1984), enf'd., 759 F2d 1477 (9th Cir. 1985).

With regard to the two particularly significant factors, employee interchange and common supervision, the record herein does not support a finding of accretion. Thus, while the Ransome Rents Division and the Employer's Construction, Lift and Engine Divisions share a few common upper management officials such as Ken Bryant in labor relations, the day-to-day supervision of employees is quite separate. As described previously, each facility of the Employer is separately managed and supervised. Branch Managers for the Ransome Rents stores have no responsibility for supervision within the Construction, Lift or Engine Divisions; nor do the supervisory personnel of those facilities perform any supervisory role relating to Ransome Rents employees. To the contrary, the supervisors of each division have little or no contact with supervisors of the Employer's other divisions.

Similarly, the record evidence involving employee interchange fails to support a finding of accretion. In this regard, none of the employees from Ransome Rents has ever been assigned to perform unit work for the Employer's Construction, Lift or Engine Divisions, or vice-versa, either on a temporary or a permanent basis. The rental specialists in issue did not transfer from the Employer's other divisions upon the Employer's opening of the Ransome Rents stores; rather, these employees were hired directly from the rental services industry. Further, employees of the Ransome Rents, Construction, Lift and Engine Divisions have

minimal contact with each other, based only on the brief and occasional transfers of equipment from one location to another.

A review of the remaining factors relevant to accretion yields no contrary result. With respect to the terms and conditions of employment for the Ransome Rents employees, the record establishes that the rental specialists share the same benefits packages as the Employer's non-unit employees. Additionally, while the wage rate ranges for the two groups of employees are arguably similar, the employees' job duties and skills are notably distinct. The rental specialists whom the Employer seeks to exclude from the unit perform a wide range of jobs, only a small portion of which are shared with employees in the bargaining unit. Rental specialists are regularly required to perform tasks beyond equipment and yard maintenance; tasks such as taking rental orders, that are consistent with the nature of rental stores as small operations. These duties stand in contrast to those performed by the specialized and highly skilled mechanics in the bargaining unit. All complex or Caterpillar warranty work is delegated to the unit employees, and the Ransome Rents employees never perform such work. Thus, while the unit employees are sufficiently skilled to perform the minor, routine maintenance and repair work that Ransome Rents employees undertake, the converse cannot be said, inasmuch as the Ransome Rents employees are generally unqualified to perform the unit work.

Further, although Ransome Rents shares the same upper-level administration with the Employer's Construction, Lift and Engine Divisions, and at the Allentown, Pennsylvania facility, shares the same building, the two divisions are not functionally integrated. The record indicates that all business dealings between Ransome Rents and the Employer's other divisions are in the form of arms-length, customer service transactions. Ransome Rents pays the Employer's other divisions for the warranty and repair services it purchases, and each division works independently of the other, in its own space.

Finally, with respect to the employees' bargaining history, the Union has never represented all of the Employer's employees; nor has it even represented all of the mechanics

whom the Employer employs. The Ransome Rents employees have never been represented by any union. There is no evidence that the parties ever contemplated that Ransome Rents employees would be part of the bargaining unit. To the contrary, the record indicates that the parties previously agreed that the Union did not seek to represent those Ransome Rents employees who perform counter duties; tasks which are, in fact, performed by all Ransome Rents rental specialists.³⁵

The Union appears to argue that the disputed Ransome Rents employees should be accreted into the existing unit based, in part, on the ground that they handle some of the equipment described in Addendum 4 of the parties' collective-bargaining agreement (concerning the Employer's anticipated BCP Division). Nevertheless, the record evidence affirmatively establishes that the BCP Division referenced in Addendum 4 has not yet begun to function.³⁶ To the extent that the Ransome Rents employees handle some portion of the equipment referred to in Addendum 4 of the contract, this factor is far outweighed in an accretion determination by the absence of common day-to-day supervision and employee interchange.

In sum, based on the above and the record as a whole, I do not find that the Ransome Rents employees share an overwhelming community of interest with the bargaining unit employees, so as to compel accretion. Nor do I find that the Ransome Rents employees have "little or no separate group identity," as required by the Board in order to find accretion appropriate. To the contrary, the record indicates that the Ransome Rents employees might

³⁵ In this regard, the record discloses that in about late January or early February 1998, representatives of the Union and the Employer met to discuss the nature of the Employer's Ransome Rents venture. At that time, according to the hearing testimony of the Union's business representative, the Union advised the Employer that it had no interest in representing the Ransome Rents "counter person" who meets with the customer to rent the equipment and/or who fixes a broken drill or chain saw. Rather, the Union was interested in representing the mechanics who perform work akin to that which the unit mechanics perform with respect to heavy equipment. Counsel for the Union reiterated this position during opening statements at the hearing in this matter.

³⁶ During the hearing in this matter, the Union took the position that the Employer's Ransome Rents stores were, in actuality, the same as the BCP Division referred to in Addendum 4, forming the basis for the Union's claim that the Ransome Rents employees were already members of the bargaining unit at the time the Employer filed its UC petition herein.

well constitute a separate appropriate unit for the purposes of collective bargaining.

Accordingly, I shall clarify the existing collective-bargaining unit so as to specifically exclude all employees of the Employer at its Ransome Rents Division stores.³⁷

ORDER

IT IS HEREBY ORDERED that the existing unit of employees represented by Local 542, International Union of Operating Engineers, AFL-CIO, in the Employer's Construction, Lift and Engine Divisions be, and it hereby is, clarified so as to exclude all employees of the Employer who are employed in its Ransome Rents Division stores, located in Allentown, Pennsylvania; Wilmington, Delaware; and Atlantic City, New Jersey.

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
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³⁷ Having reached this conclusion, I find it unnecessary to determine whether the Ransome Rents employees who are classified as "working supervisor" are supervisors within the meaning of Section 2(11) of the Act.