

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

DFD CALIFORNIA OPERATIONS

Employer-Petitioner

and

Case 21-UC-402

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 465,
AFL-CIO¹

Union

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1245,
AFL-CIO²

Union

DECISION
AND
CLARIFICATION OF BARGAINING UNIT

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before 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 authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

¹ The name of this Union appears as corrected at the hearing.

² The name of this Union appears as corrected at the hearing.

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

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

3. International Brotherhood of Electrical Workers, Local 465, AFL-CIO, (Local 465), is a labor organization within the meaning of Section 2(5) of the Act.

4. International Brotherhood of Electrical Workers, Local 1245, AFL-CIO, (Local 1245), is a labor organization within the meaning of Section 2(5) of the Act.

5. Employer-Petitioner DFD California Operations seeks to clarify its existing collective-bargaining unit represented by Local 1245 to include all regular full-time, regular part-time, and temporary operations and maintenance employees in the Power Plant Technician job classification at its South Bay plant, in Chula Vista, California.³ The collective-bargaining unit presently includes all regular full-time, regular part-time, and temporary operations and maintenance employees in the Power Plant Technician job classification at the Employer's Moss Landing plant, located in Moss Landing, California, and at its Morro Bay plant, located in Morro Bay, California.

³ The South Bay plant employees were formerly employed by San Diego Gas & Electric and were part of a multi-plant unit of San Diego Gas & Electric employees represented by Local 465.

At issue is whether the Employer's South Bay plant employees should be accreted to the bargaining unit of the Employer's Moss Landing and Morro Bay plant employees, who are represented by Local 1245. The Employer seeks the accretion on the basis that the only appropriate unit is a multi-facility unit that includes employees at all three of the Employer's plants. Local 465 opposes the petition, contending that the South Bay plant employees constitute a separate and appropriate unit. Although Local 1245 does not affirmatively claim a right to represent the South Bay plant employees, its Business Manager and Staff Attorney testified that Local 1245 will represent those employees if they are accreted into the current collective-bargaining unit.⁴

DFD California Operations (herein called the Employer) is a general partnership that operates and maintains three large power plants on behalf of its sole client, Duke Energy of North America (herein called DENA), an Independent Power Producer. DENA owns two of the power plants, the Moss Landing plant, located in Moss Landing, California, and the Morro Bay plant, located in Morro Bay, California. DENA purchased these two power plants from Pacific Gas & Electric (PG&E) in July 1998, following the deregulation of the California energy market under California's Electrical Restructuring Act. DENA

⁴ Local 1245 did not make a formal appearance at the hearing. Local 1245 Assistant Business Manager/Staff Attorney Tom Dalzell testified at the hearing pursuant to subpoena.

leases the third power plant, the South Bay plant, located in Chula Vista, California, from the San Diego Port Authority. The Port Authority purchased the South Bay plant from San Diego Gas & Electric (SDG&E), and leased the plant to DENA for a 9 1/2 year term, commencing in April 1999. DENA contracted with Employer DFD California Operations to operate and maintain its Moss Landing, Morro Bay, and South Bay plants. However, as the record discloses, following DENA's purchase and lease of each of the three plants, there was a 2-year transition period mandated by the Electrical Restructuring Act before the Employer could take over operation and maintenance of the three plants.

With regard to the Moss Landing and Morro Bay plants, the record reveals that during the July 1998 through July 2000 transition period, PG&E continued to operate and maintain these power plants for DENA. During this period, PG&E drew on its substantial workforce and resources systemwide to handle unplanned outages or other crises at Moss Landing and Morro Bay. During these 2 years, PG&E employees at DENA's Moss Landing and Morro Bay plants were represented by Local 1245, as they had been for many years, under a large multi-facility collective-bargaining agreement.

In July 2000, Employer DFD California Operations took over from PG&E the maintenance and operation of the Moss Landing and Morro Bay plants. The Employer and Local 1245

negotiated and entered into a collective-bargaining agreement, which covered a unit of all regular full-time, regular part-time, and temporary operations and maintenance employees in the Power Plant Technician job classification at the Moss Landing and Morro Bay plants.

With regard to the South Bay plant, which DENA leased commencing in April 1999, there was also a 2-year transition period. From April 1999 through April 23, 2001, SDG&E continued to operate and maintain this power plant for DENA. The record reveals that during this period, SDG&E drew on its substantial workforce and resources systemwide to handle unplanned outages or other crises at the South Bay plant. During these 2 years, SDG&E employees at the South Bay plant were represented by Local 465, as they had been for years, under a large multi-facility collective-bargaining agreement.

On about April 23, 2001, Employer DFD California Operations, took over from SDG&E the operation and maintenance of the South Bay plant. Undisputed record evidence reveals that the Employer has not recognized Local 465 as the bargaining representative of employees at the South Bay plant.

The record discloses that California's Electrical Restructuring Act created an Independent System Operator (ISO), a non-profit organization charged with ensuring the efficient and reliable operation of the California transmission grid. In order to sell power on the grid, an Independent Power Producer

such as DENA enters into a "Participating Generator Agreement" with the ISO, which gives the ISO considerable control over the Independent Power Producer's facilities, and which requires the Independent Power Producer to comply with numerous rules and regulations.

The record reveals that the Employer must prepare coordinated outage schedules for generating units at the Moss Landing, Morro Bay, and South Bay plants that DENA then submits to the ISO in order to get approval to shut down its power generating units for maintenance. E-mail correspondence between the Employer and the ISO reveals that the ISO has conditioned the Employer's ability to take a unit down for service at one of the plants on getting a unit back on line at another plant. In the event of an unplanned loss of generating capacity, such as an unplanned outage, the Employer works to increase power supplies at its other plants to cover the loss. If the Employer cannot cover the loss of power through supplies at the other plants, ISO will purchase the power and charge the Employer's client, DENA, for the cost. This results in significant monetary losses for DENA.⁵ If power cannot be purchased, rolling blackouts ensue. In any given week, it is

⁵ The Employer moves to correct the transcript at page 45, line 6, to reflect that losses have amounted to "one million dollars per hour," rather than "nine dollars per hour," as currently set forth in the transcript. Inasmuch as the record discloses that DENA is charged at the market rate for every hour it fails to produce sufficient power, and that this results in substantial monetary losses, I find it unnecessary to rule upon this motion.

common for at least one unit at the Moss Landing, Morro Bay, or South Bay plant to be out of service due to a mechanical breakdown or some other unplanned event. These outages at one plant have ripple effects across the plants as other plants increase generation to make up for the outage, and as employees work overtime, shift their duties, and/or temporarily transfer to other plants to respond to the problem.

During the transition period before the Employer took over operation and maintenance from PG&E and SDG&E, the Employer formed a transition group that consisted of Vice-President George Wackerhagen, Human Resources Manager Ed Conway, and each of the Plant Managers for the Moss Landing, Morro Bay, and South Bay plants. The transition group designed one organizational structure to apply across the three facilities. It also designed common job descriptions and skill requirements, common terms and conditions of employment, and common procedures and policies to govern operation and maintenance across the three facilities. The Employer structured its operations at the three plants in a centralized, uniform, and coordinated manner in order to provide for maximum flexibility in the use of labor and other resources throughout the plants, and in order to avoid an outage crisis.

Since the Employer took over operation and maintenance of the three power plants, the plants have been subject to shared managerial and administrative control. Vice-

President Wackerhagen and Human Resources Manager Conway testified that they have been involved in all major decisions affecting each plant. The three plants share the same environmental, health and safety department; and the same information technology department. These departments, based in Morro Bay, serve all three plants. The plants also share a common Employee Assistance Program, a common accounting department, a common payroll department, and a common Human Resources Department.

Day-to-day responsibility for managing the three plants rests with Vice-President Wackerhagen. The three Plant Managers report directly to Wackerhagen. Below the Plant Managers is a workforce divided into two groups at each plant: the Operations Team, which is headed by the Operations Team Leader, and the Technical Team, which is headed by the Technical Team Leader. Below them are the front-line supervisors, the Production Team Leaders, to whom the Power Plant Technicians directly report.

Vice-President Wackerhagen is responsible for managing the team that operates and maintains the California plants. He sets policy and establishes the guidelines under which they operate. Wackerhagen makes the final decision on the plants' wage rates, pay scales, compensation, benefits, and human resource practices and procedures. He is responsible for all employee terminations and discipline. Wackerhagen is also

in charge of collective-bargaining negotiations, contract administration, and contract interpretation. He works in close consultation with the Plant Managers and the Employer's Human Resources department.

The record discloses that the Plant Managers regularly work together in operating the Moss Landing, Morro Bay, and South Bay plants. The Plant Managers have two scheduled conference calls per week in which they discuss common concerns and issues. All three Plant Managers were involved in the formulation of proposals for negotiation of the collective-bargaining agreement with Local 1245. If one Plant Manager is away from the facility, a Plant Manager or Team Leader from another plant will fill in. If a Plant Manager has specific expertise in a particular area, he will travel to the plant where his expertise is needed and manage the situation. Plant Managers have interviewed applicants for other DENA plants, and have made hiring recommendations to Wackerhagen with respect to employees across the system. For example, former South Bay Plant Manager Tom Guthrie interviewed applicants for employment at Morro Bay. Vice-President Wackerhagen testified that he directs his Plant Managers to work together and rewards them for providing support to each other.

Like Plant Managers, Team Leaders at each facility have moved to other facilities to fill in for an absent

supervisor, to supply a particular expertise, and to interview applicants for employment.

The record reveals the centralized control of labor relations for all three plants. Final decision-making authority for all labor relations issues rests with Vice-President Wackerhagen. At Wackerhagen's direction, the centralized Human Resources department is charged with ensuring uniformity and consistency in labor relations matters. The centralized off-site Human Resources Department consists of three human resources professionals and is managed by Human Resources Manager Conway. A human resources professional is stationed at each of the three plants 2 days per week, and employees have been notified of several different ways to contact human resources personnel when they are not on site.

The Human Resources department administers employee benefits, places employees in a particular wage range, and coordinates and participates in all employee hiring, discipline, grievances, and terminations for all three plants. The Human Resources department participates in collective bargaining and coordinates union relations.

With regard to hiring, a common application for Power Plant Technicians is used at all facilities. While human resources personnel do not participate with Plant Managers in every interview, the Human Resources department is always

consulted in any decision to hire a particular employee and in setting the employee's initial wage rate.

Before an employee is terminated or disciplined in any manner, a Plant Manager must contact the Human Resources department to discuss the situation and to recommend a course of action. The Human Resources department will then determine whether further investigation is necessary, and will take a recommendation to Vice-President Wackerhagen for final decision making. Human Resources Manager Conway testified that his department must be involved in any decision to administer discipline because of the need for consistency within and between plants in order to avoid potential litigation, EEO claims, or employee morale problems.

All formal union grievances concerning employees in the Local 1245 bargaining unit are directed to Human Resources Manager Conway. Conway, Plant Managers at all three plants, and Vice-President Wackerhagen are involved in resolving each grievance in order to achieve a consistent, systemwide approach. The way in which a grievance is settled will uniformly affect the particular policy at issue in all three plants.

The record discloses that the operation and maintenance employees at the three plants share a common job classification and similar skills. The Employer's transition team created the uniform job classification for all operation

and maintenance employees, "Power Plant Technician" (PPT). The uniform job classification was designed based on the Employer's philosophy of the importance of cross-training in the deregulated economy. Since the Employer took over, employees are developing skills in work areas different from those in which they have typically performed. For example, welders at the three plants now remove pumps, a task historically done only by a Machinist while SDG&E and PG&E were the employers at these plants. Control Power Plant Technicians at each plant now work with members of the Operations Team cleaning condensers, a task typically done by maintenance personnel while SDG&E and PG&E were the employers. Employer representatives testified that the job classification was also designed to create flexibility and to ease employee interchange between plants. The classification has been integrated into the Employer's collective-bargaining agreement with Local 1245 and also exists at the South Bay plant.

The sole and uniform Power Plant Technician job classification is very different from the job classifications in place while SDG&E and PG&E were the employers. In this regard, the SDG&E contract lists in excess of 25 job classifications for operation and maintenance employees, while the PG&E contract lists hundreds of job classifications.

The record also reveals that the Power Plant Technicians at each of the Employer's three plants share common

terms and conditions of employment. Employees at the South Bay plant share the same wage structure and the same health-care benefits provider as employees at Moss Landing and Morro Bay. The Operations and Maintenance Procedures manuals for each plant are virtually identical, with only minor differences regarding plant-specific equipment. These common procedures include: interfacing with the ISO, administrative procedures, budgeting, accounting, employee benefits, health and safety procedures, materials and inventory management, employee development and qualifications, operations and maintenance procedures, and environmental procedures. Also consistent among the three plants are the substance-abuse policies, holidays, sick-leave benefits, funeral-leave benefits, jury duty, family and medical leave, education reimbursement, incentive pay, and relocation assistance.

Shifts worked by South Bay Power Plant Technicians currently differ from those worked by Moss Landing and Morro Bay employees. Employer representatives testified that the only reason for the difference is that South Bay plant employees are not currently covered by a collective-bargaining agreement, and that the Employer is therefore subject to a much stricter shift and overtime regime for these employees under California law.

The record further discloses that there have been both permanent and temporary interchanges of employees between

the three plants. With regard to permanent interchange, there have been several permanent transfers between Moss Landing and Morro Bay during the approximately 10 months that the Employer has been there. In the approximately 1 1/2 months that the Employer has been at the South Bay plant, there has been one permanent transfer from Morro Bay to South Bay. Job openings for the Employer are posted across all three facilities by the Human Resources department.

With regard to temporary interchange, Power Plant Technicians have transferred between Moss Landing and Morro Bay to cover vacations for one another, and to perform critical outage work. For example, Morro Bay employees have gone to Moss Landing, worked for Moss Landing supervisors, and worked alongside Power Plant Technicians stationed at Moss Landing. On one occasion, a Morro Bay Power Plant Technician was transferred to Moss Landing because his expertise was required to end an outage and quickly bring a Moss Landing generator back on line. Employer representatives testified that although there has not yet been occasion for a temporary transfer involving South Bay employees during the 1 1/2 months that the Employer has been there, temporary transfers are expected to rapidly increase as the Employer's operation of the South Bay plant proceeds, as the energy crisis continues, and as a new generation of technology-the "combined cycle" power generator-is introduced into the Employer's facilities. Plans are

currently underway for the temporary transfer of employees between South Bay, Morro Bay, and Moss Landing to participate in training regarding the new technology. For example, employees from Morro Bay and South Bay will temporarily transfer to Moss Landing to use a training simulator. Employees from Morro Bay and South Bay will temporarily transfer to Moss Landing to be trained on the combined-cycle technology, once it is installed.

The record reveals that the driving distance between the Moss Landing plant and the Morro Bay plant is approximately 141 miles; the distance between the Morro Bay plant and the South Bay plant is approximately 331 miles; and the distance between the South Bay plant and the Moss Landing plant is approximately 466 miles. With combined air and motor-vehicle transportation, travel time between the South Bay plant and the Morro Bay and Moss Landing plants is about 2 1/2 hours, which is the same approximate travel time by motor vehicle between Morro Bay and Moss Landing.

With regard to bargaining history, the record reveals that while SDG&E operated the South Bay plant, the operation and maintenance employees were formerly represented by Local 465 in a system-wide unit and then in a multi-facility Generation Business Unit. Employees within the SDG&E unit were, at times, temporarily transferred to different locations within the SDG&E bargaining unit. Since the Employer took over

operation and maintenance of the South Bay plant in about late-April 2001, it has not recognized Local 465 as the representative of employees in a single-facility South Bay unit. The record is devoid of evidence of any bargaining history involving operation and maintenance employees at the South Bay plant in a single-facility unit.

The record also discloses that following deregulation, other Independent Power Producers purchased other SDG&E sites. Local 465 represents operation and maintenance employees in a multi-facility unit of an Independent Power Producer named "NRG."

With regard to Local 1245, the record reveals that it represents utilities and Independent Power Producers in multi-facility units covering large geographic areas. These multi-facility bargaining units typically include all facilities of a particular employer. For example, Local 1245 represents PG&E's employees in a California systemwide unit spanning from the Oregon border to Bakersfield; a gas pipeline company's employees in a multi-state unit running from the Canadian border through California; and Sierra Pacific Power Company's operation and maintenance power plant employees in a Nevada unit consisting of several generating plants spread over 300 to 400 miles. Local 1245 represents employees throughout California, including San Diego County.

The Employer seeks to accrete the South Bay Power Plant Technicians into the bargaining unit of the Morro Bay and Moss Landing Power Plant Technicians on the basis that a multi-facility unit is the only appropriate unit following the Employer's takeover of the operation and maintenance of the three plants. Local 465 opposes the accretion, contending that the South Bay plant employees constitute a separate and appropriate unit.

In determining whether a group of employees is an accretion to an existing bargaining unit, the Board weighs a variety of factors, including: the integration of operations; centralization of managerial and administrative control; common control over labor relations; similarity of working conditions, skills, and functions; the interchange of employees; geographical proximity; and collective-bargaining history. Pilot Freight Carriers, 208 NLRB 853, 858 (1974); U.S. West Communications, 310 NLRB 854 (1993). A balancing of factors is necessary as the typical situation presents a variety of elements, some militating toward and some against accretion. The Great Atlantic and Pacific Tea Co., 140 NLRB 1011, 1021 (1963).

In making unit determinations in the public utilities industries, the Board also considers that the systemwide unit is the optimum bargaining unit based on the "essential services rendered to their customers and the integrated and

interdependent nature of their operations." Colorado Interstate Gas Co., 202 NLRB 847 (1973). The Board recognizes that the public has an immediate and direct interest in the uninterrupted maintenance of essential services, and is reluctant "to fragmentize a utility's operations." PECO Energy Co., 322 NLRB 1074, 1079 (1997); Baltimore Gas & Electric Co., 206 NLRB 199 (1973).

Application of these principles to the instant case reveals that an accretion is appropriate. Here, the record reveals that operations at the Moss Landing, Morro Bay, and South Bay plants are highly integrated. The Employer must prepare a coordinated planned-outage schedule for the ISO regarding the three plants, and the ISO has conditioned the Employer's ability to take a unit down for service at one plant on getting a unit back on line at another plant. During unplanned outages at one plant, the Employer depends on the other plants to increase production and to send employees to address the crisis at the plant where the breakdown occurred. The necessity for the coordination among plants is highlighted by the substantial monetary losses to DENA if the Employer is unable to produce the power to meet a power contract, and the rolling blackouts that ensue if the ISO cannot buy the extra power for DENA.

The Employer's centralized managerial and administrative control also supports a finding of accretion.

Abundant uncontroverted record evidence establishes that operating methods and techniques have been centrally set for the three facilities. Operating procedures and policies are almost identical among the plants. The Employer's planning, safety, accounting, payroll, and human resources functions are all centralized. All significant management decisions are made centrally by the Employer's Vice-President, with the assistance of the centralized Human Resources department and the input of the Plant Managers. Plant Mangers and Team Leaders regularly communicate and travel between the plants to support one another by filling in during absences, providing special expertise, and interviewing applicants.

Likewise, the common control of labor relations also supports a finding of accretion. A single centralized Human Resources department serves all three plants, and departmental personnel make on-site visits to each plant twice per week. Terms and conditions of employment are set centrally by the Vice-President and Human Resources department. Personnel decisions concerning discipline, hiring, firing, and placement of employees in the Employer's wage structure are coordinated centrally by the Human Resources department, with recommendations from Plant Managers, and final decision making by the Employer's Vice-President. Collective bargaining is performed in a coordinated manner by the Vice-President, the Human Resources department, and the Plant Managers.

The similarity of working conditions, skills, and functions further support accretion of the South Bay plant employees into the Morro Bay and Moss Landing collective-bargaining unit. In this regard, employees at the three plants work in the same job classifications under the same basic wage scale and with the same health-care providers. They have the same skills and perform the same job functions. They are also subject to the same employment policies with respect to safety, vacation, holidays, sick leave, funeral leave, family and medical leave, education reimbursement, and relocation assistance. The employees at all three plants have the same policies and utilize the same procedures to operate and maintain the plants. The fact that the South Bay employees are currently subject to a different shift structure because they do not have a collective-bargaining agreement does not significantly detract from the overall similarity of working conditions among employees at the three plants. U.S. West Communications, 310 NLRB 854, 855 (1993) (finding accretion appropriate despite some initial deviation in terms and conditions of employment among employees).

The interchange among employees and the plans for future interchange also lend support to a finding of accretion. During the first 1 1/2 months that the Employer has operated the South Bay plant, there has been one permanent transfer to the South Bay plant from the Morro Bay plant. Several

temporary transfers have occurred between Morro Bay and Moss Landing to deal with unplanned outages. Temporary transfers are expected to increase among the three plants in the midst of the energy crisis, and with the advent of the new "combine cycle" power generator technology. Plans are underway for temporary transfers between the three plants for training in the new technological equipment.

At first glance, the geographical distance between the South Bay plant and the Morro Bay and Moss Landing plants appears to weigh against a finding of accretion. The record, however, reveals that the travel time between the South Bay plant and the Moss Landing and Morro Bay plants is 2 1/2 hours by a combination of air and motor-vehicle travel. This is the same as the travel time between the Morro Bay and Moss Landing plants by motor vehicle. Further, as the record demonstrates, in the power plant industry, it is common for Local 1245 to have multi-facility bargaining units that encompass long distances, including from Oregon to Central California, from California to the Canadian border, and 400 miles throughout Nevada. Thus, on balance, I find that the geographical distance between the South Bay plant and the two other plants does not weigh significantly against a finding of accretion.

With regard to bargaining history, the record reveals that South Bay plant employees have historically been part of a multi-facility unit. Although South Bay plant employees in

this multi-facility unit were represented by Local 465 before the Employer took over operations, there is no evidence of bargaining history at the South Bay plant in a single-facility unit. Undisputed record evidence reveals that the Employer has not recognized Local 465 as the representative of its South Bay plant employees.⁶ Accordingly, I find that the history of collective bargaining does not weigh significantly against a finding of accretion.

Finally, the Board has held that when an employer merges two groups of employees who have been historically represented by different unions, a question concerning representation may arise, and the Board will not impose a union by applying accretion policy unless one of the groups is sufficiently predominant to remove the question concerning representation. U.S. West Communications, Inc. 310 NLRB 854, 855 (1993) (accretion found proper where systemwide unit held to be the appropriate unit and the employees represented by the Communications Workers of America outnumbered the employees

⁶ Local 465 requests that the record be re-opened to allow evidence regarding bargaining history that the Hearing Officer did not permit. Specifically, the Hearing Officer did not permit Local 465 to question Employer Human Resources Manager Conway about meetings he attended with Local 465. Local 465 claimed that the testimony was relevant to whether the Employer recognized and bargained with Local 465. The Hearing Officer held that the testimony was not relevant to the unit clarification proceeding. I find it unnecessary to re-open the record inasmuch as consistent record testimony from both the Employer and Local 465 Representative David Moore establishes that the Employer has not recognized Local 465 at this facility. In its brief, Local 465 confirms that the Employer has declined to recognize Local 465 as the representative of its South Bay plant employees. Without recognition, there can be no collective-bargaining history between the Employer and Local 465. Accordingly, Local 465's request to re-open the record is denied.

that had historically been represented by International Brotherhood of Electrical Workers, Local 111); Martin Marietta Chemicals, 270 NLRB 821 (1984) (although multi-facility unit found to be the sole appropriate unit following Employer's purchase of second facility, accretion found improper because question concerning representation existed where neither group of employees was predominant in number and the two separate units had historically been represented by different unions). Here, the Employer's Moss Landing and Morro Bay collective-bargaining unit of approximately 100 employees, represented by Local 1245, outnumbered by a two-to-one margin the Employer's approximately 50 South Bay plant employees who were historically represented by Local 465 in a multi-facility unit before the Employer took over operations. Therefore, I find accretion appropriate here.

Local 465's argument against a finding of accretion is two-fold: (1) a "strikingly similar" 1961 Board case establishes that accretion is inappropriate; and (2) the Employer's ability to successfully function during the 2-year transition period establishes that a multi-facility unit is unnecessary.

With regard to its first argument, Local 465 cites to Consolidated Edison Company, 132 NLRB 1518 (1961) to support its contention that accretion of the South Bay plant employees to the Moss Landing and Morro Bay bargaining unit is

inappropriate. Local 465's reliance on Consolidated Edison is misplaced as the case is readily distinguishable. In Consolidated Edison, the employer purchased three plants from the Transit Authority. The Board found that it was not appropriate to accrete these Transit Authority employees at the three plants to its existing system-wide unit because under the sales agreement, Consolidated Edison was bound to maintain the same wage and salary agreements and vacation benefits that these employees were subject to before the sale. The Board found that these conditions of employment and other "common interests" set forth in the sales agreement were not shared by the employer's other employees. Furthermore, the terms of the sales agreement explicitly reserved to the Transit Authority employees the freedom of choice in selecting their bargaining representative.

In sharp contrast, here the employees at all three of the Employer's plants share the same wage structure, vacation benefits, and other terms and conditions of employment. The record is also devoid of evidence of limitations imposed by any sales or lease agreement. Rather, the situation here is similar to that of more recent cases where the Board has found a system-wide or multi-facility unit appropriate and a single-facility unit inappropriate. See, e.g., U.S. Western Communications, supra, (1993) (accretion of employees historically represented by one union into multi-facility unit

represented by another union proper where balancing of community of interest factors and public policy favoring uninterrupted telecommunications resulted in a finding that the multi-facility unit was the appropriate unit); Waste Management Northwest, 331 NLRB No. 51 (June 8, 2000) (multi-facility unit found to be the appropriate unit where integration and centralization of operations, similar skills and working conditions of employees outweighed the geographic distance between facilities and the minimal interchange); and Lutheran Welfare Services of Northeastern Pennsylvania, 319 NLRB 886 (1995) (finding that based on integration and centralization of operations, only a multi-facility healthcare unit was appropriate).

Second, Local 465 argues that "the Employer's" ability to successfully function during the 2-year transition period establishes that a multi-facility unit is unnecessary. Local 465's contention is flawed for several reasons. First, DFD California Operations was not the employer of these employees during the 2-year transition period at each plant. DENA owned the Moss Landing and Morro Bay plants and leased the South Bay plant during the transition period at each plant. However, during the transition period at Moss Landing and Morro Bay, PG&E operated and maintained these plants and employed all operation and maintenance employees. Similarly, during the transition period at South Bay, SDG&E operated and maintained

the South Bay plant and employed all operation and maintenance employees. Moreover, as the record reveals, when Moss Landing or Morro Bay experienced an outage during the transition period, PG&E drew upon its system-wide labor and resources to solve the problem. Likewise, when South Bay experienced an outage during the transition period, SDG&E drew upon its substantial workforce and resources system-wide. Thus, the operational reasons why integration of the three plants has become necessary since DFD California Operations took over did not exist while PG&E and SDG&E employed operation and maintenance employees in multi-facility bargaining units.

Accordingly, based on a balancing of the traditional accretion factors, public policy considerations, and the record as a whole, I find that a multi-facility unit is the appropriate unit and that accretion of the South Bay Power Plant Technicians to the Morro Bay and Moss Landing collective-bargaining unit is proper. I shall, therefore, grant the unit clarification petition.

There are approximately 150 employees in the unit.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, granted, and the collective-bargaining unit be, and hereby is, clarified to reflect the following multi-facility unit:

Included: All regular full-time, regular part-time, and temporary operations and maintenance employees employed by DFD California Operations in the Power Plant Technician job classification at the Moss Landing plant, located in Moss Landing, California; at the Morro Bay plant, located in Moss Landing, California; and at the South Bay plant, located in Chula Vista, California.

Excluded: All other employees, including confidential, professional, supervisory, managerial, clerical, casual employees, and guards.

RIGHT TO REQUEST REVIEW

Under the provision 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 Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on July 18, 2001.

DATED at Los Angeles, California, this 11th day of July 2001.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

440-6750-3300

