STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN JOAQUIN REGIONAL TRANSIT DISTRICT, Employer, and AMALGAMATED TRANSIT UNION, LOCAL 276, Exclusive Representative.	SMCS Case No. 17-2-315 Case No. SA-UM-873-M[1] PERB Decision No. 2650-P June 21, 2019

Appearances: Palmer Kazanjian Wohl Hodson by Treaver K. Hodson and Alexandra M. Asterlin, Attorneys, for San Joaquin Regional Transit District; Neyhart, Anderson, Flynn & Grosboll by William J. Flynn and Benjamin K. Lunch, Attorneys, for Amalgamated Transit Union, Local 276.

Before Shiners, Krantz, and Paulson, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Amalgamated Transit Union, Local 276 (Local 276), under PERB Regulation 93060.[2] Local 276 asks us to overturn a proposed decision issued by a hearing officer appointed by the State Mediation and Conciliation Service (SMCS) under PERB Regulation 93030. The dispute involves Local 276's Petition for Clarification (Petition) seeking to accrete the unrepresented classification of Transit Ambassador (TA) at the San Joaquin Regional Transit District (District) into the District's single, broad bargaining unit,

[1] As a result of programming changes, in future cases involving transit employers covered by the Public Utilities Code, PERB will designate the case numbers using the letter P in place of the letter M.

[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

which Local 276 exclusively represents. The hearing officer denied the Petition, finding that: (1) the TA classification had been historically excluded from the unit, (2) the classification had not undergone recent substantial changes necessary to overcome its historical exclusion, and (3) those findings were sufficient to deny the Petition.

Based on our review of the proposed decision, the entire record, and relevant legal authority, we reverse the proposed decision and grant Local 276's Petition for the reasons discussed below.

FACTUAL AND PROCEDURAL BACKGROUND

The District is one of approximately 18 public transit districts established under the transit district enabling acts found in the Public Utilities Code (PUC). The District's enabling act is codified at PUC sections 50000 through 50507, including labor relations provisions found at PUC sections 50120-50126.

Local 276 is the exclusive representative of the District's sole bargaining unit, which includes the following classifications: Bus Operators, Mechanics, Utility Workers, Storekeepers, Facilities Technicians, Custodians, and Customer Information Clerks (CICs).[3] At the time of the hearing, the District employed approximately 105 employees in the bargaining unit, and eight TAs outside of the unit.[4]

[3] The hearing officer denied the District's petition to remove the CIC classification from the bargaining unit, finding that the CIC classification has been included in the unit since at least 1983, and that the evidence did not establish significant changes in that classification's duties which would raise any doubt as to its proper placement in the unit. Because neither party filed exceptions to the hearing officer's conclusions regarding the CIC classification, those conclusions are not before us on appeal but remain binding on the parties. (Pub. Util. Code, § 50121; PERB Regs. 32215, 32300, subd. (c), 93055, 93060, 93065; *City of Torrance* (2009) PERB Decision No. 2004, p. 12.)

[4] The District also employed one TA Lead. That position was not a subject of Local 276's Petition.

The District created the TA classification as part of a pilot program in 2014, although the evidentiary record does not include the exact dates when the District initiated the pilot program, made the TA classification permanent, or filled the TA positions.[5]

TAs provide route information and guidance to passengers; sell tickets; assist with special transit-related events; and monitor District facilities and assigned bus stop locations to report on safety-related issues and other problems, including graffiti and restroom maintenance needs that bargaining unit employees must remedy. TAs ride the buses for approximately half of their daily shifts. For the balance of their time, they are stationed at the central bus terminal (referred to as the "tarmac") adjacent to the Downtown Transit Center (DTC), where they answer passenger questions, help with schedules, assist riders with transit planning, and are available for other tasks needed to help the transit system operate.

There are similarities between CIC and TA job duties. CICs are stationed at the DTC, where they answer phone calls regarding bus routes, schedules, and other transit-related information, and use various District computer systems to assist passengers in planning their bus routes. The CICs also sell tickets and provide information to patrons who approach the DTC's customer service window. Over the years, the District reduced the number of CICs through layoff and attrition. Ten years ago, there were approximately three full-time and two part-time CICs. During much of 2016-2017, there were no CICs at the District, and TAs performed the CIC duties, including helping passengers find the correct bus and determine the

[5] Kent Bradbury (Bradbury), the District's in-house attorney who oversees labor relations, testified at the June 2018 hearing that the "position was created about three or four years ago" as a pilot program. The TA job descriptions and job announcements in the record are undated. TA Lead Nelson Nieves testified that he retired from the District in 2012 as a bus operator, and came back "in 2014 . . . in the lead capacity with the pilot program called Transit ambassadors."

best route to take. When the sole remaining CIC returned from a ten-month layoff in 2017, she completed a month-long computer training course alongside the TAs.

During 2014-2015, the parties engaged in negotiations for a successor collective bargaining agreement. In June 2014, Local 276 proposed to add the phrase "information service delivery" to the existing contractual definition of bargaining unit work. The District rejected this proposal. Other than this proposal to modify the recognition clause, there is no evidence the parties discussed or sought to negotiate the inclusion of the TA classification into the bargaining unit. Nor is there evidence that either party exacted bargaining concessions in relation to the TA issue, or discussed, much less waived, any right to file a unit clarification petition.

The parties reached an impasse and submitted their collective bargaining dispute to mandatory interest arbitration pursuant to PUC section 50120, subdivision (b)(1). On December 9, 2015, the arbitration board issued a final and binding decision retroactively imposing a collective bargaining agreement for the term of July 1, 2014 to June 30, 2017.[6]

On January 5, 2018, Local 276 filed its Petition with SMCS. (PERB Reg. 93005, subd. (c).) SMCS appointed a hearing officer, who conducted a hearing on June 12, 2018. (PERB Reg. 93030, subd. (a).) The hearing officer denied the Petition on procedural grounds, finding the TAs had been historically excluded from the unit, and that Local 276 failed to submit any evidence showing the classification had undergone recent substantial changes that would overcome its historical exclusion. Local 276 timely filed exceptions to the proposed decision and order. The District did not file exceptions of its own, but filed a response to

[6] At the time of the hearing in June 2018, the 2014-2017 agreement remained in effect pending the outcome of interest arbitration for a successor agreement.

Local 276's exceptions, urging the Board to adopt the hearing officer's proposed decision and dismiss Local 276's Petition.

DISCUSSION

When the Legislature transferred SMCS from the Department of Industrial Relations (DIR) to PERB in July 2012, the Board itself assumed jurisdiction over appeals from SMCS determinations in representation matters. (Gov. Code, § 3603, subd. (b); PERB Regs. 93025, subd. (d), 93060; *San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-460-M, pp. 4-5; *San Diego Metropolitan Transit System* (2016) PERB Order No. Ad-441-M, p. 2, fn. 1.) After this transfer was complete, PERB adopted pre-existing transit act regulations that DIR had promulgated, without making any material changes. (PERB Regs. 93000-93080.)

We first explain applicable accretion principles under the transit district enabling acts, and we then apply those principles to the factual record. In doing so, we apply DIR and California Court of Appeal precedent, which have interpreted the transit acts in a manner that restricts accretions to a lesser degree than the National Labor Relations Act, but more so than under California's non-transit public sector labor relations acts. Before turning to this middle ground standard, however, we provide relevant legal context.

I. The Role of Federal Precedent in PUC Transit District Representation Matters

In enacting the various PUC transit district acts, the Legislature took three different approaches to how federal law would guide determinations of appropriate bargaining units and other representation matters. Some of these acts provide that SMCS "shall apply" relevant federal law, while others say SMCS "shall be guided by" relevant federal law. (*San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-465-M, pp. 3-4.) The third approach, used in the acts covering the District and three other transit districts, omit any reference to

federal law.[7] Instead, this third approach directs SMCS to establish appropriate bargaining unit "boundaries." For instance, the District's enabling act, at PUC section 50121, provides as follows:

> If there is a question whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, such matters shall be submitted to the State Conciliation Service for disposition. The State Conciliation Service shall promptly hold a public hearing and may, by decision, establish the boundaries of any collective bargaining unit and provide for an election to determine the question of representation.

Prior to the transfer of SMCS to PERB in 2012, SMCS transit district unit determinations could be appealed to the Director of DIR. (*IBEW Local 889 v. Aubry* (1996) 42 Cal.App.4th 861, 867 (*Aubry*).) In 1983, DIR adopted a regulation stating: "In resolving questions of representation, the Director shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act [LMRA], 1947, as amended." (Cal. Code Regs., tit. 8, § 15875.1 [renumbered eff. July 1, 2013].) Upon SMCS's transfer to PERB, the Board itself adopted that regulation as PERB Regulation 93080 with only one change—replacing "Director" with "Board."

In deciding whether federal law is "relevant" to the question presented in a particular case, PERB Regulation 93080 "does not demand slavish adherence to the LMRA." (See *Santa Clara Valley Transp. Auth. v. Rea* (2006) 140 Cal.App.4th 1303, 1319 (*SCVTA*) [interpreting language in PUC section 100301 identical to that in PERB Reg. 93080].) In *SCVTA*, the court analogized the language of PUC section 100301 requiring DIR to apply relevant federal law to Labor Code section 1148, which similarly requires the Agricultural Labor Relations Board to

[7] The other three transit district enabling acts that do not reference federal law are the laws covering Alameda-Contra Costa Transit District (AC Transit), the Bay Area Rapid Transit District (BART), and Santa Barbara Metropolitan Transit District.

"follow applicable precedents of the National Labor Relations Act, as amended."[8] (*Id*. at pp. 1319-1320.) The California Supreme Court, in turn, has held that "applicable precedents" under Labor Code section 1148 are "only those federal precedents which are relevant to the particular problems of labor relations on the California agricultural scene." (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 413; see *Triple E Produce Corp. v. Agricultural Labor Relations Bd.* (1983) 35 Cal.3d 42, 48 ["under certain circumstances, the board may diverge from federal precedents if the particular problems of labor relations within the agricultural context justify such treatment"].)

DIR followed essentially the same approach in its precedential decisions. For example, in *San Francisco Bay Area Rapid Transit District* (1993) DIR Final Decision, adopting April 2, 1993 tentative decision (*SFBART*), DIR found the LMRA was not relevant to the issue of whether certain purported supervisors should be removed from the bargaining unit, given that California law provides supervisors with relevant protected rights not available under federal law.[9] (*Id*., Final Decision, adopting tentative decision at pp. 12-13.) Similarly, in *Santa Clara Valley Transportation Authority* (2004) DIR Final Decision, adopting December 4, 2003 proposed decision and incorporated November 17, 2003 preliminary decision, DIR found no federal law relevant to the issue of whether the Director could certify a

[8] The LMRA amended the National Labor Relations Act. (Chin et al., Cal. Practice Guide: Employment Litigation (The Rutter Group 2018) § 15:162.) Thus, although they refer to different Acts, Labor Code section 1148 and PERB Regulation 93080 require the respective boards to look to the same substantive federal law.

[9] *SFBART* also found that federal law is not relevant under transit district acts with "boundaries" language because federal private-sector labor law contains no similar concept regarding unit determination. (*SFBART*, *supra*, DIR Final Decision, adopting tentative decision at p. 11.) Although *SFBART* suggests a stark contrast between the "boundaries" language and the other transit district enabling acts referencing federal law, as well as PERB Regulation 93080, we caution that the difference is, at most, one of the degree to which federal law may be applicable to a certain situation.

bargaining unit that includes supervisors and managers. (*Id*., Final Decision, p. 5 & adopting preliminary decision at pp. 9-10.)

Furthermore, courts and PERB have found no relevant federal law where the question presented is governed by explicit language in the transit district's enabling act. For instance, in *SCVTA* the court held that language in PUC section 100309 requiring the district to "grant recognition" to any employee organization that represented certain county employees transferred to the district necessarily contemplated that the bargaining unit would continue to include managers and supervisors, even though under federal law supervisors and managers would be excluded from the unit. (*SCVTA, supra*, 140 Cal.App.4th at pp. 1316-1319.) Likewise, in *San Diego Metropolitan Transit System*, *supra*, PERB Order No. Ad-465-M, we held that federal law imposing a three-year contract bar on decertification petitions did not apply because the district's enabling act contains an explicit two-year contract bar. (*Id*. at p. 4.)

From the above authorities, the following rule may be gleaned: under PERB Regulation 93080, federal law is relevant, and therefore must be applied, unless (1) the question presented is governed by an explicit provision of the applicable transit district statute or (2) considerations unique to public sector labor relations require a deviation from federal law. Thus, whether federal law is relevant will depend upon the particular circumstances of each case. Nevertheless, federal law is often fully relevant to transit district representation matters. (See, e.g., *San Diego Metropolitan Transit System*, *supra*, PERB Order No. Ad-465-M, pp. 4-5 & fn. 6 [while "law and practice under the transit district acts must necessarily differ, at times, from federal law and practice," PERB follows federal law, in both transit and non-transit cases, in holding that a contract extension does not create a contract bar

unless it is long enough to create a window in which a representation petition may be filed]; *San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-464-M, p. 6 [following federal law and holding that SMCS should consider severance petition and determine if requested craft unit is appropriate]; *San Diego Metropolitan Transit System, supra*, PERB Order No. Ad-441-M, p. 5 [following federal law as to the meaning of the term "labor organization"].)

II. Bargaining Unit Accretions Under the Transit District Acts

The transit district enabling acts generally grant employees the right to form bargaining units appropriate for collective bargaining and authorize SMCS to resolve disputes over questions concerning representation (QCR) or whether a particular unit is appropriate. (E.g., Pub. Util. Code, § 50121; see also, PERB Reg. 93005 [distinguishing petitions for certification or decertification, which involve a QCR, from those for clarification, in which there is no QCR].) A QCR arises when there is a legitimate doubt whether the union has majority support in the bargaining unit. (*NLRB v. Financial Inst. Employees of Am., Local 1182* (1986) 475 U.S. 192, 198.) If a QCR exists, a union must demonstrate majority support among employees to be added to an existing unit. (*Teamsters Nat. United Parcel Service Neg. Cmte. v. NLRB* (D.C. Cir. 1994) 17 F.3d 1518, 1524.) In contrast, accretion allows employees to be added to an existing unit without an election or other demonstration of majority support. (*Aubry, supra*,
42 Cal.App.4th at p. 872.) Thus, "the accretion doctrine's goal of promoting industrial stability places it in tension with the right of employees to freely choose their bargaining representative." (*Frontier Telephone of Rochester, Inc.* (2005) 344 NLRB 1270, 1271 (*Frontier*).)

To address this tension, the *Aubry* court held the following factors must be considered when determining whether to accrete employees to an existing PUC transit district bargaining unit: "whether the new group of employees itself constitutes an appropriate unit; the size of the group to be accreted relative to the size of the existing unit; whether the group to be accreted was already in existence at the time the existing bargaining unit was recognized; the extent to which the existing unit is itself the result of prior accretions; and, of course, the views of the employees." (*Aubry*, *supra*, 42 Cal.App.4th at p. 872.) Additionally, as we would in any case involving a unit determination, we examine the traditional community of interest factors to determine whether the proposed transit unit is appropriate. These include: "bargaining history; desires of the affected employees; nature of the employer's business; similarity in scale and manner of determining earnings; similarity in employment benefits, hours of work, and other terms and conditions of employment; similarity in the kind of work performed; similarity in the qualifications, skills, and training of the affected employees; frequency of contact or interchange among the employees; geographical proximity; continuity or integration of production processes; common supervision and determination of labor-relations policy; and relationship to the employer's administrative organization," as well as "the employer's authority to bargain effectively at the level of the unit and the effect of a unit on the efficient operation of the public service." (*Id.* at p. 871.)[10] While most of these factors are also relevant to one degree or another under federal law, in several respects discussed below, *Aubry* and DIR have applied, weighed, and interpreted these factors in a manner that

[10] As described below, system-wide bargaining units "are favored" in California's public sector transit districts. (*Aubry*, *supra*, 42 Cal.App.4th at p. 871.) Adopting a contrary rule might result in unit proliferation and employee fragmentation that would impede the efficient service required of our public transportation systems.

does not restrict accretions to the same extent as does the National Labor Relations Board (NLRB) in applying federal law.

A. Bargaining Unit History

We consider first the impact, if any, of the bargaining unit's history. Relying on federal law, the hearing officer found this factor alone to be dispositive. For the reasons discussed below, we find that California's public transit law does not exactly mirror federal law in applying this factor and, under applicable transit law, the hearing officer erred in finding the parties had historically excluded the TAs from the bargaining unit.

Under federal law, "unit clarification is not appropriate during the term of a contract where such clarification would upset the agreement of the parties concerning the exclusion of various individuals." (*Kaiser Foundation Hospitals* (2002) 337 NLRB 1061 (*Kaiser*), citing *Union Electric Co.* (1975) 217 NLRB 666, 667, and *Batesville Casket Co.* (1987) 283 NLRB 795, 797.) On the other hand, unit clarification is appropriate to resolve ambiguities concerning unit placement of newly established classifications or within an existing classification which has undergone recent, substantial changes in duties and responsibilities so as to create real doubt about its continued unit placement. (*Kaiser, supra*, 337 NLRB at p. 1061; see also *United Parcel Service* (1991) 303 NLRB 326, 327 [NLRB will not interfere with the composition of long-established bargaining units in the absence of recent substantial changes or other circumstances which would render the *Union Electric* rule inapplicable].)

Aubry, however, merely asked "whether the group to be accreted was already in existence at the time the existing bargaining unit was recognized." (*Aubry, supra*, 42 Cal.App.4th at p. 872.) DIR precedent is largely in accord, although it also asks whether a union has explicitly waived inclusion of the classification(s) it now seeks to add. Thus, for a

classification such as the TAs, which was established after the initial certification, transit district law treats the "historical exclusion" issue as simply a waiver issue: If the parties cannot resolve a unit dispute in negotiations, the party seeking the change may leave the issue unresolved in negotiations and pursue a unit clarification petition after the collective bargaining agreement is signed, provided the petitioner has not abandoned its unit request in exchange for concessions in the negotiations. (*SFBART*, *supra*, Final Decision, adopting tentative decision at pp. 15-17 [interests of stability better served by entertaining a unit clarification petition during the term of a contract where parties cannot agree on unit placement during bargaining, absent an indication that the petitioner abandoned its request in exchange for some concession in negotiations]; see also *Baltimore Sun Co.* (1989) 296 NLRB 1023.)[11]

Under this transit law standard, the hearing officer erred in finding that the TAs had been historically excluded from the unit. The TA classification did not exist at the time the unit was certified. The evidentiary record is insufficient for us to determine exactly when the TA classification came into existence relative to the effective date of the 2014-2017 agreement, i.e., whether the District established a permanent TA classification before or after

[11] In contrast, in cases not arising under the transit acts, PERB's unit modification procedure is a proper mechanism by which to resolve disputes over unit placement at any time, even if there is a long history of the classification being excluded from the unit and even if the petitioning union previously agreed to such exclusion. (*Regents of the University of California* (2010) PERB Decision No. 2107-H, pp. 18-23 (*Regents I*); *Hemet Unified School District* (1990) PERB Decision No. 820.) Under these cases and their progeny, (1) a union may seek to add unrepresented employees to a unit even if the employees were excluded at the time the unit was first determined, and/or the union clearly bargained for some benefit in exchange for their exclusion at some point, or otherwise waived their inclusion; and (2) a petitioning union must only establish a community of interest between the unrepresented employees to be added and the existing unit, plus proof of support from a majority of the employees to be added, if and only if the union proposes to increase the size of the unit by more than ten percent. (PERB Reg. 32781, subd. (e)(1).) PERB has declined to incorporate the "historical exclusion" rule from *Union Electric*, *supra*, 217 NLRB 666 and *Laconia Shoe Co.* (1974) 215 NLRB 573, 576. (*Regents I*, *supra*, PERB Decision No. 2107-H, p. 22.)

the parties' 2014-2017 agreement took effect. While there is some evidence that Local 276 proposed to expand the definition of bargaining unit work to include "information service delivery," that proposal alone does not establish when the permanent TA classification was established or when the positions were filled. Neither Bradbury's testimony nor the District's undated exhibits resolve the ambiguity. Nor is there evidence that Local 276 clearly and unmistakably waived its right to file a unit clarification petition with SMCS when TA unit placement was not resolved during bargaining. The evidence thus does not establish that the TA classification had been historically excluded from the unit under California transit law.

B. Other Accretion Factors

In evaluating the traditional community of interest factors, we acknowledge that public sector labor relations differ significantly from private sector labor relations. We thus subscribe to *Aubry*'s instruction that system-wide units "are favored" in units established under the transit district enabling acts to avoid unit proliferation and employee fragmentation that would likely impede the system's efficiency. (*Aubry*, *supra*, 42 Cal.App.4th at p. 871.) Even under federal law, however, system-wide units are considered optimum in transportation systems because of the integrated and interdependent nature of the services they perform. (*Southern California Rapid Transit District Metro Lines and Local 889, IBEW and Local 1277, Amalgamated Transit Union* (1993) DIR Final Decision, p. 11, and adopting hearing officer proposed decision at p. 26; *St. Louis Public Service Co.* (1948) 77 NLRB 749, 754-755.)[12]

[12] *Aubry* and DIR precedent, by favoring larger units, thus partially mirror PERB's approach in non-transit cases involving accretion of unrepresented employees, where we focus on preventing the proliferation of bargaining units and fragmentation of employee groups, as well as finding an appropriate unit in which employees can realistically be represented. (*Regents of the University of California* (2017) PERB Order No. Ad-453-H, pp. 10-11, 23-24 (*Regents II*) [from its earliest days, PERB has sought to avoid fragmentation of employee groups and unnecessary proliferation of units]; *Regents I*, *supra*, PERB Decision No. 2107-H,

Thus, both California public sector transit law and federal private-sector law favor broad units in transit systems.

On the other hand, *Aubry* requires that we also consider factors unique to accretion of employees into an existing unit without an expression of employee choice, such as "whether the new group of employees itself constitutes an appropriate unit; the size of the group to be accreted relative to the size of the existing unit; . . . the extent to which the existing unit is itself the result of prior accretions; and, of course, the views of the employees." (*Aubry*, *supra*, 42 Cal.App.4th at p. 872.) This accommodation of the potential conflict between the preference for broad units and accretion without an expression of employee choice has resulted in California transit accretion law being less restrictive than federal law but more restrictive than PERB precedent involving non-transit accretions.[13]

Applying this middle ground standard, we find that the *Aubry* factors point toward adding the TAs to the District's single existing bargaining unit. Most importantly, the TAs share a community of interest with the existing bargaining unit. Community of interest is determined by the totality of circumstances. (*Monterey Peninsula Community College District* (1978) PERB Decision No. 76, p. 13.) In determining whether a community of interest exists,

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pp. 23-24; *El Monte Union High School District* (1982) PERB Decision No. 220, p. 10 [interest in preventing fragmentation or proliferation of units].)

[13] Further illustrating this dynamic, DIR and California appellate courts have never adopted the NLRB's requirement that a petitioning union show the classifications it seeks to add share "an overwhelming community of interest" with the existing unit. (See, e.g., *Frontier*, *supra*, 344 NLRB at p. 1271.) Therefore, we do not apply an "overwhelming community of interest standard" to a transit union's attempt to accrete unrepresented employees into an existing unit. It is also of note that in non-transit cases, PERB has explicitly rejected applying the "overwhelming community of interest" standard to petitions to accrete unrepresented employees. (*Regents II*, *supra*, PERB Order No. Ad-453-H, p. 5.)

we do not "go[] down a check list" of these factors but rather ascertain whether employees share a substantial mutual interest in matters subject to meeting and negotiating. (*Id.* at p. 13.)

The District's operation is moving passengers throughout San Joaquin County via its public bus system. It is an integrated system. All unit employees contribute to its operation. Hence, this community of interest determination flows from multiple general and specific facts, including geographic location, contact, interchange, work proximity, and overlapping skills and duties between TAs and the historically included CIC classification.

The District has two main facilities, the DTC, where the TAs report for work, and the Regional Transit Center (RTC), which is approximately two to three miles away from the DTC. The RTC, also known as the bus yard, is the assigned base work location for most bargaining unit members, but the DTC is the assigned work location of the CICs and two custodians. Although TAs are assigned to a different base work location than most bargaining unit members, TAs have substantial contact with bargaining unit members throughout the day, both on the tarmac adjacent to the DTC[14] and on the buses themselves.

TAs assist passengers with trip planning, finding the right bus, navigating the transit system, and using fare vending machines. They are described by their first-line supervisor, the Customer Engagement Specialist, as being "available for anything relative to the Transit system." Although TAs check-in at the DTC, their work is divided between assisting passengers on the tarmac/at the main transfer station and riding on high-traffic buses to assist passengers. If a TA is on board a bus, the bus operator will refer rider questions to the TA. If

[14] The DTC primarily serves as the workplace for the District's executive officers and administration. Adjacent to the DTC, however, is the District's central transportation hub and main transfer station for buses traveling throughout Stockton and greater San Joaquin County. There is space for 20 buses to pull-in to this transfer station area, referred to as "the tarmac." Bus operators pick-up or change buses and start and end their routes at the main transfer station, and take their breaks in the DTC breakroom.

no TA is on board, the bus operator will answer the questions herself. Thus, although TAs and bus operators initially report to different locations, TAs are in constant proximity to bus operators, both on the tarmac and on the bus routes.

As discussed above, the introduction of the TA classification corresponded closely in time to the near-elimination of the CIC classification, and TAs picked up many duties previously performed by CICs. There are some differences between those two classifications. For instance, CICs work inside the DTC while TAs primarily work outdoors, adjacent to the DTC or on the buses. However, the similarities outweigh the differences. The one CIC employed as of the time of hearing works on the ground floor of the DTC and provides information to patrons who approach the customer service window, while the TAs provide customer information on the adjacent tarmac. Bradbury noted that when a passenger asks him a question, he will direct the passenger to a TA if the passenger is on the tarmac, or to the CIC if the passenger is closer to the DTC.

Moreover, TAs and CICs report to the same immediate supervisor and supervision chain, receive at least some of the same training, and perform the same primary function of assisting passengers in navigating the transit system. The existing unit, without the TAs, comprises at least three lines of supervision at the lowest level, which merge at higher levels, as one might expect in a broad transit unit. Those three lines of supervision correspond to Maintenance, Operations, and Customer Engagement.[15] TAs, like CICs, are in Customer Engagement. While there are several other unrepresented hourly employees in the Customer Engagement Department and in administration, TAs have a stronger community of interest with the bargaining unit than with those other unrepresented employees. For instance, TAs are

[15] The record is unclear as to whether Facilities employees have a separate line of supervision, or are supervised by the Maintenance Department.

the only unrepresented employees who routinely spend their working hours outside or on the buses, assisting with the operational aspect of the District's transit system.

TAs tend to work as early as 6:30 a.m. and as late as 7:00 p.m. Their work hours thus correspond to when the majority of bus operators work and do not match the office hours of other unrepresented Customer Engagement employees. TAs and bus operators both work in outdoor weather conditions and in and around buses, unlike other unrepresented Customer Engagement employees. TAs are also similar to unit employees in that they wear uniforms and receive identification badges, which also serve as bus passes, to wear while at work. TAs, like bus operators, must be familiar with the various bus routes. It is no surprise that the lead TA is a recently-retired bus operator who is familiar with the bus routes.

The TAs are covered by several employment terms that are similar to unit employees, and several others that are different. The TA classification is solely a part-time position, while the CIC and bus operator classifications contemplate both full-time and part-time employment. Accordingly, the District does not provide the same benefits to the TAs as it does other part-time positions, such as the bus operators. We have, however, consistently declined to give significance in the community of interest analysis to differences in wages, benefits, and other terms and conditions of employment that are primarily controlled by the employer and may be changed through collective bargaining. (*Santa Clara County Office of Education* (1990) PERB Decision No. 839, p. 2 and adopting proposed decision at p. 12.) These differences thus do not substantially weaken our community of interest finding.

As is usually the case, some community of interest factors weigh against accreting the TAs into the existing unit. These factors, however, are outweighed by the factors supporting

accretion. Moreover, none of the accretion-specific factors listed in *Aubry* weigh against accreting the TAs to the existing bargaining unit.

First, there are only eight employees in the TA classification as compared to approximately 105 employees in the existing bargaining unit; thus, there is little concern that the accretion could create a QCR or otherwise disrupt Local 276's majority support within the unit. (See, e.g., *Sacramento Regional Transit District* (1988) DIR Final Decision, p. 3 [finding that fare inspection officers share a sufficient community of interest with existing union-represented unit and constitute a proper accretion, and noting that small size of proposed addition relative to existing unit favors accretion].)

Second, the TAs would not constitute an appropriate unit in themselves. Although that factor is not necessarily dispositive in every case, it favors accretion here. (See *Aubry*, *supra*, 42 Cal.App.3d at p. 873 [extent to which this factor overrides other factors may vary depending upon all relevant circumstances]; *International Assn. of Machinists and Aerospace Workers v. NLRB* (9th Cir. 1985) 759 F.2d 1477, 1481 [accretion decision "need not necessarily turn on the question whether that group itself could constitute a distinct unit"].)

Third, there is no evidence of prior accretions to the existing unit. And, fourth, there is no evidence the TAs were against joining the existing unit represented by Local 276. Consequently, none of the *Aubry* accretion factors weighs against accretion here.

In light of the preference for broad units in transit systems, we conclude that the TAs share a community of interest with employees in the District's existing bargaining unit and that nothing in the record weighs against accreting them to that unit. While not every transit district has a single, broad unit, that is the only structure which has ever existed at the District. Based on the record before us, we find no reason to depart from that history and exclude the

TAs based on relatively small differences that are common within any broad unit, and are not different in scale from the many differences already existing within its single bargaining unit.

ORDER

Based on the foregoing and on the entire record in this case, Amalgamated Transit Union Local 276's Petition for Clarification is GRANTED. The Transit Ambassador classification is hereby added to the District's existing bargaining unit.

Members Shiners and Paulson joined in this Decision.