STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN DIEGO METROPOLITAN TRANSIT SYSTEM, Employer, and TRANSIT ELECTROMECHANICS UNION, Petitioner, and PUBLIC TRANSIT EMPLOYEES ASSOCIATION, Exclusive Representative.	SMCS Case No. 17-3-137 Case No. LA-PC-16-M[1] PERB Decision No. 2667-P September 6, 2019

Appearances: Paul, Plevin, Sullivan & Connaughton by J. Rod Betts, Attorney, for San Diego Metropolitan Transit System; Juan G. Gonzalez, President, for Transit Electromechanics Union.

Before Banks, Shiners, and Paulson, Members.

DECISION

SHINERS, Member: This is the latest in a series of appeals to the Public Employment Relations Board (PERB or Board) arising out of efforts by various employee organizations to represent employees of the light rail component of the San Diego Metropolitan Transit System (System).[2] The Transit Electromechanics Union (TEU) initiated this case by filing a petition

[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] The System's light rail is operated by its subsidiary, San Diego Trolley, Incorporated, colloquially known as "the Trolley." The System's other subsidiary, San Diego Transit, operates the System's bus lines.

to represent certain maintenance employees who currently are part of the Trolley's general bargaining unit. Following an evidentiary hearing, the hearing officer found the petitioned-for employees to be skilled craft workers, concluded that a multi-craft bargaining unit composed of those employees is appropriate, and ordered an election in the new unit. Based on our review of the hearing officer's proposed decision, the entire record, and relevant legal authority in light of the parties' submissions, we conclude severance is not appropriate. Accordingly, we reverse the proposed decision and deny TEU's petition.

PROCEDURAL HISTORY

TEU's Petition

On October 2, 2017, TEU filed with the State Mediation and Conciliation Service (SMCS) a petition to sever the following classifications from the Trolley's general bargaining unit:

Light Rail Vehicle (LRV) Electromechanic
LRV Lineman
LRV Assistant Lineman
Maintenance of Way (MOW) Electromechanic
MOW Linemen
MOW Assistant Linemen
Track Serviceperson
Revenue Maintainer I
Revenue Maintainer II
Revenue Maintainer III

The petition describes the proposed unit as "[a] unit of skilled laborers specializing in electro-mechanical trades which require college coursework and completion of an apprenticeship." The petition indicates that approximately 128 employees work in the petitioned-for classifications. All petitioned-for classifications are in the Maintenance Department except for Revenue Maintainers, who are in the Administration Department. At the time TEU filed its

petition, the general bargaining unit was represented by the Public Transit Employees Association (PTEA).

On October 6, 2017, SMCS rejected TEU's petition on the ground that relevant law did not allow the decertification of a portion of an existing bargaining unit. On or about October 12, 2017, TEU filed with the Board an appeal of SMCS's determination. On May 15, 2018,[3] the Board issued a decision reversing SMCS's determination and remanding the matter to SMCS for further processing, including determining whether the petitioned-for unit is appropriate. (*San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-464-M, pp. 4-8.)

On May 31, SMCS informed the parties that TEU had provided at least thirty percent employee support for its petition. SMCS then assigned a hearing officer to hold a hearing on the questions presented by the petition, including whether the proposed unit of skilled laborers is an appropriate unit.

SMART's Petition

Meanwhile, on January 22, the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) filed a petition to decertify PTEA and become the exclusive representative of the general bargaining unit. PTEA challenged SMART's petition on the basis that it was barred because it was filed during a one-month extension to the PTEA-Trolley collective bargaining agreement (CBA).[4]

On March 2, the System filed a motion to consolidate SMART's petition with TEU's petition. SMCS denied the motion because TEU's petition was pending on appeal before the

[3] All dates refer to the year 2018 unless otherwise noted.

[4] The CBA was effective through December 31, 2017. On that date, PTEA and the Trolley extended the CBA through January 31.

Board. Further, SMART's petition was still awaiting SMCS's determination as to whether SMART's petition was barred by the PTEA-Trolley CBA.

On March 19, SMCS determined that SMART's petition was not barred by the CBA and that an election was required. PTEA filed an appeal with the Board, again asserting that SMART's petition was barred by the one-month extension to the PTEA-Trolley CBA. On June 12, PERB issued a decision finding that the one-month extension did not bar SMART's petition. (*San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-465-M, pp. 3-7.)

On or about June 21 and 22, PTEA, the System, TEU and SMART informed SMCS that they all agreed the election on SMART's petition to decertify PTEA as the exclusive representative of the general bargaining unit should be deferred until after TEU's petition to sever a proposed unit of skilled laborers was decided. On September 4, SMART withdrew its agreement to defer the election after the System allegedly disclosed as part of a pre-hearing motion in this case the proof of support SMART had submitted with its January 22 decertification petition.

The hearing officer held an evidentiary hearing on TEU's petition on September 5 and 6. On October 4, TEU filed a motion to amend its petition to "represent all classifications in a single craft unit, separate craft units, or any combination that the hearing officer finds to be appropriate." On October 23, SMCS issued a letter to all parties, and to SMART, providing each with the opportunity to file position statements in response to TEU's motion to amend. On November 9, the parties filed post-hearing briefs addressing TEU's original petition and motion to amend requesting alternate configurations. SMART did not file a post-hearing brief or provide a position statement regarding TEU's motion to amend.

Election for the General Unit

In the meantime, after SMART's September 4 withdrawal of its agreement to defer the decertification election in the general unit, SMCS informed the parties that the election would proceed on October 15. On or about October 10, PTEA filed in San Diego Superior Court an ex parte application for a temporary restraining order halting the election. On October 11, the Court denied PTEA's application. SMCS proceeded with the secret mail ballot election on October 15. SMCS tallied the ballots on November 7. Representatives of PTEA, SMART, TEU, and the System observed the tally, where it was determined that SMART had majority support of the general bargaining unit. No party filed a challenge and the election results became final on November 19.

Hearing Officer's Proposed Decision

The hearing officer issued her proposed decision on April 22, 2019. First, she concluded the classifications listed in TEU's petition are composed of skilled craft workers as defined in National Labor Relations Board (NLRB) case law. Then, applying the six-factor test from *Mallinckrodt Chemical Works* (1966) 162 NLRB 387 (*Mallinckrodt*), the hearing officer found the factors weighed in favor of severing the petitioned-for classifications from the general bargaining unit and placing them into one multi-craft bargaining unit. Finding such a unit appropriate, the hearing officer declined to consider TEU's post-hearing motion to establish alternate separate craft units. The hearing officer ordered an election to determine whether employees in the newly-created craft unit desire representation by TEU or SMART.

FACTUAL BACKGROUND

The System provides both bus and trolley service in San Diego County. Trolley service began in 1981. Today, the Trolley operates three lines that connect downtown San Diego with

San Ysidro, El Cajon, and Santee. There are approximately 55 Trolley stations. The equipment on each of the three lines is different.

In 1984, the International Brotherhood of Electrical Workers (IBEW) organized Trolley employees and began representing the general bargaining unit, with the first IBEW-Trolley CBA taking effect in 1986. IBEW represented the general bargaining unit until it was decertified by PTEA in 2016. The general bargaining unit consists of approximately 365 employees in the Transportation, Maintenance, and Administration departments. The job classifications in the general bargaining unit are:

LRV Electromechanic
LRV Lineman
LRV Assistant Lineman
MOW Electromechanic
MOW Linemen
MOW Assistant Linemen
Track Serviceperson
Revenue Maintainer I
Revenue Maintainer II
Revenue Maintainer III
Train Operator
Revenue Collector
Revenue Processor
Ridership Surveyor
Serviceperson
Storekeeper
Data Entry Clerk
Station Attendant
Clerk Typist

TEU's petition seeks to sever approximately 128 skilled laborers in the LRV, MOW, Track Serviceperson and Revenue Maintainer classifications.

The Classifications in TEU's Petition

All of the classifications in TEU's proposed unit of skilled laborers clock in and out at buildings at 12th and Imperial Streets in San Diego. All except for the Track Servicepersons

go through an apprenticeship program. LRV and Revenue Maintainers share the same pay scale. Trolley Chief Operating Officer Wayne Terry (Terry) testified that skilled laborers spend "a hundred percent of their time working in those areas associated with the discipline they're hired to perform in." He also testified that the groups are interdependent because each has to function appropriately to provide safe and reliable trolley service.

LRV

LRV Electromechanics, Linemen, and Assistant Linemen are responsible for inspecting and repairing trains. LRV employees work at 12th and Imperial, Facility/Building "C," and only leave the facility in the event there is a failure on the line and they have to go retrieve a trolley car. The majority of work is done at night when most of the cars are out of service. There are multiple, and perhaps as many as four, overlapping shifts.

LRV employees complete a four-year apprenticeship program and on-the-job training. They work almost exclusively with other LRV employees. Train Operators may tell LRV employees what went wrong with a car, but the LRV personnel perform their own assessment. The department has an LRV Superintendent and several LRV supervisors. Historically, the LRV Superintendent and LRV supervisors have been former LRV Electromechanics.

MOW and Track Servicepersons

The MOW Electromechanics, Linemen and Assistant Linemen are responsible for inspecting and maintaining in excess of 260 wayside signals; more than 200 hundred track switches and associated circuitry; approach circuits, bells, lights, and gates at 87 grade crossings; and 61 substations that provide traction power to the overhead catenary system. Every month MOW employees clean the substations by shutting them down completely, and breaking down, cleaning, and inspecting all the parts and emergency functions. MOW

employees perform inspections on monthly, quarterly, and yearly cycles. The inspections are required in order to maintain certifications and comply with rules of the Federal Railroad Administration and the California Public Utilities Commission. MOW employees may also be held liable, fined, or jailed for violations.

MOW employees work with "lethal" voltage: the AC power comes in from the provider and the system "rectif[ies]" it to 700 volts of DC power. MOW employees cross-train in all aspects of MOW, which includes low-voltage electrician work for stations up to 480 volts, high-voltage electrician work for substations up to 12,000 volts, and high-voltage lineman for the overhead catenary system bucket work with up to 700 volts of direct current.

MOW employees perform work while the trains are in operation. They maintain a seven and fifteen minute headway without obstructing service. When there is a major malfunction, the MOW employees are called first. They secure and contain power, and they perform the repair if they are able. They either change the wiring on the overhead catenary system or shut down "the main." When required, the Trolley contracts with outside provider(s) to perform work. MOW employees also service all the lighting in the stations and parking lots on the system, and they may also be called out for elevator emergency calls.

MOW employees complete a four to five year course of education and an eight-thousand hour apprenticeship program. They progress from Assistant Lineman, to Lineman, to Electromechanic. Unlike other departments, MOW employees are required to have multiple certificates such as a commercial driver's license. MOW employees operate lift and bucket trucks. One MOW employee has a crane certificate and operates a crane that can lift stranded vehicles off the tracks. MOW employees must maintain their qualifications and skills, and

they are continually required to learn new equipment. They exercise independent judgment and have minimal supervision.

Although MOW classifications do not work with other departments, they may respond to requests from supervisors from other departments like Facilities if there are, for example, problems with lighting, problems with machines, or sometimes when there is a need to restore power at trolley stations. MOW employees may remove something to enable a repair, and afterward, will return to restore power.

MOW employees sometimes receive reports from Train Operators about problematic signals or track issues but they usually do not discuss work with Train Operators. Neither Train Operators nor Facilities Department employees assist the MOW employees. If there is a problem with signals, Central Control is contacted and in turn contacts the supervisor of the relevant department, who assigns the work.

Track Servicepersons maintain 108 miles of track and all of their work is on the right of way, much of it at night. For example, they may work on a tie changeout or various tasks associated with keeping the rail in a state of good repair. When Track Servicepersons receive a Class B license, they can train on operating the Ballast Regulator and the Track Aligner. They earn more for operating such equipment, as well as an Excavator, Low-railer, or Bobcat.

Track Servicepersons interact with MOW employees daily and there is "one hundred percent integration." MOW personnel and Track Servicepersons clock-in at 12th and Imperial, "A" Building. There is very little interaction between LRV employees and MOW/Track Servicepersons because MOW employees and Track Servicepersons work out on the line while LRV employees work at 12th and Imperial.

There are 29 employees in the MOW classifications and an additional 14 Track Servicepersons. MOW employees and Track Servicepersons each have their own supervisors, but there is one superintendent responsible for MOW classifications and Track Servicepersons. MOW supervisors usually are former MOW Electromechanics.

Revenue Maintainers

Revenue Maintainer I, II, and III classifications are electricians that complete a four semester apprenticeship and on-the-job training program.[5] They work in the field to maintain and repair 133 ticket machines and card readers at 56 stations. They deal with "Cat5" and fiber optic cables, and install hard drives when they crash. They also help patrons as appropriate. Revenue Maintainers sometimes work in the laboratory in Facility B to solve problems with ticket vending machines. Their supervisors are former Revenue Maintainers. They have no contact with Train Operators and do not work with LRV, MOW, or Track employees.

Collective Bargaining History

During the decades when IBEW represented the general bargaining unit, IBEW and the Trolley continually reached collective bargaining agreements. When the Trolley and IBEW negotiated, they would schedule sessions to focus on a particular department and bring in Maintenance employees to advocate for their interests. Sometimes there would be differences among classifications. For example, in 2007, the CBA provided a pay increase every six months for LRV, MOW, and Revenue employees, while Train Operators received yearly increases. The CBA also provided additional pay for Track Servicepersons working with

[5] Camille Caufield (Caufield) testified that she started at the Trolley as an MOW Lineman 19 years ago but has been a Revenue Maintainer for six years. As a result, her apprenticeship was different: she completed an IBEW Local 569 electrician program of ten semesters and five years of on-the-job training.

certain equipment, as well as a separate work rule for special maintenance assignments in the LRV Department.

System Human Resources and Labor Relations Director Jeffrey Stumbo (Stumbo) testified that IBEW, in negotiating for the general bargaining unit, advocated for all the different classifications, not just Train Operators. IBEW's bargaining team included a representative from each department, and an MOW Electromechanic and LRV Electromechanic signed the 2007 CBA on behalf of IBEW. MOW Electromechanic, Don Estep (Estep), was also an IBEW steward.

The last IBEW–Trolley CBA expired on December 21, 2014, and, although IBEW and the Trolley reached tentative agreements for a successor CBA, the membership rejected the tentative agreements on five different occasions during 2015 and 2016.

During this period, bargaining unit members organized PTEA. LRV Electromechanics Juan Gonzalez (Gonzalez) and Joshua Stolz (Stolz) were the president and vice president of PTEA at its inception. Gonzalez drafted the PTEA Bylaws. PTEA filed a decertification petition which proceeded to an election in April 2016. PTEA won the election but IBEW filed a challenge, which the Board denied in September 2016. (*San Diego Metropolitan Transit System* (2016) PERB Order No. Ad-441-M, p. 5.)

After IBEW's election challenge was dismissed, PTEA and the System began bargaining over the initial PTEA–Trolley CBA. Gonzalez testified that in negotiations he tried to get rid of a two-tier system that created lower wages for Facilities employees. He also tried to obtain for LRV employees a boot allowance, tool allowance, and a 4/10 work schedule.

After arriving at impasse, the System and PTEA reached agreement in April 2017 with the assistance of a mediator from SMCS. The CBA, effective January 19, 2017 to

December 31, 2017, provided a 9.75 percent pay increase and a $1,000 lump sum payment for employees hired before a certain date, which included most of the employees in the bargaining unit. The terms were similar to the tentative agreement(s) between IBEW and the System, which the membership had rejected five times: a 6.5 percent pay increase and an additional 3.25 percent raise, plus a $425 bonus. Gonzalez and Stolz, as PTEA president and vice president, along with PTEA's treasurer, secretary, and member at large, signed the PTEA–Trolley CBA.

In May 2017, Gonzalez was voted out of office as PTEA president. Nonetheless, PTEA appointed him as the representative for LRV employees. Gonzalez resigned from that position on September 19, and filed the instant petition on October 2.

In November 2017, PTEA began negotiating with the System for a second contract. After agreeing on December 31, 2017, to extend their initial CBA for one month, PTEA and the System reached a tentative agreement on January 8. The members ratified it later that month. The second PTEA–Trolley CBA was effective from February 1, 2018 through December 31, 2020. It provided a 2.75 percent wage increase each year, on April 1 of 2018, 2019, and 2020.

Stumbo testified that relations and negotiations have been stable with the System's Bus Operators bargaining unit and with its Bus Maintenance bargaining unit. Stumbo also testified that IBEW represents flaggers at the Trolley. There is also a unit of Code Compliance Inspectors, represented by the Transit Enforcement Officers Association, that apparently perform work for both bus and trolley operations. Stumbo testified that it is "very hard" to negotiate with five units.

Skilled Laborers' Representation by PTEA and IBEW

From 2003 to 2016,[6] the relationship between the System and IBEW was "excellent" and, though grievances were filed, they did not result in arbitration. Stumbo and Terry testified that during this time there were no labor disturbances, strikes, or disruptions in trolley service due to labor activity. However, in 2015 approximately a dozen LRV employees called in sick on the same day. Trolley service was not disrupted. The Trolley disciplined employees who had called in sick. One employee challenged the discipline and it proceeded to arbitration where the arbitrator sustained the discipline imposed. The Trolley did not believe IBEW instigated the sick calls, and Stumbo did not believe Gonzalez was involved either.

Stumbo testified that relations had been "very smooth" since PTEA began representing the unit, and many things were informally resolved at labor-management committee meetings. However, despite outreach from PTEA representatives, nobody from the LRV Department had been attending the labor-management committee meetings. Stumbo testified that "[i]t's definitely more stable with one union" than to have different groups as proposed by TEU. Terry stated that "from my perspective, it has been very functional as one unit."

In contrast, employees in the proposed unit testified generally about their dissatisfaction with IBEW and PTEA. MOW Electromechanic Bernardo Manucal (Manucal) testified that PTEA did not do an effective job representing him but did not provide specifics. And while Manucal testified that he felt adequately represented by IBEW because they were an established union, he also testified that IBEW "failed to stay with us."

Caufield testified that the IBEW Local also represented a large bargaining unit of employees of San Diego Gas and Electric (SDG&E) that outnumbered the Trolley bargaining

[6] Stumbo commenced employment with the System in 2003.

unit. The IBEW Local executive board was made up exclusively of SDG&E employees and did not include any employees from the Trolley. Caufield's dissatisfaction with PTEA stemmed from statements she had heard about unprofessional behavior by PTEA Board members. She also testified that PTEA lacked experience and that she would have preferred IBEW to stay because it was international and experienced.

Joseph Dieterle (Dieterle), a MOW Electromechanic with 19 years of experience, testified without specifics that neither IBEW nor PTEA addressed MOW employees' concerns and their representation was inadequate. Dieterle testified that he would have preferred to stay with IBEW. He also testified that PTEA told MOW employees that PTEA did not need their support because they already had the numbers to decertify IBEW. Dieterle asked IBEW if the skilled laborers could be represented separately from PTEA and an IBEW field representative "said that they didn't see any way that we could actually sever or petition to get out of the one unit, PTEA." He also testified that it was common sense that a group of 29 MOW employees would have more bargaining power than a group that has 365 employees because the MOW employees have five years of education, work with high voltages, and have a very important job.

Stolz testified that if he needs something he goes straight to a supervisor. For example, instead of going to the union for assistance, Stolz has discussed a 4/10 schedule directly with LRV Superintendent Andy Goddard (Goddard) and Assistant Supervisor Mel Bickham, who said they would "review it and see how it can be implemented."

Witnesses working in LRV, MOW, and Revenue classifications also testified about their dissatisfaction at being represented in the general bargaining unit. One common complaint was that there are more than 100 Train Operators. According to the witnesses, Train

Operators do not necessarily look at their job from a career perspective because many work only part-time for as many as eight years and they may lack interest in long-term medical and retirement benefits. The LRV, MOW, and Revenue employees, in contrast, invest up to five years in their apprenticeships and on-the-job training, and devote a significant amount of their own time and hard work to become skilled in their discipline.

The Train Operators and other classifications in the general bargaining unit outnumber the 128 skilled laborers. Manucal testified that he would rather have the voices of the skilled workers heard instead of "the majority wins." He did not feel he was being well represented because the interests of his department were not being addressed by PTEA or IBEW. Stolz testified that even as an officer in PTEA, "we didn't really have our voice specifically heard" because the majority of the unit was from other departments and their needs took more precedence. Caufield testified that the skilled workers did not get some of the things they wanted in the CBAs but the Train Operators got things like the ability to wear shorts.

Witnesses in the proposed bargaining unit testified that they should be represented in a craft unit because of their different training and expertise as well as exposure to danger by high-voltage and use of tools. Stolz testified that the craft employees are more alike than the rest of the unit. Also common among the witnesses employed in the petitioned-for classifications was a belief that they should be better compensated than unskilled classifications because of their education and training, and that they were not compensated comparably to similar classifications in other transit systems. These witnesses all testified that they believe representation in a separate crafts unit would allow them to more effectively negotiate for their interests.

The History and Pattern of Collective Bargaining in the Industry

The System introduced as an exhibit a chart showing the results of an informal survey conducted by the System. Specifically, Stumbo asked Goddard to survey his peers as to which union represented their mechanical positions and if those unions also represented the operators and other positions. Goddard received information from Denver, St. Louis, Calgary, Minneapolis, Baltimore, Virginia, Pittsburg, Portland, Dallas, Sacramento, Seattle, and Los Angeles. The chart reports that: the Amalgamated Transit Union (ATU) represents both operators and maintenance for bus and rail in seven transit systems; ATU represents operators and IBEW represents maintenance workers at one system; ATU represents operators and maintenance, with IBEW representing a small group of rail maintenance or electrical workers at two transit systems; SMART represents Train Operators and ATU represents maintenance workers at one system; and ATU represents both operators and maintenance for bus operations at one system. The System's exhibit does not specify whether ATU—at the systems where it represents both operators and maintenance—represents operators and maintenance employees in combined or separate bargaining units. Stumbo testified that in reviewing the results as shown in the exhibit, it is much more common to have one union represent both operators and maintainers, just as IBEW, then PTEA, had represented the Trolley's general bargaining unit.[7]

TEU's History and Operations

TEU formed around the time Gonzalez resigned from PTEA. Around this time he

[7] The hearing officer informed TEU that if it wished to present evidence contrary to that in the System's chart, it could do so before post-hearing briefs were filed. TEU instead attached to its post-hearing brief a list of California Public Utilities Code transit districts with annotations about each district's bargaining units. The proposed decision does not explain why this list was not considered. Nonetheless, as the list was not presented before the evidentiary record closed nor did TEU request administrative notice be taken of the list, it was proper for the hearing officer not to consider it. (See *Oxnard Union High School District* (2018) PERB Decision No. 2617, p. 3 [administrative law judge properly declined to consider documents attached to post-hearing brief].)

discussed with co-workers in the LRV Department whether to remain with PTEA, decertify PTEA, or go a separate way in a severance. The co-workers agreed they should seek a severance. Thirty percent of employees in the proposed unit of skilled workers signed proof of support for severance and Gonzalez proceeded, on October 2, 2017, to file the instant petition with SMCS under the name of TEU. Gonzalez listed himself as TEU president but there was no official election that made him president. Gonzalez testified that he was not going to be the president long-term and that an election for president would be held once TEU affiliated with a larger union. Witnesses testified that they were aware TEU is not an international union and hoped that TEU would affiliate with an international union.

DISCUSSION

The System is a transit district established by Public Utilities Code (PUC) section 120000 et seq., and its labor relations are governed by PUC sections 120500-120509. The System's enabling statute grants SMCS jurisdiction to investigate and resolve questions concerning representation, including determination of appropriate bargaining units. (Pub. Util. Code, § 120505.) In doing so, SMCS "shall be guided by relevant federal law and administrative practice developed under the Labor Management Relations Act [(LMRA)], 1947, as amended."[8] (*Ibid.*) Similarly, when deciding PUC transit district representation cases, "the Board shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended."[9] (PERB Reg. 93080.)

[8] The LMRA is codified at 29 U.S.C. section 141 et seq.

[9] PERB Regulation 93025, subdivision (d) provides that a determination by the SMCS Supervisor in a PUC transit district representation case may be appealed to the Board itself. (*San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-460-M, pp. 4-5.) (PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.)

"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.'" (*San Joaquin Regional Transit District* (2019) PERB Decision No. 2650-P, p. 6, quoting *Santa Clara Valley Transp. Auth. v. Rea* (2006) 140 Cal.App.4th 1303, 1319.) "Thus, whether federal law is relevant will depend upon the particular circumstances of each case." (*San Joaquin Regional Transit District, supra*, p. 8.) "[U]nder 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." (*Ibid.*)

As we noted in a prior decision concerning this case, the LMRA allows a unit of skilled craft workers to be severed from an existing, represented unit. (*San Diego Metropolitan Transit System, supra*, PERB Order No. Ad-464-M, p. 6.) The System's enabling statute does not mention skilled craft units. Nonetheless, both the Ralph C. Dills Act (Dills Act)[10] and the Higher Education Employer-Employee Relations Act (HEERA)[11] grant skilled craft workers the right to separate, craft-only bargaining units. (Dills Act, § 3521, subd. (b)(6); HEERA, § 3579, subd. (d).) Thus, as we implicitly recognized in *San Diego Metropolitan Transit System, supra*, PERB Order No. Ad-464-M, "considerations unique to public sector labor relations" do not foreclose the establishment of a skilled craft unit within the System. We therefore examine whether TEU's proposed unit of Trolley maintenance workers is an appropriate skilled craft unit.

[10] The Dills Act is codified at Government Code section 3512 et seq.

[11] HEERA is codified at Government Code section 3560 et seq.

1. Skilled Craft Workers

The threshold issue in this case is whether employees in the classifications listed in TEU's petition are skilled craft workers. "A craft unit is one consisting of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment." (*Burns and Roe Services Corp.* (1994) 313 NLRB 1307, 1308, footnote omitted.) "To be a 'journeyman craftsman' an individual must have a kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training."[12] (*American Potash & Chemical Corp.* (1954) 107 NLRB 1418, 1423 (*American Potash*).)[13]

In *Dodge City of Wauwatosa*, service technicians required training and skills that set them apart from the rest of the service department employees "as craftsmen who appropriately may be represented in a separate unit." (*Dodge City of Wauwatosa* (1986) 282 NLRB 459, 460.) In *Country Ford Trucks, Inc. v. NLRB* (D.C. Cir. 2000) 229 F.3d 1184, the NLRB

[12] As noted in *Unit Determination for Skilled Crafts Employees of the University of California* (1983) PERB Decision No. 242a-H, the NLRB's definition of "the term 'skilled crafts' has, over the years, taken on a generic connotation to include virtually any job which requires extensive training and experience, and possibly formal apprenticeship and even licensure." (*Id*. at pp. 9-10.) PERB, in contrast, has taken a more narrow view of "skilled crafts" under some of the statutes it administers. (*Id.* at p. 9.) This narrow view is based on statutory language defining "skilled crafts employees" as including, "but not necessarily [] limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers." (*Id*. at p. 10, internal quotations omitted.) In the absence of similar narrowing language in the System's enabling statute, coupled with the statute's command to be "guided by relevant federal law," we follow the NLRB's broader definition of skilled craft workers.

[13] Although *Mallinckrodt* overruled certain aspects of *American Potash*, it approved that decision's definition of a "true craft unit." (*Metropolitan Opera Assn.* (1999) 327 NLRB 740, 754.)

determined that a combined unit of service technicians and lube workers was appropriate because the lube workers engaged in mechanical work alongside the service technicians. (*Id.* at pp. 1189-1190 [employer failed to identify any evidence that other employees, such as its service advisors, provided equivalent assistance to the service technicians].) Although the service technicians and lube workers were part of the employer's overall business of retail sales and service of new and used cars, they were properly recognized in a craft unit that did not include all service employees. (*Ibid.*)

At the Trolley, LRV, MOW, Track Servicepersons, and Revenue Maintenance employees each are assigned work according to craft lines, and perform work that does not overlap with the work of employees outside their craft. There is also no cross-training among the different crafts or between the crafts and other classifications in the general bargaining unit. All LRV employees complete a four-year apprenticeship, MOW employees complete a four to five year course of education and an eight-thousand hour apprenticeship program, and Revenue Maintainers are electricians that complete a four-semester apprenticeship program and an on-the-job training program. Therefore, each of the classifications in the proposed unit, except for Track Servicepersons, completes an apprenticeship program. Nonetheless, because Track Servicepersons provide assistance to MOW employees that no other employee classification does, the work of Track Servicepersons is fully integrated with that of MOW employees. (*Country Ford Trucks, supra*, 229 F.3d at pp. 1189-1190.) Considering all of the facts, employees in the proposed bargaining unit are skilled craft workers. (*Burns and Roe Services Corp., supra*, 313 NLRB at p. 1308.; *Dodge City of Wauwatosa, supra*, 282 NLRB at p. 460.)

2. Severance of Proposed Bargaining Unit

Having determined that employees in the petitioned-for classifications are skilled craft workers, we turn to whether the proposed bargaining unit composed of those classifications should be severed from the Trolley's general bargaining unit. The hearing officer concluded severance is appropriate. For the following reasons, we disagree.

Under federal law, the determination of whether a group of skilled craft workers should be severed from an existing bargaining unit is guided by *Mallinckrodt*. "Underlying such determinations is the need to balance the interest of the employer and the total employee complement in maintaining the industrial stability and resulting benefits of an [*sic*] historical plantwide bargaining unit as against the interest of a portion of such complement in having an opportunity to break away from the historical unit by a vote for separate representation." (*Id*. at p. 392.) The policy goal is to ensure that interests of the craft employees do not always predominate "without affording a voice in the decision to the other employees, whose unity of association is broken and whose collective strength is weakened by the success of the craft or departmental group in pressing its own special interests." (*Id*. at p. 396.) *Mallinckrodt* thus places a "heavy burden" on the party seeking severance. (See *Battelle Memorial Institute* (2016) 363 NLRB No. 119, p. 2, citing *Kaiser Foundation Hosp.* (1993) 312 NLRB 933, 936 ["the [NLRB] is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining"] & fn. 15.)

In making a craft severance determination, the following illustrative factors are considered:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen

> performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
>
> 2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
>
> 3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
>
> 4. The history and pattern of collective bargaining in the industry involved.
>
> 5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
>
> 6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

(*Mallinckrodt*, *supra*, 162 NLRB at p. 392.)

Subsequent case law has clarified:

> There is no "hard and fast definition or an inclusive or exclusive listing" of the factors to consider. [Citation.] Rather, unit determination must be made only after "weighing . . . all relevant factors on a case-by-case basis."

(*Country Ford Trucks*, *supra*, 229 F.3d at pp. 1190-1191.) Indeed, the six *Mallinckrodt* factors are "non-exclusive" and "concentrate on the bargaining unit's history and community of

interests, as well as the nature of the employer's operations." (*NLRB v. Catalytic Indus. Maintenance Co.* (5th Cir. 1992) 964 F.2d 513, 519.)

An additional factor to consider here is that "system-wide units are considered optimum in transportation systems because of the integrated and interdependent nature of the services they perform." (*San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, p. 13; *IBEW Local 889 v. Aubry* (1996) 42 Cal.App.4th 861, 871.) Larger units are favored in PUC transit districts "to avoid unit proliferation and employee fragmentation that would likely impede the system's efficiency." (*San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, p. 13; *Aubry*, *supra*, 42 Cal.App.4th at p. 871.) The *Mallinckrodt* factors appear to be consistent with this preference for larger units.[14] (See *San Francisco Bay Area Rapid Transit District* (2002) DIR Final Decision, adopting interim decision and order at pp. 6-7 [including *Mallinckrodt* factors among factors to be considered when determining whether to sever a proposed unit of electronic technicians from a system-wide maintenance unit;[15] *State of California (Department of Personnel Administration)* (1993) PERB Decision No. 1025-S, adopting proposed decision at pp. 30-32 [suggesting that the *Mallinckrodt* factors are consistent with avoiding proliferation of units but declining to apply them because there was no "generally accepted practice of pharmacists functioning in their own collective bargaining units"].) Moreover, public employment relations boards and commissions in other

[14] "[C]ommentators have indicated that the *Mallinckrodt* standard usually results in a denial of craft severance" in favor of preserving an existing bargaining unit. (1 Higgins, Developing Labor Law (6th ed. 2012) pp. 710-711, footnote omitted; Pawlenko, *Reevaluating Inter-Union Competition: A Proposal To Resurrect Rival Unionism* (2006) 8 U. Pa. J. Lab. & Empl. L. 651, 653.)

[15] Prior to July 1, 2012, SMCS transit district unit determinations could be appealed to the Director of the Department of Industrial Relations (DIR). (*San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, p. 6.)

states, applying state statutes directing the agency to avoid excessive fragmentation of bargaining units, have adopted *Mallinckrodt* as the appropriate standard in craft severance cases. (E.g., *State of Alaska*, ALRA Decision No. 270, 2004 WL 5542781, p. 12 [Alaska Labor Relations Agency]; *Monroe School District*, PECB Decision 5283, 1995 WL 853488, p. 5 [Washington Public Employment Relations Commission]; *Lansing Community College*, 1991 MERC Lab Op 613, 1991 WL 11748911 [Michigan Employment Relations Commission].)

We nonetheless decline to adopt the *Mallinckrodt* standard wholesale because "considerations unique to public sector labor relations" in California require a modification of the factors. (*San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, p. 8.) Specifically, the sixth *Mallinckrodt* factor is inconsistent with employees' right "to bargain collectively through representatives *of their own choosing*," as clearly stated by the governing PUC section. (Pub. Util. Code, § 120500, emphasis added.) Indeed, California's public sector labor relations statutes consistently recognize employees' right to a representative of their own choosing. (See, e.g., Dills Act, § 3512; HEERA, § 3565; Educational Employment Relations Act (EERA),[16] § 3543, subd. (a).) Notably, the severance standards under these other statutes do not incorporate considerations comparable to *Mallinckrodt's* final factor, i.e., the qualifications and experience of the petitioning organization. (See, e.g. *State of California (Department of Personnel Administration)* (1990) PERB Decision No. 794-S, p. 7 [severance based on showing new unit is more appropriate than existing unit]; HEERA, § 3579 [setting forth specific factors for unit determination, and providing presumptively appropriate single skilled craft unit]; EERA, § 3545 [unit determinations based on community of interest and

[16] EERA is codified at Government Code section 3540 et seq.

efficient operations of school district].) In light of employees' statutory right to decide for themselves the organization best qualified to represent them, we see no compelling reason to substitute the Board's judgment regarding the qualifications of a union for that of employees seeking to create a skilled craft unit. We accordingly decline to adopt the sixth *Mallinckrodt* factor in deciding whether craft unit severance is appropriate under the PUC transit district enabling acts. However, nothing in the landscape of California public sector labor relations counsels against applying the remaining *Mallinckrodt* factors to TEU's craft severance petition, and we now turn to that analysis.

a. Factor 1: Character of Proposed Unit

The first *Mallinckrodt* factor examines whether "the proposed unit consists of a distinct and homogenous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, . . . working in trades or occupations for which a tradition of separate representation exists."[17] (*Mallinckrodt*, *supra*, 162 NLRB at p. 392.) As found above, employees in the proposed unit are skilled craft workers. Additionally, although they perform routine maintenance on the System's rail cars, track, fare machines, and electrical systems, they also perform repairs on an as-needed basis, using independent judgment to fix the broken item. The proposed unit is not, however, "a distinct and homogenous group" but a collection of three such groups: LRV Electromechanics, MOW Electromechanics/Track Servicepersons, and Revenue Maintainers. Nonetheless, given the preference in California's public sector for multi-craft bargaining units, the inclusion of three distinct craft groups in the proposed unit does not bar severance. (See, e.g., HEERA, § 3579, subd. (d) [a skilled craft unit "shall

[17] Because TEU is not seeking to sever a departmental unit, we need not address the alternative basis for satisfying this factor, i.e., whether the petitioned-for "employees constitut[e] a functionally distinct department." (*Mallinckrodt*, *supra*, 162 NLRB at p. 397.)

include not less than all skilled crafts employees at a campus"].) Consequently, this factor weighs in favor of severance.

b. Factor 2: History of Collective Bargaining

The second *Mallinckrodt* factor examines the history of collective bargaining of the employees at issue and the employer as a whole, "with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation." (*Mallinckrodt, supra*, 162 NLRB at p. 392.) Historically, the NLRB has given this factor substantial weight and typically will not disturb "a long history of continuous bargaining" with the existing unit. (*Kaiser Foundation Hosp., supra*, 312 NLRB at p. 936; *Metropolitan Opera Assn., supra*, 327 NLRB at p. 740; see 1 Higgins, Developing Labor Law, *supra*, p. 712 ["The Board's reluctance to disrupt an established stable bargaining relationship will generally prevail over a claim that a separate craft unit is entitled to different representation."].)[18] As an example, in *Kaiser Foundation Hospitals, supra*, the NLRB denied a craft severance petition where the employer's bargaining relationship with the existing unit had been "predominately stable" for over 40 years, with only two strikes during that time. (*Id.* at pp. 935-936.)

Stumbo and Terry testified, without contradiction, that from at least 2003 until 2016 the System's labor relations with IBEW were "excellent" and there were no labor disturbances, strikes, or disruptions in trolley service due to labor activity. The only apparent work action during this time—one day in 2015 when a dozen LRV employees called in sick—does not appear to have been initiated or condoned by IBEW. IBEW and the Trolley were parties to

[18] PERB takes a similarly restrictive approach in severance cases under other statutes it administers. (*Los Rios Community College District* (2018) PERB Decision No. 2587, p. 4; *Livermore Valley Joint Unified School District* (1981) PERB Decision No. 165, p. 6.)

multiple successive CBAs. Stumbo testified that during PTEA's representation of the unit, things have been very smooth and many issues are resolved informally at labor-management committee meetings. PTEA and the Trolley successfully negotiated two CBAs. From this undisputed evidence, we find that a stable bargaining relationship exists between the general bargaining unit and the Trolley.

The hearing officer found, to the contrary, that the bargaining relationship is no longer stable because there have been two successful decertifications in the general unit in the past three years. But a recent change in the bargaining representative does not necessarily destabilize the existing relationship between the bargaining unit and the employer. (See *Battelle Memorial Institute, supra,* 363 NLRB No. 119, pp. 15-16 [finding stable bargaining history despite union's disaffiliation from umbrella crafts organization].) Rather, for purposes of determining whether severance is warranted, there must be some showing that these decertifications resulted not from a generalized dissatisfaction with the incumbent union, but from dissatisfaction among the skilled craft employees specifically. Thus, the question becomes whether the representative of the existing unit has failed to adequately represent the interests of the employees who seek to sever from the unit. (*Kaiser Foundation Hosp., supra*, 312 NLRB at p. 935; *Union Carbide Corp.* (1973) 205 NLRB 794, 796.)[19]

The evidence does not show that IBEW or PTEA failed to adequately represent the interests of employees in the proposed unit. When the Trolley and IBEW negotiated, some bargaining sessions were devoted to particular departments and Maintenance employees would attend to advocate for their interests. In the 2007 CBA, IBEW was able to secure a pay

[19] This also is an important consideration in severance cases under other PERB-administered statutes. (*Los Rios Community College District, supra,* PERB Decision No. 2587, p. 6; *State of California* (2011) PERB Decision No. 2178-S, pp. 5-6.)

increase every six months for LRV, MOW, and Revenue employees, while Train Operators received yearly increases. The CBA also provided additional pay for Track Servicepersons working with certain equipment, as well as a separate work rule for special maintenance assignments in the LRV Department.

Most of the testimony about IBEW and PTEA not representing the interests of the employees in the proposed unit was general and conclusory. As for specifics, Stoltz testified that IBEW and PTEA sought a night shift differential and boot allowance for LRV Department employees but were unable to secure them in negotiations. But the failure to achieve a bargaining goal on behalf of certain employees does not mean the union failed to adequately represent them. (*State of California (Department of Personnel Administration), supra,* PERB Decision No. 1025-S, adopting proposed decision at pp. 16-17.) Notwithstanding TEU witnesses' beliefs to the contrary, there is no evidence in the record showing that either union disregarded the petitioned-for employees' interests.

Furthermore, inadequate representation is unlikely to be found where employees in the proposed craft unit have participated in internal union affairs and in contract negotiations as part of the existing unit. (*La-Z-Boy Chair Co.* (1978) 235 NLRB 77, 78; *Bendix Corp.* (1977) 227 NLRB 1534, 1537.) Here, LRV Electromechanics Gonzalez, as PTEA president, and Stoltz, as PTEA vice-president, participated in negotiations for the first PTEA-Trolley CBA, and both signed the final agreement. Stoltz had also served as an IBEW steward. While IBEW was the exclusive representative, each Trolley department had a representative on the bargaining team: (1) a Revenue Maintainer, Roberta Montijo, signed the 2013 CBA on behalf of IBEW; (2) an MOW Electromechanic and LRV Electromechanic signed the 2007 CBA on behalf of IBEW; and (3) MOW Electromechanic Estep was also an IBEW steward. Thus,

employees in the proposed unit actively participated in negotiations and union affairs as part of the general unit.

In the absence of any evidence establishing that petitioned-for employees' interests have been disregarded by their exclusive representatives, or that dissatisfaction within their ranks motivated the successive decertifications, this factor weighs against severance.

c. Factor 3: Separate Identity of Employees in Proposed Unit

The third *Mallinckrodt* factor examines whether the petitioned-for employees have maintained a separate identity within the larger unit, and the extent of their participation in establishing and maintaining the existing representational structure. (*Mallinckrodt, supra*, 162 NLRB at p. 392.) This factor includes consideration of the similarity of terms and conditions of employment between the proposed unit and the existing unit. (*Battelle Memorial Institute, supra*, 363 NLRB No. 119, at pp. 16-17.) Transfers and interchange between positions in the proposed unit and positions outside the proposed unit are also relevant. (*Ibid*.)

Employees in the petitioned-for classifications have significantly higher wages than other classifications in the general bargaining unit. Track Servicepersons receive additional pay when operating certain equipment, while LRV Electromechanics have unique work rules for special assignments. In the two PTEA CBAs, however, the petitioned-for classifications received the same percentage salary increases as other unit classifications, and most other terms and conditions of employment are uniform across the entire unit. There is no interchange between employees in the proposed unit and other Trolley employees. Employees

in the petitioned-for classifications typically are not promoted or transferred from other classifications and tend to stay in their craft for the duration of their career.[20]

The participation of petitioned-for employees in general unit representation matters, as discussed above, indicates they have not sought to maintain a separate identity during their inclusion in the broader unit. (*Kaiser Foundation Hosp.*, *supra*, 312 NLRB at p. 936.) Yet the absence of any interchange with classifications outside the proposed unit indicates that the employees in the petitioned-for unit maintain some semblance of separate identity. Similarly, the petitioned-for employees and the employees in the existing bargaining unit share both similar and dissimilar terms and conditions of employment. On the record before us, this factor is inconclusive as to whether severance is warranted.

d. Factor 4: History and Pattern of Collective Bargaining in the Industry

The fourth *Mallinckrodt* factor examines "[t]he history and pattern of collective bargaining in the industry involved." (*Mallinckrodt*, *supra*, 162 NLRB at p. 392.) The only evidence in the record on this factor is the System's admittedly informal poll of other public transit systems. As the hearing officer correctly noted, there is no indication this sample is reliably indicative of the pattern of bargaining units in the transit industry. Moreover, the chart summarizing the results of the System's informal poll does not clearly indicate whether a "maintenance" unit consists of skilled and unskilled workers, or only skilled craft workers.[21]

[20] TEU witness Caufield appears to be an anomaly, having started at the Trolley as an MOW Lineman, then becoming a Revenue Maintainer.

[21] The chart is hearsay evidence, as it summarizes information the System obtained from individuals who did not testify at the hearing. The regulation governing hearings conducted by SMCS, however, does not prohibit consideration of hearsay evidence. (See PERB Reg. 93040(a) ["The rules of evidence prevailing in courts of law or equity shall not be controlling."].) We thus consider the chart while taking into account its hearsay nature when

At most, the chart shows that in two of the thirteen listed systems IBEW represents a unit with a small number of employees, which may constitute a craft unit; one unit is described as "electrical workers" and the other as "rail maintenance personnel." Because it does not address the central inquiry of this factor for our purposes, i.e., the prevalence of skilled craft units in the transit industry, the System's chart has little probative value. Nonetheless, without contrary evidence from TEU establishing such prevalence, this factor weighs against severance.

e. Factor 5: Skilled Craft Workers' Role in the Employer's Operations

The fifth *Mallinckrodt* factor examines the degree to which the skilled craft workers are part of an integrated production process. (*Mallinckrodt, supra,* 162 NLRB at p. 392.) This factor focuses on "the extent to which the continued normal operation of the production process is dependent upon the performance of the assigned functions of the employees in the proposed unit." (*Id.* at p. 397.) "Functional integration . . . involves an assessment of the overall impact of one operation or function upon another." (*Southern California Rapid Transit District* (1993) DIR Final Decision, adopting proposed decision at p. 28.) Considerations under this factor include whether the skilled craft workers work primarily in production areas or in separate shops (*Dow Chemical Co.* (1973) 202 NLRB 17, 19), and whether the employer's "production process is functionally dependent upon" the work performed by the skilled craft workers (*La-Z-Boy Chair Co., supra,* 235 NLRB at p. 78). Another consideration is whether a work stoppage among the employees in the unit proposed to be severed "would have a substantial impact on the operations" of other parts of the system. (*Southwest Gas Corp.* (1972) 199 NLRB 486.)

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determining how much evidentiary weight to give it. (*Trustees of the California State University (San Marcos)* (2004) PERB Decision No. 1635-H, p. 6.)

The System argues that the petitioned-for employees perform functions integral to trolley operations, and therefore the existing unit is like plant-wide production and maintenance units the NLRB has declined to sever. TEU, relying primarily on pre-*Mallinckrodt* NLRB decisions,[22] contends that separate units of operations and maintenance employees are common in transit districts because of "the lack of functional integration in mass transit." The System has the better argument, as TEU's position is contrary to established law and the evidence in this case.

As we noted in *San Joaquin Regional Transit District*, *supra*, PERB Decision No. 2650-P, "system-wide units are considered optimum in transportation systems because of the integrated and interdependent nature of the services they perform." (*Id*. at p. 13.) Although it does not involve a transit system, *La-Z-Boy Chair Co.*, *supra*, 235 NLRB 77, is instructive. There, a newly formed labor organization petitioned to sever tool-and-die makers from an existing plant-wide production and maintenance unit. The tool-and-die makers spent 95 percent of their worktime in a tool room separate from the production floor, and only went into the production area when necessary to sharpen or repair tools or dies. Despite their minimal interaction with production workers, the NLRB found sufficient integration to deny severance because "the Employer's production process is functionally dependent upon the work of tool-and-die employees whose primary job is to assure that new and used dies and tools needed for production are available and in proper working order." (*Id.* at p. 78.)

The evidence here shows similar functional dependence. LRV Department employees make sure the Trolley's vehicles are in working order. MOW employees similarly ensure the Trolley's electrical power and signal systems are in working order. Track Servicepersons

[22] Prior to *Mallinckrodt*, the NLRB more readily granted craft unit severance. (1 Higgins, Developing Labor Law, *supra*, p. 709.)

make sure the trolley tracks are in working order. And Revenue Maintainers ensure ticket vending machines are operating properly so customers can purchase tickets to ride the Trolley. All of these functions are integral to the Trolley's provision of safe, reliable public transit service. Consequently, a strike or work stoppage by employees in the proposed unit would substantially impact the Trolley's ability to provide such service.[23] For these reasons, this factor weighs against severance.

3. Conclusion

The employees in the proposed unit TEU seeks to sever from the Trolley's general bargaining unit are skilled craft workers as defined in NLRB case law. Application of the NLRB's *Mallinckrodt* standard against the backdrop of a preference for larger, system-wide bargaining units in California's public transit systems, however, leads us to conclude that severance is not appropriate under the current circumstances.

We acknowledge the testimony of TEU's witnesses that they would prefer to be represented in a separate craft unit because they believe such a unit would be more favorable to their interests. But employee preference alone is not sufficient to justify severance. (*Los Rios Community College District*, *supra,* PERB Decision No. 2587, p. 6; see *State of California, supra*, PERB Decision No. 2178-S, adopting proposed decision at p. 24 ["Feelings are not facts, however, and the wishes of employees are just one factor for consideration; that factor alone does not make a proposed unit more appropriate than the existing unit."].) Rather, we

[23] Stumbo acknowledged that approximately one dozen LRV employees called in sick one day in 2015. He testified this did not disrupt or otherwise impact Trolley services. The record, however, lacks any other specifics as to the System's response that may have mitigated the impact of the sick calls (*e.g.*, whether the LRV Superintendent and supervisors provided interim coverage, whether other LRV employees provided "on-call" coverage, etc.). Regardless, there is no evidence showing that a strike or work stoppage by the majority of the employees in the proposed 128-member unit would have a similarly negligible impact.

must determine based on the totality of the evidence presented at the hearing whether severance of the requested unit is appropriate. Viewing the record as a whole in light of the relevant factors, we conclude that severance of the unit sought in TEU's petition is not appropriate. We therefore deny TEU's petition.[24]

ORDER

The Petition filed by the Transit Electromechanics Union in SMCS Case No. 17-3-137 is DENIED.

Members Banks and Paulson joined in this Decision.

[24] Because we deny TEU's petition, we need not consider the System's arguments that PUC section 120505 bars an election in the proposed unit prior to November 19, 2019 (one year after SMART was certified as the exclusive representative of the general bargaining unit), or, alternatively, prior to December 31, 2020 (the expiration date of the current CBA between the System and SMART for the general bargaining unit).