

Bargaining Unit Consolidations: One Union or Two?

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I. Introduction

As the global economy expands, twenty-first century employers continue to restructure, reorganize, and acquire in a general attempt to be more efficient and competitive organizations. Thus, labor lawyers are often asked by their clients what should be done with existing bargaining units that must adapt to the company's changing structure. This question arises when a unionized company acquires another similar company whose employees are represented by a different union. The same situation also arises within a single company when the jurisdictional lines between separate bargaining units are blurred due to operational or geographic reorganization, or technological advances. When worlds—or bargaining units—collide, will it be “peaceful coexistence,” “all for one and one for all,” or “to the victor go the spoils?”

This article examines both existing and undeveloped areas of bargaining unit consolidations law and the panoply of complex legal issues that force employers and unions to answer a difficult question: one union or two? After discussing the basic legal framework, the article examines the framework's application when two unions are involved. The article also examines specific situations that arise, including when one or both of the employee groups involved are part of multiemployer bargaining units, the differences between sufficiently and insufficiently consolidated bargaining units, the timing of a consolidation, and the impact of a consolidation on existing collective bargaining agreements.

II. The Basic Legal Framework

To begin, consider the following scenario: the merger of a unionized workforce with a nonunion workforce. In a situation where two separate groups of employees are combined because of an employer's decision to consolidate operations, and *one* of the groups is represented by a union (but there is no significant relocation of bargaining unit work

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to other facilities), the “accretion” doctrine applies.¹ Under the accretion doctrine, “an employer may incorporate a small group of employees into an already existing collective bargaining unit without holding elections, so long as the added employees (1) do not constitute a separate bargaining unit, and (2) do not outnumber the employees who belong to the existing unit.”²

An accretion determination depends on the following factors: (i) the “community of interest” shared by employees in two or more groups; (ii) the relative size of the group to be accreted to the existing bargaining unit; (iii) whether the group to be accreted was in existence at the time of recognition of the bargaining unit; (iv) whether the existing unit is the result of prior accretions; (v) the views of the employees to be accreted; and (vi) an independent determination of whether the group to be accreted constitutes and can survive as an appropriate unit on its own.³ The National Labor Relations Board (Board) broadly stated that “[t]he determination of questions of representation, accretion, and appropriate unit do not depend upon contract interpretation but involve the application of statutory policy, standards, and criteria.”⁴

Thus, a collective bargaining agreement neither compels nor prevents an accretion. Instead, accretion is determined by application of the National Labor Relations Act (Act).⁵ Procedurally, an accretion is generally accomplished by filing a “unit clarification” or “UC” petition with the Board.⁶ Either an employer or a union may file a UC petition.⁷ The Board Region where the petition is filed holds a fact-finding hearing, and based on the evidence presented, the Regional Director determines whether there is a sufficient “community of interest” between employees such that a group of unrepresented employees should be accreted into an existing bargaining unit.⁸

Establishing a “community of interest” between previously separate employees after an acquisition or restructuring is critical to the accretion analysis. As suggested by factor (vi), if the potentially accreted group continues as a separate bargaining unit, that fact “is itself

1. “When new employees are added to the staff of a company, and their work is clearly integrated with that of employees in an existing unit, the Board may simply add the new workers to that unit. This is known as the doctrine of accretion.” 4 KHEEL, LABOR LAW § 14.03[5], at 14–68 (1995).

2. SEIU Local 144 v. NLRB, 9 F.3d 218, 223, 144 L.R.R.M. (BNA) 2617 (2d Cir. 1993).

3. Renaissance Ctr. P’ship, 239 N.L.R.B. 1247, 1248, 100 L.R.R.M. (BNA) 1121 (1979).

4. Marion Power Shovel Co., 230 N.L.R.B. 576, 577, 95 L.R.R.M. (BNA) 1339 (1977).

5. IAM District Lodge 190 v. NLRB, 759 F.2d 1477, 1478–79, 119 L.R.R.M. (BNA) 2488 (9th Cir. 1985).

6. Tree of Life, Inc., 336 N.L.R.B. 872, 874, 168 L.R.R.M. (BNA) 1281 (2001); Armco Steel Co., 312 N.L.R.B. 257, 259, 144 L.R.R.M. (BNA) 1111 (1993).

7. 29 C.F.R. § 101.17 (2005).

8. 29 C.F.R. § 101.18 (2005); Safeway Stores, Inc., 256 N.L.R.B. 918, 918, 107 L.R.R.M. (BNA) 1338 (1981).

sufficient to mandate a refusal to accrete those employees to an already-existing unit.”⁹ In determining whether the unionized employees share a “community of interest” with the group of nonunion employees, the Board examines (i) geographic proximity; (ii) similarity of skills and functions; (iii) similarity of employment conditions; (iv) centralization of the employer’s administration; (v) managerial and supervisory control; (vi) interchange between the employees; (vii) functional integration of the employer; and (viii) bargaining history.¹⁰

If a community of interest is established, and the two employee groups clearly lost their separate identities and existence as separate appropriate units, the next element in the analysis is an examination of the relative numbers of employees between the surviving bargaining unit and the potentially accreted group. Significantly, “[t]he Board has followed a restrictive policy in finding accretion because it forecloses the employees’ basic right to select their bargaining representative.”¹¹ Thus, the employees in the existing bargaining unit must outnumber the potentially accreted nonunion employees.

In *Renaissance Center Partnership*, for example, a partnership owned and managed a commercial development in downtown Detroit that included office towers, stores, restaurants, and the Detroit Plaza Hotel.¹² The partnership employed fifty-nine union-represented security guards.¹³ The hotel, which existed as a separate legal entity, employed sixty-seven nonunion security guards.¹⁴ When the partnership and the hotel decided that it would be more efficient to maintain a single security force, the two guard groups were consolidated into a single force employed by the partnership.¹⁵ The union filed a UC petition to have the former hotel guards included in its bargaining unit, and the employer filed its own petition (known as an RM petition) claiming that a question concerning representation existed (otherwise known as a QCR), meaning that the union’s status as representative of certain employees is uncertain.¹⁶ Such petitions, if granted, result in a secret ballot election among employees, where they choose whether

9. *IAM District Lodge 190*, 759 F.2d at 1478–79, enforcing *Towne Ford Sales*, 270 N.L.R.B. 311, 116 L.R.R.M. (BNA) 1066 (1984).

10. *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468, 473, 120 L.R.R.M. (BNA) 2589 (2d Cir. 1985); *Safeway Stores, Inc.*, 276 N.L.R.B. 944, 949, 120 L.R.R.M. (BNA) 1186 (1985); *Gould, Inc.*, 263 N.L.R.B. 442, 445, 111 L.R.R.M. (BNA) 1033 (1982), enforced, 610 F.2d 316 (5th Cir. 1980); *Great Atl. & Pac. Tea Co.*, 140 N.L.R.B. 1011, 1021, 52 L.R.R.M. (BNA) 1155 (1963).

11. *Safeway Stores, Inc.*, 276 N.L.R.B. at 948 (quoting *Towne Ford Sales*, 270 N.L.R.B. at 311); *Melbet Jewelry Co.*, 180 N.L.R.B. 107, 110, 73 L.R.R.M. (BNA) 1264 (1969).

12. *Renaissance Ctr. P’ship*, 239 N.L.R.B. at 1247.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

or not to be represented by the union, rather than having that decision made for them by virtue of their smaller numbers.¹⁷

The Board agreed that the certified bargaining unit was no longer appropriate, but it rejected the Regional Director's accretion analysis and held that an election was necessary.¹⁸ Although the two security forces were previously distinguishable and separately employed, after consolidation they were indistinguishable and employed by the same entity.¹⁹ This fact alone satisfied nearly all the accretion analysis "community of interest" standards. However, because the number of employees that the union sought to add to the certified unit exceeded the existing number, the Board held that an accretion finding improperly disenfranchised a preexisting group of employees formerly employed by a different entity without providing them an opportunity to express their desires regarding representation.²⁰ If the numbers were reversed in that case, however, the nonunion employees likely would have been accreted into the existing unit.

III. The More Difficult Case: Two Different Unions in Play

A more difficult case is presented when different unions represent both groups of employees. When two unionized units are consolidated, the same "community of interest" analysis applies, even where different unions represent the units, and each asserts contractual claims to representation.²¹ Unless, however, the number of employees in one unionized bargaining unit is "sufficiently predominant to remove the question concerning overall representation," rather than permitting one unit to accrete the other, an election is typically necessary to protect the employees' rights to choose one union over the other.²² This is a higher standard than in the situation of a nonunion employee group being accreted into a unionized bargaining unit where a slight majority is sufficient.²³

For example, in *Martin Marietta Chemicals*, the employer owned a limestone facility where 159 employees were represented by the Steelworkers Union.²⁴ When the employer purchased a nearby lime-

17. *Id.* at 1248.

18. *Id.*

19. *Id.*

20. *Id.*

21. *See, e.g.*, *A.C. Pavement Striping Co.*, 296 N.L.R.B. 206, 210, 132 L.R.R.M. (BNA) 1113 (1989).

22. *Martin Marietta Chem.*, 270 N.L.R.B. 821, 822, 116 L.R.R.M. (BNA) 1150 (1984); *Boston Gas Co.*, 221 N.L.R.B. 628, 91 L.R.R.M. (BNA) 1034 (1975).

23. *See Cent. Soya Co.*, 281 N.L.R.B. 1308, 1309-10, 124 L.R.R.M. (BNA) 1026 (1986) (citing *Western-Davis Co.* 236 N.L.R.B. 1224, 98 L.R.R.M. (BNA) 1461 (1978)), *aff'd*, 867 F.2d 1245 (10th Cir. 1988); *see also Special Mach. & Eng'g, Inc.*, 282 N.L.R.B. 1410, 1410, 124 L.R.R.M. (BNA) 1219 (1987).

24. *Martin Marietta Chem.*, 270 N.L.R.B. at 821.

stone facility where ninety-three employees were represented by the Cement Workers Union, the employer merged the two groups into a single operation.²⁵ Both unions protested the merger and contended that the separate units were viable and should remain intact.²⁶ The Board disagreed, however, and held that the employer created a “new operation” because the operation was physically consolidated under common management and administration, with centralized labor relations and an interchange of employees.²⁷ Both groups of employees performed similar functions under common terms and conditions of employment for the same employer.²⁸ Because neither group of employees was sufficiently predominant to remove the question concerning overall representation—notwithstanding the clear sixty-six employee majority held by the Steelworkers—the Board did not apply the accretion doctrine; instead, the Board decided that a QCR existed and ordered an election.²⁹

Similarly, in *Boston Gas Company*, the employer acquired two companies, “Lynn” and “Mystic Valley,” which had different unions representing their employees.³⁰ After Boston Gas merged, the thirty-eight Mystic Valley employees, who were represented by the Steelworkers, with the Lynn facilities (where thirty-four employees were represented by the Utility Workers union), the employer filed both an RM and a UC petition.³¹ The Board held that the employer successfully created a new operation because the functions of the merged customer inquiry center, and the employees performing those functions, were “totally commingled and fully integrated.”³² However, because “neither group of affected employees [was] sufficiently predominant to remove any real question as to the overall choice of a representative,” the Board ordered an election.³³

In *U.S. West Communications, Inc.*, the employer filed a UC petition after consolidating three formerly separate Pacific Bell telephone companies.³⁴ It sought to accrete the 500 employees represented by the Order of Repeatermen and Toll Testerboardmen (ORTT) from the former company into a multistate unit of 35,000 employees represented by the Communication Workers of America (CWA).³⁵ The Board affirmed the regional director’s finding that the employer’s consolidation

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 822.

29. *Id.*

30. *Boston Gas Co.*, 221 N.L.R.B. at 628.

31. *Id.* at 621 n.5.

32. *Id.* at 628–29.

33. *Id.*

34. *U.S. W. Communications, Inc.*, 310 N.L.R.B. 854, 143 L.R.R.M. (BNA) 1328 (1993).

35. *Id.* at 854.

and technological changes eliminated the separate identity of the employees represented by ORTT.³⁶ Therefore, the employees represented by ORTT were accreted into the CWA's bargaining unit without an election because the latter was "overwhelmingly" predominant.³⁷

A review of cases in which the Board was willing to accrete one unionized bargaining unit into another reveals that the relative numbers of employees has typically been fairly pronounced, as they were in *U.S. West Communications*.³⁸ In *Metropolitan Teletronics Corporation*, for example, the employer owned two plants, one in New York, where employees were represented by Local 140, United Furniture Workers, and the other in Union City, New Jersey, where Production Workers Union Local 148 represented employees.³⁹ Because of economic problems, foreclosure proceedings were commenced against the New York facility, which ultimately closed.⁴⁰ The employer then acquired a plant in Jersey City, New Jersey, and moved its Union City operation there.⁴¹ The new plant had twenty-six former Union City employees, thirteen new hires, and two Local 140 employees (the other twenty-four Local 140 employees had been laid off).⁴² The employer recognized Local 148 as the employees' bargaining representative at the Jersey City plant.⁴³

Local 140 filed a charge under section 8(a)(5) of the Act alleging that the employer failed to bargain in good faith over the effects of closing the New York facility and unlawfully recognized Local 148 instead of Local 140.⁴⁴ The Board found in favor of Local 140 on the notice and bargaining issue.⁴⁵ However, it found that the employer did not unlawfully recognize Local 148 because 63 percent of the workforce were former Union City (Local 148) employees, whereas only 5 percent were former New York (Local 140) employees.⁴⁶

Thus, in these cases, the "predominance" was more than tenfold.⁴⁷ As seen in the next section, however, more recently, an employee ratio of six to one was found sufficiently predominant for the smaller unit to be accreted into the larger unit without an election.⁴⁸

36. *Id.* at 855.

37. *Id.*

38. *Id.* at 854.

39. *Metro. Teletronics Corp.*, 279 N.L.R.B. 957, 122 L.R.R.M. (BNA) 1107 (1986), *aff'd*, 819 F.2d 1130 (2d Cir. 1987).

40. *Id.* at 957.

41. *Id.*

42. *Id.* at 958.

43. *Id.*

44. *Id.* at 958-60.

45. *Id.* at 959-60.

46. *Id.* at 958-60.

47. *Id.* at 958-60 (accreting two employees into unit of thirty-nine); *U.S. W. Communications, Inc.*, 310 N.L.R.B. at 854 (accreting 500 employees into unit of 35,000).

48. *See Schindler Elevator Corp.*, No. 29-UC-503 (July 18, 2002).

A union that finds itself outnumbered in such circumstances is not without potential recourse. When the employer or the union representing the larger unit files a UC petition to obtain a determination that the smaller unit of employees represented by a different union should be accreted into a larger unit without an election, the union representing the smaller contingent is able to preserve its right to seek a determination that an election is necessary by filing its own petition for an election (known as an RC petition).⁴⁹ In such circumstances, the “contract bar” doctrine, which would normally protect a union from such a petition during the first three years of its collective bargaining agreement, does not apply as long as the employer does not engage in a “mere relocation of operation” but rather creates a new operation by combining the two subsidiaries.⁵⁰ “[A] contract does not bar an election if changes have occurred in the nature as distinguished from the size of the operations between the execution of the contract and the filing of the petition, involving (1) a merger of two or more operations resulting in creation of an entirely new operation with major personnel changes.”⁵¹ Thus, in this situation, the union can seek an election rather than an accretion, arguing that there is insufficient predominance. Of course, because it remains the smaller union, it would likely have an uphill battle if an election is ordered; but nevertheless, the union would at least have the opportunity to campaign and convince employees to select it rather than losing its representative status through an accretion.

Further, if the employer simply announces that the smaller unit is being accreted into the larger bargaining unit without filing a UC petition, the smaller could also file unfair labor practice charges under section 8(a)(5) claiming an unlawful withdrawal of recognition. The accretion issue would then be litigated as a defense to the unfair labor practice charge. The risk associated with unilateral action of this nature is an adverse finding against the employer if sufficient predominance is not found. This leads to Board-imposed remedies for any unilateral changes in terms and conditions of employment for the putatively accreted employees.

49. See *Gen. Extrusion Co.*, 121 N.L.R.B. 1165, 1167–68, 42 L.R.R.M. (BNA) (1958).

50. *Id.* at 1167–68.

51. *Id.* at 1167; see also *Boston Gas Co.*, 221 N.L.R.B. at 629 (holding that because “Employer’s customer inquiry center at 90 Exchange Street is a ‘new operation’ designed to carry out the Employer’s customer relations in these newly acquired areas, and that, accordingly, the Utility Workers contract is not a bar to an election”); *Massachusetts Elec. Co.*, 248 N.L.R.B. 155, 157, 103 L.R.R.M. (BNA) 1404 (1980) (holding that there was no contract bar because after a merger of different companies with different unions that resulted in none of the unions having an “overwhelming majority,” there was a question concerning representation of the new operation).

IV. Who Counts in the Case of a Multiemployer Bargaining Unit?

When the employees in the existing unit to be clarified are part of a multiemployer bargaining unit, the question arises whether to include only the employees of that one employer or all the employees in the multiemployer unit in the tally. Such inclusion could mean counting employees at many other employers as well. The Board held that in order to determine whether the relative size of that existing unit is “sufficiently predominant” over the number of employees to be accreted to remove any question concerning representation, the membership of the *entire* multiemployer bargaining unit is examined relative to the employees to be accreted.⁵²

In *Schindler Elevator Corporation*, for example, rival unions representing elevator mechanics (Local 1, I.U.E.C., and Local 3, I.B.E.W.) were in place at two separate elevator companies owned by the same corporate parent.⁵³ The mechanics at both companies were members of different multiemployer bargaining units.⁵⁴ When the organization decided to have one subsidiary acquire the other and consolidate workforces, Schindler Elevator Corp., the surviving subsidiary, recognized Local 1 as representative of all the mechanics rather than Local 3, which had represented mechanics at the smaller, acquired subsidiary.⁵⁵ Schindler then filed a UC petition to have the former Local 3 members included in the multiemployer bargaining unit represented by Local 1.⁵⁶

The regional director, citing *Pergament United Sales, Inc.*,⁵⁷ noted that “the case law is clear that the entire multi-employer bargaining unit must be considered in assessing a possible accretion.”⁵⁸ In *Pergament United Sales, Inc.*, no exception was taken from an administrative law judge’s decision that counted and compared employees in the entire multiemployer bargaining unit against employees of one employer to be accreted into that unit.⁵⁹ Similarly, in *U.S. W. Communications Inc.*, discussed above, the Board, in finding sufficient predominance, counted and compared *all* members of the employer’s fourteen-state multifacility CWA bargaining unit to the ORTT employees to be accreted who

52. See *Schindler Elevator Corp.*, 29-UC-503, *review denied*, slip. op. (N.L.R.B. October 11, 2002). The authors represented Schindler Elevator Corporation in that case. The decision is on file with the authors.

53. *Schindler Elevator Corp.*, slip op. at 2–3.

54. *Id.*

55. *Id.* at 7.

56. *Id.* at 1–2.

57. *Pergament United Sales, Inc.*, 296 N.L.R.B. 333, 345, 132 L.R.R.M. (BNA) 1124 (1989), *enforced*, *Pergament United Sales, Inc. v. NLRB*, 920 F.2d 130, 135 L.R.R.M. (BNA) 3222 (2d Cir. 1990).

58. *Schindler Elevator Corp.*, slip op. at 16 n.10.

59. *Pergament United Sales, Inc.*, 296 N.L.R.B. at 345.

worked in just three of those states.⁶⁰ *U.S. W. Communications* provides additional persuasive authority because the Board has long treated multiplant and multiemployer bargaining units similarly in representation cases.⁶¹

Thus, consistent with these decisions, the regional director in *Schindler Elevator Corporation* compared the approximately 1,200-member Local 1 multiemployer unit, of whom approximately 400 members worked for Schindler, to the approximately 200 former Local 3 members who had been hired by Schindler as part of the acquisition, and found that the resulting six to one employee ratio constituted sufficient predominance by Local 1 over the former Local 3 members.⁶²

Thus, when determining whether employees have been accreted into a multiemployer unit, the unit cannot be dissected into a count of employees at an individual employer when determining whether a question concerning representation exists. This principle is consistent with the Board's treatment of multiemployer bargaining units in other contexts, where it has held, for example, that (i) a decertification election will only be ordered for a unit coextensive with an existing multiemployer unit⁶³ and (ii) employers whose employees are members of a multiemployer bargaining unit may not withdraw recognition from the union based on a lack of majority support for the union among the employees of that one employer.⁶⁴

V. There Must Be a True Consolidation and Integration of the Bargaining Units

Significantly, if a community of interest does *not* exist, and the units are deemed inappropriate for either an accretion *or* an election, an employer may have an obligation to continue to recognize and bargain with both unions (absent a showing of loss of majority status within one of the units). In *Matlack, Inc.*,⁶⁵ for example, the Board found that when a unionized employer acquired a unionized facility, the two units should not be accreted because the unit the employer sought to accrete did not lose its separate identity. Rather, the Board

60. *U.S. W. Communications, Inc.*, 310 N.L.R.B. at 345.

61. *NLRB v. Am. Printers & Lithographers*, 820 F.2d 878, 886 n.6, 125 L.R.R.M. (BNA) 2593 (7th Cir. 1987) (citing *Los Angeles Statler Hilton Hotel*, 129 N.L.R.B. 1349, 1351, 47 L.R.R.M. (BNA) 1194 (1961)).

62. *Schindler Elevator Corp.*, slip. op. at 1–3.

63. *See, e.g., Mo's West*, 283 N.L.R.B. 130, 124 L.R.R.M. (BNA) 1279 (1987); *Young's Market Co.*, 265 N.L.R.B. 687, 111 L.R.R.M. (BNA) 1677 (1982).

64. *See, e.g., Tile, Terrazzo & Marble Contractors Ass'n of Atlanta*, 287 N.L.R.B. 769, 770, 130 L.R.R.M. (BNA) 1106 (1987), *enforced*, 935 F.2d 1249, 138 L.R.R.M. (BNA) 2007 (11th Cir. 1991), *cert. denied*, 502 U.S. 1031 (1992); *Joseph J. Callier*, 243 N.L.R.B. 1114, 1118, 102 L.R.R.M. (BNA) 1008 (1979), *enforced in relevant part*, 630 F.2d 595, 105 L.R.R.M. (BNA) 2510 (8th Cir. 1980).

65. *Matlack, Inc.*, 278 N.L.R.B. 246, 251–52, 121 L.R.R.M. (BNA) 1183 (1986).

found that there was a mere change in ownership without any essential change in working conditions.⁶⁶

In *Innovative Communications Corporation*, the employer (ICC) owned multiple subsidiaries, including VitelCo, VitalCom, Vital Cellular, St. Croix Cable, and St. Thomas/St. John Cable TV.⁶⁷ VitelCo, where employees were represented by the Steelworkers Union, decided to merge and consolidate the job functions of the other subsidiaries into VitelCo, but there was not a technical corporate merger.⁶⁸ Employees at the other subsidiaries were not represented by any union.⁶⁹ VitelCo commenced negotiations with the Steelworkers over the effects of the merger.⁷⁰

Toward the end of the negotiations, a rival union, Our Virgin Island Labor Union (OVILU), requested an election to represent St. Croix Cable's employees.⁷¹ The Steelworkers requested that it also be placed on the ballot.⁷² OVILU won the election.⁷³ Nevertheless, VitelCo shortly thereafter signed a collective bargaining agreement recognizing the Steelworkers as the exclusive bargaining representative of employees at St. Croix Cable.⁷⁴

OVILU filed unfair labor practice charges claiming that VitelCo violated the Act by recognizing the Steelworkers as the exclusive representative of employees at St. Croix Cable, by extending the Steelworkers contract to those employees, and by unilaterally changing the employees' terms and conditions of employment.⁷⁵ In its defense, VitelCo argued that the employees of St. Croix Cable had been accreted into the Steelworkers' bargaining unit as a result of the merger.⁷⁶

The Board affirmed the administrative law judge's conclusion that there had been no accretion because the evidence established that VitelCo and St. Croix Cable employees continued to be "located in separate facilities, performing different job functions, and that they would continue to perform those separate job functions in separate facilities for quite some time."⁷⁷ The Board based its holding, in part, on the fact

66. See also *Innovative Communications Corp.*, 333 N.L.R.B. No. 86, 169 L.R.R.M. (BNA) 1261 (March 23, 2001) (finding no consolidation and an ongoing duty to recognize two different unions); *Mac Towing, Inc.*, 262 N.L.R.B. 1331, 1334, 110 L.R.R.M. (BNA) 1537 (1982) (same).

67. *Innovative Communications Corp.*, 333 N.L.R.B. No. 86.

68. *Id.* No. 24-CA-8472, slip. op. at 4.

69. *Id.*

70. *Id.*

71. *Id.* at 5.

72. *Id.*

73. *Id.*

74. *Id.* at 5-6.

75. *Id.* at 4-7.

76. *Id.* at 6.

77. *Id.*

that almost a year after the merger, VitelCo and St. Croix Cable still operated out of different facilities.⁷⁸

In *Mac Towing, Inc.*, a parent company owned three separate subsidiaries.⁷⁹ Employees at each subsidiary were represented in a single bargaining unit by the Seafarers International Union (SIU).⁸⁰ When the parent company purchased another subsidiary, Mac Towing, whose employees were represented by the Inland Riverman's Association, the SIU filed a UC petition seeking to have the Mac Towing employees accreted into its existing bargaining unit.⁸¹ The Board rejected the SIU's petition, however, finding that there had not been an accretion because there had been no "interchange of vessels or employees with" the other subsidiaries.⁸²

As these cases demonstrate, the employees to be accreted must be truly integrated into the predominant bargaining unit such that they lose any and all separate identity. Otherwise, the attempted accretion will fail.

VI. If the Bargaining Units Are Not Sufficiently Consolidated, the Employer Will Likely Acquire the Obligations of a Successor

If the accretion fails in a case involving a merger or acquisition—in other words, if the two bargaining units are *not* sufficiently consolidated as a consequence of the merger or acquisition, such that the employees of the smaller unit can still exist as an appropriate bargaining unit in their own right—that gives a union representing those employees an argument that the purchaser assumes an obligation to continue to recognize and bargain with that union. Whether the purchaser is required to bargain with the union of the acquired company depends on whether the purchaser is a legal "successor."⁸³ There is a rebuttable presumption that employees of the predecessor continue to support their former union, but a successor employer may lawfully withdraw recognition if it can prove that the union, in fact, does not represent a majority of unit employees.⁸⁴

The successorship analysis can be reduced to a two-part test in which the Board seeks to determine whether there is continuity in the employing enterprise *and* continuity in the workforce. The Board ex-

78. *Id.* at 5–6.

79. *Mac Towing, Inc.*, 262 N.L.R.B. at 1331.

80. *Id.*

81. *Id.* at 1334.

82. *Id.*

83. *M.V. Transp.*, 337 N.L.R.B. No. 770, 771, 170 L.R.R.M. (BNA) 1233 (2002).

84. *Id.* at 771; *see also* *Levitz Furniture Co.*, 333 N.L.R.B. No. 105 (Mar. 29, 2001) (holding that an employer may withdraw recognition "only where the union has actually lost the support of the majority of the bargaining unit members").

amines the following factors in determining whether there is continuity of the employing enterprise: (i) substantial continuity of the same business operations; (ii) use of the same plant, machinery, equipment, and methods of production; (iii) the same or substantially the same workforce; (iv) the same jobs existing under the same working conditions; (v) the same supervisors; and (vi) the same product manufactured or service offered.⁸⁵ This test relies on the totality of the circumstances and the factors are viewed from the perspective of the employees (*i.e.*, whether an employee reasonably expects that his/her union representation would continue after the sale).⁸⁶

In determining whether there has been continuity in the workforce, the Board will look at whether the purchaser has hired a "substantial and representative complement" within the unit, a majority of whom are the seller's unit employees.⁸⁷ In making this determination, the Board will attempt to establish whether, at the time of the union's request for bargaining: (i) the job classifications for the operations were filled or substantially filled; (ii) the operation was in normal or substantially normal production; (iii) the size of the complement; (iv) the time expected to elapse before a substantially larger complement will be hired; and (v) the relative certainty of the expected expansion.⁸⁸

Different principles apply depending upon whether the transaction is structured as an asset sale or a stock purchase. If the transaction is structured as a stock purchase, the law is clear that the employer's obligations to the existing union inherited in the purchase continue.⁸⁹ "The Board has recognized that a stock transfer is 'the continuing existence of a legal entity, albeit under new ownership.'"⁹⁰ "The Board has also held that 'the mere change of stock ownership does not absolve a continuing corporation of responsibility under the Act.'"⁹¹ In general, the rule is that a purchaser of stock must both bargain with the union and adopt the existing labor agreement.⁹² This analysis applies to a hostile takeover as well as the negotiated sale.⁹³ Thus, absent a consolidation of the bargaining units, a stock purchase would give a union

85. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 125 L.R.R.M. (BNA) 2441 (1987).

86. *Id.* at 27-28.

87. *Id.* at 27.

88. *Id.* at 49; *Premium Foods, Inc.*, 260 N.L.R.B. 708, 109 L.R.R.M. (BNA) 1328 (1982), *enforced*, 709 F.2d 623, 628, 113 L.R.R.M. (BNA) 3261 (9th Cir. 1983).

89. *Rockwood Energy & Mineral Corp.*, 299 N.L.R.B. 1136, 1139, 135 L.R.R.M. (BNA) 1282 (1990).

90. *Id.* at 1139 (quoting *Hendricks-Miller Typographic Co.*, 240 N.L.R.B. 1082, 1083 n.4 (1979)), *enforced*, 942 F.2d 169, 137 L.R.R.M. (BNA) 3008 (3d Cir. 1991).

91. *Id.* (quoting *Miller Trucking Servs.*, 176 N.L.R.B. 556, 71 L.R.R.M. (BNA) 1277 (1969), *enforced in relevant part*, 445 F.2d 927, 77 L.R.R.M. (BNA) 2964 (10th Cir. 1971)).

92. *See W. Boot & Shoe, Inc.*, 205 N.L.R.B. 999, 84 L.R.R.M. (BNA) 1140 (1973); *Topinka's Country House, Inc.*, 235 N.L.R.B. 72, 98 L.R.R.M. (BNA) 1298 (1978), *enforced*, 624 F.2d 770, 105 L.R.R.M. (BNA) 3419 (6th Cir. 1980).

93. *Id.*

representing a smaller unit—even a much smaller unit—a claim for continued recognition *and* application of its collective bargaining agreement to its existing members.

On the other hand, the general rule is that a purchaser of the assets of a business is *not* required by law to adopt the seller's contract with a union.⁹⁴ If the Board finds that the sale of assets was merely a sham transaction, however, undertaken so that the seller can avoid its collective bargaining agreement with the union, it may find that the purchaser is actually an *alter ego* of the seller who is bound by that seller's collective bargaining agreement.⁹⁵ In addition, the Board has displayed a willingness to treat an asset acquisition where both companies were approximately the same size as “akin” to a stock transfer even in the absence of an actual transfer of stock. The Board does so where one company is subsumed within a surviving company, which merely amends its articles of incorporation and changes its name, while operations remain essentially the same after the transfer of ownership.⁹⁶ This inclination again highlights that the employer must make sufficient changes in the operations as the result of the acquisition that the new, consolidated unit will constitute a “new operation.”

Notably, if the surviving employer is found to be a successor, although it will be required to recognize and bargain with the union representing acquired employees, the employer may be permitted to set new wage rates, hours, and other terms and conditions of employment and negotiate its own collective bargaining agreement.⁹⁷ If a purchaser desires to make changes in terms or conditions of employment upon taking over the operation, the purchaser should set the terms and announce them to employees prior to the takeover. Employment should only be offered at the new terms. A formal announcement and hiring process will increase the purchaser's ability to withstand a challenge over the new terms and conditions of employment.⁹⁸

94. I.W.G., Inc., 322 N.L.R.B. No. 12, 153 L.R.R.M. (BNA) 1209 (1996).

95. See, e.g., Fugazy Cont'l Corp., 265 N.L.R.B. 1301, 112 L.R.R.M. (BNA) 1203 (1982), *enforced*, 725 F.2d 1416, 115 L.R.R.M. (BNA) 2571 (D.C. Cir. 1984); Artcraft Ornamental Iron Co., 271 N.L.R.B. 829, 117 L.R.R.M. (BNA) 1230 (1984) (to determine whether corporations are alter egos, the Board examines whether they share substantially identical (i) management, (ii) business purposes, (iii) operation, (iv) equipment, (v) customers, (vi) supervision, and (vii) ownership); I.W.G., Inc., 322 N.L.R.B. No. 12 (the Board also examines whether, but does not require a showing that, “the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act”) (quoting Watt Elec. Co., 273 N.L.R.B. 655, 658, 118 L.R.R.M. (BNA) 1352 (1984)).

96. Children's Hosp. of San Francisco, 312 N.L.R.B. 920, 144 L.R.R.M. (BNA) 1189 (1993), *enforced sub nom.* California Pac. Med. Ctr., 87 F.3d 304, 152 L.R.R.M. (BNA) 2593 (9th Cir. 1996).

97. NLRB v. Burns Int'l Sec. Servs., Inc., 406 U.S. 272, 294–95, 80 L.R.R.M. (BNA) 2225 (1972).

98. See, e.g., Spruce Up Corp., 209 N.L.R.B. 194, 85 L.R.R.M. (BNA) 1426 (1974), *enforced*, 529 F.2d 516, 90 L.R.R.M. (BNA) 2525 (4th Cir. 1975).

Significantly, a purchaser may lose the right to set initial terms and conditions of employment if it is “perfectly clear” that it will be a successor by making known that it plans to retain all of the seller’s employees.⁹⁹ In *Canteen Company*, for example, the Board held that an employer had violated the Act when, after making it clear to the union that it would retain the employees, it then told employees that they would be working at a reduced rate of pay.¹⁰⁰

VII. The Timing of a Unit Clarification Petition

Although an employer who accretes a group of employees into an existing bargaining unit may choose to sit back and wait for the adversely affected union to file an unfair labor practice, the proactive course is to file a UC petition. UC petitions generally are not entertained by the Board when a party seeks to clarify a bargaining unit during the term of a collective bargaining agreement, although certain exceptions exist.¹⁰¹ One such exception applies when the petition is filed with respect to a group of new employees who were not employees when the collective bargaining agreement at issue was executed.¹⁰² Thus, in a merger or acquisition, provided that the two employers were not single or joint employers, or alter egos, the former employees of the acquired entity are new employees to the purchaser because they did not exist as employees of that company at the time its collective bargaining agreement with the union was executed.¹⁰³

At first blush, waiting until the collective bargaining agreement expires may seem to be a way to circumvent any possibility that the Board would dismiss the midterm UC petition, but it actually creates greater problems. The change in business operations that accompanies the acquisition and influx of newly hired employees whose status is disputed is precisely what compels the Board’s willingness to entertain

99. See *Burns Int’l Sec. Servs.*, 406 U.S. at 294–95; *Spruce Up Corp.*, 209 N.L.R.B. at 195.

100. *Canteen Co.*, 317 N.L.R.B. 1052, 149 L.R.R.M. (BNA) 1233 (1995), *enforced*, 103 F.3d 1355, 154 L.R.R.M. (BNA) 2065 (7th Cir. 1997); see also *Hilton’s Envtl., Inc.*, 320 N.L.R.B. 437, 152 L.R.R.M. (BNA) 1263 (1995).

101. *Baltimore Sun Co.*, 296 N.L.R.B. 1023, 1024, 132 L.R.R.M. (BNA) 1210 (1989) (a case in which a midterm UC petition was found to be *timely* because it met an exception to the general rule).

102. See, e.g., *Gould, Inc.*, 263 N.L.R.B. 442, 445, 111 L.R.R.M. (BNA) 1033 (1982).

103. See also *Parker Jewish Geriatric Inst.*, 304 N.L.R.B. 153, 154, 138 L.R.R.M. (BNA) 1061 (1991) (ruling on merits of midterm UC petition where the parties did not agree whether certain employees previously covered under a different contract were part of the overall bargaining unit or covered by agreement between the union and multiemployer association); *Super Valu Stores, Inc.*, 283 N.L.R.B. 134, 135, 124 L.R.R.M. (BNA) 1294 (1987) (ruling on merits of midterm UC petition where parties did not agree whether employees at new facility were included in current bargaining unit); *Crown Cork & Seal Co.*, 203 N.L.R.B. 171, 172, 83 L.R.R.M. (BNA) 1088 (1973) (ruling on merits of midterm UC petition in case involving the unit placement of employees working on a new production line in one of two existing bargaining units).

a UC petition in the middle of the term of a collective bargaining agreement, which it otherwise generally will not do.¹⁰⁴ Further—and more importantly—the Board appears dubious of an employer that “merges” two corporate entities, maintains separation of the workforces for a time, and *then* tries to accomplish an accretion.¹⁰⁵ If the employees to be accreted can exist and have existed as a separate appropriate bargaining unit for a period of time prior to expiration of the contract, this will weigh against an accretion finding when the employer files the UC post-expiration.¹⁰⁶ In short, the accretion issues should be dealt with by the parties and by the Board immediately when an operational change or acquisition calls into question the continuing viability of separate bargaining units.

VIII. The Collective Bargaining Agreement Terminates Upon Accretion of the Unit

Sometimes the union that is ousted by the consolidation and accretion—understandably unhappy with the turn of events—will claim that because its collective bargaining agreement does not expire for several months or years, the acquiring company is required to maintain the employees as part of its bargaining unit. This would include all existing terms and conditions of employment for the duration of the contract. It is well settled, however, that a contractual duration clause does not carry with it an obligation that a company remain in business (or in any particular line of business) or continue the employment of the bargaining unit members.¹⁰⁷ Thus, the mere existence of a collective bargaining agreement cannot prevent a midterm accretion. As noted above, accretion is a question of statutory application, not of contractual interpretation.

Instead, once the former employees represented by the ousted union are hired by the acquiring company and accreted into the substantially predominant bargaining unit, all obligations under the smaller union’s collective bargaining agreement become null, void, and unenforceable.

104. See *Northwest Publ’n, Inc.*, 200 N.L.R.B. 105, 81 L.R.R.M. (BNA) 1448 (1972); *Wallace-Murray Corp.*, 192 N.L.R.B. 1090, 78 L.R.R.M. (BNA) 1046 (1971).

105. *Brooklyn Hosp. Ctr.*, 309 N.L.R.B. 1163, 1182, 143 L.R.R.M. (BNA) 1094 (1992), *enforced*, 9 F.3d 218, 144 L.R.R.M. (BNA) 2617 (2d Cir. 1993).

106. *Id.* at 1163.

107. *United Rubber, Cork, Linoleum & Plastic Workers v. Great Am. Indus., Inc.*, 479 F. Supp. 216, 234 (S.D.N.Y. 1979) (citing *Fraser v. Magic Chef-Food Giant Markets, Inc.*, 324 F.2d 853, 856 (6th Cir. 1963) (“A collective bargaining agreement . . . does not create an employer-employee relationship and does not guarantee the continuance of one.”); see also *Wien Air Alaska, Inc. v. Bachner*, 865 F.2d 1106, 1112 (9th Cir. 1989) (“It is well established that a collective bargaining agreement cannot bind an employer to continue in business.”); *Hill v. Ralph’s Grocery Co.*, 896 F. Supp. 1492, 1495, 150 L.R.R.M. (BNA) 2106 (C.D. Ca. 1995) (“The Term of Agreement Clause . . . simply means that as long as an employer-employee relationship exists, the rights and obligations of the parties are governed by the contract.”).

Many cases recognize that a union's collective bargaining agreement terminates, even midterm, if the union is decertified.¹⁰⁸ The same principle applies in a situation in which a union loses its representational status as the result of an accretion to another bargaining unit, rather than through a decertification election. As one popular treatise observes:

The Board and the Courts have made clear that no union other than the duly recognized or certified bargaining representative retains any rights under a collective bargaining contract. [] Once a union that is signatory to a contract is decertified or otherwise loses its status as collective bargaining representative, it retains no rights under that contract. [] This feature of the collective bargaining relationship, which elevates the statutory right to choose a representative over the stability of contract, underscores that the collective bargaining agreement is *sui generis*.¹⁰⁹

This is a fairly obvious outgrowth of the principle of exclusive representation. As the Supreme Court has stated, the obligation to recognize and deal with the lawful representative of a bargaining unit imposes "the negative duty to treat with no other."¹¹⁰

Indeed, there is no way as a matter of law that a company can continue to recognize the smaller union and continue to apply that union's collective bargaining agreement once the company consolidates the once separate bargaining units, which it is lawfully entitled to do upon its acquisition of another company. In *McGuire v. Humble Oil & Refining Company*, for example, the court dismissed a lawsuit brought under section 301 of the Labor Management Relations Act to compel arbitration over alleged breaches of a collective bargaining agreement between a seller and the seller's union by the purchaser employer.¹¹¹ The purchaser filed a UC petition after the seller's union filed the com-

108. See also *United Paperworkers Int'l Union, Local 14 v. Int'l Paper*, Civ. No. 93-279, 1994 U.S. Dist. LEXIS 20002, at *4-*5 (D. Me. Dec. 1, 1994) (once union decertified, employer relieved of all obligations to withhold union dues or contribute to union trust funds); *Sheet Metal Workers Int'l Ass'n, Local No. 162 v. Jason Mfg., Inc.*, 900 F.2d 1392, 1400 (9th Cir. 1990) (holding that union's CBA void upon decertification by NLRB, but rejecting employer's argument that arbitration award issued thereunder after decertification petition filed was void ab initio); *Retail Clerks Int'l Ass'n v. Montgomery Ward & Co.*, 316 F.2d 754, 757 (7th Cir. 1963) (holding that CBA no longer enforceable after union decertified, because "[a]n implied condition of the contracts was the continuance of [the union's] status as such certified representative"); *Modine Mfg. Co. v. Grand Lodge Int'l Ass'n of Machinists*, 216 F.2d 326, 329 (6th Cir. 1954) (where another union was certified after election as representative of same bargaining unit, "[t]he provisions as to IAM and the payment of dues became inoperative as soon as IAM ceased to be the bargaining representative . . . The recognition clause of the agreement of 1948 became inoperative when IAM ceased to be the certified representative of the employees").

109. *The Developing Labor Law 752* (Patrick Hardin ed., 3d ed., 1995) (emphasis added) (internal citations omitted).

110. *NLRB v. Jones & McLaughlin Steel Corp.*, 301 U.S. 1, 44, 1 L.R.R.M. (BNA) 703 (1937).

111. *McGuire v. Humble Oil & Refining Co.*, 355 F.2d 352, 357-58 (2d Cir.), cert. denied, 384 U.S. 988 (1966).

plaint, and the Board granted the petition, declaring that the purchaser's union was the exclusive bargaining representative of the employees in question, who had been accreted into the larger bargaining unit.¹¹² Therefore, the court concluded that "the consequences that flow from [the larger union's] exclusive bargaining representation of all the Humble employees are decisive of the case."¹¹³ One such consequence was that the court could not compel the company to arbitrate contractual grievances with a union that had lost its exclusive representative status through the Board's earlier decision that the employees in question had been accreted into a different bargaining unit.¹¹⁴

One issue of first impression that has not been ruled upon by the Board in any published decision is whether the collective bargaining agreement and the employer's obligations thereunder terminate on the date the Board issues a UC decision or at some earlier point, such as the actual closing date of a merger or acquisition between two companies. We believe that logically there can be only one answer: The union's rights under the contract must terminate at the earlier date when the consolidation is actually consummated, not when the Board process—the ultimate length of which will be uncertain—subsequently concludes with the issuance of a decision. This is because, in the consolidation and accretion context, there are two unions simultaneously claiming that their contracts apply, unlike the decertification context where there is no rival union who has any representational claim on the employees until after one union is decertified.

The smaller unit's collective bargaining agreement must terminate as of the date of the consolidation to (i) maintain consistency between the different procedural avenues for accomplishing an accretion and (ii) avoid a situation where the employer is accruing liability while waiting for an ultimately favorable UC decision from the Board. For example, if a union files an unfair labor practice charge claiming that the employer unlawfully withdrew recognition, the Board, in applying the consolidation principles discussed above, would determine whether the employer had lawfully withdrawn recognition from the union representing the smaller unit on the day it merged the two em-

112. *Id.* at 356.

113. *Id.* at 357.

114. *Id.* at 357–58; *see also* Kenin v. Warner Bros. Pictures, Inc., 188 F. Supp. 690, 695–96 (S.D.N.Y. 1960) (collecting case law regarding principles of exclusive representation, in a case where AFM attempted to assert a contract claim against Warner Brothers after its CBA had expired and it had been superceded by the Musicians Guild); *see also* Printing Specialties & Paper Prods. Union No. 447 v. Pride Papers Aaronson Bros. Paper Corp., 445 F.2d 361, 363–64 (2d Cir. 1971) (affirming dismissal of section 301 suit where two companies with separate unions consolidated operations, no unionized employees of the smaller company were hired by the new company, and, thus, the new company was not a successor); Am. Fed'n of Gov't Employees, Local 1164, 6 F.L.R.A. No. 60 (July 30, 1981) (holding that union's rights as exclusive bargaining representative were terminated once its bargaining unit was consolidated with another).

ployee groups and recognized the union representing the larger unit as representative of all the employees in the consolidated unit.¹¹⁵

Similarly, there is no reason that the Board cannot or should not determine that the accretion of the former employees occurred as of the effective date of any acquisition or merger, just as it would in an unfair labor practice proceeding in which the employer's defense would be that employees of the smaller unit were accreted into the larger unit on that date. Indeed, as noted above, the Board has refused to find that an accretion has occurred where an employer acquired another and intentionally preserved the separate employee groups for some period of time, and then subsequently attempted to recognize the union that represented one group as representing the other group through an accretion.¹¹⁶ Thus, under Board law, an employer is compelled to commence the integration and consolidation of the previously separate bargaining units immediately, rather than waiting until the expiration of the collective bargaining agreement.

Further, under well-established labor law principles of exclusivity, an employer cannot recognize two different unions as representative of employees within a single, appropriate bargaining unit.¹¹⁷ Therefore, an employer is entitled to recognize the union that represents a substantially predominant majority of the consolidated bargaining unit from the moment of consolidation.¹¹⁸ Of course, the employer must be correct in its position that there *is* a substantially predominant majority, bearing in mind that six to one is the closest ratio thus far approved by the Board. But if the Board subsequently approves, our view is that the accretion should be treated for all purposes as having occurred on the first day after the merger or acquisition. This should be so even if the process takes a few weeks or even months to complete, provided the employer has been actively engaged in the consolidation process and it results in a Board-approved accretion at some point.

Otherwise, the employer is trapped in an untenable position. If it continues to recognize and apply the smaller unit's collective bargaining agreement, it will avoid any liability under that contract but in all likelihood doom the accretion. On the other hand, if it ceases to apply the smaller unit's contract on the day after the acquisition, it may incur liability between that date and the date the Board issues a decision. In that instance, because the UC petition can be subject to numerous delays in scheduling or in the decision making process, the employer would accrue liability even though it had so thoroughly prepared for

115. See *Metro. Teletronics Corp.*, 279 N.L.R.B. at 960.

116. *Brooklyn Hosp. Ctr.*, 309 N.L.R.B. at 1183–85 (finding employer violated section 8(a)(2)).

117. See *Jones & McLaughlin Steel Corp.*, 301 U.S. at 44.

118. *Id.* (the obligation to recognize and deal with the lawful representative of a bargaining unit imposes "the negative duty to treat with no other").

the acquisition and consolidation of bargaining units that they were perfectly integrated from day one.

Such perfect integration from day one is difficult to accomplish, particularly in a larger organization, but the alternatives are even less appealing. Using the date of the Board's UC decision as the date on which the collective bargaining agreement terminates exposes the employer to unfair contractual liability when it has every right to consolidate separate bargaining units to meet changing business needs. Moreover, trying to ascertain some trigger point during the process of consolidation and integration when the accretion is "complete"—somewhere between "day one" and the Board's subsequent decision—not only fails to completely remove the problem of undeserved employer liability but in most cases would be extremely difficult to pinpoint realistically as a factual matter. The only logical alternative, provided the process of integration commenced immediately and an accretion is ultimately approved by the Board, is a rule that the collective bargaining agreement governing the accreted employees terminates on the first day after the merger or acquisition.

IX. Conclusion

Corporate mergers, acquisitions, and reorganizations present a host of challenges for employers, unions, and labor lawyers. The consolidation of previously separate bargaining units is particularly interesting because, rather than dealing with the more typical issue of whether a union continues to represent employees, it focuses on *which* union's stake in the company will survive. On one level, consolidation of separate units does not raise the same legal concerns that arise when a successor employer sheds (or attempts to shed) its bargaining obligations, and formerly represented employees are left without representation.

However, the absence of an employer attempting to "go nonunion" does not render the repercussions of a consolidation of separately represented bargaining units any less critical. This is true for the employer that carefully seeks to determine the legal obligations it inherits as the result of its business decisions; this is also true for the union that must accommodate an influx of new bargaining unit members, not all of whom may be pleased to be switching unions; and it is certainly true for the union that may lose its representational status. Nevertheless, labor law must strive to keep up with the changing corporate world. With respect to bargaining unit consolidations, while certain issues remain undetermined, the law, thus far, has succeeded in maintaining a balanced approach to this issue.