

**We Transport, Inc. and Towne Bus Corp. and Local 707, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.** Case 29-RC-4171

February 15, 1979

**DECISION ON REVIEW, ORDER, AND DIRECTION OF ELECTION**

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on May 2, 1978, before Hearing Officer Steven Goodman. On May 19, 1978, the Regional Director for Region 28 issued a Decision and Direction of Election in which he found that all full-time and regular part-time busdrivers who are regularly engaged in providing private, nonpublic school related bus services and all mechanics employed by the Employer at its Hicksville and Bayshore locations, excluding all other employees, public school busdrivers, matrons, office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Employer filed a request for review of the Regional Director's decision.

In its request for review the Employer contends that the Regional Director erred in excluding from the unit drivers who provide bus service to public schools and the matron who works on the public school bus runs. The Employer asserts that in a prior case involving its operations,<sup>1</sup> the Board determined the appropriate unit should include all of the Employer's drivers. The Employer also notes that the Board has recently asserted jurisdiction over employers engaged in Head Start programs, finding that the important factor is control of labor relations policies and not whether employers act in aid of the State. The Employer submits that there can be no doubt it controls its labor relations policies and that, therefore, the appropriate unit should include those drivers providing public school bus service and the matron.

By order dated June 16, 1978, the Board granted the Employer's request for review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

<sup>1</sup> *We Transport, Inc. and Town Bus Corp.*, 215 NLRB 497 (1974).

tional Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in the case with respect to the issues under review, including the request for review filed by the Employer, and makes the following findings:

The Employer, a New York corporation, provides bus services, including bus transportation for public and private schools. The Petitioner seeks to represent all of the Employer's full-time and regular part-time busdrivers, matrons, and mechanics employed at the Employer's Bayshore and Hicksville locations. The Employer and Petitioner agree that the appropriate unit should consist of all the Employer's employees in these classifications at the two locations.<sup>2</sup>

In making his unit determination, the Regional Director relied on our decisions in *Columbia Transit Corporation*, 226 NLRB 812 (1976), and *Campdown Bus Lines, Inc.*, 226 NLRB 4 (1976). In those cases the Board declined to assert jurisdiction over the employers' school district related bus service because that part of the employers' operation was found to be so intimately related to the school districts' function as to warrant a conclusion that such services are, in effect, a municipal function. The Board, however, has recently abandoned the so-called intimate-connection test<sup>3</sup> and has stated that the proper focus of inquiry is whether the employer retains sufficient control over its employees' terms and conditions of employment so as to be capable of effective bargaining. The record here contains no evidence that the school districts control the Employer's labor relations policies. Nor, indeed, is there any evidence that the Employer's operation has changed in any legally significant way since our prior decision directing an election in a unit including both drivers engaged in public-school service and drivers engaged in private service. Therefore, we conclude, contrary to the Regional Director, that a unit consisting of all employees, including those busdrivers and matrons providing service to public schools, constitutes an appropriate unit for bargaining, and we shall direct an election therein. We find that the following is an appropriate unit for collective bargaining within the meaning of Section 9(b):

All regular full-time and regular part-time busdrivers, mechanics, and matrons employed by the Employer at its Hicksville and Bayshore locations; excluding all other employees, office

<sup>2</sup> The Petitioner originally petitioned to represent only the employees at the Employer's Bayshore location. At the hearing the Petitioner amended its petition to include the employees at the Hicksville site. The Employer did not oppose the amendment, but requested that the Board investigate the adequacy of the Petitioner's showing of interest after the Board determines the appropriate unit.

<sup>3</sup> See *National Transportation Service, Inc.*, 240 NLRB 565 (1979).

clerical employees, guards, and supervisors as defined in the Act.

On May 19, 1978, the Regional Director for Region 29 issued a Decision and Direction of Election in which he found appropriate a unit for collective bargaining which was different from the unit originally sought by the Petitioner in a petition filed on April 10, 1978. The Regional Director conditioned the Direction of Election upon the Petitioner's demonstrating within 10 days from the date of the Decision that it had an adequate showing of interest in the unit found appropriate. Because the Petitioner did not demonstrate an adequate showing of interest, the Regional Director, on June 2, 1978, dismissed the Petitioner's petition.

The Board, having reviewed the Regional Director's Decision and Direction of Election, has found appropriate a unit different from that defined in the Regional Director's Decision and Direction of Election.

## ORDER

It is hereby ordered that the Petitioner's petition filed on April 10, 1978, be, and it hereby is, reinstated.<sup>4</sup>

[Direction of Election and *Excelsior* footnote omitted from publication.]

MEMBER PENELLO, dissenting:

I would not assert jurisdiction herein for the reasons set forth in my dissent in *We Transport, Inc.*, 215 NLRB 497 (1974), as well as for the reasons given in the dissenting opinion in *National Transportation Service, Inc.*, 240 NLRB 565 (1979).

<sup>4</sup> Inasmuch as the Petitioner amended its petition at the hearing to include the employees at the Employer's Hicksville location, we direct the Petitioner to demonstrate an adequate showing of interest in the amended appropriate unit, if the Petitioner has not already done so, within 10 days from the date of this Order. Failure to submit a sufficient showing of interest within 10 days will result in dismissal of the petition.