

We Transport, Inc.,¹ Employer-Petitioner and Local 1181, Amalgamated Transit Union, AFL-CIO. Case 29-RM-320

August 16, 1972

DECISION AND ORDER

On January 18, 1971, the Employer filed a petition with the Regional Director for Region 29, seeking an election in a unit of all drivers and service and maintenance employees, excluding guards, supervisors, and professionals as defined in the Act, at the Employer's operation located at Hicksville, New York.² Thereafter, the Regional Director dismissed the petition administratively in reliance on *Camp Baumann Buses, Inc.*,³ and *Raybern Bus Service Inc.*,⁴ and the Board sustained the dismissal. However, following a Motion for Reconsideration filed by the Employer, the Board reinstated the petition and directed a hearing which was held on April 20 and 24, 1972. Pursuant to the Board's Rules and Regulations, the case was thereafter transferred to the Board for decision.

Upon the entire record in this case, the Board finds:

1. The Employers are New York corporations engaged in the business of school bus transportation.
2. The labor organization involved claims to represent certain employees of the Employers.
3. No question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act, for the following reasons:

Pursuant to a consent-election agreement, and based on petitions filed by Joint Employers referred to above, an election was held on December 17, 1971, under the auspices of the New York State Labor Relations Board in a unit comprised of all full-time and regular part-time drivers and maintenance

men, excluding supervisors, clerical employees, and all others, employed by the Employers. Fifty-one ballots were cast for, and forty-seven against, the Union, and there were eight challenged ballots. At the time of the NLRB hearing, the NYSLRB was conducting hearings on the challenged ballots.

The Employers and Nassau-Suffolk Transportation Association, Inc., as *amicus curiae*, urge that, as the Employers clearly have a significant impact on interstate commerce within the meaning of the Act, the Board has exclusive jurisdiction and should hold an election irrespective of the earlier state board election, the results of which are currently pending the disposition of some eight challenged ballots. The Union contends that, as the Employer and the Union had agreed to be bound by the results of the NYSLRB election, the Employers' petition should be dismissed.

In the instant case the secret ballot election was held under the auspices of a responsible state government agency. The parties voluntarily participated in the election and, so far as appears, such election was conducted without substantial deviation from due process requirements. In these circumstances, we shall accord the same effect to the results of the state election as we would attach to a determination of representative based on an election conducted by the Board. Accordingly, as the employees involved herein have had an opportunity to express their desires as to a bargaining representative within the 12-month period prescribed in the Act, we would not, in any event, direct a Board election at this time.⁵ We shall, therefore, dismiss the petition.⁶

ORDER

It is hereby ordered that the petition and amendment thereto in Case 29-RM-320 be, and they hereby are, dismissed.

Bluefield Produce & Provision Co., 117 NLRB 1660; *West Indian Co., Ltd.*, 129 NLRB 1203, *Olin Mathieson Chemical Corp.*, 115 NLRB 1501, *T-H Products*, 113 NLRB 1246

⁶ Accordingly, and in view of the foregoing, we need not, and do not, reach the substantive jurisdictional matters involved herein. Even apart from the 12-month rule, however, we would not be inclined to encourage forum shopping by permitting parties who have already initiated a proceeding before a state agency subsequently to institute a like proceeding in the same matter before our agency.

¹ We Transport, Inc., is hereinafter referred to as the Employer

² New York State Labor Relations Board proceedings referred to hereinafter, show We Transport, Inc., and Town Bus, Inc., as Joint Employers. At the NLRB hearings, referred to hereinafter, drivers for Town Bus, Inc., were added to the unit by amendment to the petition

³ 142 NLRB 648

⁴ 128 NLRB 430

⁵ Section 9(c)(3) of the Act provides in part as follows: "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held." See