

Mississippi City Lines, Division of American Transit Corp. and Amalgamated Transit Union, AFL-CIO, Petitioner. Case 15-RC-5634

March 11, 1976

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND WALTHER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Adrian W. Schwing, Jr., of the National Labor Relations Board on April 25, 1975. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 15, this proceeding was transferred to the Board for decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

The Petitioner seeks to represent certain employees working as bus operators and maintenance employees for the Employer in the city of Hattiesburg, Mississippi. The question presented is whether or not the Board should assert jurisdiction over the Employer.

Since 1972, the Employer has operated the transportation system of Hattiesburg, Mississippi, pursuant to a management contract with the city. Prior to this time, the system was privately owned and operated by the Employer.¹ Due to the unprofitable nature of the business, the Employer approached the city with the suggestion that the city become involved in the transit system's operations, in part because of its access to Federal funds. Thereafter, a referendum was held to determine if the citizens were willing to tax themselves to provide for mass transit in Hattiesburg. The citizens voted to do so.

However, because the city lacked the equipment and expertise to manage such an operation, it leased Employer's facilities and equipment and hired Employer to supervise operation of the system. This arrangement continued until 1974 when the city was

notified that Federal funds were available to it to purchase equipment. Such purchases were made, and, by the latter part of 1974, the city owned almost the entire operation. It was anticipated that by July 1975, a new facility erected by the city would be completed and the Employer would then no longer own any part of the system, with the exception of the school buses it would continue to lease to the city.

A new management contract was entered into in January 1975. It provides for a management fee of 6 percent of the gross operating revenue subject to a minimum annual fee of \$12,000. All expenses incurred in running the system, including the salary of resident manager, Myrick, are considered expenses of the operation and charged to the city. Thus the Employer is reimbursed for all costs exceeding the fare box, advertising, and charter revenues at the end of each month. These costs include, *inter alia*, insurance payments, license plate fees, repair parts, salaries, and fuel. As Mr. Myrick testified at the hearing, the city pays for ultimately every item that is used in the operation of the transit system in Hattiesburg.

As resident manager of Employer, Myrick has responsibility for the daily operation of the bus service, including the hiring, firing, and disciplining of employees. The city, however, determines whether routes will be added or cut back, conditions of employment (other than hiring, firing, and disciplining) changed, or salary increases given, with the city deciding upon the appropriate amount of the increase. In addition, the city sets the fare charged for a bus ride. As testified by Morris Biddle, vice president and regional manager for American Transit Corp.: "[If a change was being considered] I think we would have to advise the city that we intended to do it, and, if the city said 'Don't do it,' by God, we wouldn't do it." The city's request that a resident manager be removed would also be honored.

Furthermore, Myrick must receive permission from the city council prior to making a purchase in excess of \$100. The city's approval of the suggested budget submitted by Employer for the system is also required. Not only are the transit system's financial records open to the public but its maintenance records are subject to public scrutiny as well.

In the circumstances described above, and upon the entire record, we find that, in operating for the city of Hattiesburg the transit system which was approved by the citizenry in a referendum, the Employer is performing a management service for an exempt government agency which exercises a substantial degree of control over the performance of its services which are intimately related to the city's municipal functions. The Employer, therefore, shares the city of Hattiesburg's exemption from the Board's jurisdiction.

¹ Local Division 1453 of the Petitioner herein had a longstanding collective-bargaining relationship with Employer while it was privately owned. In 1972, the Local became defunct.

tion.² Accordingly, we shall dismiss the petition.

ORDER

² *Herbert Harvey, Inc.*, 171 NLRB 238 (1968); *Rural Fire Protection Company*, 216 NLRB 584 (1975); *Transit Systems, Inc.*, 221 NLRB No. 53 (1975).

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.