

Alpha School Bus Company, Inc. and United States Steelworkers of America, AFL-CIO, Petitioner.
Case 13-RC-16562

16 December 1987

DECISION AND DIRECTION

BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND BABSON

The National Labor Relations Board, by a three-member panel, has considered objections and determinative challenges in an election held 24 October 1986, and the hearing officer's report recommending an election. The election was held pursuant to a Direction of Election Agreement. The tally of votes shows 69 for and 66 against the Petitioner, with 16 challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings¹ and recommendations² as modified.

The Petitioner challenged busdriver David Beach's ballot on the grounds that he was a mechanic and not includable in the bargaining unit.³ It challenged substitute busdriver Catherine Brown's ballot contending that she was dispatcher, a classification excluded from the unit. The hearing officer recommended that the challenges to the ballots cast by Beach and Brown be sustained. We disagree.

David Beach

Beach was hired by the Employer in August 1984 as a regularly scheduled afternoon busdriver. In November 1985 he began to work part time in the Employer's garage but continued driving his bus route. Since June 1986 Beach has worked in the garage from 5:30 a.m. until 1:30 p.m. on preventive maintenance projects.⁴ After he completes

his shift in the garage, he punches out and immediately punches back in, using a second card to record the hours he will work driving a bus. He drives a bus daily (from 1:30 p.m. to 3:45 or 4 p.m.). From September to October 1986 Beach was assigned a specific bus route everyday.

Beach has a different seniority date and is under different supervision for each job. As a garage employee he is supervised by a foreman. As a busdriver, he is supervised by the Employer's dispatchers. When working in the garage Beach wears the garage uniform consisting of a blue monogram shirt with blue pants, but changes to the driver's uniform of blue and white shirt with Alpha jacket to drive a bus. As a garage employee Beach receives sick time, paid holidays, vacation time, and company-paid health insurance—benefits not available to the bus drivers. As a driver, however, Beach is eligible to receive a bonus for perfect attendance and a safety bonus—incentives for which the garage employees are ineligible. As a driver Beach must complete various state training courses, maintain a special "C" class license, and attend safety and school-sponsored meetings. He is also subject to the rules and regulations specifically applicable to garage employees. Beach is paid \$5.10 per hour for garage work and \$5 per hour for driving a bus.

The hearing officer dismissed the Employer's contention that under *Berea Publishing Co.*, 140 NLRB 516 (1963), Beach was a dual-function employee and includable in the bargaining unit. She noted that as a garage employee Beach is under different supervision and receives a benefit package unavailable to the unit employees. She also found that his interests were more closely allied with those of the garage employees than the unit employees⁵ and concluded that Beach did not share a sufficient community of interest with the busdrivers to be included in the unit.

In *Berea* the Board reestablished the policy for dual-function employees which permits the inclusion of a dual-function employee in a unit if he performs duties similar to those of the unit employees in sufficient degree to demonstrate that he has a substantial interest in the unit employees' wages, hours, and working conditions. The stipulated unit in the instant proceeding includes regular part-time bus drivers and it is clear that Beach performs this function. He was assigned a specific bus route and drove this route for a significant period (approximately 2-1/2 hours) daily on a regular basis. In addition, while working as a part-time busdriver, Beach

such as changing light bulbs, checking oil levels, greasing, and inspecting tires for wear and tear

⁵ Beach had spoken to the Employer about working more hours in the garage and improving his skills as a garage employee

¹ The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957)

² Absent exceptions, we adopt the hearing officer's recommendations that the Petitioner's objections be overruled in their entirety, that in accordance with their stipulation, the parties be permitted to withdraw their challenges to the ballots cast by Edna Lomax, Louise Bensema, Rita Gestner, Margaret Myers, and Jackie McDonald, that the challenges to the ballots cast by Jeanette Jurewick, Bernice Sidlo, Barbara Watson, and William Thompson be sustained. Absent exception we also adopt the hearing officer's finding that the challenges to the ballots cast by Claudia Meister and Judy Parker be overruled.

³ The agreed upon unit includes

All full-time and regular part-time busdrivers, substitute busdrivers and aides employed by the Employer at its facility presently located at 13939 South Cicero, Crestwood, Illinois, but excluding all mechanics, dispatchers, managerial employees, clerical employees, guards and supervisors as defined in the Act

⁴ As a preventive maintenance employee Beach inspects the Employer's buses for mechanical problems and does basic mechanical functions

receives the same wage rate and benefits and is subject to the same supervision as the unit employees. Although Beach spends a majority of his work time as a garage employee, the time he spends driving a bus is substantial. Therefore, we find that Beach works a sufficient number of hours as a part-time busdriver to warrant his inclusion in the unit. Accordingly, we shall overrule the challenge to his ballot.

Catherine Brown

Catherine Brown was hired by the Employer in 1979 as a busdriver, but became a substitute busdriver shortly after being hired. Substitute drivers are unit employees supervised by the Employer's dispatchers. Their primary function is to fill in for absent drivers. When they are not assigned a bus route they are assigned various duties by the dispatcher such as office and yard work. The substitute bus drivers are guaranteed 6 hours of pay each day they report to work.

From 1979 through August 1986 Brown worked exclusively as a substitute busdriver assigned both morning and afternoon routes. In August 1986, at the Employer's request, Brown acted as dispatcher between 11 a.m. and 12:30 p.m. every day⁶ but continued to act as substitute busdriver on morning and afternoon routes. Most of the route assignments were completed by the morning dispatcher before Brown began her dispatcher work so that her duties were mainly limited to checking drivers in and distributing sets of keys to drivers assigned routes. She was also expected to make certain that drivers left on time and kept track of drivers who did not show up. Brown did not have disciplinary authority. On 3 days⁷ during the 2 months before the election she substituted for a regular dispatcher.⁸ When working as a full-time dispatcher, she assigned routes to the busdrivers and had authority (which she exercised) to sign their timecards.

Brown earned 8 hours' pay a day. Her driving record indicates that in September 1986, she drove 18 out of 40 available occasions, and in October 1986, she drove 17 out of 44 occasions. When not driving a bus route, Brown spends most of her time

in the back office or dispatch area, which some employees testified they needed permission to enter.

The hearing officer, asserting that the Employer had ignored the "totality of the evidence" concerning Brown's employment status, dismissed the Employer's argument that Brown was a dual-function employee under *Berea Publishing Co.* Brown had the authority to assign routes and sign timecards. There was no evidence that during these times Brown did not exercise the dispatcher's authority to direct the drivers. She further found that Brown was the only substitute driver credited with an 8-hour rather than a 6-hour day, that when not driving a bus route Brown spent her time in the back office or dispatcher room, and that during September and October Brown's driving record was not sufficiently consistent to indicate that she performed enough unit work to be included in the unit. Finally, the hearing officer noted that there is evidence that Brown has attended management meetings.

The stipulated unit includes the job classification "substitute driver." Brown spent a majority of her time performing substitute driver functions, including office work, such as answering phones and preparing route sheets when bus route assignment were not available. In addition, she was subject to the same wage-and-benefit scale and supervision as the substitute drivers. Therefore we find that Brown worked a sufficient amount of time as a substitute driver to warrant a finding that she is included in the unit.⁹ Accordingly, we will overrule the challenge to Brown's ballot.

DIRECTION

It is directed that the Regional Director shall, within 10 days from the date of this Decision and Direction, open and count the ballots of Edna Lomax, Louise Bensema, Rita Gestner, Margaret Myers, Jackie McDonald, Claudia Meister, Pearl Haberman, Oliver Haberman, Judy Parker, Shirley Gaskin, David Beach, and Catherine Brown, and prepare and serve on the parties a revised tally of ballots. Thereafter, the Regional Director shall issue the appropriate certification.

⁶ Brown testified that her dispatch work was usually completed by 12:30 p.m. but that she would stay for up to an hour in the office if the afternoon dispatcher was busy and needed help to perform related activities.

⁷ September 14 and 15, and 21 October 1986

⁸ The Employer employs three full-time dispatchers

⁹ The fact that Brown waits in the dispatcher area or back office areas for assignment as a substitute driver does not warrant a finding that she is not included in the unit nor does the fact that she may have attended management meetings in the absence of any explanation of the circumstances surrounding her attendance of such meetings nor does her temporary assignment to full-time dispatching duties in the absence of one of the dispatchers