

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

CASE No. 19-UD-77098

FIRST STUDENT, INC.,
Employer,
and
ANDRIN J. MITCHELL, an individual,
Petitioner,
and
TEAMSTERS LOCAL UNION NO. 959,
affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
Local Union.

PETITIONER ANDRIN J. MITCHELL'S REQUEST FOR REVIEW

I. INTRODUCTION

On 13 April 2012, Regional Director Ronald K. Hooks dismissed the Petition for a Deauthorization Election filed in this case. That dismissal was based upon the Board's rules indicating that a deauthorization petition must be coextensive with the contractually-defined unit. Pursuant to § 102.67 of the Board's Rules and Regulations, Petitioner Andrin J. Mitchell hereby submits this Request for Review.

This Request for Review should be granted because this case presents compelling issues of employee free choice, and calls for a full Board review of the “merger” doctrine as it relates to employee election petitions and employee free choice. *See, e.g., West Lawrence Care Center*, 305 NLRB 212 (1991) (election held in pre-merged unit).

II. BACKGROUND FACTS

On 23 April 2009, Teamsters Union Local No. 959 (“Local 959”) and First Student, Inc. (“First Student”) executed a monopoly bargaining agreement negotiated between them, and effective by its terms from 1 August 2009, through 31 July 2012. Said agreement contained a forced-unionism clause.

However, it wasn’t until 7 May 2009, that Local 959 was certified as the monopoly bargaining representative of First Student’s employees in a bargaining unit servicing the Fairbanks North Star Borough School District (“the Fairbanks unit”). Eight days later, on 15 May 2009, local unions — and Local 959, without the approval of the membership, and before its agreement with First Student even went into effect — voted for the creation of a nationwide bargaining committee to participate in company-wide bargaining and surrendered each local’s monopoly bargaining power to the International Brotherhood of Teamsters (“IBT”) to

bargain for a national master agreement. Subsequently, a national master agreement was negotiated and presented to the members of the bargaining units for ratification.

On 1 June 2011, the national master agreement was ratified, and was formally executed on 28 June 2011. It was effective by its terms from 1 June 2011 through 31 March 2015. Pursuant to the terms of that agreement, the Fairbanks unit was merged into a single nationwide bargaining unit.

With regards to the election conducted in May 2009, there was nothing on the ballot that indicated that bus drivers would be lumped into a massive, nationwide bargaining unit with other, widely-scattered and disparate First Student locations. To the contrary, the wording on the ballot indicates that the Fairbanks bus drivers were voting on whether they wanted Local 959 at their one location, in two local facilities (Union Exhibit 3). Indeed, after Local 959 won the election, First Student was only obligated to bargain with the union over this one Fairbanks unit, not every unit in the First Student. See, *e.g.*, *Pall Corp. v. NLRB*, 275 F.3d 116 (D.C. Cir. 2002) (employer has no obligation to bargain over other or “after acquired” facilities). However, even before the ratification election, First Student and Local 959 had reached and entered into a monopoly bargaining agreement.

On 20 March 2012, Petitioner submitted a deauthorization petition, seeking

a deauthorization election among First Student employees in the Fairbanks North Star Borough School District represented by Local 959.

However, in June 2011, the IBT ratified an agreement by which employees in scores of different bargaining units in dozens of states were now lumped into a single, nationwide unit with hundreds of different locations. According to this agreement, the recently certified unit of fewer than two hundred bus drivers in Fairbanks ceased to exist, replaced by a single, nationwide unit of over 20,000 bus drivers facilities widely scattered from Maine to California, and in Alaska.¹

It is self-evident that there is no “community of interest” among the bus drivers at these hundreds of facilities. They are widely separated by geographical location. Indeed the Fairbanks location here at issue is separated by several thousand miles and two borders from most of the locations in this massive “unit.” There is no interaction among the bus drivers in these scores of separate locations. Bus drivers do not cover shifts for each other, rotate among locations, switch schedules, or anything which one normally associates with bargaining unit employees.

¹ A list of those scores of widely-distributed locations in dozens of states appears in Local 959’s Exhibit 12

III. ARGUMENT

That employee free choice, not the administrative convenience of a union and employer, is the touchstone of the Act is so elementary a principle that it requires no further elaboration. In essence, this case presents, in the deauthorization context, a clash between the Board's rules for "mergers" and the employees' rights under §§ 7 and 9(e), 29 U.S.C. §§ 157 and 159(e), to deauthorize an unpopular and unwanted union security clause.

Although the general rule is that elections must be co-extensive with the recognized or certified unit, that rule is not iron-clad. Here, the certified unit is the unit of First Student bus drivers in Fairbanks. NLRB Region 19 in fact certified that unit, and that unit alone, only days before the IBT moved to lump scores of bargaining units into one, large, nationwide unit. Nevertheless, the Regional Director concluded that the Fairbanks bus drivers bargaining unit disappeared into thin air just days after the certification election. To allow this is to sanction a severe violation of employees' rights to self-organize or refrain under the Act, 29 U.S.C. § 157.

Admittedly, the Board has recognized a "merger" doctrine, whereby an employer and union can agree to merge separately certified or recognized units. To determine if such a merger should be recognized, however, the Board will look

to what the collective bargaining agreement says about the unit; the bargaining history between the union and the employer; how long the merged unit had bargained separately compared with how long it has been part of a multi-facility unit; whether the different locations have the same terms and conditions of employment; and whether the employees had an opportunity to participate in the multi-facility negotiation process. *Albertson's*, 307 NLRB 338 (1992), **citing** *West Lawrence Care Center*, 305 NLRB 212 (1991) (election held in pre-merged unit).

Here, Local 959 and First Student essentially sprung their “merged” unit on the Fairbanks unit only days after the union was certified as the monopoly bargaining representative, and even before the monopoly bargaining agreement negotiated by Local 959 for that unit alone went into effect. Indeed, there are compelling circumstances to disregard the “merger” that First Student and the IBT have foisted on the Fairbanks bus drivers. This is especially true given the fact that this is a case of deauthorization and not decertification.

First, there is no “history” of any bargaining here, whether “local” or “multi-location.” Indeed, the history is precisely the opposite: this was a brand-new unit, with **no** history of bargaining. *West Lawrence Care Center*, 305 NLRB 212 (1991).

Second, bus drivers among the very disparate First Student facilities share no “community of interest.” They are widely separated by geographical location, from one edge of the continent to the other. There is no interaction among the bus drivers in these varied and widely-separated work locations. The bus drivers do not cover for each other, rotate among the work locations, switch schedules, or anything of the sort. There seems to be much local autonomy among these work locations.

As shown above, “compelling circumstances” warrant disturbing the multi-location bargaining recently created by Local 959 and First Student for their own administrative convenience. *Gibbs & Cox*, 280 NLRB 953, 955 (1986), **dismissed as moot**, 904 F.2d 214 (4TH CIR. 1990); *Trident Seafoods*, 318 NLRB 738 (1995); *Owens-Illinois Glass Co.*, 108 NLRB 947 (1954); **see also** *Arrow Uniform Rental*, 300 NLRB 246 (1990) (issue raised in the context of an eight year history of bargaining). Again, the touchstone of the Act is employee free choice, not the administrative convenience of an employer and union whose merger casts employee free choice to the wind.

Here, Local 959 and the IBT are using and abusing their power over First Student precisely to frustrate the right of Petitioner and fellow employees to deauthorize an unpopular and unwanted forced-unionism or “union security”

clause, violating Petitioner's rights under §§ 7 and 9 of the NLRA. It cannot be allowed.

Indeed, there are many circumstances in which an election will be ordered in a unit that is not coextensive with a recognized unit. For example, in *Utah Power & Light Co.*, 258 NLRB 1059 (1981), the Board conducted an election of only a portion of the unit, where professional employees were lumped into a production and maintenance bargaining unit without ever having been given a vote. Here, similarly, the bus drivers in Fairbanks were never given a vote to decide whether they wished to disband their small unit that had been certified only days before, and substitute it with a nationwide unit of thousands in scores of states, all lacking a community of interest.

In *Met Electrical Testing Co.*, 331 NLRB 872 (2000), the Board indicated it “normally will not disturb an historical, multilocation unit absent compelling circumstances. . . . In balancing the goals of employee free choice and bargaining stability, the Board has determined that even a 1-year bargaining history on a multiplant basis can be sufficient to bar a petition seeking an election in a segment of that unit.” Here, there has been no history of multi-location bargaining, and less than a year's history prior to the filing of the Petitioner.

The Board has recognized that its deference to “bargaining history” is not

absolute. *West Virginia Pulp & Paper Co.*, 120 NLRB 1281, 1284 (1958). There, the Board stated that a unit established for collective bargaining will not be respected if it is “repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act.” In *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549, 1550 (1965), the Board phrased the test in terms of whether an exception to the Board’s usual practice is required by “the dictates of the Act or other compelling circumstances.” Here, the Fairbanks unit plainly has no “community of interest” with bus drivers in the other widely disparate First Student locations, and the Board would never on its own have certified such an unwieldy, unrelated, and geographical dispersed unit.

Finally, the Board’s rules about elections being “co-extensive” with the recognized unit may make sense with regard to decertification elections, but they make less sense when applied to deauthorization elections. Whether the bus drivers of Fairbanks are freed from the compulsory unionism requirements of a nationwide contract has no bearing on what happens in any of the other locations. Indeed, reference to the agreement (Union’s Exhibit 12) plainly demonstrates that there are many bargaining units — in Louisiana, Iowa, North Carolina, Florida, Tennessee, Nebraska, Georgia, Kansas, Texas and Mississippi — where such clauses have no force and effect, as those states protect employees with Right to

Work laws.

Thus, even if there was a reason to apply the “co-extensive with the unit” rule to decertification efforts, there is no reason to apply it to deauthorization efforts. Congress granted workers a statutory right to deauthorize the union security clause at a time of their own choosing. The **only** restriction that Congress placed upon Petitioner’s right to deauthorize is the one-year “election bar” in § 9(e)(2) of the Act, which must be calculated in a broad manner to enhance employee freedom of choice and not thwart it. **See, e.g.,** *Covenant Aviation Sec.*, 349 NLRB No. 67 (2007) (signatures supporting a deauthorization can be collected prior to the effective date of the contract); *Gilchrist Timber Co.*, 76 NLRB 1233 (1948) (Board rejects the argument that a deauthorization election cannot be held within one year of a certification election); *Monsanto Chem. Corp.*, 147 NLRB 49 (1964) (same); *Great Atlantic & Pacific Tea Co.*, 100 NLRB 1494 (1952) (Board rejects the argument that a “contract bar” rule should be applied to deauthorization elections); *Albertson’s/Max Food Warehouse*, 329 NLRB 410 (1999) (rejecting Colorado’s arbitrary limits on employees’ statutory right to conduct a deauthorization election at a time of their choosing). The Board should not allow a suspect “merger” to thwart the statutory rights of bus drivers who seek a deauthorization election that is coextensive to the unit they voted on

barely two years before filing their Petition.

IV. CONCLUSION

The Request for Review should be granted and the decision of the Regional Director should be reversed. The Deauthorization Petition at the First Student locations in the Fairbanks North Star Borough School District should be allowed to proceed, and an election should be scheduled promptly.

DATED: 11 May 2012

Respectfully submitted,

/s/ W. James Young

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