

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

INDIVIDUAL TRANSPORTATION SERVICES
Employer

and

Case No. 29-RC-91991

LOCAL 1181-1061, AMALGAMATED TRANSIT
UNION, AFL-CIO¹
Petitioner

DECISION AND DIRECTION OF ELECTION

Individual Transportation (“the Employer”) is engaged in the transportation industry. On October 25, 2012,² Local 1181-1061, Amalgamated Transit Union, AFL-CIO (“the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of drivers and matrons employed by the Employer.

A hearing was held before Lynda Tooker, a hearing officer of the National Labor Relations Board.³

Although given notice of the hearing, the Employer did not appear or participate in this matter. On October 26, the Employer was served by mail with a copy of the petition and the Notice of Representation Hearing. On November 2, the Employer was served with an Order rescheduling the hearing to November 13. In addition, the Hearing Officer indicated that she had

¹ The caption is amended to reflect the Petitioner’s full and correct name.

² All dates hereinafter are in 2012 unless otherwise indicated.

³ References to the transcript are identified as Tr. ___. References to the Board and Petitioner exhibits will be cited as Bd. Ex. ___, and Pet. Ex. ___, respectively.

called the Employer's facility and left messages for the Employer on November 6, 7, 8, and 9. The Employer did not respond to the Hearing Officer's messages. On November 13, the hearing was scheduled to commence at 9:30 a.m., but did not commence until 12:30 p.m. The Employer failed to appear. On November 8, the Employer was served with a subpoena seeking commerce information. The Employer failed to respond to that subpoena.

On November 13, the Regional Office became aware that International Brotherhood of Teamsters, Local 917 ("Local 917"), had a collective bargaining agreement with Blue Star Bus Company, an alleged predecessor to the Employer. On November 14, the Regional Office sent a letter to Local 917 notifying the union of the instant petition and providing an opportunity to intervene in the instant case. On November 15, Local 917 informed the Regional Office that Local 917 did not intend to intervene and was not interested in representing the employees in the petitioned-for unit. Bd. Ex. 7.

Labor Organization Status

Dominick Agate, an organizer employed by the Petitioner, testified regarding the Petitioner's labor organization status. According to Agate, the purpose of the Petitioner is to represent employees in collective bargaining. The Petitioner's bylaws state that the Petitioner was established "to secure and defend [its members'] rights, advance [their] interests as workers" and "build up an organization where all working members of [the] industry can participate in the discussion of those practical problems upon the solution of which depends [their] welfare and prosperity." Pet. Ex. 1. The Petitioner has approximately 15,000 members. The Petitioner maintains approximately fifty collective bargaining agreements with different employers. The Petitioner introduced its Fall 2012 newsletter, which includes updates on a number of contract

negotiations and arbitrations in which the Petitioner is engaged. Pet. Ex. 2. In addition, Agate testified that the Petitioner's members attend monthly union meetings and vote in internal union elections. Tr. at 13-14.

Discussion

Section 2(5) of the Act defines a labor organization as:

any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

See also *Alto Plastics Mfg. Corp.*, 136 NLRB 850 (1962).

Agate's testimony and the documentary evidence clearly establish that the Petitioner exists for the purpose of dealing with employers concerning grievances and other terms and conditions of employment, and that employees participate in the organization. The Petitioner is actively engaged in collective bargaining regarding terms and conditions of employment and seeks to enforce its agreements through arbitration. Members of the Petitioner participate in meetings and elections of union officials. Thus, the Petitioner meets the broad definition of labor organization in Section 2(5) of the Act.

Jurisdiction

As stated above, the Employer did not appear at the hearing in this matter. The Employer also failed to provide any commerce information before the hearing. Accordingly, on November 8, the Employer was served with a subpoena seeking jurisdictional information. The Employer failed to comply with this subpoena or provide any information on this matter. At the hearing, Ruben Torres, an employee of the Employer, testified to certain jurisdictional information.

Torres testified that all the drivers purchase gas for the buses at the same Citgo gas station located at 2978 Cropsey Avenue, Brooklyn, New York. Torres purchases gas for his bus every other day. He spends approximately \$160.00 to \$170.00 on each gasoline purchase. The Region issued a subpoena to Citgo seeking commerce information. Bd. Exs. 13 and 14. Citgo has not responded to this subpoena.

Torres testified that the drivers and matrons employed by the Employer pick up disabled adults and transport them to a facility operated by Catholic Charities Neighborhood Services, Inc. ("Catholic Charities"), which provides various services to these adults. Tr. at 22-23. The Region issued a subpoena to Catholic Charities seeking commerce information. Bd. Ex. 11.

In response to that subpoena, Catholic Charities confirmed that it is engaged in commerce within the meaning of the Act. Specifically, Catholic Charities stated that it is a domestic non-profit corporation with its principal place of business located at 191 Joralemon Street, Brooklyn, New York, with a facility located at 15 Willow Street, Brooklyn, New York. During the past year, which period is representative of its annual operations generally, Catholic Charities, in the course and conduct of its business operations, derived gross annual revenue in excess of \$250,000, and purchased and received at its Willow Street facility, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York. Bd. Ex. 8.

Catholic Charities also provided a copy of its contract with the Employer, under which the Employer agreed to provide transportation to individuals participating in Catholic Charities programs. This agreement is effective from July 1, 2012 and continues until Catholic Charities moves its facilities. Bd. Ex. 9. Catholic Charities has paid the Employer approximately \$101,000.00 for transportation services provided in August and September. Bd. Ex. 10.

Discussion

In Tropicana Products, 122 NLRB 121 (1959), the Board recognized that to initiate enforcement proceedings to compel compliance with its jurisdictional subpoenas could have the effect of rewarding an employer for its refusal to cooperate in Board proceedings. Accordingly, the Board decided that in cases in which employers refused to provide jurisdictional information, it would take evidence concerning statutory jurisdiction rather than initiate lengthy enforcement proceedings. Furthermore, the Board held that it would forgo the time consuming task of ascertaining whether the employer met the Board's discretionary standards, and would assert jurisdiction when the record demonstrated that the employer met statutory jurisdiction.

Based on the record, I am satisfied that the Employer meets the statutory jurisdictional standards. Since July, the Employer has provided in excess of \$100,000 of goods and services to an entity, Catholic Charities, which is located in New York, but which meets the Board's direct jurisdictional standards. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴

The Petitioned-for Unit

Ruben Torres, a driver employed by the Employer, testified about the job classifications in the petitioned-for unit. According to Torres, the Employer employs eight drivers and eight matrons. Tr. at 17-18. The drivers and matrons pick up adults with disabilities from their homes and transport them to facilities operated by Catholic Charities, which provides various services to these adults. Tr. at 22-23. Torres testified that the Employer does not employ any employees

⁴ Given that the Employer has provided in excess of \$50,000 in services to Catholic Charities, the Employer also satisfies the Board's nonretail discretionary jurisdictional standard.

other than the drivers and matrons. Tr. at 28. The drivers are responsible for purchasing gas for the buses and for cleaning the buses. Torres testified that the Employer does not employ any maintenance or office staff. Torres testified that the drivers report to a single manager, Edwin Marida. Tr. at 16. Marida gives the drivers their route sheets and keeps in touch with the drivers and matrons every day through a two-way radio. Tr. at 21, 28.

Discussion

When determining whether a petitioned-for unit is appropriate, the Board will determine whether the employees in that unit share a community of interest regarding their working conditions. See NLRB v. Paper Mfrs. Co., 786 F.2d 163 (3d Cir. 1986). The Board's task is not to determine the most appropriate unit, but simply to determine whether a unit sought is an appropriate unit. Specialty Healthcare and Rehabilitation Center of Mobile, 357 NLRB No. 83 (2011); Overnite Transportation Co., 322 NLRB 723 (1996). Therefore, the Board first looks to the unit sought in the petition because "...it is enough that the unit sought is an appropriate unit." Newington Children's Hospital, 217 NLRB 793, 794 (1975).

The record evidence demonstrates that the employees in the petitioned-for unit share a community of interest. Their working conditions are substantially identical. They work similar hours and perform similar duties, specifically transporting adults with disabilities to Catholic Charities facilities. Edwin Marida dispatches employees and keeps in contact with them daily by radio. Torres identified Marida as a manager, but Marida's managerial or supervisory status was not litigated at the hearing. Torres further testified that the Employer does not employ any employees in any other job classifications.⁵ It appears that the unit sought by the Petitioner is a

⁵ Although the unit sought specifically excludes dispatchers, mechanics, and maintenance employees, it is unnecessary to exclude these classifications in the unit description found appropriate.

plant-wide unit.⁶ Given that the employees in the petitioned-for unit share a community of interest, I find that the unit sought by the Petitioner is appropriate.

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

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that Individual Transportation, herein called the Employer, a domestic corporation, with an office and principal place of business located at 2548 West 13th Street, Brooklyn New York, has been engaged in the transportation industry. During the past year, which period represents its annual operations generally, the Employer, in the course and conduct of its business operations described above, provided services in excess of \$50,000 to the Catholic Charities Neighborhood Services, Inc., which enterprise meets the Board's direct standard for the assertion of jurisdiction.

Based on the record, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁶ The Board has held that a plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees. See Airco, Inc., 273 NLRB 348 (1984).

5. Based on the record, I find that the following employees constitute a unit appropriate for the purpose of collective bargaining:

All full-time and regular part-time drivers and matrons employed by the Employer out of its 2548 West 13th Street, Brooklyn, New York facility, but excluding all office clericals, guards and supervisors as defined in Section 2(11) of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 1181-1061, Amalgamated Transit Union, AFL-CIO, or by no union. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the

strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **November 26, 2012**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov, by mail, or by facsimile transmission at (718) 330-7579. To file the

eligibility list electronically, go to the Agency's website at www.nlr.gov, select "File Case Documents," enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the lists will continue to be on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

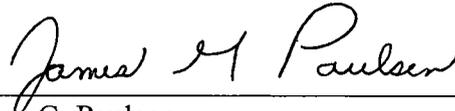
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 a.m. of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 3, 2012**. The request

may be filed electronically through the Agency's website, www.nlr.gov,⁷ but may **not** be filed by facsimile.

Dated at Brooklyn, New York, on this 19th day of November, 2012.

A handwritten signature in cursive script that reads "James G. Paulsen". The signature is written in black ink and is positioned above a horizontal line.

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

⁷ To file the request for review electronically, go to www.nlr.gov, select "File Case Documents," click on the NLRB Case Number, and follow the detailed instructions.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

CASE NO: 29-RC-091991

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional director, would serve to cancel the hearing

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; *and*
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of the hearing.

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