



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 29
TWO METRO TECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201-3838

Agency Website:
www.nlr.gov
Telephone: (718)330-7713
Fax: (718)330-7579

February 1, 2013

[REDACTED]

[REDACTED]

Re: Amalgamated Transit Union, Local 1181-1061 (All American School Bus Co., et al.)
Case 29-CC-096453

[REDACTED]

We have carefully investigated and considered your charge that AMALGAMATED TRANSIT UNION, LOCAL 1181-1061, AFL-CIO ("Union") has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

The evidence showed that the Union has a primary labor dispute with the Charging Party Employers as to whether the Employee Protection Provision ("EPP") will be included in the parties' collective-bargaining agreements, as the Union has proposed. The primary dispute directly involves the job security and other terms and conditions of employment of the employees of the Charging Party Employers. Significantly, while the Charging Party Employers have not agreed to the Union's proposal that the collective-bargaining agreements incorporate the EPPs, the Charging Party Employers do not deny that they have the ability to do so. Indeed, the parties themselves have made clear the primary nature of this dispute by their acknowledgement in their past collective-bargaining agreements that the job security provided by the EPPs is "an integral part" of the agreements, as well as by the express provisions permitting the Union to reopen the agreements and to strike the Charging Party Employers in the event the New York City Department of Education ("DOE") promulgates any contract bid without EPPs. Given this primary labor dispute with the Charging Party Employers, I conclude that the Union has not violated Section 8(b)(4) of the Act by its strike.

I recognize that the Charging Party Employers argue that only DOE is a primary employer, because only it has the power to include the EPPs in the contract bids. The Charging

Party Employers claim that they are therefore neutral secondary parties. In support of this contention, the Charging Party Employers have proffered evidence of several statements made by the Union about the strike which refer solely to DOE and the inclusion of the EPPs in the bid contracts. The Charging Party Employers' argument, however, ignores the primary labor dispute between the Union and the Charging Party Employers as to whether the EPPs will be included in the parties' collective-bargaining agreements. Thus, the proffered statements made by the Union merely demonstrate that the Union also has a primary labor dispute with the DOE, a point on which both the Charging Party Employers and the Union agree. They do not contradict or undermine the Union's primary labor dispute with the Charging Party Employers as to whether a condition of employment (the EPPs) will be included in the parties' new collective-bargaining agreement. In this regard, it is well established that more than one employer may be a primary employer under Section 8(b)(4) of the Act, particularly where, as here, one of the employers (DOE) has inserted itself in a "basic area" of the other employer's labor relations, i.e., the provision of the EPPs covering the Charging Party Employers' employees. *See Bricklayers Union Local 29 (J.E. Hoetger and Co.)*, 221 NLRB 1337, 1339 (1976) (*citing Teamsters Local 363 (Roslyn Americana Corp.)*), 214 NLRB 868 (1974)).

According, I am dismissing the instant case because the Union has a primary labor dispute with the Charging Party Employers.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **February 15, 2013**. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than February 14, 2013.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to

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www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before February 15, 2013**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/

JAMES G. PAULSEN
Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS
BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570





UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)