

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

FIRST STUDENT
Employer

and

VELVIE LEDGER
Petitioner

and

Case 13-RD-102567

TEAMSTERS LOCAL UNION NO. 777
Union

DECISION AND ORDER

Petitioner Velvie Ledger seeks to decertify a unit of bus drivers and monitors represented by Teamsters Local Union Number 777 (the Union) and employed by First Student (the Employer) at the Employer's Batavia, Illinois location. The Union asserts that the petitioned-for unit was merged into a nationwide unit with its own national collective-bargaining agreement (National Agreement) effective from June 1, 2011, through March 31, 2015. Accordingly, the Union seeks dismissal of the petition for two reasons: 1) the petitioned-for, single-location unit is not coextensive with the nationwide unit; and 2) the petition is time-barred by the National Agreement.

In contrast, the Petitioner does not believe the merger should bar the petition from being processed. She further asserts that she was unaware of any change in the bargaining unit when she filed the petition. The Employer was not present at the hearing and did not offer a position.

Based on the record and Board case law, I find that the local unit's merger into the national unit precludes the processing of the petition, and therefore, the petition shall be dismissed. Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. 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.¹
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce does not exist 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.
5. In this Decision, I will first highlight the factors the Board relies upon in determining whether a single-facility unit has merged into a larger national unit. I will then provide an overview of the facts in the instant case. Last, by applying the relevant Board law to the facts, I ultimately conclude that the local unit's merger into a national unit precludes the processing of the petition, and accordingly, the petition shall be dismissed.

I. FACTORS RELEVANT TO DETERMINING WHETHER A PROPER MERGER OF BARGAINING UNITS HAS TAKEN PLACE

The issue presented is whether the single-facility unit in the petition has merged into a larger national unit and would warrant the dismissal of the petition. Under Board law, it is well settled that an employer and union can merge separately certified or recognized units into a single overall unit. See, e.g., *Wisconsin Bell, Inc.*, 283 NLRB 1165, 1165 (1987); *Gibbs & Cox, Inc.*, 280 NLRB 953, 954 (1986). When such a merger occurs, "the larger, merged unit is the only unit appropriate for purposes of a representation election." *Wisconsin Bell, Inc.*, 283 NLRB at 1165 (citing *White-Westinghouse Crop.*, 229 NLRB 667 (1977); *General Electric Co.*, 180 NLRB 1094 (1970)).

To determine whether separate units have in fact been merged into a single overall unit, the Board considers several factors, such as the recognition clause and other language of the multi-location contract, the parties' conduct, bargaining history, the relative duration of the unit, and whether a multi or single-employer relationship is at issue. See, e.g., *Raley's*, 348 NLRB 382,

¹ Due to the Employer's absence at the hearing, the Hearing Officer relied upon the findings in Case Number 13-RD-002673, the most recent case where the Board asserted jurisdiction over the Employer. In that case, the Employer stipulated to the following commerce information: First Student, Inc., a Florida corporation, is engaged in the business of bus transportation of students. In the past calendar year, a representative period, the Employer at its facilities in Naperville, Illinois, derived gross revenues in excess of \$250,000. During this same period, the Employer purchased and received goods, products, and materials valued in excess of \$5,000 directly from points outside the state of Illinois.

554-556 (2006); *Albertson's, Inc.*, 307 NLRB 338, 338-339 (1992). For example, the Board has dismissed a petition where the multi-location agreement is found to be the “basic agreement” and local agreements merely supplement it. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1164 (1958).

Additionally, the Board has considered the relative duration of the unit. For instance, in *S.B. Restaurant of Huntington*, the Board dismissed a deauthorization petition for a single location when the petition was filed one year after multiple locations merged into a single national unit. 223 NLRB 1445 (1976). Similarly, in *Wisconsin Bell, Inc.*, the Board dismissed a petition for a smaller unit that had existed for only eleven days prior to the merger into a larger unit, which had functioned for more than a year and a half prior to the petition being filed. 283 NLRB 1165, 1165 (1987).

In contrast, in *West Lawrence Care Center*, 305 NLRB 894 (1991), the Board declined to dismiss a petition, noting that the petitioned-for employees had been in a single-employer unit for fifteen years and were only part of the multi-employer unit for nine months at the time the petition was filed. However, the Board did not decide the case on this ground alone. The Board recognized that the case contained unusual circumstances, such as the fact that the multi-employer bargaining unit bargained on a coordinated rather than multi-employer basis.

If, after applying the above factors, a single unit is found to have been merged into a larger unit, the unit listed on a petition must be coextensive with the larger unit. See, e.g., *Wisconsin Bell, Inc.*, 283 at 1165-1166; *Albertson's, Inc.*, 307 NLRB at 339.

II. FACTS

The Employer provides bus transportation services for school districts throughout the United States. The Union currently represents employees at several First Student locations in Illinois, including in South Holland, Belvidere, Glen Ellyn, Villa Park, and Batavia.² The petition at issue only concerns the Batavia location, where the Union represents approximately 45 full-time and part-time bus drivers and monitors (the Batavia unit).

The Union was first certified as the collective-bargaining representative for the Batavia unit on April 21, 2009. Following certification, the parties executed a local collective-bargaining agreement with a term effective from January 7, 2010, through June 30, 2013. According to the Union, local Teamsters unions began working on a national agreement in May or June of 2009,³ and a national bargaining committee began negotiating in 2010 and 2011. Local 777 President James Glimco was a member of that national bargaining committee.

² Union official Gregory Glimco testified that Local 777 represents employees at the above First Student locations. The National Agreement also lists Glenwood, Illinois, as a location that Local 777 represents.

³ The Union presented testimony on this at the hearing. Additionally, a union witness confirmed that the facts set forth in a Region 4 Decision and Order in Case Number 4-RD-066924 were applicable to the instant case. I take administrative notice of that Decision and Order.

Local Teamsters unions ultimately voted in favor of the National Agreement, and thereafter, needed the employees to approve it as well. The Union's Constitution specifically permits master agreements if employees vote to approve them. It says, "If a majority of the votes cast by the involved membership approve such agreement, it shall become binding and effective upon all Local Unions involved and their members." (Union Exhibit 3, p. 91). In order to raise awareness of the vote and to encourage members to vote in favor of the agreement, the Union asserts that it and the International notified members about the national contract in several ways.

For example, the Union maintains that the International contacted members about the national contract via robo calls and mailings. The International also sent out a mailer dated April 19, 2011, stating that the tentative agreement could be found on the Union's website, accessible at www.teamster.org/firststudent. The mailer also contained a newsletter and PowerPoint slides that further explained the National Agreement. The newsletter noted that the National Agreement would overlay existing local agreements, creating a single national bargaining unit for a four-year term. It explained that if local terms were inferior, the national terms would control.

In addition to the International's mailing, the local Union posted a letter dated May 3, 2011, on the Union bulletin board at the Batavia location and also placed a copy in both members' and non-members' mailboxes. The letter indicated that employees would soon receive a copy of the National Agreement and a voting ballot, and it advertised a meeting on May 14 if employees sought additional information. The Union also posted a subsequent advertisement for the May 14 meeting.

On May 14, 2011, the Union held a meeting for all of the local's different bargaining units at First Student locations and presented a PowerPoint presentation to explain the National Agreement. Following that meeting, the Union subsequently held a cookout on May 26, 2011, to answer any remaining questions, encourage employees to vote, and to distribute postcards and fliers about the vote.

Ultimately, a majority of employees from all of the Union's First Student locations voted in favor the National Agreement.⁴ The count occurred in Washington, D.C., and the National Agreement was officially ratified on June 1, 2011. On June 28, 2011, the parties ultimately signed the Agreement, which has a term from June 1, 2011, until March 31, 2015.

According to the Union, the results of the vote were announced in several ways, including at a large international conference, at Union meetings, on the Union's website, and in the school's bus newspaper. A form that employees must sign for employee handbooks also references the National Agreement. Copies of the National Agreement itself were also placed in Batavia unit employees' work mail slots.

⁴ The Union presented evidence that 290 of its members at all locals voted for the contract while 37 voted against it. The Union does not know whether the majority of the Batavia unit voted for or against the merger.

The National Agreement contains several provisions that are relevant to the instant petition. For example, Appendix A of the National Agreement contains a list of all local unions covered by the agreement and includes Local 777 on the list. Further, Section 4 of the National Agreement provides, “All employees covered by this National Agreement and the various local agreements, supplements and/or riders shall constitute one (1) bargaining unit.” While the Agreement permits local supplements that address site-specific issues, it sets forth minimum national standards on a variety of issues, including discipline, union security, shop stewards, union access to the Employer’s facilities, layoffs, and seniority. It also includes a grievance-arbitration procedure to resolve certain disputes at the national level. It specifically states that previously-adopted agreements, practices or provisions that contain lesser wages, hours or conditions than those of the National Agreement would be null and void.

After the National Agreement was in effect for over a year and a half, the Petitioner filed a decertification petition on April 11, 2013, and amended it on April 16, 2013. She denied receiving any communications from the Union about the National Agreement or about meetings or cookouts to discuss it. The Petitioner testified that she first learned that a national contract existed in late fall or early winter of 2012 when the Employer’s Branch Manager commented that the National Agreement mentioned flu shots. The Petitioner made a copy of the Agreement for the Branch Manager but denied knowing its contents and asserted that she was not curious about what it contained.

At the hearing, the parties disputed the Petitioner’s status as a member and whether, as a non-member, she would have received notice of the National Agreement. The Petitioner asserted that she had always been a fair share member but that the Union wrongfully had dues deducted from her paychecks. In contrast, Gregory Glimco testified that the Petitioner was a full member until February of 2012. Even if the Petitioner was a non-member, Gregory Glimco testified that non-members who were entered in the “Titan system”⁵ would have received notice of the national merger. The Union also noted that the Petitioner never voiced any objections over the National Agreement.

III. ANALYSIS

The current decertification petition cannot be processed. The Petitioner seeks to decertify the Batavia unit, but, as the facts demonstrate above, the Batavia unit has been merged into a larger, national unit. Because the petitioned-for unit is not coextensive with the recognized national unit, the Petitioner seeks an inappropriate unit.

Although in *West Lawrence Care Center, Inc.*, 305 NLRB 212 (1991), the Board found an exception to the merger doctrine, the circumstances in that case are not present in the instant case. In *West Lawrence Care Center, Inc.*, the Board encountered “unusual circumstances,” in that the employees had been in a single-employer unit for more than 15 years and in a multi-employer unit for merely 9 months. In contrast, the current case presents neither a multi-employer unit nor a long bargaining history. Instead, First Student is the sole employer of the local bargaining unit members, and at the time it signed a local agreement on January 7, 2010, it

⁵ The record does not specifically explain the Titan system. It appears to be a database that stores employees’ contact information.

was already working on a national agreement for a single bargaining unit. By June 1, 2011, the National Agreement was in effect.

Moreover, at the time the Petitioner filed her decertification petition in April of 2013, the National Agreement had been in effect for over a year and a half. This case presents a situation similar to that in *S.B. Restaurant of Huntington*, where the Board dismissed a deauthorization petition for a single location when the petition was filed one year after multiple locations merged into a single national unit. 223 NLRB 1445 (1976). Moreover, the National Agreement clearly constitutes the “basic agreement” for all locals and sets forth minimum national standards that trump any lesser provisions and terms and conditions of employment.

Finally, Petitioner’s argument that she lacked notice of the merger does not warrant a different result. The record evidence shows several attempts by both the Internal and local to notify both members and non-members of the National Agreement and the vote. Moreover, while this particular local’s locations did not have a significant voting turnout and it is unclear how many employees from the Batavia unit voted, the Union presented evidence that a total of 19,214 employees across all locals participated in the vote.

Even if the Petitioner did in fact lack notice, the merger doctrine does not require that all employees be notified of a change in the bargaining unit. Although in *First Student*, 359 NLRB No. 27 (December 5, 2012), the Board noted the Regional Director’s finding that employees had notice and an opportunity to vote, the Board did not specifically require that all employees be notified. The Board ultimately denied review of the Regional Director’s Order Dismissing Petition in that case because the petitioned-for unit had been merged into a national bargaining unit and the petitioned-for unit was not co-extensive with that.⁶

In addition to the above Board decision, several other Regions have already considered these same circumstances, and each of those petitions has been dismissed for reasons similar to those set forth in this Decision.⁷

IV. ORDER

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.

V. 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

⁶ In any event, even if the unit was coextensive with the unit in the National Agreement, a petition would nevertheless be time-barred by the National Agreement. Where, as here, a contract’s duration is longer than 3 years, it will act as a bar for the first 3 years of its term. *General Cable Corp.*, 139 NLRB 1123 (1962); *Union Carbide Corp.*, 190 NLRB 191, 192 (1971). Since the National Agreement was effective by its terms on June 1, 2011, it acts as a bar until May 31, 2014, except for the window period 60 to 90 days before May 31, 2014.

⁷ See cases 03-RD-091035, 15-RD-092716, and 19-UD-077098.

the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 22, 2013**. *The request may be filed electronically through the Agency's website, www.nlr.gov,⁸ but may not be filed by facsimile.*

Signed at Chicago, Illinois this 8th day of May 2013.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
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National Labor Relations Board
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⁸ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.