

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

FIRST TRANSIT, INC.

Employer

and

Case 19-RD-121241

AMALGAMATED TRANSIT UNION  
LOCAL 587, AFL-CIO

Union

and

MARY MILES, an Individual

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The above-captioned matter is before the National Labor Relations Board (“Board”) upon a petition duly filed under § 9(c) of the National Labor Relations Act (“Act”), as amended. Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.<sup>1</sup>

**I. SUMMARY**

The Employer, which provides paratransit services, operates a call center in Seattle, Washington (“Facility”). Since at least 2010, the Union has represented employees at the Facility. The collective bargaining relationship is currently embodied in a collective bargaining agreement (“CBA”) between the Union and the Employer and effective by its terms from March 9, 2010, through March 31, 2014.

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<sup>1</sup> The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed. The labor organization involved claims to represent certain employees of the Employer, and is a labor organization within the meaning § 2(5) of the Act. The Employer is engaged in commerce within the meaning of §§ 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

On January 24, 2014, after the CBA had been in effect for over 3 years and before any new agreement had been reached, Petitioner filed the instant decertification petition on behalf of “the employees of First Transit, Inc.” At hearing, over the Union’s objection, the Hearing Officer allowed Petitioner to amend the petition to accurately reflect her status and intention to file as an employee.

The issues in this proceeding are threefold. First, the Union seeks to challenge the Board’s longstanding 3-year contract bar rule, as set forth in *General Cable Corp.*, 139 NLRB 1123 (1962). Second, the Union questions the appropriateness of the petition amendment at hearing to reflect Petitioner’s status as an individual, rather than as a labor organization. Third, the Union contends that, should it succeed in extending the contract bar, the petition is not timely filed.

I have carefully reviewed and considered the record evidence and the arguments made by the parties at the hearing and in their respective post-hearing briefs and make the following findings.<sup>2</sup> First, a question concerning representation exists and the petition was timely filed pursuant to existing Board precedent under *General Cable Corp.* Second, the petition amendment at hearing was appropriate in light of Petitioner’s apparent intention to file as an employee on behalf of a group of employees at the time she initially filed the petition. Third, the filing date of the original petition is controlling, which was timely under established Board precedent. In view of the above and the record as a whole, I shall direct an election in the unit described below.

Below, I have set forth the record evidence relating to the collective bargaining history, and the filing and amending of the instant petition. Then, I set forth an analysis of the Board’s relevant standards for contract bar, the filing of petitions, and hearing officer conduct, and apply those standards to the record evidence. Finally, I conclude with the details of the directed election and the procedures for requesting review of this decision.

## **II. RECORD EVIDENCE<sup>3</sup>**

As noted above, the Employer operates a call center in Seattle, Washington. The record does not detail the nature or scope of the Employer’s operations at the Facility.

### **A. COLLECTIVE BARGAINING HISTORY**

The Union and the Employer are parties to a CBA, which by its terms is effective from March 9, 2010, through March 31, 2014, and which covers a unit of employees employed at that Facility. The composition and scope of this unit is not in dispute and is described below in the conclusion.

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<sup>2</sup> The Union and the Employer timely filed briefs; Petitioner did not file a brief.

<sup>3</sup> The Union called Petitioner Mary Miles and Union Vice President Neal Safrin as witnesses. The Employer and Petitioner did not call any witnesses.

On October 17, 2013, the Union requested to commence bargaining with the Employer to modify or amend the CBA. Bargaining sessions are scheduled for February 12, 13, and 14, 2014. The record contains no evidence suggesting that the Union and the Employer have reached or executed an agreement to modify or amend the CBA.

## **B. THE PETITION**

On January 24, 2014, after the CBA had been in effect for over 3 years, Petitioner filed the instant petition. On the petition in item 13, Petitioner wrote in "The employees of First Transit, Inc." as the full name of the party filing the petition.

At hearing, the Union argued that the petition did not raise a question concerning representation because the party filing and listed in item 13 of the petition was neither a person nor a labor organization, and, thus, did not comply with § 101.17 of the Board's Rules and Regulations. In addressing the Union's argument regarding petition item 13, the Hearing Officer asked Petitioner whether she considered herself to be a labor organization and whether she intended to file the instant petition as a labor organization. Petitioner, who was appearing pro se, replied "no," but did note that she expected to file the petition "as a group." The Hearing Officer asked Petitioner if she wished to amend the petition to reflect her intent to file as an individual. The Union objected on the grounds that the Hearing Officer's questions constituted legal advice. The Hearing Officer overruled the objection and allowed the amendment to the petition, to accurately reflect Petitioner's status and her intention to file as an employee of the Employer and on behalf of a group of her co-workers. The Union does not dispute Petitioner's status as an employee of the Employer.

Subsequently at hearing, the Union called Petitioner as a witness to elaborate on her desire to file the original petition as part of a group. Petitioner essentially testified that she was filing on behalf of herself and the other employees who had signed the showing of interest supporting the decertification petition. Throughout her testimony, Petitioner referred to employees who had signed the "petition." However, it is apparent, as the Union notes in its brief, that Petitioner actually meant the showing of interest that employees had signed in support of the petition, rather than the petition itself.

## **III. ANALYSIS**

### **A. CONTRACT BAR**

The Board has long held that a contract having a fixed term of more than 3 years operates as a bar for as much of its term as does not exceed 3 years. *General Cable Corp.*, 139 NLRB 1123 (1962); *General Dynamics Corp.*, 175 NLRB 1035 (1969). The period during which a contract is operative as a bar runs from its effective date. *Benjamin Franklin Paint Co.*, 124 NLRB 54 (1959). If, after the first 3 years of a contract, and before the filing of a petition, the parties execute a new agreement, or

expressly reaffirm the prior agreement, the new agreement is effective as a bar for as much of its term as does not exceed 3 years. See *Southwestern Portland Cement Co.*, 126 NLRB 931 (1960); *Santa Fe Trail Transportation Co.*, 139 NLRB 1513, 1514 fn. 2 (1962).

Here, the CBA became effective on March 9, 2010, and Petitioner filed the petition more than 3 years after this date. Further, it does not appear that the Union and the Employer entered into any new agreement after the initial 3-year period had expired. Indeed, the record reflects that the Union and the Employer are only now negotiating for a modification or amendment of the CBA. In light of the above and the record as a whole, I find the Board's contract bar principles do not bar the instant petition.

At hearing and in its brief, the Union introduced a BNA report and a number of other documents to support the Union's argument to extend the contract bar principle from 3 to 4 years. However, such arguments are appropriately addressed to the Board, as I am bound by and shall apply the precedent set forth above, in *General Cable Corp.*, 139 NLRB 1123 (1962) and *General Dynamics Corp.*, 175 NLRB 1035 (1969), to the instant case before me.

## **B. FILING AND AMENDMENT OF THE PETITION**

§ 101.17 of the Board's Rules and Regulations states in pertinent part:

The investigation of the question as to whether a union represents a majority of an appropriate grouping of employees is initiated by the filing of a petition by any person or labor organization acting on behalf of a substantial number of employees or by an employer when one or more individuals or labor organizations present a claim to be recognized as the exclusive bargaining representative. If there is a certified or currently recognized representative, any employee, *or group of employees*, or any individual or labor organization acting in their behalf may also file decertification petitions to test the question of whether the certified or recognized agent is still the representative of the employees. [Italics provided.]

Whether Petitioner was seeking to file as an individual, employee, or as a "group of employees," § 101.17 permits all three situations. Thus, Petitioner had standing to file the instant petition. In sum, the Union's argument that Petitioner was not filing as an employee or on behalf of a group of employees is neither supported by the record or the initial manner in which Petitioner completed item 13 of the petition.

As for the Hearing Officer's conduct at the hearing, the Board's "Casehandling Manual, Part Two, Representation Proceedings" in § 11188 details a hearing officer's responsibilities during a pre-election hearing of this nature. § 11188.1 states in pertinent part:

The hearing officer should take an active role in exploring all potential areas of agreement and narrowing the issues that remain to be litigated. The hearing officer should guide, direct, and control the hearing, excluding irrelevant and cumulative material and not allowing the record to be cluttered with evidence submitted "for what it's worth." Cf. Sec. 11217. In addition, the hearing officer should solicit stipulations and utilize offers of proof in order to achieve an uncluttered record. Secs. 11187.2, 11189(f) and 11226. The hearing officer may cross-examine and call and examine witnesses. The hearing officer may call for and introduce all appropriate documentary evidence, being limited only by the relevance of the evidence to the issues. Whenever the hearing officer's technical assistance is required by any party, it should be given.

When necessary to ensure the development of a record that is complete, concise, and cogent, it may become necessary for the hearing officer to interrupt the presentation of a party and conduct some or all of the questioning of a witness or witnesses. However, it should be recognized that the hearing officer's responsibility for the development of a complete yet concise record may on occasion lead to an appearance of undue assistance to a party that does not itself introduce evidence in support of its positions or of undue interference with a party seeking to introduce immaterial, irrelevant, or cumulative evidence. In discharging his/her obligation to develop a full yet concise record, the hearing officer must also keep constantly in mind that to the parties he/she is the Board's representative and that the parties expect him/her to be objective and considerate in the conduct of the hearing. Thus, the hearing officer, while meeting his/her primary responsibility to develop a full yet concise record, should also exercise self-restraint, should give the parties prior opportunity to develop points, and should refrain from needlessly taking over.

The same Board Manual under §11189 (e) requires the Hearing Officer to ascertain the correct names of the parties.

(e) Correct names of parties should be ascertained. Sec. 11198. Appropriate corrective motions for amendment of the petition, if made, should be ruled on. Secs. 11014 and 11204.

Here, the Hearing Officer appropriately fulfilled his duty to develop a complete, concise, and cogent record by assisting a pro se party in her understanding of Board processes, and by allowing an amendment of the petition. Most significantly, the amendment of the petition, as corroborated by the Union's subsequent questioning of Petitioner, accurately reflects her status as an employee of the Employer, filing on behalf of the group of employees who signed the showing of interest in support of the instant petition.

The Union contends that Petitioner did not understand that her petition was defective or how to correct it and that the Hearing Office improperly advised Petitioner on how to correct the critical defect. However, the record fails to support the Union's conclusion and arguments regarding the Hearing's officer's conduct at the hearing. Such conduct here by the Hearing Officer simply does not rise to the level of inappropriate advice. Rather, hearing officers routinely assist all parties with technical matters that might otherwise escape their attention during pre-elections hearings. For example, a hearing officer may assist a petitioning union by asking whether it wishes to amend a petition to reflect the legal and correct name of the employer, to reflect the correct job titles of employees whom the union is seeking to include or exclude in the petitioned-for unit, and/or to reflect the correct name of the petitioning union itself under item 13 of the petition. In short, hearing officers provide this type of assistance to parties with the goal of developing a complete and accurate record while at the same time assisting the parties to clarify their positions so that any issues unresolved by the parties may be fully presented for decision.

Here, I find that the Hearing Officer properly assisted Petitioner in amending the petition to accurately reflect her status as an employee filing on behalf of a group of employees who support the decertification petition. Notably, the Union does not dispute the employee status of Petitioner.

The cases cited by the Union for the proposition that the Board remain neutral while performing its duties are distinguishable. *Athbro Precision Engineering and IUE*, 166 NLRB 966 (1967) (Board Agent conducting election drank beer with a union representative during a break in polling); *Hudson Aviation Services, Inc.*, 288 NLRB 870 (1988) (Board agent instigated a loud argument with assistant manager during an election, and threatened to stop the election, thus giving the impression that Board was displeased with and was criticizing management of the employer). Those cases involved incidents that occurred *during* the course of an election, not during a pre-election hearing. Here, the Hearing Officer's conduct merely related to assistance to Petitioner in amending and processing her petition. Such conduct does not constitute argument against or bias towards any of the parties.

In light of the above and the record as a whole, I affirm the Hearing Officer's ruling regarding assisting Petitioner and permitting her to amend the petition to accurately reflect her status and intention to file her petition as an employee of the Employer on behalf of a group of her co-workers.

### **C. TIMELINESS OF THE PETITION**

Except in certain circumstances, to be timely with respect to an existing contract of reasonable length, a petition must be filed more than 60 days but less than 90 days before the expiration date of the contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). Where a petition is amended, and the employer, operations, or employees involved were contemplated under the original petition, and the amendment does not

substantially enlarge the character or size of the unit, the filing date of the original petition is controlling. *Deluxe Metal Furniture Co.*, 121 NLRB 995, fn. 12 (1958).

Here, as discussed above, the petition amendment simply and correctly named the Petitioner and did not alter the Employer, operations, employees involved, or size or character of the unit. As such, I find that the original filing date of the petition is controlling.

The Union argues that were the Board to adopt an extension of the contract bar, the Board would do so for a period of 4 years, but not more. In light of this, the Union contends that the appropriate insulated window period would thus run from January 7 to March 8, 2014, and that the petition would thus be untimely. However, as I noted above, I must dismiss these arguments because I am bound by controlling Board law, under which I have already found that the petition was timely filed.

#### **IV. CONCLUSION**

In light of the above and the record as a whole, I find that the petition was timely filed and appropriately amended, and that a question concerning representation exists. Accordingly, I shall direct an election in the following appropriate unit, which is co-extensive with the unit set forth in the parties' current CBA:

All full-time and regular part-time employees in customer service/QA, scheduling, dispatch, pathway review, transit instruction, reservations, and reception employed by the Employer at its facility located in Seattle, Washington; excluding administration, information services, confidential employees, managers, and guards and supervisors as defined by the Act.

There are approximately 73 employees in the unit ("Unit") found appropriate.

#### **V. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Region among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding 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 that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause

since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **AMALGAMATED TRANSIT UNION, LOCAL 587, AFL-CIO.**

#### **A. LIST OF VOTERS**

In order to assure 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 that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Region 19 of the National Labor Relations Board, 915 2<sup>nd</sup> Avenue, Suite 2948, Seattle, WA 98174-1006, on or before **February 19, 2014**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Because the list is to be made available to all parties to the election, please furnish a total of four (4) copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

#### **B. NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 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.

### C. 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 NW, Washington, DC 20570. This request must be received by the Board in Washington by **5:00 p.m. (ET) on February 26, 2014**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.<sup>4</sup>

DATED at Seattle, Washington on the 12<sup>th</sup> day of February 2014.



Ronald K. Hooks, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

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<sup>4</sup> To file a request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Region's original correspondence in this matter, and is also available on [www.nlr.gov](http://www.nlr.gov) under the E-file tab.