

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**AMERICAN SCHOOL BUS, LLC<sup>1</sup>**

**Employer**

**and**

**CASE 13-RC-124121**

**TEAMSTERS LOCAL 777**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, (“the Act”), a hearing was held on March 20, 2014, before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.<sup>2</sup>

**I. Issue**

The single issue presented during the hearing was whether the petitioned-for unit of full-time and regular part-time drivers and monitors constitutes an appropriate unit for purposes of collective bargaining.

The Employer contends that the petitioned-for unit is inappropriate because the drivers and monitors lack a community of interest.

The Petitioner, Teamsters Local 777, maintains that the Employer failed to show that the petitioned-for unit was inappropriate and therefore an election should be directed in the petitioned-for Unit consisting of:

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<sup>1</sup> At hearing, the parties stipulated that this is the correct legal name of the Employer.

<sup>2</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. 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.
- c. The Petitioner is a labor organization within the meaning of the Act.
- d. There is no collective-bargaining agreement covering any of the employees in the unit sought by the Petitioner or the unit proposed by the Employer, and the parties do not contend that there is any contract bar to this proceeding.
- e. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

“All full-time and regular part-time drivers and monitors of American Bus Company, LLC at its facility currently located at 10101 W. Laraway Rd., Frankfort, Illinois; excluding all full-time and regular part-time managers, mechanics, dispatchers, yardmen, office clerical employees and guards, professional employees and supervisors as defined by the Act.”

There are approximately 179 total employees in the petitioned-for unit, of which approximately 90 are drivers and 89 are monitors.

## **II. Decision**

Based on the entire record in this proceeding and for the reasons set forth below, I find that the petitioned-for unit is appropriate for purposes of collective bargaining.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full-time and regular part-time drivers and monitors of American Bus Company, LLC at its facility currently located at 10101 W. Laraway Rd. Frankfort, Illinois; excluding managers, mechanics, dispatchers, yardmen, office clerical employees and guards, professional employees and supervisors as defined by the Act.

The unit found appropriate herein consists of approximately 179 employees.

## **III. Statement of Facts**

### **A. The Employer’s Operations and the Job Responsibilities of Drivers and Monitors**

The Employer is in the business of transporting students to and from school. Located in Frankfort, Illinois, the Employer generally serves school districts in Chicago’s far southeastern suburbs, and ninety-five percent of the students it serves are special education students with disabilities. To transport these students, the Employer employs approximately 90 drivers and 89 monitors (also called aides).

Each bus transporting students has one driver and one monitor. At the beginning of each school year, both drivers and monitors bid on routes and receive their assignments based on seniority. Once routes are assigned, drivers and monitors typically remain on designated routes for the rest of the school year unless problems or requests from the school district arise.

On their routes, drivers sit at the front of the bus and drive the bus, and monitors sit with students and move around the bus. According to the Employer’s Operations Manager Andrew Tierney, drivers are responsible for driving safely, adhering to traffic laws, and ensuring students get on and off the bus, while monitors keep order and assist and secure students into their seats. In addition to these responsibilities, drivers help monitors to load wheelchairs on to the bus and

monitors assist drivers when drivers need to back up their vehicle by moving to the back of the bus to observe and report any obstacles or issues which might hinder the driver.

The parties presented conflicting testimony at the hearing regarding whether both drivers and monitors communicate with the Employer's dispatcher, who is stationed at the Employer's Frankfort, Illinois office. Operations Manager Tierney testified that while the dispatcher communicates back and forth with the driver regarding issues such as pickup times or student absentees, the dispatcher has no communication with the monitor. Tierney further testified that the monitor does not use the bus's radio to communicate either. In contrast, a driver and monitor both testified that monitors *do* communicate with the dispatcher. The driver testified that monitors do so by using either their own phones or the bus radio, while the monitor confirmed that dispatch calls her cell phone.

Finally, a driver and monitor testified that both drivers and monitors report incidents on the bus. The driver further testified that if an incident occurs on the bus, both the driver and monitor fill out a form to report it. While there can be two forms, usually there is just one. They then make a copy of the report, and submit a copy to both the school at issue and the Employer's dispatcher.

## **B. Job Qualifications and Training**

To obtain employment with the Employer, both drivers and monitors must pass background tests and pre-employment drug tests. Drivers must also obtain certain licenses. Conflicting testimony was offered at the hearing, however, regarding whether monitors must be licensed too. Operations Manager Tierney initially testified that the Employer does not require monitors to have a license but then later confirmed that any employee hired must have one.

While the record does not reflect what type of license a monitor must possess, Tierney testified that drivers must have two licenses issued by the Illinois Secretary of State: 1) a commercial driver's license (CDL) for driving; and 2) a school bus driver's license. As part of the licensing process, drivers must take three written tests,<sup>3</sup> complete a class on school bus driving, and take a pre-inspection test and road test. To prepare drivers for these tests, the Employer provides them with training, including study materials and dedicated time behind-the-wheel driving. Tierney testified that monitors are not required to complete any of the above training, classes, or tests related to licensing. Although the Employer has a contract with a certain school district that requires all drivers and aides to take a defensive driving course every two years that is certified by the National Safety Council, Tierney testified that monitors have not actually participated in such a course.

Both the Employer and Illinois state agencies have additional requirements for drivers, but not monitors. For instance, the Illinois Department of Transportation requires that only drivers undergo a physical screening and a drug test screening. Drivers, but not monitors, must also pass a physical fitness test to demonstrate they are in adequate shape to take children off of the bus. The Employer further requires driver applicants to present a fairly clean motor vehicle record (MVR) but does not review a monitor's MVR prior to employment.

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<sup>3</sup> These tests include: 1) the CDL test; 2) the passenger endorsement test; and 3) the school bus driver test.

In addition, after being hired, both drivers and monitors must meet certain requirements to maintain their employment. For example, training exists for both, though the State of Illinois does not mandate monitors' training. Drivers, but not monitors, are required to complete a yearly two-hour refresher course administered by the Illinois Secretary of State. The record also reflects that the Employer has its own trainers as well, though it uses different trainers for monitors and drivers.

Drivers must further submit to yearly physicals and drug screening, and certain school districts require information for drivers, but not monitors, such as a copy of the driver's license, a DOT card, and possibly the driver's MVR. Drivers, and not monitors, must also do pre-trip inspections and complete a state-mandated pre-inspection form before taking the bus out of the yard to drive students. The pre-trip inspection consists of a series of checklists a driver must complete to ensure the bus is safe to drive.

Due to the above requirements, Tierney testified that a monitor has never filled in for a driver, although some monitors in the past ultimately became drivers after being a monitor. In turn, drivers rarely fill in for monitors, though they may if the Employer is short-staffed.

### **C. Other Terms and Conditions of Employment**

Once drivers and monitors are hired and meet the various requirements discussed above, Operations Manager Andrew Tierney directly supervises both drivers and monitors in their daily activities. Both drivers and monitors are subject to the same employee handbook and attendance policy. When drivers or monitors need to call in sick, they call the office and speak to dispatch, office personnel, or Tierney himself.

Drivers and monitors also share the same disciplinary policy, though the parties offered slightly different testimony with regard to which employee is disciplined for a student being left behind on the bus. Tierney explained that drivers are disciplined for this issue and monitors are possibly disciplined if the issue involved the monitor. In contrast, both a bus driver and monitor confirmed that both drivers and monitors are disciplined if a student is left on a bus. Tierney further testified that drivers are also responsible for buses that fall behind schedule and for traffic infractions.

When not on their routes, drivers and monitors share the same break room. Additionally, both drivers and monitors are required to attend mandatory meetings together which are conducted by the Employer on safety and other issues.

Finally, testimony was also presented regarding the employees' pay and benefits. Both drivers and monitors are paid on an hourly basis bi-weekly. The starting pay for drivers is \$11.00/hour for drivers and \$8.25/hour for monitors. Drivers also receive an extra ten minutes per day to perform a pre-trip inspection. Different rates of pay also apply for charter pay, which refers to pay for field trips. The charter pay rate for a driver is \$10.00/hour and for a monitor is \$8.50/hour.

The Employer also offers a safety incentive, which is a bonus, to both drivers and monitors. Tierney explained that the safety incentive for drivers consists of driving accident-free, and the safety incentive for monitors is to have no accidents with students, such as no students falling down or cutting their legs.

In addition to the above pay, the Employer offers drivers a health insurance package that includes dental, vision, medical and life. Monitors do not currently receive those benefits.

#### IV. Legal Analysis

The only issue in the instant case is whether the unit sought by the Petitioner constitutes an appropriate unit. The Employer maintains that the petitioned-for unit is inappropriate because drivers and monitors lack a community of interest.

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry ends. *Boeing Co.*, 337 NLRB 152, 153 (2001). Section 9(b) of the Act requires that a unit be appropriate in order to ensure employees the "fullest freedom in exercising the rights guaranteed by this Act." It is well established that a petitioned-for unit need only be *an* appropriate unit for collective-bargaining and need not be the most appropriate unit, the largest appropriate unit, or the ultimate appropriate unit. See, e.g., *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 10 (2011); *International Bedding Co. (IBC of Pennsylvania)*, 356 NLRB No. 168, slip op. at 2 (2011)(citing *Morand Brothers Beverage Co., et al.*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951)); *Overnite Transportation*, 322 NLRB 723, 725 (1996). Accordingly, the Board has recognized that more than one way exists in which employees of a given employer may be grouped into appropriate units for purposes of collective bargaining. See *Rothstein Corp.*, 233 NLRB 545, 547 (1977).

When determining the appropriateness of a unit, the Board examines whether the employees at issue share a sufficient "community of interest." *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). The Board considers several community of interest factors, including the employees' compensation and benefits; hours of work; work locations, management and supervision; skills, training, duties, and functions; general working conditions of the employees; the degree of interchange and contact amongst employees; and any historical bargaining involving the employees. See, e.g., *United Operations, Inc.*, 338 NLRB 123, 123 (2002); *Overnight Transportation*, 322 NLRB at 724. In addition to these factors, the petitioner's desire regarding the unit is also a relevant consideration. See, e.g., *International Bedding Co.*, 356 NLRB No. 168, slip op. at 2. The Board applies a totality of the circumstances approach, and no one factor is given controlling weight. *Airco, Inc.*, 273 NLRB 348, 348 (1984).

Applying the foregoing principles to the instant case, I find that the petitioned-for unit of full-time and regular part-time drivers and monitors share a sufficient community of interest in their terms and conditions of employment to constitute an appropriate unit.<sup>4</sup> Specifically, in their

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<sup>4</sup> In finding that the petitioned-for unit is appropriate I did not rely on testimony presented by the Petitioner at hearing regarding the purported history of collective-bargaining in the school bus industry because this testimony lacked a proper foundation and was primarily comprised of hearsay.

respective job positions working for the Employer, both drivers and monitors share a high degree of contact and interaction in the performance of their employment duties. Thus, record evidence established that they work closely together on a daily basis and act as a team on a regularly assigned bus, on a regularly assigned route to transport students. Both drivers and monitors report to the same facility and ultimately have the same location of work since both a driver and monitor must be present together on their assigned bus each day. Although the driver is driving at the front of the bus and the monitor is moving around observing students and the latter does not substitute for the former, both drivers and monitors are nevertheless responsible for the students' safety. In fact, both work together to report incidents on the bus, such as a student left behind, and both attend the same safety meetings.

Although the Employer argues that different job qualifications and training exist for drivers and monitors, this difference does not render the petitioned-for unit inappropriate because it is one community of interest factor among many. As the Board has recognized, one factor is not dispositive in determining this issue since the Board applies a totality of the circumstances analysis. See e.g. *Airco, Inc., supra*.

Moreover, drivers and monitors are subject to common working conditions. Specifically, to obtain employment, both drivers and monitors must pass background tests and pre-employment drug tests. Additionally, both drivers and monitors are hourly paid<sup>5</sup>, paid bi-weekly, eligible for safety bonuses, attend employer-held mandatory meetings together, share the same break room, have common supervision and are subject to the same work rules, disciplinary process, and attendance policy.

Based upon the foregoing I find that the Employer has not established that the petitioned-for unit of drivers and monitors is inappropriate. Because I find that the drivers and monitors share a community of interest and therefore constitute an appropriate unit, I direct an election in the petitioned-for unit.

## **V. 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 **Teamsters Local 777**. 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 strike who have retained their status as strikers but who have been permanently replaced, as well as their

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<sup>5</sup> That drivers are paid for an additional 10 minutes per day to perform a pre-trip inspection and monitors are not is not sufficient to render the petitioned-for unit inappropriate.

replacements are eligible to vote. Unit employees in the military services of the United States 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. List of 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 7 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). The 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.). This list may initially be used by me to assist in determining an adequate showing of interest. 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 on or before **April 7, 2014**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this 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](http://www.nlr.gov),<sup>6</sup> by mail, or by facsimile transmission at 312-886-1341. The burden of establishing the timely filing and receipt of the list will continue to be placed 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 e-mail, 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 to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed.

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<sup>6</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

Section 103.20(c) 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.

## **VI. 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, DC 20570. This request must be received by the Board in Washington by **April 14, 2014**.

DATED at Chicago, Illinois this 31<sup>st</sup> day of March 2014.

/s/ *Peter Sung Ohr*  
Peter Sung Ohr, Regional Director  
National Labor Relations Board  
Region 13  
209 South La Salle Street, Suite 900  
Chicago, Illinois 60604-1443