

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

A.J. MYERS AND SONS

and

Case 06-CA-119505

AMALGAMATED TRANSIT UNION, LOCAL 1738, AFL-CIO,
CLC

**ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE
DECISION OF ADMINISTRATIVE LAW JUDGE DAVID I. GOLDMAN**

Submitted by:

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Dated at Pittsburgh, Pennsylvania,

this 14th day of November 2014

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Counsel for the General Counsel hereby submits this Answering Brief to Respondent's Exceptions to the Decision of Administrative Law Judge David I. Goldman in the above-captioned matter.¹

I. STATEMENT OF THE CASE²

The Administrative Law Judge's decision sets forth in detail many of the operative facts in this case. In addition, the parties in this case stipulated to many of the facts relevant to an

¹ References to General Counsel Exhibits are designated as "GCX-n," Respondent's Exhibits are "RX-n" and Joint Exhibits are "JX-n." Reference to the Decision and Recommended Order of the ALJ appear as "ALJD at p, lines ____." Finally, references to Respondent's Brief in Support of Exceptions appear as "Respondent's Brief at ____."

² The matter was tried before Administrative Law Judge David I. Goldman (also herein called the ALJ) in Pittsburgh, Pennsylvania on July 23, 2014. The ALJ issued his decision on October 3, 2014. In his decision, the ALJ found, inter alia, that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the Union.

analysis of the *Burns/Fall River* successor doctrine.³ Respondent's Exceptions to the conclusion that Respondent violated Section 8(a)(5) of the Act by refusing to recognize and bargain with the Amalgamated Transit Union, Local 1738, AFL-CIO, CLC (Union) are primarily based on legal argument since the legally operative facts for finding a *Burns* successor are largely undisputed. To the extent that Respondent's Exceptions question the Administrative Law Judge's findings of fact, it is apparent that Respondent does not contest the validity of the underlying factual findings. Respondent instead disputes the weight given to those facts by the ALJ to support the conclusion that Respondent is a *Burns* successor and as such violated Section 8(a)(5) of the Act by refusing to recognize the Union as the collective bargaining representative of drivers employed to service its contract to provide school bus transportation services to the Greater Latrobe Area School District (herein also called Latrobe School District). As will be argued below, the ALJ properly found based upon the credible record evidence that Respondent is a successor to First Student and as such, has an obligation to recognize and bargain with the Union. Further, the ALJ correctly concluded that that Respondent's refusal to recognize and bargain with the Union violates Section 8(a)(5) of the Act.

A. Background

The ALJ's findings of fact to support his determination that Respondent is a *Burns* successor and that Respondent failed to rebut the presumption in favor of a single-facility Latrobe unit, are fully supported by the credible record evidence in this case.

B. Description of the Predecessor's Operations and Bargaining History

On March 11, 1996, Amalgamated Transit Union, Local 85, AFL-CIO, CLC was certified as the exclusive collective bargaining representative of school bus drivers, park-outs, and monitors working at the terminal located at 1010 Clearview Avenue in Latrobe, Pennsylvania (JX1 Stipulation 33; JX2). At that time, the employees at that Route 981 location were

³ *NLRB v. Burns Int'l Security Services, Inc.*, 406 NLRB U.S. 272 (1972); *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987).

employed by Laidlaw Transit, Inc. (JX2). In about 1997, the school bus drivers at the Route 981 location were placed in a different local, Amalgamated Transit Union, Local 1728, AFL-CIO, CLC and by about 1999 these same members chartered their own local, Amalgamated Transit Union, Local 1738, AFL-CIO, CLC, the Union involved herein (T. 77).

About 2005, First Student (the predecessor to Respondent) purchased the facility and operations at the Route 981 location (T. 80). There, the First Student drivers were employed to transport students within the locations for which their employer held service contracts, including Greensburg-Salem School District, Jeannette City Schools, Greensburg Central Catholic School, Seton Hill University, and until about July 2013, Latrobe School District (T. 76-77).

First Student and the Union were parties to collective bargaining agreements, including one effective August 15, 2010 through August 15, 2013, covering the unit of drivers at First Student's Latrobe terminal, including those who transported students for the Latrobe School District (GCX2). The agreement expressly states that the contract is entered into by First Student, its successors, and assigns, and the Union. The agreement described above covered employees in the following described unit:

All full-time and regular part-time bus employees, spare bus employees, van employees, utility worker and monitors, employed by the Employer at its Latrobe facility, 5947 Route 981, Latrobe, Pennsylvania 15650, and all other facilities under the direction of or replacement of the Latrobe facility; excluding mechanics, dispatchers, laborers, office clerical employees, guards, professional employees and supervisors as defined in the Act (GX2).

C. Description of Respondent's Operations

1) Respondent enters into a contract with the Latrobe School District

Respondent furnishes school transportation services to various school districts located in Western Pennsylvania. Respondent's operations are headquartered in Kittanning, Pennsylvania. Respondent currently operates six terminals throughout four counties in western Pennsylvania. (GCX6). Respondent's newest terminal is its Latrobe terminal, which is located at 163 Menasha Lane in Latrobe, and which opened in about August 2013, upon Respondent's

being awarded a seven-year contract to provide regular school bus transportation services to the Latrobe School District beginning with the 2013-2014 school year (T. 84; JX1 Stipulation 4). Respondent has had no previous collective bargaining history with any union (T. 16).

As discussed further in this Answering Brief, the ALJ properly found that the Latrobe terminal unit is an appropriate unit and in so doing, relied upon Respondent's preexisting structure of its operations. Specifically, the record demonstrates that even before Respondent succeeded to providing transportation services to the Latrobe School District, Respondent structured its operations to service each of its school districts under contract with it from a dedicated single terminal. In this respect, Respondent's Kittanning terminal in Armstrong County, which is located about 45 minutes to an hour from Respondent's Latrobe terminal, serves the school transportation needs of the Armstrong School District (T. 84-85). The Mars terminal in Butler County, which is located about a 51-mile drive from Respondent's Latrobe terminal, serves the needs of the Mars Area School District (T. 85). The Harmony/Zelienople terminal also in Butler County is located about a 64-mile drive from Respondent's Latrobe terminal, and serves the Seneca Valley School District (T. 85-86). The Turtle Creek terminal serves the Woodland Hills School District in Allegheny County and is located about 33 miles from the Latrobe terminal (T. 86). Finally, the Export terminal, which serves the Franklin Regional School District in Westmoreland County, is located about 17 miles from the Latrobe terminal (T. 86-87).

Respondent's terminals operate independently and, as described above, exist to serve a specific school district. Each of the six terminals has its own terminal manager and assistant terminal manager (GCX6). In addition, each terminal has its own equipment, which is housed at the terminal when it is not being used (T. 87). Each terminal employs its own mechanics and some office staff (T.87-88).

After receiving the Latrobe School District contract and in preparation for the 2013-2014 school year, Respondent purchased the plot of land and building located at 163 Menasha Lane

in Latrobe, as well as school buses for use at its newest facility (T.141). Respondent's Latrobe terminal is located about three miles from First Student's Route 981 location (T. 54). The ALJ found and it is undisputed that Tom Oleyar and Michelle Murphy were former employees of First Student who held positions involving leadership and oversight of the drivers. When Respondent hired Oleyar and Murphy, they became undisputed Section 2(11) supervisors of Respondent (JX1 Stipulation 22; T. 89). Oleyar and Murphy became the first- and second-highest ranking managers working on a daily basis at Respondent's Latrobe facility (JX1 Stipulations 19 and 24).

- 2) Respondent hired a majority of its employees at its Latrobe terminal, sufficient to provide services to the Latrobe School District, from employees who had formerly worked for First Student, Inc. at its Route 981 location during the previous school year

During the latter part of the 2012-2013 school year, Respondent made employment applications available to employees of First Student by leaving them at the Latrobe School District high school building offices in a designated area (T.90). Respondent received completed applications, interviewed, and extended offers of employment to applicants before the beginning of the 2013-2014 school year (T. 90). By August 19, 2013, Respondent had hired about 52 drivers, all but one of whom had been employed as drivers at First Student's Route 981 facility during the previous school year.⁴ Since that time, Respondent hired only an additional six drivers for the Latrobe facility. Of those six, five were also former drivers employed by the predecessor at First Student's Route 981 facility during the previous school year (JX3). Thus, only one driver was not previously in the bargaining unit employed by the predecessor, First Student, during the relevant time frame (JX3).

⁴ Although Respondent's Secretary/Treasurer William Myers, testified that Respondent hired "between about 45 and 50, 51, somewhere in there," documents submitted by Respondent, as reflected in JX3, show that there were 52 drivers hired at Respondent's Latrobe terminal as of August 19, 2013(T.91; JX1 Stipulation; JX3).

- 3) The Union sought recognition and bargaining with Respondent, and Respondent refused to recognize and bargain with the Union

Respondent now concedes that on about November 25, 2013, Respondent received the Union's letter requesting recognition and bargaining on behalf of the Latrobe terminal drivers (Respondent's Brief at 8, fn.7; T. 28; GCX3). While Respondent had challenged the sufficiency of the Union's initial request for recognition, in its Brief in Support of Exceptions, Respondent expressly states that it does not challenge the ALJ's finding that the November 25 letter was a demand to bargain with Latrobe-based operators alone (Respondent's Brief at 8, fn. 7). On April 13, 2014, the Union sent another letter to Respondent's Export and Latrobe locations, again requesting recognition and bargaining and clarifying the Union's original request (GCX4). In response, Respondent sent the Union a letter dated April 25, 2014, declining to recognize and bargain with the Union (GCX5). As of the date of the hearing before the ALJ, Respondent continued to refuse to recognize and bargain with the Union (JX1 Stipulation 32).

II. **ARGUMENT**

A. Overview of Respondent's Exceptions

Respondent has timely filed with the Board two Exceptions to the decision of Administrative Law Judge David I. Goldman. A 30-page brief in support of those Exceptions was also filed. Counsel for the General Counsel opposes Respondent's Exceptions and argument in support thereof for the reasons set forth herein. As the record evidence shows, the ALJ properly gave weight to the relevant factors in favor of a *Burns* successor finding, and further properly determined that Respondent's evidence and arguments were insufficient to rebut the presumption favoring a single-facility unit consisting of Respondent's Latrobe drivers.

Each of Respondent's Exceptions will be addressed in this Answering Brief. Each section addressing Exceptions will address bullet points Respondent included in its Exceptions, which specify the facts and conclusions from the ALJ's decision that Respondent apparently disputes.

B. Exception No. 1 Concerning Respondent's Status As a *Burns* Successor

In Exception No. 1, Respondent disputes the ALJ's finding that Respondent is a successor employer under *NLRB v. Burns Int'l Security Services, Inc.*, 406 U.S. 272 (1972). In particular, Respondent seizes onto the point that there was no evidence at the hearing as to how many of the former First Student employees hired by Respondent actually drove for the Latrobe School District, rather than for other school districts that also were served by represented employees from First Student's Latrobe terminal. For this reason, apparently, Respondent challenges the ALJ's statement that the "unit transports the same body of students for the same customer – as did the unit operated by the predecessor First Student." (Respondent's Brief at 11-12; ALJD at 12, lines 5-8). Further, Respondent disputes the ALJ's conclusions that "the employees are doing the same job" and that "from the employee's perspective, there is substantial continuity between the old and new employing enterprise." (ALJD at 12, lines 9-11; ALJD at 15, lines 33-34).

As discussed below, contrary to Respondent's arguments, in order to find continuity of operations establishing *Burns* successorship, it is not legally required to show that the predecessor's drivers hired by Respondent actually drove for the Latrobe School District while employed by the predecessor. However, as a threshold matter, the record evidence demonstrates, by Respondent's own admission, it hired those predecessor's drivers who formerly drove Latrobe School District routes, and made an effort to assign them to the same routes when they came to work for Respondent (T. 92). At the hearing, Secretary/Treasurer and co-owner of Respondent William Myers testified that the Latrobe School District's transportation director asked Respondent "that if we were hiring a number of the previous drivers that he would like to see them on the previous routes that they had ran just to make the transition much smoother" (T. 92). Myers further testified and the record shows that Respondent complied with the transportation director's request to the extent that it could (T. 92).

The ALJ recognized this, noting that “in many cases, pursuant to the school district’s request, the A.J. Myers Latrobe terminal drivers are driving the same routes and therefore, the same individual students as they did when they drove for First Student” (ALJD at 12, lines 7-9). Thus, contrary to Respondent’s claim, there is substantial record evidence that the drivers Respondent hired to service its contract with the Latrobe School District actually drove for the Latrobe School District while working for the predecessor First Student.

Moreover, the Board’s prior decisions and the *Burns* successor doctrine plainly do not require what Respondent urges. Instead, the essential question is whether, at the time the Union requested recognition and bargaining, the majority of Respondent’s employees at its Latrobe terminal were formerly employed by the predecessor First Student at that predecessor’s Latrobe terminal. The focus of concern under the Act is industrial stability through collective-bargaining, and the successorship doctrine reflects that focus. See, e.g., *Derby Refining Co.*, 292 NLRB 1015 (1989). Thus, whether a particular predecessor employee hired by Respondent was the same employee assigned by the predecessor to service that particular customer is not relevant. What is relevant is that the predecessor’s employees were represented by the Union and that a majority of the successor’s unit is comprised of those employees. Accordingly, the Board considers evidence of substantial continuity of the business operation from the employees’ perspective, and whether the employees will “view their job situations as essentially unaltered.” *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 41-43 (1987). Indeed, the customer’s identity is a consideration only in that in some cases that identity affects the employees’ perspective concerning whether their job remains essentially unaltered. In the instant case, Respondent’s Latrobe employees’ job is essentially unaltered and therefore Respondent’s argument is without legal force. Accordingly, the ALJ correctly noted in his assessment of Respondent’s defense that Respondent’s arguments against successorship missed the mark, and actually miscomprehend the essence of successorship, wherein a new employer maintains “generally the same business and hires a majority of its employees from the

predecessor” in order to take advantage of the trained work force of its predecessor.” *Id.* at 41. (ALJD at 13, lines 4-8).

That is, of course, the situation here and the evidence amply demonstrates this point. In fact, the unit does transport the same body of students for the same customer, i.e. the Greater Area Latrobe School District public schools. The employees are performing the same job: driving a school bus, transporting school children from home to school and back home again. From the employees’ perspective, there is substantial continuity of the business enterprise: they continue to drive regular school bus routes, report daily to a terminal located in Latrobe just 2.6 miles from the First Student terminal, and report to individuals who held positions of authority at the predecessor’s terminal (ALJD at 12, lines 9-13; 25-34; 36-41). Thus, the ALJ gave proper weight to the salient facts regarding Respondent’s status as a *Burns* successor. None of Respondent’s arguments overcome the reasoning of the ALJ or disprove his conclusions.

In its Brief In Support of Exceptions, Respondent also disputes the ALJ’s characterization of cases relied upon by Respondent, including *Lincoln Private Police*, 189 NLRB 717 (1971), *Atlantic Technical Services Corp. (ATS)*, 202 NLRB 169 (1973) and *Nova Services, Inc.*, 213 NLRB 95 (1974) as misleading outliers. While it is true that in those cases the Board declined to find successorship where an employer took on only a portion of a predecessor’s business, a careful reading of these cases, as well as the weight of authority since those cases were decided in the 1970s, reveals that the ALJ’s characterization of them as “outliers” is accurate. As the ALJ noted, the Board has not relied on these decisions, but even distinguished and limited them in its own later decisions, and they are not representative of the far more ample and relevant Board law supporting the finding of *Burns* successorship in situations involving a portion of the predecessor’s business. See, e.g., *Simon DeBartelo Group*, 325 NLRB 1154 (1998); *Van Lear Equipment, Inc.*, 336 NLRB 1059 (2001); *Roman Catholic Diocese of Brooklyn*, 222 NLRB 1052 (1976), *enfd* in relevant part 549 F.3d 873 (2d Cir. 1977); *Stewart Granite Enterprises*, 255 NLRB 569 (1981); *Louis Pappas’ Homosassa Spring*

Restaurant, 275 NLRB 1519 (1985); *The Bronx Health Plan*, 326 NLRB 810 (1998), *enfd.* 203 F.3d 51 (D.C.Cir. 1999). (ALJD at 13, lines 43-51; ALJD at 14, line 2, fn.5). Thus, although these cases have not been directly overruled, it is questionable whether they continue to have any remaining precedential value.⁵

Moreover, the ALJ correctly found that the three cases relied upon by Respondent are factually distinguishable and do not dissuade from the proper conclusion that from the employees' perspective, there is substantial continuity of the business enterprise (ALJD at 12, lines 43-46; ALJD at 13, lines 38-41; ALJD at 15, lines 29-34). None of the cases relied upon by Respondent require a different result than that found by ALJ, i.e. imposition of a bargaining obligation by virtue of Respondent's status as a *Burns* successor, which result is consistent with the greater weight of authority in subsequent and more frequently cited Board decisions. The paragraphs that follow examine each of these three cases relied upon by Respondent and argue that the ALJ's treatment of these cases in the context of the instant matter was appropriate.

In *Lincoln Private Police*, *supra*, under circumstances far different than Respondent's, the Board found that there was no *Burns* successorship relationship based on a lack of substantial continuity of operations. In that case, the predecessor security company employed a unit covering numerous locations throughout the San Juan metropolitan area. As a large number of the predecessor's client's canceled their contracts and the business deteriorated, the predecessor notified its remaining clients that it was canceling their contracts and discontinuing service. *Id.* at 718. The alleged successor, Lincoln, secured a percentage of the predecessor's

⁵ In his decision, the ALJ argues that the three cases ought to be overruled by the Board [ALJD at 13, lines 43-46]. Notably, the ALJ pointed out that the three cases long preceded the *Fall River* holding and subsequent development of that well-established rule [ALJD at 13, lines 46-51]. It is the position of the General Counsel that to the extent these cases are relied upon for the proposition that a diminution of the unit alone is sufficient to preclude finding a successorship status, they have been effectively overruled by Board's later rulings as cited above. Even if the current Board declines to directly overrule these cases, as suggested by the ALJ, the cases are each factually distinguishable from the instant case and do not require a different result.

clients and the remainder, a majority, of the predecessor's business went to numerous other companies. Lincoln secured a large number of contracts from outside of the predecessor's former clients. Lincoln hired about 28 percent of the predecessor's guards. Thus, in that case, the ALJ noted, the employing industry was "materially fragmented and, in effect, split asunder." *Id.* at 720. In the instant matter, none of this occurred. Instead, as the ALJ accurately noted, the predecessor First Student's Latrobe unit was a distinct unit and part of a larger employer, as is the case with the Latrobe unit now operated by Respondent. Although First Student continues to operate its Latrobe terminal serving additional contracts, the Latrobe School District contract was a significant part of the predecessor unit's work (ALJD at 15, lines 18-27). In sum, the holding of *Lincoln Private Police* cannot be held to support Respondent's position where the facts are so inapposite.

In *Atlantic Technical Services, Corp. (ATS)*, *supra*, again, the facts and circumstances do not square with the instant case. In *ATS*, a small contractor took over the mail and distribution services of the Kennedy Space Center from TWA. TWA and the union involved therein were parties to successive collective bargaining agreements that covered a nationwide unit of about 14,000 employees consisting of mechanics and related classifications. TWA extended voluntary recognition and agreed to also extend the extant nationwide collective bargaining agreement to cover the 41 employees employed at the Kennedy Space Center performing mail and distribution services. Thus, when *ATS* assumed the contract to perform the mail and distribution services at the Kennedy Space Center, it succeeded to only a fraction of TWA's business. Specifically, the mail and distribution services employees constituted less than 4 percent of the unit employed by TWA at the space center and drastically less than 4 percent of the nationwide unit covered by the collective-bargaining agreement. The Board also relied on differences in the employing industries. Specifically, TWA was a much larger business and due to the core of its operations regulated by the Railway Labor Act. The alleged successor was a much smaller company which secured that portion of TWA's operations that

was outside the jurisdiction of the Railway Labor Act, i.e. mail and distribution services. Thus, the alleged successor was literally engaged in a different industry that was now properly subject to the jurisdiction of the Board by virtue of the basic change in its operations. Finally, there was evidence calling into question the validity of the union's presumption of majority support, based on the fact that the mail and distribution employees were originally accreted to the larger predecessor unit. *Id.* at 170-171. As the ALJ noted, the Board made its decision reversing an ALJD, based on its analysis of the "peculiar circumstances here presented." *Id.* at 170; ALJD at 14, lines 10-11. It also cannot be ignored that the Board in *ATS* specifically acknowledged that the "diminution in the scope of the unit does not operate in any relevant fashion to preclude the lesser unit from being appropriate." *ATS, Id.* It should also be noted that the Board nonetheless found that the successor in *ATS* had an obligation to bargain with the union based upon the fact that a voluntarily conducted poll of the employees in the unit sought by the union therein demonstrated that a majority of the employees continued to support the union. *ATS, supra* at 171.

In contrast, unlike in *ATS*, Respondent opened its Latrobe terminal employing a unit that constitutes a significant portion of the predecessor First Student's Latrobe-based unit. As the ALJ noted, this is far greater than the four percent figure attributed to the mail and distribution employees in *ATS* [ALJD at 14, lines 28-30]. Additionally, the ALJ correctly weighed the fact that here, unlike in *ATS*, First Student and Respondent are engaged in the same industry, providing school transportation, and are governed by the same types of legal regulations [ALJD at 14, 30-32]. Further, the ALJ rightly recognized there are no issues present related to accretion in the instant case, another factor distinguishing the circumstances around Respondent's conduct from that in *ATS*. Thus, the ALJ properly distinguished *ATS* and its holdings from the instant case, and properly dismissed their relevance, in finding that the facts of the instant case demonstrated a continuity of operations favoring *Burns* successorship.

Finally, in *Nova Services*, supra, that case also centered around a small unit of what had been a statewide unit, in this case in the janitorial context. Additionally, the predecessor in *Nova Services* was a member of an employer association and as such the collective-bargaining agreement covered all employees employed by the predecessor engaged in contract building cleaning services throughout the state. Refusing to find a successorship status, the Board concluded that there had been a basic change in the employing industry. *Id.* In the instant case, there is no such grand disparity between the predecessor First Student's unit and the unit of Respondent's Latrobe drivers. Thus, the ALJ correctly highlighted the differences in the factual situations involved, rightly noting that the Latrobe unit formed a substantial portion of the predecessor First Student's unit (ALJD at 15, lines 4-10).

C. Exception No. 2 Concerning the Appropriateness of the Bargaining Unit

In Exception No. 2, Respondent disputes the ALJ's findings that the successor bargaining unit is an appropriate unit. Instead, Respondent argues that its 500 employees, from six terminals across four different counties, share a community of interest, such that a unit limited to its Latrobe terminal is an inappropriate bargaining unit.

In analyzing whether employees employed at locations share an overwhelming community of interest, the Board examines several factors, including central control over daily operations and labor relations; similarity in employee skills, functions, and working conditions; employee interchange; the distance between locations; and bargaining history, if any. *Trane, an Operating Unit of American Standard Companies*, 339 NLRB 866, 867 (2003), citing *J&L Plate, Inc.*, 310 NLRB 429 (1993) and *R&D Trucking, Inc.*, 327 NLRB 531 (1999). For Respondent to successfully demonstrate that a unit of drivers and monitors employed at its Latrobe terminal is not an appropriate unit, Respondent bears a heavy burden. First, Respondent would have had to present compelling evidence to overcome the presumption that the historical unit, even a portion of the historical unit, continues to be an appropriate unit. Second, Respondent would have had to rebut the Board presumption in favor of a single facility unit. See *SFX Target*

Center Area Management, 342 NLRB 725, 734 (2004); *Trane*, supra at 867. As the ALJ correctly found, Respondent did not establish by compelling evidence that the historical unit of drivers employed to service the Latrobe School District working from a single facility was no longer an appropriate unit.

Respondent's arguments reveal the scant amount of evidence weighing in favor of finding this single-facility unit, which is a portion of an historical unit, in appropriate. Specifically, Respondent takes issue with the ALJ's findings and contends that the ALJ did not analyze all of the relevant factors related to a community of interest analysis (Respondent's Brief at 18). In particular, Respondent disputes the ALJ's conclusions with respect to the factors of central control of operations and interchange. Respondent further claims the ALJ failed to examine similarity of employee skills, functions, and working conditions; distance between the locations; and bargaining history, if any (Respondent's Brief at 18). However, as discussed below, the ALJ considered each of the relevant factors, and the facts and analysis simply did not square with Respondent's position.

Concerning central control of operations and labor relations, the ALJ correctly concluded that the evidence supported finding that the Latrobe unit is an appropriate unit. Specifically, the ALJ was correct in his assessment of the terminal managers as responsible for day-to-day operations and management (ALJD at 16, lines 40-42, 50). The ALJ gave due weight to the key features of the terminals with respect to payroll, purchasing, communications with their respective school district, hiring, and wage scales (ALJD at 16, lines 42-45).

Concerning employee skills, functions and working conditions, the ALJ noted that the employees drive school buses for the school district with which their terminal is affiliated, and that was about all he could have noted. Respondent did not produce any evidence about these factors for drivers at terminals other than Latrobe, and thus Respondent did not introduce evidence to overcome either the presumption that the historical unit remains an appropriate unit, or that a single-facility unit is presumptively an appropriate unit. The evidence concerning this

factor was insufficient to alter the ALJ's conclusion regarding appropriateness of the unit. Thus, the ALJ correctly rejected Respondent's argument and instead properly found that the Latrobe unit was an appropriate unit (ALJD at 18, lines 41-43).

Concerning employee interchange, the ALJ closely analyzed relevant Board law and record evidence to determine that employee interchange was insufficient to render a unit of Latrobe employees inappropriate. In his analysis, the ALJ correctly rejected Respondent's contention that Respondent's evidence of interchange involving terminals other than the Latrobe terminal advanced Respondent's arguments (ALJD at 18, lines 3-10). Further, the ALJ correctly found that even if those other examples of driver sharing were to count as relevant interchange, ultimately this would still not amount to much interchange, and certainly would not constitute sufficient interchange to rebut the presumption in favor of the single-facility Latrobe unit (ALJD at 18, lines 14-22).

In this regard, the ALJ correctly noted that the vast majority of Respondent's evidence of interchange (1,100 out of 1,062 instances) comes from the Harmony/Zelienople terminal's regular use of six drivers stationed at three other terminals, in order to provide transportation services to the Seneca Valley School District (ALJD at 18, lines 11-14). First and foremost, as the ALJ noted, such evidence is irrelevant, in that none of Respondent's Latrobe drivers perform this work for the Harmony/Zelienople terminal (ALJD at 18, lines 5-10). Notwithstanding that such evidence does not involve the Latrobe terminal in any way and is irrelevant on that basis, the ALJ analyzed all of Respondent's evidence of interchange. Nevertheless, the ALJ found that the sum total of Respondent's evidence of interchange was insufficient to rebut Board presumptions in favor of the single-facility Latrobe unit (ALJD at 18, lines 41-43). In so doing, the ALJ noted that this type of interchange does not reflect the kind of interchange where a large segment of drivers regularly performed work for other terminals, and out of the total runs from the Harmony/Zelienople terminal, still is far less than one percent of the runs performed for the Seneca Valley School District. See *New Britain Transportation Co.*, 330 NLRB 397 (1999).

(ALJD at 18, lines 14-39). Thus, the ALJ properly examined Respondent's evidence of interchange in the context of Board law and properly found no basis for overriding the presumption in favor of the single-facility Latrobe terminal.

Concerning the distance between Respondent's facilities, record evidence only notes the distance between the Latrobe facility and the other facilities (T.84-87). Thus, the ALJ properly did not include information that was not at that time a part of the record. Here, too, the importance of the distance between the facilities is rather low, except in the context of evidence of interchange. This is because each facility generally serves a unique role of providing transportation to a specific school district, and the employees of each terminal generally report just to that terminal for work.

In his decision, the ALJ analyzed bargaining history, noting that while the successor unit at Latrobe has a history of representation, the unit Respondent proposes includes five other terminals in four other counties with no collective bargaining history, neither with this unit nor any unit. The ALJ properly found that bargaining history does not support the expanded unit Respondent proposed.

In consideration of all of the foregoing arguments, it is clear that Respondent failed to rebut the presumptions in favor of the historical unit and in favor of the appropriateness of the single-facility Latrobe unit. Accordingly, Respondent's contentions that the ALJ reached an incorrect conclusion must be rejected.

IV. CONCLUSION

Based on the above and record as a whole, Counsel for the General Counsel submits that the record herein fully supports the findings and conclusions and recommended remedy of the Administrative Law Judge that Respondent, a *Burns* successor, has violated Section 8(a)(1) and (5) of the Act as alleged in the Complaint by refusing to recognize and bargain with the Union.

It is submitted that the findings of fact and conclusions of law of the Administrative Law Judge are amply supported by the record evidence. Respondent's arguments and authorities have previously been fully considered and correctly rejected by the Administrative Law Judge in a decision which carefully analyzes and applies appropriate law to the facts of this case. Accordingly, Counsel for the General Counsel respectfully requests that the Board deny Respondent's Exceptions and adopt the recommended Decision and Order of the Administrative Law Judge in its entirety.

Dated at Pittsburgh, Pennsylvania, this 14th day of November, 2014.

Respectfully submitted,



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