

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

TRANSDEV SERVICES, INC.,

Employer

and

Case 05-RC-137335

**AMALGAMATED TRANSIT UNION LOCAL 689,
associated with AMALGAMATED TRANSIT
UNION, AFL-CIO.**

Petitioner

**SUPPLEMENTAL DECISION AND
CERTIFICATION OF REPRESENTATIVE**

Pursuant to a Board-directed election,¹ an election by secret ballot was conducted on July 1, 2016, with the following results:

Approximate number of eligible voters.....	12
Void Ballots.....	0
Votes cast for Petitioner.....	11
Votes cast against participating labor organization.....	0
Valid votes counted.....	11
Challenged ballots.....	0
Valid votes counted plus challenged ballots.....	11

On July 8, 2016, Transdev Services, Inc.², herein called the Employer, timely filed objections to conduct of the election,³ a copy of which is attached as Exhibit A.

Objection No. 1:

The Amalgamated Transit Union, Local 689 (“Union”) failed to demonstrate a showing of interest of 30% of current Road Supervisors and Lead Road

¹ The Unit is “all full-time and regular part-time road supervisors and lead road supervisors employed by the Employer at its facility currently located at 3201 Hubbard Road in Hyattsville, Maryland, who were employed by the Employer during the payroll period ending May 8, 2016.” Excluded from the Unit are “all other employees, guards and supervisors as defined in the Act.”

² Following the Board’s Decision on Review and Order in 363 NLRB No. 188 (2016), the Employer informed the Regional Office that its legal name had changed from Veolia Transportation Services, Inc. d/b/a Veolia Transportation to Transdev Services, Inc.

³ The petition was filed on September 23, 2014. I will consider on its merits only the alleged interference which occurred during the critical period which begins on and includes the date of the filing of the petition and extends through the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1962).

Supervisors after the Board's May 2016 Order and prior to the election. The Union's prior showing of interest occurred outside the six-month limitation period and because of the high turnover rate of Employer's Road Supervisors and Lead Road Supervisors, and the passage of time between the Union's Petition and the election, the 2014 showing of interest was unreliable and a stale indicator of Union support.

In support of Objection No. 1, the Employer submitted material which states that, in the period since the petition's filing, the Employer experienced turnover of its employees. The Employer provided a current list of employees in the Unit, which includes each employee's date of transfer to the Unit. Six of the listed employees transferred to the Unit after the petition was filed. The Employer argues that the election was not based upon a current showing of interest since fifty percent of the Unit members who voted in the election were not part of the Unit at the time the petition was filed. The Employer also relies on an affidavit of its attorney, which states that prior to the election, he "repeatedly requested from the Board agent a showing of interest for Union representation of current Road Supervisors and Lead Road Supervisors."

The sufficiency of a petitioner's showing of interest is a matter for administrative determination and is not litigable by the parties. *Barnes Hospital*, 306 NLRB 201 fn. 2 (1992); *Globe Iron Foundry*, 112 NLRB 1200 (1955); *Potomac Electric Power Co.*, 111 NLRB 553, 554 (1995). It is exclusively within the Board's discretion to determine whether a party's showing of interest is sufficient to warrant processing a petition. *S. H. Kress & Co.*, 137 NLRB 1244, 1248 (1962). In fact, the purpose of a showing of interest is to determine whether the conduct of an election serves a useful purpose under the statute—that is, whether there is sufficient employee interest to warrant the expenditure of time, effort, and funds to conduct an election. *Stockton Roofing Co.*, 304 NLRB 699 (1991). In *Quick Find*, 259 NLRB 1051, 1062 (1982), the Board noted:

The requirement of a “showing of interest” is not jurisdictional or statutory; it is merely a self-imposed rule employed by the Board to determine whether there is a demonstration of enough genuine employee interest in a union to justify the expenditure of agency resources for an election. Once an election has been held, as here, that inquiry becomes pointless.

To the extent that the Employer sought the showing of interest from the Board agent, the Employer’s request for the showing of interest was properly denied. The showing of interest is confidential and the Board agent cannot disclose it to another party. *See In re Irving*, 600 F.2d 1027 (2nd Cir. 1979). Assuming the Employer sought a check of the showing of interest, pursuant to Casehandling Manual § 11025.1, the payroll list used to check a showing of interest “should be of those employees as of a date about the time of or immediately preceding the filing of the petition.” Changes to the employee composition between the petition and election do not change the adequacy of the showing of interest submitted at the time the petition was filed. Moreover, the Tally of Ballots clearly reflects that a majority of the employees expressed their desire to be represented by the Petitioner. *See Casehandling Manual § 11028.4* (“After an election has been held, the adequacy of the showing if interest is irrelevant. *Gaylord Bag Co.*, 313 NLRB 306 (1993). Accordingly, challenges to the adequacy of the showing of interest may not be raised after an election has been held.”). For these reasons, Employer’s Objection No. 1 is overruled.

Objection No. 2:

The requisite laboratory conditions for a fair election were not present for the July 1, 2016 election referenced above inasmuch as the Secretary of Labor investigated and prosecuted for a violation of the Labor-Management Reporting and Disclosure Act of 1959.

Objection No. 3:

The requisite laboratory conditions for a fair election were not present for the July 1, 2016 election referenced above inasmuch as the Board determined that

the Union as an employer had committed unfair labor practices in violation of the National Labor Relations Act against its own employees.

In as much as they are related, I will consider Employer's Objections 2 and 3 together.

In support of Objection Nos. 2 and 3, the Employer submitted material which describes a Department of Labor Complaint against the Petitioner for conduct which is alleged to have occurred in December 2015. The Employer also presented material about a Board Order against the Petitioner for the Petitioner's unfair labor practice conduct against its own employees. The Employer submitted copies of the referenced Department of Labor Complaint in Case 8:16-cv-02052-GJH, filed June 13, 2016, and the Board Order that issued on December 1, 2015, *Amalgamated Transit Union, Local 689*, 363 NLRB No.43.

In order for the Board to set aside an election because of misconduct by a union, the "[c]onduct upon which an election is set aside must be found to have affected the outcome of the election, i.e., likely to coerce prospective voters to cast their ballot in a particular manner." *Professional Research, Inc., d/b/a West Side Hospital*, 218 NLRB 96 (1975); *Great Atlantic and Pacific Tea Company, Inc.*, 177 NLRB 942 (1969). No probative evidence was presented from which to conclude that the employees knew of the Department of Labor Complaint or the Board Order at the time of the election. Without citing a legal basis, the Employer appears to argue that simply because the Petitioner committed certain acts involving its own employees, it is not qualified to represent the employees of the Employer. The Employer also failed to present evidence that these unrelated proceedings actually had any adverse effect on the election.⁴ Rather, the Employer's objections amount to allegations of *per se* objectionable conduct warranting that an election be set aside. As a result, the Employer's submission is insufficient to

⁴ The Employer did not request an extension of time to provide additional evidence in support of its objections. *Star Video Entertainment*, 290 NLRB 1010 (1988).

support its Objections Nos. 2 and 3. For these reasons, Employer's Objections Nos. 2 and 3 are overruled.

Objection No. 4:

By these and other similar acts, the Union prevented a fair election process from occurring consistent with the Act.

The Employer includes Objection No. 4 as a "catchall objection," namely an objection where no specific evidence is advanced and lacks specificity contemplated by the Board's Rules; hence, it must be overruled. *See Smithfield Packing Co.*, 344 NLRB 1, 172 (2004); *Airstream*, 288 NLRB 220, 229 (1988). Accordingly, I recommend that Objection No. 4 be overruled in its entirety.

SUMMARY

The Employer's objections are overruled in their entirety, and I am issuing the appropriate Certification of Representative.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid votes has been cast for AMALGAMATED TRANSIT UNION LOCAL 689, associated with AMALGAMATED TRANSIT UNION, AFL-CIO, and that said Union is the exclusive representative of the employees in the unit involved, herein, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

Under the provisions of Section 102.69 of the Board's rules and Regulations, a request for review of this Supplemental Decision, if filed, must be filed with the Board in Washington, DC. Pursuant to Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of challenges and which are not included in the Supplemental Decision, are not a part of the record before the

Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding. The request for review must be received by the Board in Washington by **August 2, 2016**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement

that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Dated at Baltimore, Maryland this 19th day of July 2016.

/s/ Charles L. Posner

Charles L. Posner, Regional Director
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