

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**OLYMPIC TRAILS BUS COMPANY, INC.**

**Employer**

**and**

**Case 22-RC-186984**

**UNITED TICKET AGENTS UNION**

**Petitioner**

**and**

**AMALGAMATED LOCAL 1931, IUANPW,  
AFL-CIO**

**Intervenor**

**DECISION AND DIRECTION OF ELECTION**

Petitioner seeks to represent a unit of all full-time and regular part-time ticket agents employed by the Employer at Newark Liberty International Airport, Newark, New Jersey, but excluding all other employees, including bus operators, maintenance employees, dispatchers, guards and supervisors as defined in the Act. The parties stipulated that the unit sought by Petitioner is appropriate for collective bargaining.

Because a question of representation exists under Section 9(c) of the Act, I am directing an election in this matter.

The sole issue presented at the hearing is whether the petition should be dismissed, as argued by Intervenor, because Petitioner is not a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended ("the Act"). For the reasons that follow, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>1</sup>

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<sup>1</sup> The Employer, Olympic Trails Bus Company, Inc., a New Jersey corporation with its headquarters located in Elizabeth, New Jersey, is engaged in the provision of motor coach passenger transportation between Newark Liberty International Airport and New York, New York, from its Newark Liberty International Airport location, the only location involved herein. During the preceding twelve months, the Employer derived gross revenue in excess of \$250,000. During the same period of time, the Employer purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey.

3. The labor organizations involved claim to represent certain employees of the Employer. The parties stipulated, and I find, that Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

As noted above, Intervenor contends that Petitioner is not a labor organization. For the reasons set forth below, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The only witness presented at this hearing was Idalis Gonzalez, Representative of Petitioner and the current shop steward. Accordingly, the record facts summarized below are based on Gonzalez's testimony.

The record herein reflects that Petitioner had its genesis during an October 2016 discussion between Gonzalez and a colleague, Betty Blackburn. During this discussion, these individuals discussed forming their own labor organization after it was determined that another labor organization who recently showed interest in organizing the employees, was in fact an AFL-CIO affiliate, as is the Intervenor. Consequently, that organization was unwilling to challenge the Intervenor because, in part, of the strictures of Article XX of the AFL-CIO's constitution which restricts the ability of its affiliate-members to "raid" each other's represented bargaining units. During their discussion, the employees discussed forming their own independent union and agreed that Gonzalez would be the leader and the "union rep," and that Blackburn would assist in these efforts. Also around this time, certain other colleagues (the bargaining unit is estimated to consist of 9 individuals) individually spoke with Gonzalez and expressed their support for forming a new union to be led by Gonzalez.

Gonzalez testified that Petitioner was thereafter created to represent employees with respect to their terms and conditions of employment, to negotiate a contract regarding wages, insurance, working conditions, hours of employment, grievances, and other terms and conditions of employment. She acknowledged that Petitioner is not currently involved in attempts to organize any other employer's employees. During the discussions with her colleagues, Gonzalez told them that if elected Petitioner will represent the employees and negotiate on their behalf with the Employer.

Currently, Petitioner has members who are employees of the Employer. Thus far, however, Petitioner has not been recognized by any employer or certified by the Board, nor has it negotiated any contracts.

Section 2(5) of the Act provides the following definition of "labor organization":

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The statutory definition of a "labor organization" has long been interpreted broadly. See *Electromation, Inc.*, 309 NLRB 990, 993-994 (1992), *enf'd.* 35 F.3d 1148 (7<sup>th</sup> Cir. 1994). For a union to fall within the definition of a "labor organization," the Board has held that employees must participate in the union and it must exist for the purpose, in whole or in part, of dealing with employees on their behalf regarding their wages, hours of employment and other terms and conditions of employment. See *Alto Plastic Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). Under this definition, even an incipient union that has not actually represented employees may, nevertheless, be accorded Section 2(5) status if it was *formed* for the purpose of representing employees. See *Coinmach Laundry Corp.*, 337 NLRB 1286

(2002); *The East Dayton Tool & Die Company*, 194 266 (1971); *Butler Manufacturing Company*, 167 NLRB 308 (1967).

Moreover, “structural formalities are not prerequisites to labor organization status.” *Yale New Haven Hospital*, 309 NLRB 363 (1992) (no constitution, by-laws, meetings, or filings with the Department of Labor); *Butler, supra*, at 308 (no constitution, bylaws, dues, or initiation fees); *East Dayton, supra*, at 266 (no constitution or officers). Thus, the absence of a constitution or bylaws is an irrelevant consideration in analyzing whether a petitioner is a labor organization within the meaning of the Act. The record herein reflects that Petitioner is in the nascent stage of its existence, but that it intends to conduct periodic membership meetings where employees will participate.

In the instant case, the record clearly establishes that Petitioner exists for the purpose of representing employees in collective bargaining with respect to wages, hours and other terms and conditions of employment. Petitioner’s members participate and will participate in the organization by selecting officers and discussing how to represent the bargaining unit employees involved herein. Based on this evidence, the statutory requirements of Section 2(5) have been met.

Thus, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act based on the record evidence that it represents employees with respect to their terms and conditions of employment, and that employees participate in the organization.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. At the hearing, the parties stipulated and I find that the following employees constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and part-time ticket agents employed by the Employer at Newark Liberty International Airport, Newark, New Jersey.

**EXCLUDED:** All other employees, including bus operators, maintenance employees, field dispatchers, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by UNITED TICKET AGENTS UNION; AMALGAMATED LOCAL 1931, IUANPW, AFL-CIO, or neither labor organization.

#### **A. Election Details**

The election will be held by Mail. Ballots will be mailed from the Regional Office by the close of business, on Monday, November 28, 2016. Said ballots will be mailed to the home addresses of the eligible unit employees. Mail ballots must be returned and received in the Regional Office prior to the opening and counting of the ballots. Said ballots will be opened and counted, and a Tally of Ballots will be prepared, at 9:00 a.m. on Tuesday, December 13, 2016 at Region 22, National Labor Relations Board, 20 Washington Place, 5th Floor, Newark, New Jersey.

## **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending Saturday, November 5, 2016, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an 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. 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.

## **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Monday, November 14, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision (for the Petitioner at [ortizidais080@gmail.com](mailto:ortizidais080@gmail.com), and for the Intervenor at [sdp@bcmassociates.org](mailto:sdp@bcmassociates.org)). The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, to be issued under separate cover, in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: November 9, 2016.



David E. Leach III, Regional Director  
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