



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

September 08, 2017

Marcia M. Waldron
Clerk of the Court
U.S. Court of Appeals for the 3rd Circuit
21400 United States Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106

Re: *NLRB v. Trans-Ed, Inc.*
3rd Cir. No. 17-2617
Board Case No. 22-CA-170891

Dear Ms. Waldron:

I am enclosing a certified copy of the agency record in this case.

Very truly yours,

/s/Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Enclosures

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner	)	No. 17-2617
)	
v.	)	Board Case No.
	)	22-CA-170891
TRANS-ED, INC.)	
)	
Respondent)	

CERTIFIED AGENCY RECORD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in *Trans-Ed, Inc.*, Case No. 22-CA-170891.



Gary W. Shinnors
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

September 08, 2017

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**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner	)	No. 17-2617
)	
v.	)	Board Case Nos.
	)	22-CA-170891
TRANS-ED, INC.)	
)	
Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that on September 08, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that the foregoing document will be served via the CM/ECF system on the following counsel, who are registered CM/ECF users.

/s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 8th day of September 2017

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of: TRANS-ED, INC., Respondent, And LUIS DEL TORO, An Individual, Charging Party.	Case No. 22-CA-170891
--	-----------------------

The above-entitled matter came on for hearing pursuant to Notice, before THE HONORABLE RAYMOND P. GREEN, Administrative Law Judge, at The National Labor Relations Board, Region 22, 20 Washington Place, Newark, New Jersey, in Hearing Room 1 on Tuesday, August 9, 2016, at 9:30 a.m.

A P P E A R A N C E S

1 On behalf of the General Counsel:

2

3 TARA LEVY, ESQ.

4 National Labor Relations Board, Region 22

5 20 Washington Pl., 5th Fl.

6 Newark, NJ 07102

7

8 On Behalf of the Respondent:

9

10 EDWARD THOMAS

11 Trans-Ed, Inc.

12 24 Beckwith Ave.

13 Paterson, NJ 07503

14

15

16

17

	<u>I N D E X</u>					
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
1						
2						
3						
4	Luis Del Toro	18	52	61	--	--
5	Edward Thomas	64	82	95	--	92
6	Bismark Caraballo	104	--	--	--	--
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8	Edward Thomas	139	--	--	--	--
9	Luis Del Toro	145	--	--	--	--
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1	<u>E X H I B I T S</u>		
	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
2	General Counsel's		
3	GC-1	5	5
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12			
13			
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15			

1 to go forward with testimony it's okay also. Whatever your
2 preference is.

3 MS. LEVY: Okay. I'll give an opening statement --

4 JUDGE GREEN: Okay.

5 MS. LEVY: Preliminarily, I do want to say that we served
6 Mr. Thomas with a subpoena for some documents and I haven't
7 been provided any documents.

8 JUDGE GREEN: Well, let's get that opening statement so I
9 know what the case is about.

10 MS. LEVY: Okay. The evidence will show that Luis Del
11 Toro, the discriminatee, was employed by the Respondent, a
12 school bus company, as a driver for 16 years before his
13 unlawful termination on February 26th 2016. The evidence will
14 show that he was considered by his employer to be a dependable
15 worker and heavily relied upon. His employer has testified
16 that they had a great working relationship.

17 He was part of a small group of employees in 2015 who
18 successfully organized their coworkers to be represented by
19 Transport Workers Union Local 226. He talked to his coworkers
20 and he circulated cards. Local 226 filed a representation
21 petition on April 17th 2015 to represent the employer's
22 drivers, monitors and mechanics.

23 The parties entered into an election agreement approved
24 April 21st 2015. An election was conducted on April 27th,
25 which the Union won and a certification issued on May 6th 2015.

1 I have documents from the R case that I'd like --

2 JUDGE GREEN: Okay.

3 MS. LEVY: -- to put into --

4 JUDGE GREEN: I'll take official notice of those.

5 MS. LEVY: -- the record by stipulation. After the
6 election Luis Del Toro, along with another employee, was
7 appointed shop steward at his workplace. Negotiations for a
8 first contract began. At one of the early sessions the Union
9 introduced Luis Del Toro to the employer's owner, Ed Thomas, as
10 part of the negotiating team.

11 Mr. Thomas said that he did not want Luis to be part of
12 the negotiating team because he was a bully. The Union
13 president Jon Bradford barred Luis from negotiations and about
14 one month later removed him as shop steward, because he was
15 quote gossiping. Meanwhile, the Union and the employer
16 continued to negotiate. The Union planned to present the
17 proposed contract to the employees for ratification in about
18 January 2016.

19 Mr. Thomas heard that Luis Del Toro was telling employees
20 to vote no on the contract. He heard that Luis was telling
21 employees that the Union and the union president had sold them
22 out. He heard that Luis was trying to get the Union out and
23 another union in. He was told that Luis was misleading the
24 employees.

25 His response; this is how you guys got in here in the

1 first place. Luis was misleading people. I told you he was a
2 bully. The employees failed to ratify the contract during the
3 first vote in January 2016. Just prior to the termination of
4 Luis Del Toro the owner, Ed Thomas, was told that Luis Del Toro
5 was trying to get the drivers to strike rather than to sign the
6 contract.

7 On February 26th 2016 Luis and the union president had an
8 argument on the employer's parking lot about the contract.
9 Luis was critical of the union president for failing to permit
10 employees an opportunity to read the contract before
11 ratification. Ed Thomas approached the two and told them to
12 stop arguing and told Luis to leave.

13 That same day, and it was no coincidence that it was the
14 same day, he terminated Luis Del Toro for supposedly creating a
15 hostile work environment. We will argue that the reason for
16 Luis' termination is pretextual for a number of reason (*sic*)
17 and the real reason was Del Toro's opposition to the proposed
18 contract.

19 JUDGE GREEN: Okay. Do -- could you just -- I don't want
20 to hear your testimony. You're going to testify about
21 everything later, but could you just give me a summary of what
22 your position is?

23 MR. THOMAS: A quick summary?

24 JUDGE GREEN: Yeah.

25 MR. THOMAS: Well, the facts that the young lady put out

1 were false. The Union was in almost a year before Luis Del
2 Toro was tired -- fired. This is why I came without
3 representation, because I see it to be an open and cut case --
4 open and shut, rather.

5 Mr. Del Toro was fired because he did create a hostile
6 workforce environment and it was proven in some letters I have
7 in that box. I do have some anonymous responses to questions I
8 put out to my employees. So if I can show that and will
9 eventually, I would take it that I would be allowed to, and
10 this will show my reasons for throwing out Luis Del Toro. And
11 I have two witnesses here that will back me up.

12 JUDGE GREEN: Okay. Fine. So she says she subpoenaed
13 some stuff. Do you have the stuff that --

14 MR. THOMAS: I have -- basically, what I got was
15 everything that you sent me; the notices. The only thing that
16 I have anything over and above that basically is I mean I have
17 a copy of the contract. You must have that to. My responses
18 to the -- to Ms. Moody (ph), whatever was her name. I'm not
19 sure.

20 But the only thing I have extra that may be over and above
21 that is again the anonymous responses to my questions and two
22 letters that were signed by two aides that work for us telling
23 us that he did approach them to tell them that we were closing
24 so that they should look for another job. This would create --
25 if it went to as many people as we thought it did, people would

1 quit.

2 JUDGE GREEN: Okay. So why you don't just give her --

3 MR. THOMAS: I will --

4 JUDGE GREEN: -- the copies --

5 MR. THOMAS: -- give her the copies of this. This is
6 written in Spanish.

7 MS. LEVY: Okay. Can we go over -- I think there's four
8 items. And what you're describing does not exactly sound like
9 what I subpoenaed. If you could tell me what documents you
10 have --

11 MR. THOMAS: Okay.

12 MS. LEVY: -- in response to the subpoenaed documents? I
13 asked for all notes of negotiations between the employer and
14 the Union for contract negotiations in 2015 --

15 JUDGE GREEN: I don't want that at all.

16 MS. LEVY: -- and 2016.

17 JUDGE GREEN: I don't want that. I'm not listening to
18 that.

19 MR. THOMAS: That's really not an issue.

20 JUDGE GREEN: It's not an issue.

21 MR. THOMAS: The negotiations is what it was.

22 JUDGE GREEN: Yeah. I know you didn't file a petition to
23 revoke, but I'm not going to listen to that. I'm not going to
24 go through the negotiations. I'm going to sustain my own
25 objection to that.

1 MS. LEVY: Alright. We asked for all correspondence
2 between Trans-Ed and the Union concerning Luis Del Toro.

3 JUDGE GREEN: Okay.

4 MS. LEVY: -- or referring to Luis --

5 JUDGE GREEN: Do you --

6 MS. LEVY: -- Del Toro.

7 JUDGE GREEN: -- have anything like that?

8 MR. THOMAS: There was -- in honesty, it was all verbal.

9 JUDGE GREEN: Okay. Alright. So you're representing that
10 you have no written communications --

11 MR. THOMAS: No.

12 JUDGE GREEN: -- with the Union about --

13 MR. THOMAS: There was never anything written between me
14 and Jon or Mr. Curtis (ph) at all. It was all spoken of --

15 JUDGE GREEN: Okay.

16 MR. THOMAS: -- in the office, in which case one of my
17 witnesses was privy to.

18 JUDGE GREEN: Okay. What else did you want?

19 MS. LEVY: There were four categories that had to do with
20 negotiations --

21 JUDGE GREEN: I don't want negotiations.

22 MS. LEVY: -- and I hear you're saying that you don't want
23 those.

24 JUDGE GREEN: Alright. Would you please give General
25 Counsel the copies of the letters --

1 MR. THOMAS: These are the two.

2 JUDGE GREEN: -- and also the copies of the questionnaire

3 --

4 MR. THOMAS: If I may?

5 JUDGE GREEN: Yeah, please.

6 MR. THOMAS: Can I take them out of the box?

7 JUDGE GREEN: Yes.

8 MR. THOMAS: Because I didn't want anybody telling me who
9 they were. I was just going to let them put it in anonymously.
10 So there's no signatures of any sort and this is the first I ma
11 opening this after having it out there, because unfortunately
12 it was during the summer, which means it was kind of quiet.

13 MS. LEVY: I'm not clear what this box is. What are you -
14 -

15 MR. THOMAS: This is the box in which I put out so that
16 people -- a questionnaire that I left every driver and aide
17 that worked with us during the summer, which was very few. And
18 I asked of them specifically if Luis Del Toro at any time
19 approached them with the situation of closing down or that we
20 were going to be moving. And, you know, they folded them, they
21 put them -- they did a yes or a no. Simple yes or no. Put
22 them in the box and this is what I bring with me.

23 MS. LEVY: Okay. And when did you put that box out?

24 MR. THOMAS: I put this out approximately July 21. And
25 it's been out there until --

1 JUDGE GREEN: Oh --

2 MR. THOMAS: -- yesterday.

3 JUDGE GREEN: -- you haven't opened it?

4 MR. THOMAS: Huh?

5 JUDGE GREEN: You haven't opened it?

6 MR. THOMAS: No, I just --

7 JUDGE GREEN: So you don't know what's in the box?

8 MR. THOMAS: I have no idea.

9 MS. LEVY: And this is long after the date of the --

10 JUDGE GREEN: I know, but he's offering it. You don't
11 have to accept it.

12 MS. LEVY: Okay.

13 MR. THOMAS: This was only because one of my witnesses,
14 who had been spoken to by more employees that I had heard from,
15 there was concerns for what had been going around as -- through
16 the grapevine. And they were afraid to say anything. If you
17 want me to unfold them I shall.

18 MS. LEVY: No, I can --

19 JUDGE GREEN: Alright. Just give her the whole box. Let
20 her do with the box what she wants to do.

21 MR. THOMAS: They're not getting in there it looks like.
22 That's it.

23 JUDGE GREEN: Okay.

24 MR. THOMAS: Thank you.

25 JUDGE GREEN: Alright. So let the record show -- this is

1 one of these rather unusual situations -- that the Respondent
2 has brought with him a box, a cardboard box which had been
3 sealed and which has a slit opening on the top for which people
4 apparently can put pieces of paper. And apparently, at least
5 according to Respondent, has not been opened before. The box
6 and its contents have been turned over to the General Counsel.

7 Respondent sort of opened it at the part and started to
8 take out some of the pieces of paper and I instructed
9 Respondent just give the whole box with the contents to the
10 General Counsel so that she can look at them. You can --
11 whatever you want to do with them it's fine. I don't know yet.
12 Nothing has been presented to me, but it's being offered as
13 documents, which I guess the Respondent is going to at some
14 point want to offer into evidence. And you're going to
15 probably say that they're not relevant. So okay.

16 MR. THOMAS: Well, I couldn't give her that prior to being
17 here, because then I would have had to open it.

18 JUDGE GREEN: Alright. This is sort of a demonstration
19 plus a response to a subpoena.

20 MS. LEVY: I expect I will say the documents are not
21 relevant, because they're long --

22 JUDGE GREEN: Well --

23 MS. LEVY: -- after the --

24 JUDGE GREEN: -- yeah.

25 MS. LEVY: -- termination.

1 JUDGE GREEN: It depends. I mean it's interesting. I
2 don't -- you know, I thinking about a variety of hypothetical
3 circumstances and I don't know.

4 MS. LEVY: Well, first of all the employer hasn't read
5 them --

6 JUDGE GREEN: I know.

7 MS. LEVY: -- so he --

8 JUDGE GREEN: That's true.

9 MR. DURYEA: -- couldn't have relied on them.

10 JUDGE GREEN: Well, it's like --

11 MR. THOMAS: I'm not.

12 JUDGE GREEN: -- presenting -- in a way it's very
13 peculiar. Okay. I'm not making any more comments about it.

14 MS. LEVY: Okay. So we request for the witnesses to be
15 sequestered.

16 JUDGE GREEN: Okay. So do you have any witnesses here?

17 MR. THOMAS: I do. I have Oscar Colon, who was
18 subpoenaed, and Bismark Caraballo.

19 JUDGE GREEN: Okay. So you need to give them a separate
20 space. Some place to sit.

21 MR. THOMAS: Do you want me to move out of here or --

22 MS. LEVY: No, no.

23 JUDGE GREEN: No, no. You have to stay. Well, you could
24 -- you're going to be the first witness?

25 MS. LEVY: No. Not my first witness.

1 JUDGE GREEN: Oh, okay. Do we have a place for the people
2 to stay?

3 MS. LEVY: Yeah. We -- the waiting room is the only place
4 --

5 JUDGE GREEN: Okay.

6 MS. LEVY: -- we have. So come with me.

7 JUDGE GREEN: Do you have other witnesses also here?

8 MS. LEVY: Just one witness today.

9 JUDGE GREEN: But -- oh, okay.

10 (Whereupon, a brief recess was taken)

11 JUDGE GREEN: On the record.

12 Okay. So do you want to call your first witness?

13 MS. LEVY: Yes. General Counsel calls Luis Del Toro.

14 JUDGE GREEN: Okay. Sir, you want to come up here? Could
15 you raise your right hand, please?

16 Whereupon,

17 LUIS DEL TORO

18 Having been first duly sworn, was called as a witness and
19 testified herein as follows:

20 JUDGE GREEN: Have a seat, please.

21 MS. LEVY: Oh, before we get to that I do have the R case
22 documents that I wanted to put in record.

23 JUDGE GREEN: Okay.

24 MS. LEVY: Do you --

25 JUDGE GREEN: I'll just take official notice of them.

1 MS. LEVY: Okay. Mr. Thomas, I have the petition, the
2 election agreement, the tally of ballots and the certification
3 of representative. So we could mark that GC-2(a), (b), (c) and
4 (d).

5 (General Counsel's GC-2(a) through (d) identified)

6 JUDGE GREEN: Okay. Do you have a stapler?

7 MS. LEVY: Not in here.

8 JUDGE GREEN: We probably could use a stapler.

9 MS. LEVY: Do you have one --

10 JUDGE GREEN: Barry? Oh, good. Good, thanks.

11 MS. LEVY: There's no staples in it?

12 COURT REPORTER: No --

13 JUDGE GREEN: Alright. We'll --

14 MS. LEVY: We'll get one --

15 JUDGE GREEN: Yeah, okay. He needs two. You have two for
16 him? You have two for him?

17 MS. LEVY: I know.

18 JUDGE GREEN: Yeah.

19 MS. LEVY: Thank you. Here's a set for you.

20 JUDGE GREEN: Okay. Thank you. Alright. I'm going to
21 receive this set of documents, General Counsel exhibit 2 --

22 MS. LEVY: 2(a) --

23 JUDGE GREEN: -- (a) through (d).

24 (General Counsel's GC-2(a) through (d) received in evidence)

25 MS. LEVY: I move for the introduction of GC-2(a) through

1 (d) --

2 JUDGE GREEN: Yes.

3 MS. LEVY: -- (a), (b), (c) and (d).

4 JUDGE GREEN: Okay. Received.

5 DIRECT EXAMINATION

6 BY MS. LEVY:

7 Q Good morning, Mr. Del Toro.

8 A Good morning.

9 Q Have you been sworn in?

10 A Yes.

11 Q Okay. I'm sorry, I missed that.

12 JUDGE GREEN: Good thing you reminded me.

13 MS. LEVY: Were you employed by Trans-Ed, Inc.?

14 THE WITNESS: Yes.

15 BY MS. LEVY:

16 Q What does Trans-Ed do?

17 A They do transport school -- for school.

18 Q It transports?

19 A School.

20 Q How does it transport for school?

21 A We do charters, we do school runs.

22 JUDGE GREEN: She wants to know if you use school buses.

23 THE WITNESS: School buses, yes.

24 BY MS. LEVY:

25 Q You use school buses and you transport?

- 1 A Kids.
- 2 Q Okay. When you were employed there where was it located?
- 3 A It was located in Passaic in 8th Street.
- 4 Q On 8th Street --
- 5 A First --
- 6 Q -- in --
- 7 A Passaic.
- 8 Q -- Passaic? Did it --
- 9 A Yeah.
- 10 Q -- move from there?
- 11 A It moved from Passaic to Paterson, Bridge Street. And
- 12 from Bridge Street they moved back to Passaic to Jefferson.
- 13 And now from Jefferson they moved back to Paterson, 24
- 14 Beckwith.
- 15 Q Okay. And is 24 Beckwith Avenue the location where Trans-
- 16 Ed was at --
- 17 A It's located now.
- 18 Q -- when you last worked there?
- 19 A Yes.
- 20 Q When did you start working for Trans-Ed, Inc.?
- 21 A I stated working for Trans-Ed, Inc. 2000 in Passaic
- 22 Jefferson -- in Passaic 8th Street.
- 23 JUDGE GREEN: Okay. But you started working for the
- 24 company in the year 2000?
- 25 THE WITNESS: In the year 2000.

1 JUDGE GREEN: Okay, fine. Thank you.

2 BY MS. LEVY:

3 Q Do you know the date?

4 JUDGE GREEN: It doesn't matter, but do you know the date?

5 I --

6 THE WITNESS: I started there 2015 (*sic*), I think it was
7 in July.

8 JUDGE GREEN: Okay.

9 BY MS. LEVY:

10 Q No, what year did you start in?

11 A 2000.

12 Q 2000. And July 15th?

13 A Uh-huh.

14 Q Okay. What was your last day?

15 A My last day was February 26th --

16 Q At what --

17 A -- 2016.

18 Q And what job did you hold?

19 A Driver.

20 Q How many hours a week did you work?

21 A The first time that I started working there?

22 JUDGE GREEN: No, no, no. Let's not -- you worked there
23 for 15 years.

24 THE WITNESS: Yeah.

25 JUDGE GREEN: So I don't need to know all of your 15

1 years. Just when you left.

2 THE WITNESS: When I started working there --

3 JUDGE GREEN: No, no, not when you started.

4 THE WITNESS: When I left?

5 JUDGE GREEN: When you left. Yeah.

6 THE WITNESS: Between 35 to 40.

7 JUDGE GREEN: Okay.

8 BY MS. LEVY:

9 Q And for how long did you work 35 to 40 hours?

10 A About four months.

11 Q And prior to that?

12 A Prior to that they cut down the hours.

13 Q So you worked less than 35 to 40?

14 A Between 30 to 35.

15 Q Okay. And for how long was that?

16 A About two months.

17 Q And before that?

18 A Before that I used to -- maybe between 50 to 60 hours.

19 Q And for how long a period did you work that many hours?

20 A Close to a year.

21 Q Okay. Did you try to bring a union to Trans-Ed?

22 A Yes.

23 Q And what's the name of the Union, do you know?

24 A American -- I really don't know the name of the union
25 board, but I know they're 200 --

1 JUDGE GREEN: You can -- you know, you could suggest it --

2 THE WITNESS: 226.

3 JUDGE GREEN: -- to him. Oh, Local 226?

4 BY MS. LEVY:

5 Q Local 226?

6 A Yes.

7 Q Transport Workers Union?

8 A Transport Workers Union, yes.

9 Q Is that right? Is that the name of the Union?

10 A Yes.

11 Q Were you part of the group that contacted the Union?

12 A Yes.

13 Q And how many -- was there more than one employee who
14 contacted the Union?

15 A Yes.

16 Q How many were in the group that --

17 A Three more.

18 Q -- contacted the Union? How many?

19 A Three.

20 Q Three others. When did you contact the Union?

21 A I think it was April.

22 Q Of what year?

23 A 2014, '15. '15.

24 Q And what did you try to do to get employees to join the
25 Union?

1 A When I tried to get the employees, I went to the union
2 board. They gave me some cards. And me and the colleagues
3 went together to talk to the people to unionize.

4 Q And what --

5 A Have them fill out the cards.

6 Q And the Union won the election eventually, is that
7 correct?

8 A Yes.

9 Q After the union election, were you appointed shop steward?

10 A Yes.

11 Q Who appointed you?

12 A Jon.

13 Q And who's Jon?

14 A Jon is the president of the union board.

15 Q President of the union board?

16 A The union board 226.

17 JUDGE GREEN: Do you know his last name?

18 THE WITNESS: No.

19 JUDGE GREEN: Okay. Do you know his last name?

20 MS. LEVY: Bradford.

21 JUDGE GREEN: Bradford.

22 MS. LEVY: And it's J -- I believe it's J-O-N.

23 THE WITNESS: J-O-N.

24 BY MS. LEVY:

25 Q Is that right?

1 JUDGE GREEN: J-O-N?

2 THE WITNESS: Jon.

3 JUDGE GREEN: Oh, okay.

4 MS. LEVY: Right.

5 JUDGE GREEN: Thank you.

6 BY MS. LEVY:

7 Q After the Union won the election did the Union try to get
8 a contract to cover the employees at Trans-Ed?

9 A Yes.

10 Q And as shop steward did you attend negotiation meetings?

11 A No.

12 Q You never attended --

13 A I went -- attended once.

14 Q And what happened on that one occasion?

15 A Well, that occasion Jon convinced us, me and Oscar, as the
16 Union shop steward to Ed Thomas and he told I cannot be a shop
17 steward. I'm a bully --

18 Q He said you can't be a shop steward, you're a bully?

19 A Uh-huh.

20 Q When was that? Do you know?

21 A I don't remember the date.

22 Q Do you remember the part of the year or they year?

23 A It was last -- the beginning of the year, when -- in
24 September. That was the time they were negotiating, both of
25 them together back and forth, but they were always on vacation.

1 So really, really nothing took place until September.

2 JUDGE GREEN: Okay. But --

3 BY MS. LEVY:

4 Q September 2015?

5 A Uh-huh.

6 JUDGE GREEN: But this was the only time that you went to
7 a meeting and you were sort of kicked out?

8 THE WITNESS: Yes.

9 JUDGE GREEN: Okay. I take it that -- what did the union
10 person say when Mr. Thomas say -- said that you were a bully?

11 THE WITNESS: He told Mr. Thomas I chosen to be shop
12 steward --

13 JUDGE GREEN: Yeah.

14 THE WITNESS: -- and Ed Thomas said I don't want him
15 present. There's no deal.

16 JUDGE GREEN: Okay. And so what -- did anything else --

17 THE WITNESS: Mr. Jon (*sic*) took me outside. He left me
18 there while they were talking --

19 JUDGE GREEN: Okay.

20 THE WITNESS: -- because he said I -- he's not going to
21 say nothing. I stood quiet. I did not say nothing. The only
22 thing I said when I came in he told me take off that hat and
23 that shirt. You cannot be a shop steward. You're a bully.

24 JUDGE GREEN: Right.

25 THE WITNESS: And I told him I'm working from 6:00 to 8:30

1 --

2 JUDGE GREEN: Okay.

3 THE WITNESS: -- for you. Now for 10:00 to whatever time
4 I'm here, I'm working for Jon.

5 JUDGE GREEN: Okay.

6 THE WITNESS: And he still didn't want me present. So Jon
7 hold me there. After they talked -- whatever they talked --
8 they didn't talk much. They just prepared for a paperwork.

9 JUDGE GREEN: Uh-huh.

10 THE WITNESS: And then Jon took me outside. He said I'm
11 going to take care of this. Mr. Thomas don't like you. He
12 don't want you present.

13 JUDGE GREEN: Okay. So he agreed?

14 THE WITNESS: He agreed to take me --

15 JUDGE GREEN: Alright.

16 THE WITNESS: -- out, but he told me I'll keep you posted
17 on anything that's going on. I'll keep on track.

18 JUDGE GREEN: Okay. Alright. That's what I wanted to
19 know; what happened.

20 THE WITNESS: Yes.

21 JUDGE GREEN: Alright. Thank you.

22 MS. LEVY: Okay.

23 CONTINUED DIRECT EXAMINATION

24 BY MS. LEVY:

25 Q So you left the meeting, right?

1 A I left the meeting.

2 Q Do you remember who was present at the meeting when you
3 were introduced as shop steward?

4 A Yes. Oscar was present, Mr. Thomas --

5 Q And Oscar is who?

6 A The mechanic.

7 Q Who was the other shop steward?

8 A The other shop steward.

9 Q Do you know his last name?

10 A No.

11 Q Okay. Oscar the mechanic.

12 A Jackie.

13 Q And Jackie is who?

14 A From the union board 226.

15 Q She works for the Union?

16 A She works with the union board.

17 Q And anyone else?

18 A Larry was there.

19 Q And who's Larry?

20 A Larry is from 226 too. It was Larry, Jackie, Oscar, me,
21 Mr. Thomas and his wife.

22 JUDGE GREEN: Do you know whether or not Mister -- Oscar
23 stayed in the meeting?

24 THE WITNESS: Yes.

25 JUDGE GREEN: He did?

1 THE WITNESS: He stood (*sic*) in the meeting.

2 BY MS. LEVY:

3 Q Okay. So that was in September when --

4 A Yes.

5 Q -- you were essentially kicked out of the union meeting?

6 Did you communicate with employees about your opinion of the

7 contract proposals at that time?

8 A Yes.

9 Q Were you shown contract proposals?

10 A In the same time we went to the office, Jon gave us a

11 contract together to Mr. Thomas and us, me and Oscar.

12 Q And these were proposals for the contract?

13 A It was a proposal.

14 Q And how did you communicate with employees?

15 A I communicate fine --

16 JUDGE GREEN: No, I mean did you --

17 THE WITNESS: Oh --

18 JUDGE GREEN: I think what she's -- yeah, what you did.

19 THE WITNESS: What I'm trying to say is when I communicate

20 to the workees (*sic*) the only one I spoke to was David Lopez

21 and Rafael. I don't know his last name. He was the one that

22 went into the union board --

23 JUDGE GREEN: Okay.

24 THE WITNESS: -- 226. And when she asked me about

25 employees, the only employees is -- because they work for the

1 company too. They're bus drivers.

2 JUDGE GREEN: Okay. Alright. So I guess what she's
3 asking is whether or not you ever talked to these people about
4 the contract proposals?

5 THE WITNESS: Yes. I did.

6 JUDGE GREEN: Okay. So I guess she wants to know what you
7 said to them.

8 THE WITNESS: When I received the proposal there was a
9 glitch that I found there, because when we went to the meeting
10 he said he was going to give us between dollar fifty to two
11 dollars maximum to ask to Mr. Thomas. And when I saw the
12 proposal it was 50, 50, 50.

13 JUDGE GREEN: Okay.

14 THE WITNESS: So he told me this is only a proposal, when
15 he kicked me of the office --

16 JUDGE GREEN: Right.

17 THE WITNESS: -- when you had dispute. When I finish with
18 Mr. Thomas, I'll give you a call, which he did call me and told
19 me it's only a proposal. The real contract hadn't come in.

20 JUDGE GREEN: Okay. So, alright. So, okay. Counsel?
21 Think we could move -- either you want to explain this or you
22 can move on?

23 MS. LEVY: Okay.

24 CONTINUED DIRECT EXAMINATION

25 BY MS. LEVY:

1 Q Your opinion of that contract proposal was what?

2 A It was irrelevant. I didn't feel comfortable, because
3 usually when you do a proposal you're supposed to ask for at
4 least \$2, because if you don't negotiate it, you drop it down.
5 And I considered it wasn't fair.

6 JUDGE GREEN: Okay.

7 BY MS. LEVY:

8 Q Alright. So you thought the proposal was too low?

9 A Too low.

10 Q And is that what you told the employees --

11 A That's what told them.

12 Q -- David and Rafael?

13 JUDGE GREEN: Did you --

14 THE WITNESS: And Oscar.

15 JUDGE GREEN: And Oscar. Okay. So just to -- perhaps to
16 identify, I know Oscar is a mechanic.

17 THE WITNESS: I'm the driver.

18 JUDGE GREEN: You're a driver. David is --

19 THE WITNESS: A driver.

20 JUDGE GREEN: He's also a driver. And --

21 THE WITNESS: And Rafael is a driver.

22 JUDGE GREEN: Okay. And you all work in the same --

23 THE WITNESS: The same company.

24 JUDGE GREEN: -- place though?

25 THE WITNESS: Same place.

1 JUDGE GREEN: Okay. Thank you.

2 THE WITNESS: Thank you.

3 MS. LEVY: Okay. So did you attend any more negotiation
4 meetings after that?

5 THE WITNESS: No.

6 BY MS. LEVY:

7 Q And why not?

8 A Because Jon said that Mr. Thomas doesn't want me present.

9 Q Did he say why?

10 A Because I'm a bully. And I just heat him up every time he
11 sees my presence.

12 Q Alright. And when was this conversation, do you recall?

13 A Every time we talked he'd tell me the same thing. When I
14 -- the same day that I was kicked out he told me he'd keep me
15 posted. The one that was keeping me posted was Oscar and
16 Jackie.

17 Q But did you -- was there a meet -- a negotiation meeting
18 scheduled after that?

19 A Yes.

20 Q And you're saying -- do you know when that was scheduled?

21 A Well, it was in September when they came. It was a
22 proposal. By March it was the real contract, which I looked at
23 it too and it wasn't fair.

24 Q Alright. But after September they had a meeting
25 scheduled, didn't they?

1 A Yes.

2 Q When was that?

3 A There was a meeting in January.

4 Q Were there any --

5 A It was --

6 Q -- meetings between September and January?

7 A September. There was in between meetings, but nobody
8 appeared to the union --

9 JUDGE GREEN: Oh, you mean --

10 THE WITNESS: -- board.

11 JUDGE GREEN: -- people were not available?

12 THE WITNESS: No, because they was always working.

13 JUDGE GREEN: Alright.

14 THE WITNESS: So you really --

15 JUDGE GREEN: Well, you were invited to another meeting?

16 THE WITNESS: To another meeting. We -- me and Oscar went

17 --

18 JUDGE GREEN: Okay.

19 THE WITNESS: -- and none of workers came in.

20 JUDGE GREEN: Okay.

21 THE WITNESS: Only Rafael and David.

22 JUDGE GREEN: You're -- now you're talking about a meeting
23 with the company or a meeting of the Union?

24 THE WITNESS: A meeting with the union board.

25 JUDGE GREEN: With the union board?

1 THE WITNESS: Yeah.

2 JUDGE GREEN: Oh, okay. So this is just with the union
3 people?

4 THE WITNESS: Yes.

5 JUDGE GREEN: Alright, alright.

6 BY MS. LEVY:

7 Q Were there any negotiations scheduled after September?

8 A After --

9 JUDGE GREEN: Well, I -- you know, I mean I don't know
10 whether or not this is necessary. I know that there -- I mean
11 I know that there were meetings after September, because he's
12 testified and everybody seems to agree that the parties reached
13 a contract that was submitted for ratification. So I -- there
14 must have been another meeting. I don't know whether or not
15 he's the right person to ask about this, but if you really want
16 to persist in this, okay.

17 MS. LEVY: Okay.

18 BY MS. LEVY:

19 Q I'm trying to find out when Jon told you not to come to
20 meetings anymore, because Ed Thomas said that you were a bully.

21 A When --

22 JUDGE GREEN: Well, in addition to the first time?

23 THE WITNESS: In addition to the first time --

24 BY MS. LEVY:

25 Q Right.

1 A -- he told me that, the second time any time we talked we
2 argued, because of the contract. On March, when they came in
3 on January, they lost the contract, because I told everybody I
4 said contact is no good. They gave a contract, which I was
5 reading, 35, 45 and 55 for the mechanics.

6 JUDGE GREEN: Okay. We have to break this down. Okay? I
7 guess at some point you were notified that the Union and the
8 company had made a proposed agreement --

9 THE WITNESS: Right.

10 JUDGE GREEN: -- correct? So somebody told you that?

11 THE WITNESS: Yes.

12 JUDGE GREEN: Do you remember who told you that?

13 THE WITNESS: Oscar.

14 JUDGE GREEN: Okay. Oscar. Okay, Oscar, fine. And then
15 I take it you had an opportunity to look at it, at whatever --

16 THE WITNESS: Jon --

17 JUDGE GREEN: At something in writing?

18 THE WITNESS: Yes.

19 JUDGE GREEN: And when you looked at it you noticed that
20 the wage increases were --

21 THE WITNESS: Not fair.

22 JUDGE GREEN: Well, in your opinion they were not fair --

23 THE WITNESS: Not fair.

24 JUDGE GREEN: -- correct, because they were whatever?

25 What were they?

1 THE WITNESS: They were 50, 50, 50 --

2 JUDGE GREEN: That's the proposal?

3 THE WITNESS: -- at first. That was the proposal.

4 JUDGE GREEN: I know, but we're moving past that proposal.

5 THE WITNESS: Yeah. And then suddenly it changed to 35
6 for the aides, 45 for the driver and 55 for the mechanics.

7 JUDGE GREEN: Is that every year or --

8 THE WITNESS: Every year.

9 JUDGE GREEN: Okay. So that was --

10 THE WITNESS: The first year --

11 JUDGE GREEN: Okay. So you looked at that? You saw some
12 document that said something like that --

13 THE WITNESS: Yes.

14 JUDGE GREEN: -- right? And then you said in your opinion
15 that you didn't think that was fair?

16 THE WITNESS: Yes. And I approached Jon. I called Jon,
17 and I spoke to Jon and Jon caught an attitude, started cursing
18 at me and he didn't want to hear it.

19 JUDGE GREEN: This is Jon from the Union?

20 THE WITNESS: Jon from the Union --

21 JUDGE GREEN: So you had a conversation?

22 THE WITNESS: Conversation --

23 JUDGE GREEN: Was this over the phone or --

24 THE WITNESS: Face to face.

25 JUDGE GREEN: Okay. Face to face. And where?

1 THE WITNESS: In his office.

2 JUDGE GREEN: In his office. But this was at the Union?

3 THE WITNESS: At the Union, yeah.

4 JUDGE GREEN: Was anybody else involved in this?

5 THE WITNESS: Larry was there, and Jon and Jackie was
6 there.

7 JUDGE GREEN: Alright. These are the people we already
8 talked --

9 THE WITNESS: They were. Yes --

10 JUDGE GREEN: Okay. And as best you remember, you don't
11 have to be 100% accurate, when did this happen, this -- when
12 you had this argument with Jon at the union office?

13 THE WITNESS: That was in January when I --

14 JUDGE GREEN: Alright.

15 THE WITNESS: -- got the proposal.

16 JUDGE GREEN: January 2016?

17 THE WITNESS: '16.

18 JUDGE GREEN: This year?

19 THE WITNESS: Yeah, this year.

20 JUDGE GREEN: Okay. The beginning of this year?

21 THE WITNESS: Yes.

22 JUDGE GREEN: It's cold out?

23 THE WITNESS: Yes.

24 JUDGE GREEN: Okay. Alright. So you had this
25 conversation with Jon?

1 THE WITNESS: Jon.

2 JUDGE GREEN: And his name apparently is Bradford.

3 THE WITNESS: Bradford.

4 JUDGE GREEN: And there were other people that you
5 mentioned who were also --

6 THE WITNESS: There was two people.

7 JUDGE GREEN: -- present --

8 THE WITNESS: Yes.

9 JUDGE GREEN: -- during that conversation? So did he --
10 you said you didn't think it was fair. And what if anything
11 did he say?

12 THE WITNESS: He said that a contract is a contract.
13 We're just trying to get in to help Ed Thomas perform and help
14 us. And I said I don't see the help, because if you ask for
15 50, 50, 50 why are you dropping into half, when everybody works
16 together?

17 JUDGE GREEN: Yeah, okay. So is this still a proposal or
18 is this --

19 THE WITNESS: No, this is an issue of the contract.

20 JUDGE GREEN: This -- oh, oh, oh.

21 THE WITNESS: He wanted us to vote --

22 JUDGE GREEN: Oh, oh, oh.

23 THE WITNESS: -- on March.

24 JUDGE GREEN: Okay. Alright. So at some point were you
25 given a physical document?

1 THE WITNESS: No, he didn't. When I see this, Jon was
2 doing things at a last minute thing. Like when reading through
3 for the proposal, he gives us a slip to read it right there and
4 then going into Ed. And I spoke to Jon. I said let's --
5 you're supposed to give us to read it.

6 JUDGE GREEN: Okay.

7 THE WITNESS: So you didn't give us a proposal. We need
8 to read what we're proposing to give to Ed.

9 JUDGE GREEN: Okay. So let's back up a second. In
10 January --

11 THE WITNESS: January.

12 JUDGE GREEN: -- you and these other people went to the
13 Union's office --

14 THE WITNESS: No, we went in April to the -- it was me,
15 Rich, Rafael and David. When the first time he had a meeting
16 Rich came to me and said we cannot have this no more. We need
17 to unionize, get together and get a union board. And that's
18 when everything started.

19 JUDGE GREEN: Oh, alright. Now, I'm sorry, I'm getting
20 confused and I guess it's because of the timeline. I'm going
21 to give the questions back to you. You --

22 MS. LEVY: Okay.

23 JUDGE GREEN: You've had more of an opportunity to talk to
24 this witness before he came here today. So I'm assuming that
25 you and he have, you know, go through this before.

1 MS. LEVY: Alright.

2 CONTINUED DIRECT EXAMINATION

3 BY MS. LEVY:

4 Q I want to go back to after September. Alright? You said
5 you got thrown out of a meeting in September. And then I asked
6 you did you attend any meetings after that?

7 A I attended --

8 JUDGE GREEN: Well, we're --

9 THE WITNESS: -- but I was outside.

10 JUDGE GREEN: -- talking about negotiation meetings or
11 union?

12 MS. LEVY: Yes, negotiation meetings.

13 JUDGE GREEN: Okay, thank you.

14 THE WITNESS: No. I didn't attend --

15 BY MS. LEVY:

16 Q Now, you said that that was because Jon told you not to
17 come --

18 A Not to --

19 Q -- to meetings?

20 A -- come to the meeting.

21 Q Because Ed Thomas said you were a bully?

22 A Yes.

23 Q And do you know when that conversation occurred, when Jon
24 told you that?

25 A That was in September, when they had the negotiate -- the

1 -- that he present me to Ed as a shop steward.

2 Q And that's when Jon told you that you can't come to any
3 more meetings, because Ed said you were a bully?

4 A Yes.

5 Q Alright. Did you continue as shop steward?

6 A Yes.

7 Q How long were you shop steward?

8 A Until February.

9 Q Were you -- did Jon ever remove you as shop steward?

10 A Not really. Only until we argue and that was in March for
11 the contract they lost.

12 Q Alright. Excuse me a minute. Jon never removed you as
13 shop -- Jon never told you that you weren't going to be shop
14 steward?

15 A He never told me I wasn't going to get shop steward. He
16 told me in December -- I had an accident in October.

17 Q Right.

18 A I came back to work in December. That's when I saw Jon.
19 He was going to have a meeting with Ed. And I said I want to
20 be present in what was going on. And he told me you're no
21 longer going to be a shop steward, because you're talking that
22 the union board is no good. And I told him I never said that.

23 Q So in December he removed you from --

24 A Yes.

25 Q -- being shop steward, because you were saying that the

1 Union was no good?

2 A Right.

3 JUDGE GREEN: Who were you saying this to? Who?

4 THE WITNESS: I wasn't telling nobody, but Jon told me
5 it's --

6 JUDGE GREEN: Oh, oh, I see.

7 THE WITNESS: Jon was the one. It was a back and forth
8 thing here. The only one that was telling me things was Oscar.
9 And my -- if I call her and ask her a question, she said
10 nothing is going on. Jon told me don't talk to nobody, don't
11 tell nobody nothing, because it's only a proposal until we get
12 the contract.

13 JUDGE GREEN: Okay.

14 THE WITNESS: And that's what -- I kept calm. I said I
15 haven't talked to nobody. People used to come to me what's
16 going on with the union board? They're not doing nothing. I
17 said I can't tell you nothing, because I don't know nothing.

18 JUDGE GREEN: Okay. Alright.

19 BY MS. LEVY:

20 Q Okay. So you said that back in September you told
21 employees that you thought that that contract proposals were
22 too low, right?

23 A Yes.

24 Q Did you ever tell employees you were opposed to proposals
25 after September?

1 A No.

2 Q Never?

3 A What do you mean?

4 Q After September did you ever tell employees that you --

5 JUDGE GREEN: I -- yeah.

6 THE WITNESS: When I --

7 JUDGE GREEN: I think you're going to have to -- maybe
8 you're going to have to -- I mean it's up to you how you want
9 to do this, but this is -- you know, he's covering a long
10 period of time and maybe it's a little too amorphous. We could
11 probably get down to the ratification vote. That would
12 probably be a defined incident that took place. And I mean if
13 you put it at that point, maybe that would -- he would be able
14 to really focus on that? But again, you know --

15 MS. LEVY: I'll try that.

16 JUDGE GREEN: -- I'll leave it up to you.

17 MS. LEVY: Do you remember the employees voting on the
18 contract in January?

19 THE WITNESS: Yes.

20 BY MS. LEVY:

21 Q And before that did you speak to employees about how they
22 should vote on the contract?

23 A Yes.

24 Q What did you tell employees?

25 A I told them to read the contract before they vote.

1 Q That's it?

2 A That's it. That's all I told them.

3 Q Did you tell them your opinion of the proposals?

4 A I told them it's not a fair contract.

5 Q You told them it wasn't a fair contract. And what
6 happened to that ratification vote?

7 A No.

8 Q Do you remember?

9 A They started reading the papers and they started voting.

10 JUDGE GREEN: Well, she wants to know how they voted.

11 THE WITNESS: They voted no.

12 JUDGE GREEN: Alright. So who did you tell? Who were the
13 people you told?

14 THE WITNESS: I told almost everybody in the company.

15 JUDGE GREEN: Okay. Alright. So there was in fact some
16 form of voting?

17 THE WITNESS: On January it was a vote --

18 JUDGE GREEN: Okay.

19 THE WITNESS: -- which they lost.

20 JUDGE GREEN: Okay.

21 THE WITNESS: In March they had another vote, which they
22 lost, because it was the same contract.

23 BY MS. LEVY:

24 Q And before March did you talk to employees about the
25 contract? Right --

1 A Before March I talked to everybody. Everybody came to me,
2 what's going to happen? I said it was supposed to be changed
3 into the paperwork.

4 I don't consider this fair. We need an equal number. Not
5 35, not 45, not 50. Everybody is equal, everybody works the
6 same. Why should it be any different?

7 Q So that was before the March vote?

8 A Yes.

9 Q And were you still employed at that time?

10 A Yes.

11 Q And how many employees did you talk to then?

12 A About 50-60.

13 Q And how many people are employed --

14 A In the employee, that's 109.

15 Q -- at Trans-Ed who are -- wait -- who are represented by
16 the Union? Do you know?

17 A That were represented by the Union?

18 Q Yes.

19 A 34.

20 Q Only 34?

21 A Only four --

22 JUDGE GREEN: No, I have -- alright. Don't ask him that.
23 I have the tally of ballots.

24 BY MS. LEVY:

25 Q Aren't there about 100 employees?

1 A It's 109. Between 109 to 129, because you've got new
2 people, you've got old people. Only the ones who vote, it was
3 109. So they first vote they lost by 40 something.

4 Q Right.

5 A Second was about another 30 something.

6 Q Right.

7 A And the last vote I wasn't in it.

8 Q Alright. So you talked to about how many employees before
9 the March vote?

10 A 60.

11 Q Okay.

12 JUDGE GREEN: Could you just please tell me where these
13 votes took place?

14 THE WITNESS: In parking -- In the -- on the parking -- in
15 the --

16 JUDGE GREEN: Parking lot?

17 THE WITNESS: In the parking.

18 JUDGE GREEN: Okay.

19 MS. LEVY: Okay. Let me direct your attention to February
20 26th. Do you remember that day?

21 THE WITNESS: Yes.

22 BY MS. LEVY:

23 Q And what time was your first run on that date?

24 A My first run is at 6:30 in the morning, but I leave at
25 6:00, just to be early and check my bus, do my pre-checks.

1 Q Okay. And what time do you --

2 A I come --

3 Q -- return?

4 A -- back at 8:30, but I got there at 8:25.

5 Q On that day you --

6 A In that ---

7 Q -- remember?

8 A -- day.

9 Q Okay. So what happened when you returned?

10 A Well, I was parking my bus and I saw my -- I saw Jackie
11 there.

12 Q Jackie is a --

13 A Is --

14 Q -- union officer?

15 A -- the union officer from 226. And I parked the bus, I
16 came out and I said good morning, Jackie. What are you doing
17 here? And she said well, Jon is coming to talk to Ed, because
18 we need to do this process as soon as possible to proceed with
19 the contract.

20 And I told her what contract? We've got a new contract?
21 Because I don't see paperwork. We want to see the new papers,
22 but no contract. Because everybody don't speak English. They
23 all speak Spanish.

24 And Jackie said Jon is coming. And Jon parked. He was
25 coming towards me. Jackie said do not argue with Jon. Just

1 say good morning.

2 So I spoke to Jon. I said good morning, Jon, and shook
3 his hand. And I asked him do you have a new proposal? He said
4 I don't want to hear it. You do not -- no longer in the Union
5 board. Congratulations.

6 I said well, I still represent the people, because they
7 don't speak English. They speak Spanish. So in title I'm on
8 behalf of the people, not the Union board.

9 Q Did he say why you weren't in the Union board?

10 A Because I was gossiping and telling them that the contract
11 is no good, this, and this and that. I said I didn't say the
12 contract is no good. I said it's not fair. It's two different
13 things. You asked for 50, 50, 50 and then you dropped it down
14 to 35, 45 and 55 for the mechanics, when the drivers work
15 almost the same as the mechanics.

16 Q So what did Jon say?

17 A He don't want to hear it. He started getting loud, and
18 cursing and he don't want to hear about it. I said if you
19 can't do your job just surrender your rights and I'll get a new
20 union board, because you don't to communicate with me.

21 Then Ed Thomas came out of the office and said I don't
22 want to hear this no more. This is not happening in the
23 parking lot. I need Mr. Del Toro to leave.

24 Then took Jon and said me -- Jon, me and you need to talk.
25 And he took Jon in. From there I don't know nothing else,

1 until I came back to work.

2 Q He took Jon where?

3 A Into the office.

4 Q Alright. And Ed Thomas is the man present here --

5 A Present.

6 Q -- the owner --

7 A Yes.

8 Q -- of the company? Were you ever told there was a rule
9 against arguing in the parking lot?

10 A No.

11 Q What did -- so you left the parking lot at that time?

12 A Yes.

13 Q Where did you go?

14 A I went home.

15 Q And did you come back?

16 A I came back at 1:00 O'clock to pick up my bus. When Ed
17 Thomas looked at me and just walked away, I took my papers, did
18 my run, came back at 3:30 to surrender my papers and he told me
19 I'm fired. Give me my keys from the gate and you're no longer
20 working for me, because you're telling people this, and this
21 and that. And I told him I never said that.

22 JUDGE GREEN: Well, this and that? I mean those are the
23 words he used or --

24 THE WITNESS: No, he said you --

25 JUDGE GREEN: -- you -- what did he say?

1 THE WITNESS: This, and this and that --

2 JUDGE GREEN: Please --

3 THE WITNESS: -- what I'm try to say, he told me that I'm
4 telling people that he's selling the buses, he's -- he told me
5 I'm tired of you talking to the employees telling them that I'm
6 selling the buses, I'm going to get out of business. You're
7 fired. I don't want to hear it no more. He walked inside.

8 I said you can't fire me. Give me a letter if you're
9 going to fire me so I can collect. And he said take -- he told
10 me, take me to court, sue me. The Union board -- take that to
11 the Union board. And he said and grift that. I never used
12 that word. I don't what that word means.

13 JUDGE GREEN: I don't either.

14 THE WITNESS: He told me grift that and I left. I said
15 I'm not going to argue with you no more. I'm out of here.

16 Don't worry about it. I'll see you in court. So the --

17 JUDGE GREEN: Okay.

18 THE WITNESS: -- next Monday I came to the Labor Board.

19 JUDGE GREEN: Okay. Before -- okay, fine. Before you
20 finish that incident --

21 THE WITNESS: Uh-huh.

22 JUDGE GREEN: Is there anything else that you remember him
23 saying? I mean it seems to me he said two things that he
24 didn't like. Well, one thing. That you were telling employees
25 that he was going to sell the buses and that you were also

1 telling employees that he was going to close down --

2 THE WITNESS: Yeah.

3 JUDGE GREEN: -- go out of business. Right --

4 THE WITNESS: But I told him I didn't said that.

5 JUDGE GREEN: I -- alright. That's -- I want to finish
6 the conversation. I want to get -- I would like to be -- like
7 a movie, I'd like to be as close as possible to what happened
8 on that day. So is there anything that you want to tell me
9 about that day that you remember?

10 THE WITNESS: He just kicked me out. He said I don't want
11 to hear it anymore. You're fired.

12 I told him I wasn't in the meeting. I spoke to him
13 straight out. I said you had a meeting. I didn't go to none
14 of the meetings.

15 And then I told him Oscar told me you were selling the
16 buses. So talk to Oscar. He said I don't want to hear it no
17 more and he threw me out.

18 JUDGE GREEN: Okay. Is that -- okay. That's the whole
19 trans -- that's what happened?

20 THE WITNESS: Uh-huh.

21 JUDGE GREEN: Okay. And then the following day you went
22 to the Labor Board?

23 THE WITNESS: Yes.

24 JUDGE GREEN: Okay. So this -- the -- all this stuff
25 about the second ratification vote, you were not working?

1 THE WITNESS: No, I wasn't working.

2 JUDGE GREEN: Okay. So you know about it because --

3 THE WITNESS: Because the --

4 JUDGE GREEN: -- you -- through the people talking?

5 THE WITNESS: -- people are talking about it.

6 JUDGE GREEN: Okay. That's how you know about the things

7 that happened after --

8 THE WITNESS: Happened in --

9 JUDGE GREEN: -- you left?

10 THE WITNESS: -- the company, yes.

11 JUDGE GREEN: Okay.

12 MS. LEVY: Alright.

13 CONTINUED DIRECT EXAMINATION

14 BY MS. LEVY:

15 Q Before Mr. Thomas told you, you were fired, did he give
16 you any opportunity to talk about any charges against you --

17 A No.

18 Q -- or --

19 A He didn't give me no charges. He said you are fired. I
20 don't want -- I'm tired of all this gossiping that's going on.

21 Q Before that had you heard that you had done anything wrong
22 from Ed Thomas?

23 A No.

24 Q So he never gave you an opportunity to respond to any
25 complaints about you?

1 A No.

2 MS. LEVY: Okay. I have no further questions.

3 JUDGE GREEN: You can ask him questions if you like, but,
4 you know, don't make speeches.

5 MR. THOMAS: No, I'm not.

6 JUDGE GREEN: Just try --

7 MR. THOMAS: I -- yeah.

8 JUDGE GREEN: -- ask him questions.

9 MR. THOMAS: It's going to be a longer than expected day.
10 The issue still lies at the end result; I fired him.

11 JUDGE GREEN: No, no, but that -- you're --

12 MR. THOMAS: I understand --

13 JUDGE GREEN: -- telling me --

14 MR. THOMAS: -- but the issues that we're passing through
15 just don't seem relevant.

16 JUDGE GREEN: Well --

17 MR. THOMAS: In the mean time I'll just ask a question as
18 to it and maybe a couple of others.

19 CROSS EXAMINATION

20 BY MR. THOMAS:

21 Q But when you were -- on Monday you filed a complaint
22 stating that the Union asked me to let you go. Why did you do
23 that? And then amend it thereafter. Why did you go in with
24 such a crazy thought that the Union would ask me to fire you?

25 MS. LEVY: Objection.

1 MR. THOMAS: And that --

2 JUDGE GREEN: Alright.

3 MR. THOMAS: -- was dropped.

4 JUDGE GREEN: I'm sorry. I have to sustain the objection.

5 MR. THOMAS: Okay. Not a problem. Alright.

6 BY MR. THOMAS:

7 Q You stated that in April 2015 you contacted the Union, but
8 you referred to April 2015 there was a vote April 27th, in
9 which they were voted in. So you couldn't have voted -- you
10 couldn't have gone to them in April 2015. I believe we heard
11 at around January 2015 there was activity taking place for the
12 Union and organization for the Union to come in.

13 JUDGE GREEN: Alright. So the question is?

14 MR. THOMAS: So the time -- again, I go back to my issue,
15 the timing between you having been known to be an organizer
16 amongst others, it was almost a year. And your statement is
17 that I let you go because you began a union. That's --

18 JUDGE GREEN: Well, actually that's not his statement and
19 it's not the theory of the General Counsel's case, but you're
20 correct that he -- I take it that you first contacted or first
21 got into contact with the Union in January of 2015?

22 THE WITNESS: Yes.

23 JUDGE GREEN: Okay. And then later there was the vote to
24 bring the Union in?

25 THE WITNESS: It took almost a year --

1 JUDGE GREEN: Okay.

2 THE WITNESS: -- six months.

3 JUDGE GREEN: Okay.

4 MR. THOMAS: Well, the --

5 JUDGE GREEN: So --

6 MR. THOMAS: -- vote happened April 27th and it took a

7 year for them to ratify a contract.

8 JUDGE GREEN: Okay.

9 MR. THOMAS: Alright.

10 BY MR. THOMAS:

11 Q So you stated that I said you were a bully. That's why
12 they didn't let you be a shop steward. Not that they would go
13 by my word as to what I thought of you, but I did mention to
14 you that you had been put in leadership positions many years
15 ago when you -- as a bus driver. That you hand handled crews
16 of bus drivers at Passaic County Tech, which is one of our main
17 contracts, in which we allowed you to set the schedules and
18 what not. And the people would come back complaining that you
19 were a little bit too authoritative with them, you pushed too
20 much --

21 MS. LEVY: Wait a --

22 MR. THOMAS: -- on them.

23 MS. LEVY: -- minute. Excuse me.

24 JUDGE GREEN: Okay. Alright.

25 MR. THOMAS: So it wasn't --

1 MS. LEVY: I'm going to object.

2 MR. THOMAS: -- that it was a bully --

3 MS. LEVY: I think --

4 JUDGE GREEN: No. Alright. It all -- alright. I'm going
5 to overrule your objection in sense. Alright? Going back were
6 there -- do you know that there were complaints made by
7 employees that you were being a bit of a bully to them?

8 THE WITNESS: Nobody approached me and told me anything.

9 JUDGE GREEN: Alright. But --

10 THE WITNESS: So how should I know what -- if I disrespect
11 you, you should approach and Luis, I don't like this, and this
12 and that, but you can't wait seven -- 16 years to tell me that.
13 I've been running Tech since I started with the company.

14 JUDGE GREEN: Okay. But was there a period of time when
15 you were -- had more responsibility and then it was taken away
16 from you?

17 THE WITNESS: Not really. He never took nothing away. He
18 always --

19 JUDGE GREEN: Well, you became -- when you were last
20 working there you were a driver. You were not involved in
21 scheduling other workers or doing anything like that.

22 THE WITNESS: I wasn't really scheduling like he said.
23 Tech is a school that line up buses and they decide where they
24 go, South Peak (ph), Riverside, all different directions where
25 the kids live. The only thing I tell the bus driver, I try to

1 make it as comfortable as I can, because I did that for 16
2 years and I know more or less how to do it, so they could be
3 comfortable.

4 South Peak, that's two lines. You could run Main Street
5 and you could run Lafayette. So I break it up into two and the
6 drivers always had an attitude. And I tell the supervisor I
7 cannot tell them what to do. I could only suggest how to do
8 it.

9 JUDGE GREEN: Okay. But did you ever -- were you ever
10 told, during the time that you worked there or during this
11 period of time, that some of the drivers were annoyed at you,
12 because you were pushing them too hard or bullying them?

13 THE WITNESS: That was the first time, when his partner --

14 JUDGE GREEN: Yeah.

15 THE WITNESS: -- Juan Gonzalez approached me and said
16 you're not running for Tech. You cannot tell people what to
17 do. And I stopped.

18 JUDGE GREEN: Okay, fine. So that was it?

19 THE WITNESS: That was it.

20 JUDGE GREEN: So other than that, nobody from the company
21 --

22 THE WITNESS: Nobody from the company approached me.

23 JUDGE GREEN: -- ever said to you --

24 THE WITNESS: And they always asked me for directions. So
25 I don't know what the problem is doing that he's saying that

1 I'm telling people what to do.

2 JUDGE GREEN: Alright. Okay. I'm just --

3 THE WITNESS: Yeah --

4 JUDGE GREEN: Do you know -- alright. Yeah. Because you
5 mentioned when you were kicked out of the meet -- the
6 negotiating meeting the reason you were given was that Mr.
7 Thomas claimed that you were a bully. I mean --

8 THE WITNESS: Well, that was the same time when they
9 representing me as a shop steward, that I had the hat and the
10 shirt --

11 JUDGE GREEN: Right.

12 THE WITNESS: -- and he told me you can't come in my
13 office with that. I said I'm not working.

14 JUDGE GREEN: So --

15 THE WITNESS: I only work --

16 JUDGE GREEN: Alright.

17 THE WITNESS: -- from 8:00 to --

18 JUDGE GREEN: So as far as you know there was really no
19 reason for --

20 THE WITNESS: No.

21 JUDGE GREEN: -- him to say that --

22 THE WITNESS: Yes.

23 JUDGE GREEN: -- about you?

24 THE WITNESS: Right.

25 JUDGE GREEN: Okay. Alright. I'll hear, of course, what

1 he has to say --

2 THE WITNESS: Yes.

3 JUDGE GREEN: -- but I'm --

4 THE WITNESS: I understand.

5 JUDGE GREEN: -- hearing what you have to say first.

6 CONTINUED CROSS EXAMINATION

7 BY MR. THOMAS:

8 Q On that same subject this is why I asked Jon that he would
9 reconsider who he might have as an authoritative figure for the
10 people that you might be representing, because in that case
11 back then and even still attitude-wise you seem to be just a
12 little bit more rough than we thought a steward should be. So
13 we asked, but we didn't say do. I didn't know if I had the
14 right to say yes or no to who he elects or who he appoints. So
15 anyway, in that case --

16 JUDGE GREEN: Okay. But this is --

17 MR. THOMAS: -- that being done.

18 JUDGE GREEN: This -- yeah, this is something that you're
19 tell me when you testify.

20 MR. THOMAS: Okay.

21 JUDGE GREEN: Alright?

22 MR. THOMAS: Alright.

23 JUDGE GREEN: If you want to.

24 MR. THOMAS: Okay. Well, again the -- Luis had gone
25 around to certain individual drivers one night explaining them

1 that they were going to get \$2 an hour raises. We had people
2 coming to our windows to pick their trips and they said oh, the
3 next time I pick up one of these trips I'm going to get \$2 an
4 hour for this. They were all misled. This is what led the
5 Union to come. Jon had realized that way into the
6 negotiations.

7 JUDGE GREEN: Okay.

8 MR. THOMAS: And --

9 JUDGE GREEN: But this is not a question. I'm sorry, if
10 you have questions then --

11 MR. THOMAS: So it's --

12 JUDGE GREEN: -- you have --

13 MR. THOMAS: -- only for questioning? Okay.

14 JUDGE GREEN: Yeah.

15 MR. THOMAS: I understand. I'm sorry.

16 JUDGE GREEN: Again, I'm going to give you the -- you
17 know, the opportunity to --

18 MR. THOMAS: I'm sorry.

19 JUDGE GREEN: I'm going to give you a complete --

20 MR. THOMAS: Okay.

21 JUDGE GREEN: -- opportunity to explain in your own words
22 what your position is and what you -- what happened. So --

23 MR. THOMAS: Okay.

24 JUDGE GREEN: -- you do that --

25 MR. THOMAS: Okay.

1 JUDGE GREEN: -- when it's your turn.

2 CONTINUED CROSS EXAMINATION

3 BY MR. THOMAS:

4 Q I have two letters here and some unsigned. Doralinda
5 Ramirez, Andrea Garcia. And they write in here in Spanish
6 broken and a little bit of bad spelling, but that you had
7 approached them telling them that we were in fact going to be
8 selling and that -- one of them had said here that she be --
9 she should go look for a job at Rudco. I did not put words in
10 their mouths. This is something that we asked her, because
11 through Oscar we heard you were going around for quite a long
12 time doing this.

13 JUDGE GREEN: Okay. So your question is did you tell that
14 --

15 MR. THOMAS: Did you do this?

16 THE WITNESS: No.

17 BY MR. THOMAS:

18 Q Okay. So these two people here are lying?

19 A Yes.

20 MR. THOMAS: Okay. I don't see the reason why they would,
21 but that's okay. Alright. I don't believe that at this moment
22 I have anything relative to what, you know, these --

23 JUDGE GREEN: Okay.

24 MR. THOMAS: -- proceedings --

25 JUDGE GREEN: Okay. Do you have any other questions?

1 MS. LEVY: Yeah.

2 REDIRECT EXAMINATION

3 BY MS. LEVY:

4 Q I just wanted to ask you when -- who was Juan Gonzalez?

5 A Juan Gonzalez was the first supervisor that I had in 2000.

6 Q In 2000?

7 A Yeah, supposedly be his partner.

8 Q And how long was he your supervisor for?

9 A Since he got fired. Yeah, about 10 years.

10 Q For 10 years? So do you remember when it was that he
11 talked to you about how you were dealing with other employees?

12 A Well, I don't remember, but I know what he's talking
13 about. When I started this company -- working for this
14 company, it was supposed to be a family company. Juan Gonzalez
15 was the one that used to give me the work.

16 He said for Tech runs they pay you two hours, even if you
17 finish in one hour. What he's trying to say is that I'm
18 telling people they're getting paid two hours for a run, it's
19 incorrect, because he dropped it down to an hour and a half.

20 Q Mr. Del Toro, I'm asking you, you said that Mr. Gonzalez
21 criticized you about how you were dealing with coworkers --

22 A Yeah, because when I went up to Tech --

23 Q -- when was that?

24 JUDGE GREEN: All she want --

25 MS. LEVY: But just want to know --

1

2 JUDGE GREEN: Yeah.

3 MS. LEVY: -- when that was.

4 JUDGE GREEN: She doesn't want to know the details and

5 neither do I. All you want to know --

6 THE WITNESS: 2000 and --

7 JUDGE GREEN: How long ago was it?

8 THE WITNESS: It was pretty long --

9 JUDGE GREEN: Well, give me a --

10 THE WITNESS: 2005-2006.

11 JUDGE GREEN: Okay.

12 MS. LEVY: Okay.

13 JUDGE GREEN: Alright. That's --

14 MS. LEVY: Thank you.

15 JUDGE GREEN: So you want to show that it was a long time

16 ago.

17 MS. LEVY: Right.

18 JUDGE GREEN: Alright. Any other questions? Alright.

19 MS. LEVY: No.

20 THE WITNESS: Am I --

21 JUDGE GREEN: No. So thank you. You can step down.

22 THE WITNESS: Thank you.

23 MS. LEVY: You can stay here.

24 JUDGE GREEN: Yeah, you can stay here.

25 MS. LEVY: Okay. General Counsel called Ed Thomas.

1 JUDGE GREEN: Okay. So Mr. Thomas, she's going to ask you
2 certain questions. Now, the thing is we're going to break this
3 up and if you want to take a piece -- a pad, so that you can
4 write notes to yourself, you can do that.

5 MR. THOMAS: There might be some things I wish to write.
6 Yes, good idea --

7 JUDGE GREEN: Yeah. Because you may want to --

8 MR. THOMAS: Use it against you.

9 JUDGE GREEN: No, here's what I'm saying. She's going to
10 ask you pointed questions. Your job is to answer pointed
11 questions. Then there's going -- so -- and your job is not to
12 give a long response to her questions unless it's really
13 required.

14 MR. THOMAS: Uh-huh.

15 JUDGE GREEN: When she gets finished with her questions --
16 and this is the reason I want you to make notes -- and you can
17 ask me for time to make a note. Is that you're going to have
18 an opportunity to expand and to answer anything -- you know,
19 any -- say anything more about things that she asked you about,
20 or to explain anything more or to add other -- you know, add
21 other things that you want me to know about. So she's limiting
22 herself to certain things. You have to answer her questions.
23 But then after she gets finished you'll have an opportunity to
24 tell me what you want to tell me.

25 MR. THOMAS: Okay.

1 JUDGE GREEN: So we're breaking it down --

2 MR. THOMAS: Uh-huh.

3 JUDGE GREEN: -- in a way.

4 MR. THOMAS: Alright. Good. Thank you.

5 Whereupon,

6 Ed Thomas

7 Having been previously sworn was called as a witness and

8 testified as herein follows:

9 DIRECT EXAMINATION

10 BY MS. LEVY:

11 Q Mr. Thomas, you're the owner of Trans-Ed, Inc., correct?

12 A Yes.

13 Q And Trans-Ed provides school transportation for children

14 to and from school and at -- to and from after school

15 activities, correct?

16 A Correct.

17 Q It has a yard and an office in Paterson, New Jersey,

18 correct?

19 A Yes.

20 Q And you previously had a yard and office in Passaic, New

21 Jersey?

22 A Correct.

23 Q You relocated in 2015?

24 A Yes.

25 Q And you have no other facility right now, is that correct?

1 A Newark, New Jersey.

2 Q You have an office in Newark, New Jersey or you have a
3 yard there?

4 A Yes.

5 Q Okay. Do you employ -- is -- do you have school buses
6 there?

7 A Yes.

8 Q Alright. But Luis Del Toro has never worked there?

9 A No.

10 Q And the --

11 JUDGE GREEN: That's a yes actually. Yes, he has never
12 worked there.

13 THE WITNESS: Well, we assume she's talking about Newark.

14 JUDGE GREEN: Yeah. Right.

15 MS. LEVY: In Newark. And the labor contract doesn't
16 cover that?

17 THE WITNESS: No.

18 JUDGE GREEN: Is there a labor contract?

19 THE WITNESS: Not in Newark.

20 JUDGE GREEN: No --

21 THE WITNESS: But there is, yes. May 20 -- May 6th they
22 finally voted it in, of this year.

23 JUDGE GREEN: Okay.

24 BY MS. LEVY:

25 Q In Paterson you employ drivers, drivers' aides, monitors

1 and mechanics, correct?

2 A Aides and monitors are the same, but yes.

3 Q Okay. And in Paterson all of these employees are
4 represent by Transport Local Workers Union Local 226, correct?

5 A Correct.

6 Q And it's true that the group of employees represented by
7 the Union is approximately 100 employees, correct?

8 A True. Correct.

9 Q Alright. Now, in Paterson you're responsible for the
10 daily operations of the business, true?

11 A Yes.

12 Q And you've delegated some authority to operations manager
13 Bismark Caraballo, is that --

14 A Caraballo, yes.

15 Q Caraballo? Is that how you say his name?

16 A Yeah, B-A-L-L-O --

17 Q You delegated to him the authority to hire?

18 A Yes.

19 Q And he can fire employees?

20 A Yes.

21 Q And he can promote employees?

22 A Within certain boundaries he can promote, yes.

23 Q And he can demote employees, true?

24 A Again, within certain boundaries.

25 Q Alright. What are those boundaries?

1 A Well, we have to have a little bit of a talk first as to
2 why he may be doing either one of the two.

3 Q Alright.

4 A And that's never happened. So I can't answer --

5 Q He's never promoted anybody?

6 A Never promoted or demoted.

7 Q He's never demoted anybody. But he can hire and fire?

8 A Yes.

9 Q Okay. The Union was voted in, in an election in late
10 April 2015, correct?

11 A They were voted in May 6th 2016.

12 JUDGE GREEN: Oh, you're talking about two different
13 things. You're talking about the contract. She's talking
14 about the --

15 THE WITNESS: Oh, I'm sorry. Yeah, April 27th 2015.

16 BY MS. LEVY:

17 Q Was the election. I think you're talking about the
18 certification --

19 A Yes, I'm sorry.

20 Q -- in May. And you did not campaign against the Union
21 prior to the election?

22 A No.

23 Q And neither did any other manager or supervisor --

24 A No.

25 Q -- of Trans-Ed? And you're familiar with Luis Del Toro,

1 correct?

2 A Very much so.

3 Q And he worked for you for about 16 years before you
4 terminated him?

5 A Yes.

6 Q And you found him to be a dependable employee?

7 A Yes.

8 Q And he was heavily relied upon?

9 A Yes.

10 Q And you had a good working relationship?

11 A We did.

12 Q You were aware then in 2015 he was talking to employees
13 about being represented by a union, correct?

14 A Yes.

15 Q So after the Union was voted in, the parties began
16 contract negotiations, true?

17 A Yes.

18 Q And the Union spokesperson was Jon Bradford, the Union
19 president --

20 A Uh-huh.

21 Q -- is that correct?

22 A Yes.

23 Q And you've had a good relationship with Mr. Bradford?

24 A We got off on the right foot.

25 Q During the very first meeting you were in basic agreement,

1 isn't that true?

2 A Yes. Fortunately for them I had a lot of it in place
3 already, before they even had a union come.

4 JUDGE GREEN: What do you mean? Like --

5 THE WITNESS: Personal days, sick days, holiday pay.

6 JUDGE GREEN: Oh.

7 THE WITNESS: Everything a union would want, we already
8 had.

9 JUDGE GREEN: Well, they always want more.

10 THE WITNESS: Yeah. Well, they wanted their raises, like
11 he expected it to be \$2, but they didn't come near it.

12 BY MS. LEVY:

13 Q Alright. Do you remember when the first session was? The
14 first negotiation session.

15 A My goodness. If it was April the 27th they got voted in,
16 it probably didn't see -- and I'm not being even sure, this is
17 somewhere around June or July that I might have seen them.

18 Q Do you remember a meeting at which Luis Del Toro was
19 introduced?

20 A Yes.

21 Q And also present at that meeting was Oscar Colon?

22 A Yes.

23 Q And then the parties held several sessions after that,
24 before the employees were first given a contract to vote on?

25 A Yes. I can't pinpoint the dates though.

1 Q Alright. Well, prior to the first contract being given to
2 the employees you heard that Luis was telling employees to vote
3 no on the contract, isn't that correct?

4 A There was word that he was trying to get a Teamsters union
5 in, rather than the one they had, yes.

6 JUDGE GREEN: Well, I think you didn't answer her
7 question. Did you also hear that he was --

8 THE WITNESS: Yes. I did.

9 JUDGE GREEN: -- telling employees that he -- in his
10 opinion they should vote against the ratification?

11 THE WITNESS: I did hear that, yes.

12 BY MS. LEVY:

13 Q Alright. And you heard that he was telling employees that
14 the Union and the union president had sold out, isn't that
15 correct?

16 A I had heard that through Oscar. I didn't hear it from the
17 people other than Oscar, who is our mechanic.

18 Q Okay.

19 JUDGE GREEN: Wait, wait. The mechanics they have like a
20 little department? He's the only mechanic or it's --

21 THE WITNESS: No, there's two -- well, at the time there
22 was two others, but he was appointed the steward and he has his
23 ear to the yard. Drivers come to see him --

24 JUDGE GREEN: Yeah --

25 THE WITNESS: -- when they have little problems --

1 JUDGE GREEN: Right, yeah.

2 THE WITNESS: -- and they speak.

3 JUDGE GREEN: Right.

4 THE WITNESS: They don't see me. I'm in an office.

5 JUDGE GREEN: Right.

6 THE WITNESS: So he's out there visible to them and word
7 gets around.

8 JUDGE GREEN: Okay. So you heard it from Oscar?

9 THE WITNESS: Correct.

10 JUDGE GREEN: Alright.

11 MS. LEVY: Alright. You also heard, as you said, that
12 Luis was trying to get the Union out and another union in?

13 THE WITNESS: Yes.

14 BY MS. LEVY:

15 Q And after that the employees rejected the contract?

16 A They did.

17 Q That vote occurred in about January 2016, is that right?

18 A Was it January? My gosh. You're talking -- yeah, it was
19 a slow wheel. Things didn't happen very quickly with that
20 union. So I mean I think Luis stated January and I believe
21 that may be correct.

22 Q Alright. In March 2016 the employees voted on the
23 contract again?

24 A Yes. The Union never gave them a new proposal.

25 Q Alright. But I'm just trying to get --

1 A Yes.

2 Q -- establish a date. Do you remember, prior to the vote,
3 meeting with the union president about fliers he wanted to post
4 about -- for a union meeting to vote on the contract?

5 A Yes.

6 Q And do you remember during that conversation Luis came up
7 to you and Jon and started talking?

8 A We were speaking, Jon and I, and Luis came over speaking.
9 Again, I wasn't really paying attention. I was listening to
10 Jon or speaking with Jon at the time and I said Luis, can you
11 just leave? Go home.

12 Q Alright. So you didn't --

13 JUDGE GREEN: Excuse me. At this point was Luis still
14 employed?

15 THE WITNESS: Yes.

16 MS. LEVY: And was that on February 26th?

17 THE WITNESS: I don't recall that date exactly --

18 BY MS. LEVY:

19 Q Was it the day that Luis was fired?

20 A I know he was fired February 26th.

21 Q Well, this conversation where you told Luis to go away,
22 was that close to the time --

23 A I wish --

24 Q -- of his termination?

25 A -- I could say yes or no to it, but I don't recall. But

1 it probably wasn't too far away from it, if it wasn't the same
2 day.

3 Q Alright.

4 JUDGE GREEN: Just remind me, exactly what you remember
5 happening on this particular incident. You were having a
6 conversation with?

7 THE WITNESS: Outside?

8 JUDGE GREEN: Yeah.

9 THE WITNESS: Yeah. Well, that day I went out to see Jon.
10 I realized he was out there. Someone time me Jon was outside.
11 So I went to see him. I left the office.

12 And then I'm out there speaking with him or I think it was
13 a threesome, Luis included. And I said Luis, you don't to be
14 here. You can leave. And that's some of what I remember
15 saying.

16 JUDGE GREEN: Okay. Alright. You were -- I didn't mean
17 to interrupt.

18 MS. LEVY: Okay.

19 JUDGE GREEN: I just wanted to make sure I understood what
20 happened.

21 MS. LEVY: So the employees were -- or the Union was given
22 a contract -- there was a contract proposal in February that
23 they were going to vote on in March?

24 THE WITNESS: Yes.

25 BY MS. LEVY:

1 Q And I think you've characterized that proposal as a small
2 change from the contract as first presented, is that correct?

3 A Yes, they wanted an extra sick day.

4 Q Right. One extra sick day. That was the only change?

5 A Right, because I -- they asked for money, but I told them
6 listen, you know, you've got 100 people here. You can't really
7 go crazy. 2% is the cost of living increases that we receive
8 if we're lucky. So let's keep that where it is. And we gave
9 the sick day, the extra sick day.

10 Q Alright. And you thought that the contract as proposed
11 for the employees to vote on in March was fair, correct?

12 A Yes.

13 Q And are you familiar with Oscar Colon? You've --

14 A Yes.

15 Q -- mentioned him. He's a mechanic. And you've testified
16 that Oscar told you that Luis Del Toro told employees that
17 Trans-Ed was going to close?

18 A He had heard through some people coming to him that -- are
19 we going to close? Something like in that manner. And he was
20 like where did you get that?

21 He said Luis just told me we're going to close up or
22 something, get another job somewhere. That's how I got the
23 story. Then we asked -- I'll leave it at that.

24 Q When was that that Oscar came to you?

25 A My gosh. I believe I was hearing this for some time

1 before the final day of Luis employment. I -- it just strikes
2 me that it -- just something telling me that we've been hearing
3 this through the grapevine for a few days before. I can't say
4 how long though or how many days. If it was just the week
5 before. It might have been two weeks before, but very recent
6 to his termination.

7 Q Okay. And you didn't talk to Luis about that did you?

8 A No.

9 Q You never talked to Luis about that --

10 A No.

11 Q -- before you fired him?

12 A No, I had no reason to. I'm going to get my glasses.

13 Q Okay. Can you identify what's been marked for
14 identification as GC-3?

15 A The numbers? Oh.

16 Q Just what --

17 JUDGE GREEN: No, just --

18 MS. LEVY: -- that document is.

19 JUDGE GREEN: -- what it is.

20 THE WITNESS: It's a letter that I had written up. Again,
21 to the issue of people speaking about losing their job or
22 taking jobs elsewhere --

23 (General Counsel's GC-3 identified)

24 BY MS. LEVY:

25 Q Did you give that to Trans-Ed employees?

- 1 A We did.
- 2 Q How did you distribute it?
- 3 A Left in their buses.
- 4 Q Alright. There's writing below, 2/24/16. Is that --
- 5 A Okay.
- 6 Q Was that on the original?
- 7 A No.
- 8 Q Is that --
- 9 A Did you put that down?
- 10 Q No.
- 11 A Because I didn't put it down.
- 12 Q Is that the date --
- 13 A I have one there. I don't --
- 14 Q Is that the date that you distributed that notice?
- 15 A It could very well be.
- 16 Q You don't remember?
- 17 A No, I do not. I didn't pay attention to what -- you know,
- 18 the dates of whatever took place.
- 19 JUDGE GREEN: Well, is this -- like is this something that
- 20 an employee gave to you --
- 21 MS. LEVY: Yeah.
- 22 JUDGE GREEN: I mean that's --
- 23 BY MS. LEVY:
- 24 Q It's not true that you posted that several days before
- 25 Luis was terminated?

1 A I may have, but I don't really know exactly the date that
2 I put this in or I could it in after he was terminated, just to
3 make sure people knew they were not going to lose their jobs.

4 Q You don't remember?

5 A I do not.

6 Q Alright. The notice is in English and Spanish --

7 A Right.

8 Q -- correct?

9 A Uh-huh.

10 Q Do you speak Spanish?

11 A Yes.

12 Q Alright. So you -- you're -- this was distributed, but
13 you don't know when?

14 A No, and I didn't put that date down.

15 MS. LEVY: Okay. Alright. I'd like to introduce GC-3.

16 JUDGE GREEN: Okay. Alright. But at this point I'm not
17 sure I know what the date is.

18 MS. LEVY: We'll try to get someone else to give you a
19 date.

20 JUDGE GREEN: I mean if you could stipulate? I don't know
21 how you could do this.

22 MS. LEVY: Well --

23 JUDGE GREEN: Okay.

24 MS. LEVY: -- I understand --

25 JUDGE GREEN: I'll receive the document.

1 (General Counsel's GC-3 received in evidence)

2 MS. LEVY: I understand that it was posted several days
3 before Luis was terminated on 2/24/16.

4 THE WITNESS: Okay. What I could do is see the date that
5 we might have written this into the computer and that'll give
6 us a better idea, but obviously that'll be through the staff
7 member.

8 JUDGE GREEN: Is there some way to ask somebody to look?

9 THE WITNESS: Well, I guess the girl that typed it up. If
10 it's in the machine it would give the date it was typed, no?

11 JUDGE GREEN: Alright. What she's interested in knowing
12 is that --

13 THE WITNESS: Was it before.

14 JUDGE GREEN: Before he was terminated. So if you could -
15 - alright. When we take a break, you could ask your -- whoever
16 it is, the person who has access to the computer --

17 THE WITNESS: Okay.

18 JUDGE GREEN: -- if she could date it, to confirm it.

19 THE WITNESS: Uh-huh.

20 JUDGE GREEN: And if you can then it's easy. If you can't
21 --

22 THE WITNESS: Yeah, I mean it may --

23 JUDGE GREEN: -- if there's a problem --

24 THE WITNESS: -- have been two days before or two days --
25 I don't really know. I can't remember.

1 JUDGE GREEN: Alright. Okay. That's fine.

2 THE WITNESS: But I'll check with the lady when I get out

3 --

4 JUDGE GREEN: Okay.

5 THE WITNESS: -- and I make a phone call there.

6 JUDGE GREEN: Is that alright with you?

7 MS. LEVY: He's going to check in his office?

8 JUDGE GREEN: Yeah. If he --

9 MS. LEVY: Sure.

10 JUDGE GREEN: -- confirms that it was done -- your point
11 is that this was sent --

12 MS. LEVY: Yeah, I under --

13 JUDGE GREEN: -- on --

14 MS. LEVY: We understand it to be 2/24/16.

15 JUDGE GREEN: You believe it was sent out on February 24th
16 2016 and probably the reason you believe that is that this --
17 an employee gave you this and the handwriting on the bottom is
18 an employee's handwriting. So she just wants to confirm it.
19 Alright?

20 THE WITNESS: Uh-huh.

21 JUDGE GREEN: Okay, thank you.

22 MS. LEVY: Okay.

23 CONTINUED DIRECT EXAMINATION

24 BY MS. LEVY:

25 Q There's no question that Luis Del Toro was terminated,

1 right?

2 A Correct.

3 Q He didn't quit his employment with Trans-Ed?

4 A No.

5 Q You've never told unemployment that he quit his
6 employment?

7 A No. I don't deal with unemployment?

8 Q Who deals with unemployment on behalf --

9 A Naomi, the other staff member.

10 Q Excuse me?

11 A Naomi.

12 Q Naomi?

13 A Uh-huh.

14 Q Had she come to talk to you about how Luis came to be
15 separated from --

16 A She was there when we said -- when we terminated him.

17 Q So she knows he's been terminated?

18 A Yes.

19 MS. LEVY: Alright. And could you mark this for
20 identification as GC-4?

21 JUDGE GREEN: GC-4? I hope that this -- I'm assuming this
22 does not contain a class action waiver and arbitration clause.

23 BY MS. LEVY:

24 Q Mr. Thomas, can you identify the document that's been
25 marked as GC-4?

1 A Our employee handbook.

2 (General Counsel's GC-4 identified)

3 Q Was that in effect at the time that Luis Del Toro was
4 terminated?

5 A It was July of last year, so it most likely would have
6 been, yes.

7 MS. LEVY: Okay. I'd like to introduce GC-4.

8 JUDGE GREEN: Okay. Received.

9 (General Counsel's GC-4 received in evidence)

10 MS. LEVY: And I have no further questions.

11 JUDGE GREEN: Alright. At this point do you want to take
12 a break?

13 THE WITNESS: That's up to you. I'm fine.

14 JUDGE GREEN: Yeah. Alright. You're fine. What you can
15 do is you can tell me the circumstances, the facts, you know,
16 the circumstances that led you to discharge this gentleman --

17 THE WITNESS: Okay.

18 JUDGE GREEN: -- in your own words.

19 THE WITNESS: Okay.

20 JUDGE GREEN: But try to be factual. You know, if you're
21 talking about a conversation --

22 THE WITNESS: I'll put it out the best way I can.

23 JUDGE GREEN: You know, as best as I can, you know, the
24 W's; when, where, who, what.

25 THE WITNESS: The when --

1 MS. LEVY: Okay. Can I --

2 THE WITNESS: Alright.

3 MS. LEVY: -- have just a minute --

4 JUDGE GREEN: But --

5 THE WITNESS: Close. I'll try to --

6 JUDGE GREEN: Yeah, okay.

7 MS. LEVY: Okay. Sorry.

8 CROSS TESTIMONY

9 BY MR. THOMAS:

10 Okay. So as I said Oscar pretty much had his ear to the
11 ground. So he got word of Luis explaining to people that we
12 were ready to close up, we're going to be selling our
13 equipment, that they should start looking for another job.
14 When this exactly came to my ears I cannot say for sure.

15 I know that I had spoken to a number of people coming to
16 the window. Might have been for their paychecks, might have
17 been just to inquire for whatever reason. And I said did so-
18 in-so? Yes. Would you put that -- no, I don't really want to
19 get involved. I'm afraid. And two people stood out and that's
20 the two people that --

21 JUDGE GREEN: Alright.

22 THE WITNESS: -- signed that little letter.

23 JUDGE GREEN: So you want to show me those letters?

24 THE WITNESS: Yeah. And that was enough for me to verify
25 what I had heard from Oscar, because it could have been

1 hearsay. But why would two people say to me that they were
2 approached and told that the business would be -- it's in
3 Spanish and it's scribbly, but they did it there in front of us
4 and one of the ladies was crying, because a little bit nervous
5 --

6 JUDGE GREEN: Alright. So --

7 THE WITNESS: -- and scared of retaliation.

8 JUDGE GREEN: -- this -- one of them is signed Andrea
9 Garcia.

10 THE WITNESS: And the other one has the name up top, yeah.

11 JUDGE GREEN: Alright. And that's what? Doralinda
12 Ramirez?

13 THE WITNESS: I -- that's close.

14 JUDGE GREEN: Alright. So I'm going to look at this and
15 see --

16 THE WITNESS: So --

17 JUDGE GREEN: -- whether or not my high school English --
18 Spanish is competent.

19 THE WITNESS: But that was what I had been --

20 MS. LEVY: Can I see those letters, please?

21 JUDGE GREEN: Yeah.

22 THE WITNESS: You have copies.

23 JUDGE GREEN: Well, do you have copies? Yeah, you have
24 copies.

25 THE WITNESS: I had --

1 JUDGE GREEN: Wait, wait.

2 THE WITNESS: -- that --

3 JUDGE GREEN: Wait. Let me --

4 THE WITNESS: Oh, sorry.

5 JUDGE GREEN: -- look at it. Alright. You -- alright.

6 Well, everybody here -- not you, but at least we have two
7 people who speak Spanish who can translate. Do you want to
8 offer these letters? When did you get them? Could you tell
9 me, as best you can, when you got these letters?

10 THE WITNESS: It was --

11 JUDGE GREEN: Obviously it was before --

12 THE WITNESS: Yes.

13 JUDGE GREEN: Well, was it before? Was it before --

14 THE WITNESS: No, it would have been -- actually, it was
15 before, because that was my basis for terminating him, because
16 what I had heard from the rumors being told to me by Oscar was
17 confirmed by these two young ladies. Whereas many others said
18 -- they didn't say no, but they really didn't want to get
19 involved. So with the two young ladies signing off that this
20 actually happened, I said this is true.

21 JUDGE GREEN: Okay. I want --

22 THE WITNESS: This could hurt us.

23 JUDGE GREEN: Alright. So how did it come about that
24 these two -- did they come together? Were they separate? What
25 was the story?

1 THE WITNESS: No, there was one -- well, they came at
2 separate times.

3 JUDGE GREEN: Yeah, okay.

4 THE WITNESS: And they were agreeable to writing down a
5 statement.

6 JUDGE GREEN: Well, one is dated on February 26th 2016.
7 Alright. So could you -- you're going to offer these in
8 evidence. Alright. So can you just translate that letter for
9 me?

10 MS. LEVY: No, I'm --

11 JUDGE GREEN: And you have to look at it.

12 MS. LEVY: I'm going to object --

13 JUDGE GREEN: Yeah. You can object.

14 MS. LEVY: -- to a document coming in that first of all is
15 hearsay.

16 JUDGE GREEN: No, it's not hearsay for the purpose of
17 which it's being offered. It's not being offered for the truth
18 of the matter asserted. It's being offered for the fact that
19 it was asserted.

20 MS. LEVY: It's being offered to justify his --

21 JUDGE GREEN: Yes.

22 MS. LEVY: -- termination.

23 JUDGE GREEN: Right, right.

24 MS. LEVY: As the basis for his termination --

25 JUDGE GREEN: Yeah, that's correct.

1 MS. LEVY: -- that he told certain things.

2 JUDGE GREEN: Right.

3 MS. LEVY: So that --

4 JUDGE GREEN: But it's not being offered for the fact that
5 he actually did tell those things. It's being offered for the
6 fact that he -- that somebody told him that he was saying these
7 things.

8 MS. LEVY: Alright. The second basis is that the
9 documents are in Spanish and they should be -- and --

10 JUDGE GREEN: Well, they're going to be span -- You have a
11 person who speaks Spanish --

12 MS. LEVY: They should --

13 JUDGE GREEN: -- who can --

14 MS. LEVY: -- be translated by a neutral translator --

15 JUDGE GREEN: No.

16 MS. LEVY: -- for the purpose of this hearing.

17 JUDGE GREEN: You each can translate it. That'll give you
18 a person -- an opportunity to translate the letter also. So
19 you can translate it first. I gave you the one.

20 THE WITNESS: Okay. I'll do my best, because writing is
21 not my favorite, but "yo Andrea Garcia Beno (ph), gominando
22 (ph)" --

23 JUDGE GREEN: I don't want it translated into Spanish.

24 THE WITNESS: Oh, I'm sorry. I'm sorry. I was trying to
25 figure out gominando. Oh, I, Andrea Garcia Beno, walking

1 through the yard and Luis Del Toro told me that Edward was
2 going to sell the buses -- small buses. That she should look
3 for another job with Rudco.

4 (Respondent's R-1 identified)

5 JUDGE GREEN: Okay. And this one, the second one?

6 THE WITNESS: I, Doralinda Ramirez, Mr. Luis Del Toro told
7 me if I wanted another job that he has a friend that could get
8 her a job for more money. That was the second time that he
9 asked me that. And I told him I don't want any problems.

10 (Respondent's R-2 identified)

11 JUDGE GREEN: Okay. Alright. I don't care how you do
12 this. You could do this after the hearing is opens, but if you
13 want to get a -- your witness could testify as to what these
14 are or you can get a neutral translator, but I'm going to
15 receive these documents, which are in Spanish. So do these
16 documents accurately reflect the conversations you had with
17 these two individuals?

18 (Respondent's R-1 & 2 received in evidence)

19 THE WITNESS: It was very little conversation. It was
20 just basically is this true? Yes. Would you write it down?
21 Yes.

22 JUDGE GREEN: And this is what they wrote down?

23 THE WITNESS: Yes.

24 JUDGE GREEN: Okay. And so the date on the top, do you
25 know whether or not that date --

1 THE WITNESS: That looks like it's different ink. And so
2 --

3 JUDGE GREEN: It does look like it's different ink.

4 THE WITNESS: I mean I showed -- you know, what it could
5 have been? The lady wrote it and my staff member put the date
6 down. So this was the same day that we saw this proof and then
7 thereafter terminated Luis.

8 JUDGE GREEN: But this, as far as you know, was not
9 actually written by the person who --

10 THE WITNESS: No, because --

11 JUDGE GREEN: -- wrote the document?

12 THE WITNESS: -- that's different writing and a different
13 pen. So it's probably that it was entered into the office and
14 she wrote it down here to keep a record.

15 JUDGE GREEN: Alright. Fine. Okay. So -- alright. So
16 what else do you want to tell me?

17 THE WITNESS: I'm -- like I said the issue was so simple
18 to me coming forward. Now -- you know, now we're into this
19 question and answer period. But there's my proof and there's
20 more proof, as to the fact that what I had heard was just --
21 was not only a rumor, it was true.

22 Luis was opening his mouth to people when he shouldn't
23 have as he did, when he was trying sell off the idea of getting
24 \$2 an hour from the Union. And when they didn't reach that
25 number that's why he wanted them out. He had his agenda.

1 But Luis already from the days back had -- you know, first
2 of all, he and I were pals. Like it says in my little that you
3 (*sic*) wrote -- you saw there I gave him money to buy a house.
4 I was very close to the man. He was very close to us.

5 Now, unions and non-unions, you know, we don't need unions
6 in our business, but we have it now thanks to Luis. Yes, it is
7 discomfoting to have to share with one another -- with another
8 person what I want to do. So Luis was a little bit on --
9 thereafter it's like uh. But when it came to that situation of
10 him even going further than that, trying to harm the business
11 more so, that's when I said no. No, we can't deal with this.

12 JUDGE GREEN: So what is the thing that he did that you
13 objected -- that you --

14 THE WITNESS: He was trying to harm. And people, if they
15 listened to him -- because obviously they'll listen to him
16 quite enough when you want to bring a union in. He probably
17 had enough followers. But with telling this \$2 an hour, of
18 course I would follow him too.

19 But with people following the fact that we're going to
20 sell, they can go find another job. Then the time comes that I
21 need to have these people come to work and they're not there,
22 because they thought we were closing. People have fears.
23 Alright?

24 What would you do if you heard a rumor in that manner or
25 someone came directly to you and said we're closing -- Trans-Ed

1 is going to close down? You better go get another job. So
2 that's -- that was my first fear. And I said we're not going
3 to let this go on, because he could tell a lot more people this
4 and if 20% of them believed him we're dead, because we don't
5 have drivers knocking on our doors to come to work.

6 JUDGE GREEN: Alright. So you want me to do anything,
7 with respect to the piece -- the box?

8 THE WITNESS: Yes. I don't know what's written there as a
9 yes or a no. Like I said I asked them particularly --

10 JUDGE GREEN: Well, will you explain --

11 THE WITNESS: -- did Luis come and ask you --

12 JUDGE GREEN: Yeah, why don't you explain what did about
13 the -- this obviously took place after --

14 THE WITNESS: This was --

15 JUDGE GREEN: -- he was --

16 THE WITNESS: -- July 21 or so I put --

17 JUDGE GREEN: Yeah, alright.

18 THE WITNESS: -- this out.

19 JUDGE GREEN: So it took place after the charge -- after
20 he was fired --

21 THE WITNESS: Yes.

22 JUDGE GREEN: -- and after --

23 THE WITNESS: Yes.

24 JUDGE GREEN: -- he came to the Labor Board.

25 THE WITNESS: Yes. Because I felt two letters wouldn't be

1 enough, but that --

2 JUDGE GREEN: So what did --

3 THE WITNESS: -- for me was enough.

4 JUDGE GREEN: What did you do?

5 THE WITNESS: So I wrote up a letter in Spanish asking if
6 Luis Del Toro had approached you with the fact that we were
7 closing? Then another paragraph did Luis Del Toro ever
8 approach you with the fact that we are moving? Yes or no, yes
9 or no. So --

10 JUDGE GREEN: So was the pieces of paper that --

11 THE WITNESS: Yes.

12 JUDGE GREEN: Do you have a blank piece of paper? I mean
13 the --

14 THE WITNESS: No. I did not bring one with me. I just
15 brought the --

16 JUDGE GREEN: So we --

17 THE WITNESS: -- box.

18 JUDGE GREEN: -- got a bunch of pieces of paper in a box -
19 -

20 THE WITNESS: Yeah.

21 JUDGE GREEN: -- and a box.

22 THE WITNESS: Which people would say yes or no. And that
23 was answering the question --

24 JUDGE GREEN: Okay.

25 THE WITNESS: -- that I asked. So --

1 JUDGE GREEN: Alright. Do you want me to look at those?

2 THE WITNESS: I would like that.

3 JUDGE GREEN: Alright.

4 THE WITNESS: I brought them here --

5 JUDGE GREEN: Then I'm going --

6 THE WITNESS: -- for the reason.

7 JUDGE GREEN: Then -- okay. Then I'm --

8 THE WITNESS: I'm here to --

9 MS. LEVY: Can I voir dire --

10 THE WITNESS: -- defend myself.

11 MS. LEVY: -- on this?

12 JUDGE GREEN: Yeah, sure.

13 VOIR DIRE EXAMINATION

14 BY MS. LEVY:

15 Q So you surveyed people last month?

16 A In July 21 or so I put this out as an idea. I said let's
17 see if people actually -- you know, because it was summertime
18 there's not a lot of people at work. But the few that were
19 still left there, I just wanted to get -- gauge an idea of what
20 he actually did. How many people did he actually go to?

21 Q But my question is you put out this survey in July of
22 2016?

23 A Yes.

24 Q As in last month?

25 A Yes.

1 Q And Luis Del Toro was fired in February?

2 A Yes.

3 MS. LEVY: It's totally --

4 JUDGE GREEN: No.

5 THE WITNESS: I'm up --

6 JUDGE GREEN: I --

7 THE WITNESS: -- against a charge.

8 JUDGE GREEN: -- disagree with you. I think it's
9 relevant.

10 MR. DEL TORO: But I never receive them.

11 MS. LEVY: Well, he --

12 JUDGE GREEN: Well, you weren't there.

13 MS. LEVY: You didn't work there anymore. These are going
14 to be anonymous. We don't even know who --

15 THE WITNESS: No.

16 JUDGE GREEN: That's right. They are going to --

17 MS. LEVY: -- filled them out.

18 THE WITNESS: People have a fear of retaliation. The
19 culture --

20 JUDGE GREEN: Alright, alright.

21 THE WITNESS: -- whatever it may be.

22 JUDGE GREEN: I --

23 MR. THOMAS: He's never even seen them himself.

24 JUDGE GREEN: That's right. And I'm going to receive them
25 and we'll look at them and see what they say, if we can

1 understand them.

2 THE WITNESS: Well --

3 JUDGE GREEN: So -- alright. So you -- somebody want to
4 make a bunch of copies of these things? Do you have anything
5 else you want to tell me before we do this? Is there anything
6 else that you want -- that you feel is --

7 THE WITNESS: There's probably a million things, but --

8 JUDGE GREEN: -- important for me to know?

9 THE WITNESS: -- no, not that are pertaining exactly to --

10 JUDGE GREEN: Alright. I'll tell you --

11 THE WITNESS: -- this issue.

12 JUDGE GREEN: -- what. So let's -- could we get -- I'm
13 going to ask you to make copies of these documents.

14 THE WITNESS: Me?

15 MS. LEVY: Okay.

16 JUDGE GREEN: Not you.

17 MS. LEVY: No, me.

18 JUDGE GREEN: And I'm going to say go to lunch and come
19 back. Alright? Now, do you have any other witnesses?

20 THE WITNESS: Yeah, I have Oscar that you might want --

21 JUDGE GREEN: You have Oscar.

22 THE WITNESS: -- to question and Bismark. She subpoenaed
23 them.

24 MS. LEVY: I'm going to call Oscar and I'm going to call
25 Bismark.

1 JUDGE GREEN: Then why don't we do that now? Why don't
2 you step down?

3 THE WITNESS: I'm finished then?

4 MS. LEVY: Alright. Can I ask questions about his
5 testimony?

6 JUDGE GREEN: Oh, absolutely. I'm sorry. I thought we
7 were in the middle of doing that.

8 MS. LEVY: Not yet.

9 THE WITNESS: It's been going all over the place.

10 MS. LEVY: Okay.

11 REDIRECT EXAMINATION

12 BY MS. LEVY:

13 Q So Mr. Brown -- I mean -- I'm sorry, Mister --

14 JUDGE GREEN: Thomas.

15 MS. LEVY: -- Thomas, you stated that Oscar told you that
16 Luis was telling people that you were closing down?

17 THE WITNESS: Yes.

18 BY MS. LEVY:

19 Q And you don't remember when that was?

20 A My goodness. I have to take that it was very close to
21 these letters having been signed off or written up.

22 Q Well, these letters aren't dated.

23 A Well, one is and it was dated, I would imagine, by Naomi,
24 the girl at the front desk.

25 Q But you don't --

- 1 A I'm taking that --
- 2 Q -- know who dated it and you don't know when this --
- 3 A I didn't put the date, but somebody put 2/26 in a
4 different ink. So it may have been delivered to Naomi and she
5 put 2/26.
- 6 Q You don't know how that date got there?
- 7 A I don't know that.
- 8 Q And you don't know when these statements were given?
- 9 A Oh, I know those statements were given. I was there the
10 day that they were writing them. It was not way before his
11 termination, neither was it after.
- 12 Q Do you know --
- 13 A It was definitely --
- 14 Q -- when it was?
- 15 A -- not after. I'm sorry?
- 16 Q Do you know what date it was?
- 17 A You know, I'm just going to throw it out there and say it
18 was the --
- 19 Q Well, I don't --
- 20 A -- same day we --
- 21 Q -- want you to throw it out there.
- 22 A I can't really give you a date.
- 23 Q Okay. So you don't know what date these --
- 24 A No.
- 25 Q -- statements were given?

1 A Do you remember the day you had a cup of coffee? And that
2 -- you know, it's --

3 JUDGE GREEN: Well, this is --

4 THE WITNESS: -- just we don't know.

5 JUDGE GREEN: -- a little different than having a cup of
6 coffee though.

7 THE WITNESS: It is different, but who would think this is
8 going to be brought up in this manner?

9 JUDGE GREEN: Okay. That's fine. But in -- but her
10 question was a legitimate one --

11 THE WITNESS: No, I understand that. I'm trying to be as
12 precise as I can, but that's hard to tell. I don't want to
13 give a wrong date.

14 BY MS. LEVY:

15 Q You were present when the statements were given?

16 A Yes, I seen them. They were outside on the chairs that we
17 have a little waiting area, and they wrote them up one at a
18 time and then brought them in to Naomi.

19 Q Do you know how the -- they are two women, right?

20 A Uh-huh.

21 Q Do you know how the two women came to be in your waiting
22 area?

23 A They may have been spare aides. I really don't know. But
24 I know it wasn't all at the same exact time either though --

25 Q You --

1 A -- but it was within a little amount of time of each. So
2 one could have been coming in, spoke to the one that was
3 already there or we asked them too as they're coming in, did
4 this happen? Yes. Can you give it to us in writing? Eh, and
5 --

6 Q Did you --

7 A -- they did.

8 Q -- ask them did this happen?

9 A Yes, I did.

10 Q Did you talk to each of the two --

11 A I simply asked them. I said --

12 Q -- women who gave the statements?

13 A I said --

14 Q Did you talk to the two women who gave their statements?

15 A After the fact?

16 Q Before they --

17 JUDGE GREEN: No, before.

18 MS. LEVY: -- gave their statements.

19 THE WITNESS: Before the -- I did, yes. I asked them, I
20 said did Luis -- I said -- yeah, he did. In fact, one of the
21 women -- I'm sure Oscar will be able to tell you the name
22 better. One of those women is someone he told me was
23 concerned, because she spoke with him. So we knew to pick on
24 her.

25 I said to so-and-so, I don't remember of the two who it

1 was, did Luis? Yes. Well, you know, can you write that down
2 for us? She said sure, no problem. The other one Delina (*sic*)
3 or Del -- she was a little bit nervous. She was almost crying.

4 BY MS. LEVY:

5 Q How did she come to be in the waiting area, do you know?

6 A They are probably there -- I'm taking it that they were
7 probably there waiting for to do their route.

8 Q But you don't know?

9 A No, they're --

10 Q You --

11 A --- not there just to have time spent --

12 Q You don't know how they --

13 A -- but they come into work.

14 Q -- came to write these statements for you?

15 A Well, they were there for purposes of working, whether it
16 be before they got the job done or after they came back in to
17 drop off their paperwork. But they were there for work
18 purposes.

19 Q You don't know how they came to volunteer these
20 statements, do you?

21 A No, one of them, like I said was mentioned by Oscar as
22 having come to him. And the others we just saw them by chance.
23 We had asked a lot of others.

24 Q Who's we?

25 A Naomi and I, because we were the first ones. You know, I

1 saw the people coming and I said we should ask her. And a lot
2 of them just didn't want anything to do with it, but one -- two
3 of them did. That's why I did this anonymously, because
4 supposedly they had a fear of something happening to them.

5 Q So what are the two women's name who gave statements?

6 A Oh, my gosh. You -- thank you. Doralinda Ramirez, Andrea
7 Garcia.

8 Q Are they aides?

9 A I believe so.

10 Q Do you remember what you said to them before they gave --
11 you gave them -- they gave you statements?

12 A I said most likely -- and again, I don't --

13 Q Do you --

14 A -- remember the exact --

15 Q -- remember? I don't want you to --

16 A No.

17 Q -- say most likely.

18 A I'm not going to answer then.

19 Q You don't remember --

20 A I can't --

21 Q -- what you said.

22 A -- because I don't remember exactly, no.

23 Q And you said something about you -- Luis telling employees
24 they were going to get \$2 an hour?

25 A At first, when we -- what we heard, of course through

1 again Oscar, was that people were expecting that they would be
2 getting a \$2 raise. And Jon Bradford was joking about such a
3 hefty raise. I mean that would put anybody out of business.
4 But that's the story that went around and people were, you
5 know, overjoyed to have a union come in for those purposes.
6 Whether any -- a lot of them believed it or a lot of them got
7 that word, I don't know.

8 But there was one person who came to the window. As I
9 said earlier, he came to pick up his trip ticket. He said the
10 next time I do one of these trips I'm going to get \$2 an hour
11 more. So that verified what we had heard as possible hearsay,
12 but I wasn't.

13 Q Alright. So this was an example of Luis misleading
14 people? Would --

15 A That's what we --

16 Q -- agree with that?

17 A -- thought was going on. Sure.

18 Q That's what you thought --

19 A Yeah.

20 Q -- was going on? And you thought that was true right
21 before the contract vote, isn't that correct? You thought --

22 A That he felt --

23 Q -- he was misleading people.

24 A -- shortchanged, yes.

25 Q And he was misleading people?

1 A We -- the Union reps believe that as much as I do. They
2 thought that this man was off the wall, in their words.

3 Q And you agreed with that?

4 A Of course.

5 MS. LEVY: Okay. I have no further questions.

6 JUDGE GREEN: Alright, alright. You can step down. I
7 need -- these should be marked as -- do you have copies of this
8 stuff?

9 MS. LEVY: Yes.

10 MR. THOMAS: She does.

11 JUDGE GREEN: So I need two copies for the reporter. And
12 do you have -- how many copies do we have?

13 MS. LEVY: I have a pair here.

14 JUDGE GREEN: Okay. So why don't we do this? Why don't
15 we have the reporter mark your copies as -- and officially mark
16 them and then we could make copies. And I'll give these back
17 to the --

18 MR. THOMAS: Okay.

19 JUDGE GREEN: So there's Respondent exhibit 1 and
20 Respondent's exhibit 2.

21 MR. THOMAS: Is that it?

22 JUDGE GREEN: Well, we're going to hear what -- she's
23 going to ask Oscar what his memory is of those events and
24 apparently somebody else. And then when you -- when she gets
25 finished with her case then you'll -- if you have anything that

1 you want to add then you can add it, assuming that, you know,
2 it's legitimately --

3 MR. THOMAS: Uh-huh.

4 JUDGE GREEN: -- a matter that's evidentiary.

5 MR. THOMAS: Can I step down then?

6 JUDGE GREEN: Yes.

7 MS. LEVY: Do we want to get copies of these?

8 JUDGE GREEN: Yeah, but we can wait. Do you want to -- I
9 mean you want to do that now or do you want to call Oscar?

10 MS. LEVY: Doesn't matter to me.

11 JUDGE GREEN: I think the best thing is to get the
12 witnesses while they're here.

13 MS. LEVY: Alright.

14 JUDGE GREEN: And if we need to get your witness tomorrow,
15 the additional witness, we'll do that also.

16 MS. LEVY: Okay.

17 JUDGE GREEN: But we can take things a little bit out of
18 order.

19 MS. LEVY: Alright. I was going to call Bismark next.

20 MR. THOMAS: Do I have to step out?

21 JUDGE GREEN: No. Do you want -- that's fine. Do you
22 want to call Bismark?

23 MS. LEVY: Yes.

24 JUDGE GREEN: That's fine.

25 (Whereupon, a brief recess was taken)

1 JUDGE GREEN: On the record.

2 Could you please raise your right hand?

3 Whereupon,

4 BISMARCK CARABALLO

5 Having been first duly sworn, was called as a witness and
6 testified herein as follows:

7 JUDGE GREEN: Okay. Thank you. Please give your full
8 name to the reporter.

9 THE WITNESS: My name is Bismark Caraballo.

10 JUDGE GREEN: Okay. You're going to spell your last name.

11 THE WITNESS: C-A-R-A-B-A-L-L-O, first name B-I-S-M-A-R-K.

12 JUDGE GREEN: Okay, okay.

13 DIRECT EXAMINATION

14 BY MS. LEVY:

15 Q Is it Mr. Caraballo?

16 A Yes.

17 MS. LEVY: Okay. Ballo. Based on the description of his
18 authority given by the last witness --

19 JUDGE GREEN: Yeah, fine.

20 MS. LEVY: -- I'm going to ask for permission --

21 JUDGE GREEN: You could ask direct questions.

22 MS. LEVY: -- to question him pursuant to rule 611(c).

23 BY MS. LEVY:

24 Q You're employed by Trans-Ed, Inc.?

25 A Yes.

1 Q What's your title?

2 A I'm the transportation manager.

3 Q How long have you worked for Trans-Ed?

4 A I want to say four years.

5 Q What are your duties?

6 A Basically oversee operations. I'm in charge of the
7 drivers and the aides. You know, I assign the routes, assign
8 the trips and basically oversee operations.

9 Q Who do you report to?

10 A Mr. Ed Thomas

11 Q And when the owner is away from the office you're in
12 charge of the operations of the business, correct?

13 A Yes, ma'am.

14 Q Does anyone else have that authority?

15 A No.

16 JUDGE GREEN: Could you just give me -- there's a mention
17 of a person named Naomi.

18 THE WITNESS: Yes.

19 JUDGE GREEN: Do you know what's her full name?

20 THE WITNESS: Abreu, Naomi Abreu.

21 JUDGE GREEN: Okay. And what does she do?

22 THE WITNESS: She's HR and she does payroll as well.

23 JUDGE GREEN: Okay. She works in the office?

24 THE WITNESS: Yes, she works in the office.

25 BY MS. LEVY:

1 Q You have the power to hire and fire employees?

2 JUDGE GREEN: What if he said no? You don't want to leave
3 well enough alone?

4 MS. LEVY: Alright.

5 BY MS. LEVY:

6 Q You're aware that during 2015 and early 2016 the Union and
7 Trans-Ed met to negotiate a contract, correct?

8 A Yes, I was aware.

9 Q And you're aware that after the parties reached a
10 tentative agreement, the Union's responsibility was to present
11 the proposed agreement to the union membership, correct?

12 A Yes.

13 Q You're familiar with Oscar Colon?

14 A Yes.

15 Q He's a mechanic. And you're familiar with former driver
16 Luis Del Toro --

17 A Yes, ma'am.

18 Q -- correct? Do you recall having a conversation with
19 Oscar in which he said that Luis Del Toro opposed the contract?

20 A I'm sorry?

21 Q You recall, do you not --

22 A Yes, it was mentioned.

23 Q What was said?

24 A Just pretty much that he opposed the contract. That he
25 didn't get what he wanted. So he didn't want to sign,

1 basically. And he was telling other people not to sign as
2 well.

3 Q And when did you learn that from Oscar?

4 A Don't recall, but it was during the last months of Luis'
5 employment Trans-Ed --

6 JUDGE GREEN: You know, we could --

7 THE WITNESS: -- the last few months.

8 JUDGE GREEN: If it helps at all, we could break down
9 certain things that we know happened. So we know that there
10 was a ratification vote in January. You know, first.

11 There was a second ratification in March. So there are
12 certain events that nobody disputes. And he -- if he -- you
13 know, he may be able to tie things to specific events.

14 BY MS. LEVY:

15 Q Do you remember that there was a contract ratification
16 vote in January?

17 A Yes.

18 Q And there was one after that in March?

19 A Yes.

20 Q So you learned from Oscar Colon that Luis was talking
21 against the contract in connection with one of those two votes
22 or both of them?

23 A I believe the last vote, the last --

24 Q The vote --

25 A -- voting.

1 Q -- in March?

2 A Yeah.

3 Q So then this was close to March when you heard that Luis
4 was talking to employees about the contract?

5 A Yes.

6 Q And you conveyed that information to Mr. Thomas, did you
7 not?

8 A Yes, I mentioned it as well, but he also learned it from
9 elsewhere I believe, if I'm not mistaken.

10 Q He told you -- you told him that Luis was opposing the
11 contract?

12 A Yes.

13 Q And he told you that he had heard that from --

14 A That he's hearing the rumors as well, yeah.

15 Q Okay. And just before Trans-Ed terminated Luis you told
16 Mr. Thomas that you learned that Luis Del Toro was trying to
17 get drivers to go out on strike?

18 A Yes.

19 Q And you --

20 A And --

21 Q That you had heard that as well?

22 A Yes, I did hear that as well.

23 JUDGE GREEN: Well, who --

24 THE WITNESS: Well, it's, you know, you just hear
25 different things here and there. Don't remember people

1 specifically who told me that, but I did hear that mentioned.
2 And also that he was trying to get drivers to go work for
3 another company as well.

4 BY MS. LEVY:

5 Q And you told Mr. Thomas both of those things?

6 A Yes.

7 Q And that was just before --

8 A We --

9 Q -- he was terminated, correct?

10 A Yes, we did discuss that.

11 MS. LEVY: Okay. I have no further questions.

12 JUDGE GREEN: Well, could you be more specific about how
13 close in time that was to when Luis was terminated?

14 THE WITNESS: I know it was the last two months or so
15 where we was hearing things floating around. And, you know,
16 soon after that, that's when a decision was made that, you
17 know, it's not -- that he's, you know, against the company and
18 if these drivers decide to actually go elsewhere, we'll be in a
19 bad situation.

20 JUDGE GREEN: Okay. What I want -- that -- fine. But for
21 the moment I'm going to disregard that. But I just -- what I
22 asked you was I'm trying to get a -- I'm -- as best I can,
23 because I wasn't there, I'm trying to get a timeline. I'm
24 trying to find out what happens first, what happens second,
25 what happens third, you know? I know that Luis was discharged

1 on February 26th, which is almost the end of the month.

2 THE WITNESS: Yeah.

3 JUDGE GREEN: Okay. So these rumors about -- that you
4 were hearing, are they happening -- obviously they're happening
5 before he was fired --

6 THE WITNESS: Yeah, yeah. Definitely.

7 JUDGE GREEN: So that we know. But do you have a sense of
8 approximately how much before?

9 THE WITNESS: It was very close to his termination.

10 JUDGE GREEN: But you're not -- you can't really pinpoint?

11 THE WITNESS: I can't. You know, I can't really pinpoint.

12 JUDGE GREEN: I mean in a way I want your best
13 recollection.

14 THE WITNESS: A lot of -- I started hearing more things
15 after his wife was fired as well. She was working there too.
16 And --

17 JUDGE GREEN: Well, alright. I don't know that I want to
18 know that.

19 THE WITNESS: Okay.

20 JUDGE GREEN: That's another story.

21 THE WITNESS: But that's basically once you started
22 hearing more, and more and more. So --

23 JUDGE GREEN: Okay. Well, just as a matter of inquiry, so
24 again to get time reference --

25 THE WITNESS: Yes.

1 JUDGE GREEN: -- do you remember when she was fired? I
2 don't want to know --

3 THE WITNESS: I want to say --

4 JUDGE GREEN: -- why she was fired.

5 THE WITNESS: I want to say two to three weeks before he
6 was terminated.

7 JUDGE GREEN: She was, alright. But again, I'm not
8 interested in knowing why she was --

9 THE WITNESS: Okay.

10 JUDGE GREEN: -- fired. That's --

11 THE WITNESS: No problem.

12 JUDGE GREEN: -- something which I don't need to know
13 about. Alright. Did you have any questions you'd like to ask
14 him?

15 MR. THOMAS: No.

16 JUDGE GREEN: Alright. Thank you.

17 THE WITNESS: Thank you.

18 MS. LEVY: We're going to call Oscar Colon.

19 MR. THOMAS: Can I have two minutes to answer a quick
20 phone call?

21 JUDGE GREEN: Oh, yeah. Fine.

22 MR. THOMAS: Please?

23 JUDGE GREEN: Off the record.

24 (Whereupon, a brief recess was taken)

25 JUDGE GREEN: On the record.

1 I'm receiving Respondent's 1 and 2, which are those two
2 statements, the two letters. And if you want -- General
3 Counsel, if you want you can at some point, you know,
4 subsequent to this hearing, get an outside translator, and
5 translate them and give me an affidavit saying, you know, who
6 they are and that they did the translation. And I'll -- you
7 know, I'll accept your translation, unless there's a real
8 issue. I mean obviously send a copy to the Respondent. So
9 that's --

10 Now, with respect to the -- all the documents that were
11 contained in the box, I'm going to reject them as exhibit.
12 They obviously couldn't have been used by you to make your
13 decision. So the only thing that they could possibly be
14 evidence of is the fact that whether or not the charging party
15 actually said these things. But in that respect they are
16 really hearsay.

17 I mean it's a technical term, they're hearsay. And
18 therefore they can't be offered to prove the actual assertion
19 of fact, that he did in fact say these things. But if you
20 want, what I'll do is I'll make them as like -- as part of a
21 rejected exhibit file, so that you will have offered them into
22 evidence. They'll be there for anybody to look at if they
23 think that I'm wrong.

24 (Respondent's R-3 identified and rejected)

25 MR. THOMAS: Uh-huh.

1 JUDGE GREEN: But I'm going to reject the exhibits.

2 MR. THOMAS: Okay.

3 JUDGE GREEN: So we'll do it that way. So physically
4 they'll be in the record as a -- as part of a file. Do you
5 have anything you want to say about that?

6 MS. LEVY: Well, we object to R-1 and R-2, as I think --

7 JUDGE GREEN: Okay.

8 MS. LEVY: -- we were on the record about this.

9 JUDGE GREEN: Okay. Alright.

10 MS. LEVY: Despite the offer we still think it's the
11 Respondent's burden to provide a neutral translation of a --

12 JUDGE GREEN: No, actually it's not.

13 MS. LEVY: -- Spanish document.

14 JUDGE GREEN: No, they don't. They don't have to provide
15 a neutral translation. They could provide their own
16 translation and you could challenge it. So I'm leaving it up
17 to you to challenge it if you want to.

18 MS. LEVY: Well, I think it's clear that if Mr. Thomas is
19 going to -- he's the owner of the company, the Respondent.
20 He's not a neutral person here --

21 JUDGE GREEN: I understand he's not a neutral person, but
22 he's testifying as to what he -- his conversation with these
23 people was and what they wrote down. He's a witness to those
24 events. Obviously, he's self interested, he's an interested
25 party.

1 But that happens when General Counsel calls a witness
2 also, who testifies about a conversation taking place with a
3 supervisor that occurs in Spanish, and they're asked to testify
4 about what the conversation was and they do it in English.
5 It's the same thing. Alright. Sir, you want to --

6 MS. LEVY: Alright. Let me distribute these then. Can I
7 do that?

8 JUDGE GREEN: Yeah.

9 MR. THOMAS: Did you look at the results of that at all or
10 no?

11 JUDGE GREEN: No, I'm not looking at it. So I don't know.
12 Barry, you're going to have to take those papers over there, a
13 set of those papers and put -- make it --

14 COURT REPORTER: Just make it one?

15 JUDGE GREEN: Yeah, just make it Respondent's 3 rejected.

16 MS. LEVY: Alright. There's three sets.

17 JUDGE GREEN: All your need is two. And give back the
18 originals to Mr. Thomas.

19 MS. LEVY: Alright.

20 MR. THOMAS: Thank you.

21 JUDGE GREEN: Okay. Oscar? You're Oscar, right?

22 MR. COLON: Yes.

23 JUDGE GREEN: Colon?

24 MR. COLON: Yes.

25 JUDGE GREEN: Okay. Could you raise your right hand?

1 Whereupon,

2

OSCAR COLON

3 Having been first duly sworn, was called as a witness and

4 testified herein as follows:

5 JUDGE GREEN: Okay. Have a seat, please. You can't ask

6 leading questions, at least not now.

7

DIRECT EXAMINATION

8 BY MS. LEVY:

9 Q Mr. Colon, are you appearing here pursuant to a subpoena?

10 A Yes.

11 Q Have you and I talked before?

12 A No.

13 Q Did you participate in the investigation of this case?

14 A Yes.

15 Q And how did that happen?

16 A They called me to -- somebody called me to talk to --

17 Q Who called you?

18 A I don't recall.

19 JUDGE GREEN: You know, I don't really want to know about

20 this. Why don't we --

21 MS. LEVY: Well, he came -- I think it's relevant that he

22 came in with the employer. He was one of the employer's

23 witnesses.

24 MR. THOMAS: You subpoenaed him though.

25 JUDGE GREEN: No --

1 MS. LEVY: No, I --

2 JUDGE GREEN: No, the fact that he came in with the
3 employer that's not enough. That fact that you travel with
4 somebody is not enough to make him an adverse witness. No,
5 you're going to have to ask him questions about what he heard
6 and what transactions he was involved in. And you're going to
7 have to do it in a non-leading fashion.

8 MS. LEVY: I don't intend -- I wasn't asking for
9 permission to lead him, but I think that it's relevant to his
10 testimony --

11 JUDGE GREEN: Well, you're going to impeach him already?
12 You going --

13 MS. LEVY: No.

14 JUDGE GREEN: -- to tell me whatever he says is not true?

15 MS. LEVY: No, but --

16 JUDGE GREEN: So then why do this? Why not just have him
17 tell me what the story is?

18 MS. LEVY: It's telling that he was a witness for the
19 employer and yet supporting the General Counsel's case.

20 JUDGE GREEN: I haven't heard anything. Why don't we have
21 him testify about what the transactions were? I don't know if
22 he supports your case or doesn't. I'm assuming that he does,
23 because you're calling him as a witness.

24 CONTINUED DIRECT EXAMINATION

25 BY MS. LEVY:

- 1 Q Are you employed by Trans-Ed?
- 2 A Yes.
- 3 Q How long have you been employed by Trans-Ed?
- 4 A About four years.
- 5 Q What's the address of the facility at which you work?
- 6 A 24 Beckwith Avenue in Paterson, New Jersey.
- 7 Q And what position do you hold there?
- 8 A Mechanic.
- 9 Q What's your weekly work schedule?
- 10 A I work every day --
- 11 Q And --
- 12 A -- 40 hours a week. 40 hours a week.
- 13 Q And what are your duties as mechanic?
- 14 A Fix the buses.
- 15 Q Do you recall that there was a union election in April
- 16 2015 in which the employees voted to be represented by
- 17 Transport Workers Union of America Local 226?
- 18 A Yes.
- 19 Q Did you vote in that election?
- 20 A Yes.
- 21 Q And after the election were you asked to be one of the
- 22 shop stewards by union president Jon Bradford?
- 23 A No.
- 24 Q You were --
- 25 A By Luis.

1 Q You were asked by Luis?

2 A Because the other guy Rich wasn't working there. So he
3 said you should take over the mechanics.

4 Q Okay. And when was that, do you remember?

5 A I don't remember dates. I'm bad with dates.

6 Q It was something last year --

7 A Yes.

8 Q -- correct?

9 A Correct.

10 Q So at that time who was the other shop steward or was
11 there another shop steward?

12 A It was Luis.

13 Q Luis. So you and Luis were the shop stewards?

14 A Yes.

15 Q Do you remember a meeting held soon after the election
16 when you were introduced to Ed Thomas, the owner or Trans-Ed,
17 as one of the shop stewards?

18 A That's correct.

19 Q You don't remember when that meeting took place?

20 A Not the actual date, no.

21 Q Do you remember --

22 JUDGE GREEN: Was it the beginning of the year?

23 THE WITNESS: Yeah.

24 JUDGE GREEN: Cold, cold out?

25 THE WITNESS: The beginning, the first meeting we ever

1 had.

2 JUDGE GREEN: Okay. Alright. I don't think there's a --
3 is there -- I don't think there's a dispute as to -- about
4 that.

5 MS. LEVY: I think the majority of the testimony places
6 this meeting in about September 2015.

7 JUDGE GREEN: Okay. Do you remember where that meeting
8 took place?

9 THE WITNESS: Yes. Passaic, in the office. In Ed's
10 office in the little trailer --

11 BY MS. LEVY:

12 Q At that time Trans-Ed was in Passaic?

13 A Yes, it was.

14 Q And did -- this was a negotiation meeting?

15 A No. We was just -- the Union was introducing ourselves to
16 Ed, telling us who the shop steward is going to be, what date
17 they could come to start negotiation.

18 Q Okay. Who introduced the stewards?

19 A Jon.

20 Q Job is the union president?

21 A Yes.

22 Q And do you remember anything being said after he
23 introduced you and Luis Del Toro as shop stewards?

24 A Ed said why you elected -- why did they elect Luis,
25 because he was a bully?

- 1 Q Okay. Was anything said after that?
- 2 A No.
- 3 Q Did Luis say anything?
- 4 A I don't recall. I think -- no, because Jon said nobody
- 5 voted for him. He elected him. That's what Jon said; I
- 6 elected them, nobody voted. It --
- 7 JUDGE GREEN: Well, you mean appointed?
- 8 THE WITNESS: Appointed them. I'm sorry. Appointed them.
- 9 JUDGE GREEN: If nobody voted that means --
- 10 THE WITNESS: Nobody, yeah.
- 11 JUDGE GREEN: -- he wasn't elected if nobody voted.
- 12 THE WITNESS: That's correct.
- 13 BY MS. LEVY:
- 14 Q Did Ed ask who voted him in?
- 15 A Yes.
- 16 Q And then Jon said I appointed him?
- 17 A Yes, that's correct.
- 18 Q And did Luis say he wasn't a bully?
- 19 A Yeah, Luis said that.
- 20 Q Did he say anything else?
- 21 A Not that I recall.
- 22 Q Did he say he was fighting for his rights?
- 23 A Not that I --
- 24 Q You don't --
- 25 A -- recall.

1 Q -- remember that?

2 A No.

3 Q So after the meeting were other contract -- were contract
4 negotiation sessions held?

5 A Yes.

6 Q And you were present at those?

7 A Yes, I was.

8 Q Do you remember when the first meeting was held?

9 A I don't remember the dates.

10 Q Did Luis Del Toro attend that meeting?

11 A No. I did call him. Told him Luis, we have a meeting. I
12 need you help there. He said I'm not going. I'm on Workman's
13 Comp.

14 JUDGE GREEN: Oh, so this -- is this before Christmastime?

15 THE WITNESS: Yes. This is when he had a bus accident.
16 He said I'm not going, because I'm on Workman's Comp. I said
17 Luis, I need you to come. You've got to come to the meeting.
18 I've got doctor's appointment. I can't make it. I said
19 you could change the doctor's appointment. He said no, I
20 can't. I said okay.

21 And the second meeting we were going to have I called him
22 again. I said Luis I need you to appear, man. He says I can't
23 make it, I can't make it.

24 I said why? I can't. I'm on disability. That's two
25 meetings. Luis never showed up to none of the meetings.

1 JUDGE GREEN: Okay. Going back to the first time when you
2 were introduced, did Mr. Thomas say that he didn't want to have
3 Luis present when there was negotiations?

4 THE WITNESS: Never. He never said that.

5 BY MS. LEVY:

6 Q At the first meeting I thought you testified that Mr.
7 Thomas said Luis was a bully?

8 A He said he was a bully. He never said he didn't want him
9 there. He said who elected him or -- because he's a bully.
10 And Luis said I'm not a bully.

11 Q And did -- was -- did Luis leave the meeting after that?

12 A No, he stood there.

13 Q He stayed there at --

14 A Yeah.

15 Q -- the meeting?

16 A He stood there in the meeting.

17 Q He didn't attend any meetings after that?

18 A No, he didn't.

19 Q Do you remember when the contract was sent -- was put --
20 was given to the employees to vote?

21 A I don't remember what date.

22 JUDGE GREEN: You can suggest dates if you want.

23 BY MS. LEVY:

24 Q Do you remember that the first time was January?

25 A Yes, one was January.

1 Q And did you see a draft contract at that point?

2 A Yeah, we seen a draft contract.

3 Q And --

4 JUDGE GREEN: Well, alright. Well, I don't know -- I'm
5 not sure you know what a draft contract is.

6 THE WITNESS: It's a -- it's not an actual contract. It's
7 saying what we wanted.

8 JUDGE GREEN: Well, what -- was it multiple pages or just
9 one page with a bunch of demands?

10 THE WITNESS: Yeah, it was just one page of demands.

11 JUDGE GREEN: Was it handwritten sort of --

12 THE WITNESS: Yeah, it was like handwritten.

13 JUDGE GREEN: Okay. Now, she's asking -- now you've got
14 to pay attention to what she's asking. She's asking that there
15 was a time -- and we all agree that there was a time when the
16 employees voted on whether or not to accept a contract. And
17 that took place, I believe, on -- somewhere in what, January?
18 The first time, Tara?

19 MS. LEVY: The first ratification I think was in January.

20 THE WITNESS: Yeah, we voted on a --

21 JUDGE GREEN: Okay.

22 THE WITNESS: -- contract and --

23 JUDGE GREEN: Alright. So her question was whether or not
24 you actually saw a full copy of the contract?

25 THE WITNESS: Yeah. That --

1 JUDGE GREEN: For that?

2 THE WITNESS: Yes.

3 JUDGE GREEN: Okay.

4 THE WITNESS: That -- we've seen that one.

5 MS. LEVY: Okay. So prior to that, did you ever hear Luis
6 telling employees to vote no against the contract?

7 THE WITNESS: Yes.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. LEVY:

10 Q Who did he tell -- who did you hear him tell employee --
11 who did --

12 A He told me.

13 Q -- you hear him talk to?

14 A He told me, he told the mechanic, he told the drivers not
15 to vote for the contract, because we were supposed to get a lot
16 more money than this.

17 JUDGE GREEN: So his complaint was that the contract that
18 was being offered was less money than what he thought you
19 should get?

20 THE WITNESS: Yes. That the driver -- that the mechanics
21 are making more money than them. Why should the mechanics make
22 more money than them? We should be more equal in everything.

23 JUDGE GREEN: Okay.

24 BY MS. LEVY:

25 Q Okay. So he said that prior to January?

1 JUDGE GREEN: Before the vote?

2 THE WITNESS: Before the vote, yes.

3 BY MS. LEVY:

4 Q Did you talk to him about that?

5 A Yes, I did.

6 Q What was your conversation with him about?

7 A One time I told him Luis, we need this contract. You
8 know, we need to do something. We need a contract, because and
9 then we ain't going to have no contract, we're going on strike.

10 Q Who said that?

11 A I said that. Then he says I don't care of we go on
12 strike. I have three jobs.

13 Q Do you remember anything else about that conversation?

14 A Not that I recall.

15 Q Did you tell Jon -- did you tell, I'm sorry, Ed Thomas
16 that Luis had told employees he was not supporting the contract

17 --

18 A No.

19 Q You never told him that?

20 A No.

21 Q Did you tell anyone from the Union?

22 A I told Jon, yeah.

23 Q Do you recall in November 2015 there was a union meeting
24 to discuss the contract?

25 A Yes.

1 Q Did you speak with Luis prior to that meeting?

2 A Yes.

3 Q What did you say?

4 A Well, there was three of us in a bus. He walks in. It
5 was Pedro, what's his name? Francisco and me. We were talking
6 about the contract.

7 Luis walks in. They were telling -- they were actually
8 telling him we need this contract. We need something Luis.

9 And Luis like no, we could get better than this. We could
10 get a lot more money. It not, you know -- and I told him these
11 guys want it.

12 Francisco told him yeah, Luis, it's a good contract to me.
13 And Luis got upset and said you're stupid. This is not a good
14 contract. This is not a good contract at all.

15 Q When was this conversation, do you remember?

16 A The day before the meeting.

17 Q The day before the --

18 A The November meeting.

19 Q I'm sorry, what?

20 A The day before the November meeting.

21 Q The November meeting.

22 A That -- well, not too many -- not a lot of people went to
23 that meeting. It was just me, Jorge, Luis and another driver
24 at that meeting.

25 Q Okay. And that was a union meeting --

1 A Yes, for all employees.

2 Q -- to discuss the contract? So after that did you go back
3 to the negotiating table?

4 A Yes.

5 Q And do you know when that was after November?

6 A After November, the last negotiation meeting.

7 Q Was it before the ratification?

8 A Yes.

9 Q And do you remember the position that Ed Thomas took after
10 -- well, was there a meeting -- there was a meeting before the
11 ratification or after the ratification?

12 A Which meeting?

13 JUDGE GREEN: Probably both, but do you remember before
14 the ratification vote?

15 THE WITNESS: Yeah, before --

16 BY MS. LEVY:

17 Q There was one before and there was -- then you met again
18 after the ratification?

19 A Yes.

20 JUDGE GREEN: Alright. Which one do you want him to talk
21 about?

22 BY MS. LEVY:

23 Q Alright. After the ratification, what position did the
24 employer take?

25 A What do you mean by position?

1 JUDGE GREEN: What did they -- what opinion did Ed Thomas
2 say about whether or not this -- he was going to change his
3 mind about --

4 THE WITNESS: He said he's not going to change nothing.
5 He gave enough.

6 BY MS. LEVY:

7 Q Did he stop all vacation time?

8 A Well, it was told to me that he did by a driver, by
9 Francisco. And the -- then when I asked Naomi, she goes no, he
10 didn't stop vacation time.

11 Q So you don't know if that's true or not?

12 A I don't know if that's true, but a driver did tell me --
13 Francisco did tell me that he stopped the vacation time.

14 Q Okay. And -- but he said that he had no more flexibility,
15 he had given enough?

16 A Yeah, he gave enough. All that he could give. But at the
17 last meeting then he gave us -- I think he gave us the raise.
18 He gave it to everybody. He didn't take a -- like the people
19 who already got a raise, he was supposed to deduct it, then he
20 just gave everybody the raise.

21 Q Did you ever have a conversation with Jon about Luis
22 misleading the drivers and aides?

23 A Did I ever had a conversation with Jon?

24 Q Yes.

25 A I had a conversation with Jon about Luis telling people

- 1 that we sold out to Ed. Luis told Ralph that we sold out.
- 2 Q Luis told who?
- 3 A Ralph, another --
- 4 Q Ralph.
- 5 A -- mechanic.
- 6 Q Right.
- 7 A That Oscar and Jon sold out to Ed, because we could have
- 8 got a lot more money.
- 9 Q Did he ever say that -- did you ever tell Jon that Luis
- 10 was misleading the drivers and aides?
- 11 A No, I just told him that Luis is asking for too much.
- 12 Q Did you ever hear Jon tell Ed that Luis was misleading the
- 13 drivers and aides?
- 14 A No.
- 15 Q Did you ever hear Ed say that's how you guys got here in
- 16 the first place, Luis was misleading people? I told you he was
- 17 a bully.
- 18 A No. The only time I heard of bully was at that meeting.
- 19 Q The first time?
- 20 A Yes.
- 21 Q You never heard it a second time?
- 22 A No.
- 23 Q Do you remember giving a statement here?
- 24 A Yes.
- 25 Q It was a sworn statement --

1 A Yes.

2 Q -- correct? And you swore to the truth of the statement?

3 A Yes. But they told me that wouldn't be used in this
4 meeting.

5 JUDGE GREEN: Well, alright.

6 THE WITNESS: They told me that.

7 JUDGE GREEN: So much for that.

8 BY MS. LEVY:

9 Q Was your statement not true at that time?

10 JUDGE GREEN: Well --

11 THE WITNESS: Yes, that I recall.

12 BY MS. LEVY:

13 Q Okay. You had an opportunity to read the statement?

14 A Nah, I misplaced it.

15 Q No, but at the time you were given an opportunity to
16 review the statement before you signed it, correct?

17 A Yeah, but I told them I had difficulty reading a little
18 bit. She said do the best you can.

19 Q Okay.

20 A So I did best I can.

21 JUDGE GREEN: Well, are we just working down to one
22 statement that's in that affidavit?

23 MS. LEVY: Yes.

24 JUDGE GREEN: Why don't you just read it?

25 MS. LEVY: Okay.

1 JUDGE GREEN: I mean you don't have to read the whole
2 affidavit, but you can just read that statement. And then if
3 you want to ask him questions about it, that's fine.

4 MS. LEVY: Here it is.

5 JUDGE GREEN: I'll take your word for it that you're
6 reading it correctly, but you need to give to the employer.

7 MS. LEVY: Okay.

8 BY MS. LEVY:

9 Q There's a statement in your --

10 JUDGE GREEN: But you have to give -- first give --

11 MS. LEVY: I'm sorry.

12 JUDGE GREEN: -- a copy to the employer, to Mr. Thomas.
13 And indicate where you're reading from, please. No, to Mr.
14 Thomas.

15 I don't care about him so much. You can give him a copy
16 also if you want. Yeah, I suppose you should. No, no --

17 MS. LEVY: Oh, you don't want to mark it?

18 JUDGE GREEN: We'll mark it if we need it.

19 MS. LEVY: Okay.

20 JUDGE GREEN: It's not necessary right now. Okay. Ask
21 him. You want to point him to where? You could just read it
22 out loud, but point out to -- point out where you're reading
23 from, please.

24 MS. LEVY: Okay. I'm reading from paragraph nine.

25 JUDGE GREEN: Page four?

1 MS. LEVY: Yes.

2 JUDGE GREEN: Alright. So look at page four. Go to page
3 four.

4 MS. LEVY: You recognize this as your affidavit, correct?

5 THE WITNESS: Yes.

6 BY MS. LEVY:

7 Q "Around December 2015, I do not remember the exact date,
8 Ed stopped all vacation time for everyone until a contract is
9 established. The next negotiation session Ed said he's not
10 giving us anymore and he gave all he can.

11 He did give us two more concessions; paid jury duty time
12 and life insurance. And they were added to the contract. I
13 told everyone what they gave us, but the Union never provided
14 an updated draft of the contract.

15 Jon came a few days after and was asking the drivers why
16 they didn't vote for the contract? The drivers and aides told
17 Jon that Luis was misleading them. Jon told Ed and I this
18 information in Ed's office, but I did -- do not know who the
19 drivers or aides were that he spoke with.

20 Ed told Jon that is how you guys got here in the first
21 place; Luis was misleading people. I told you he was a bully.
22 Jon said now I know and that's why he's no longer shop
23 steward."

24 JUDGE GREEN: Okay. Does that correctly state -- does
25 that -- is that correct?

1 THE WITNESS: That's got to be correct, if I said it like
2 that.

3 JUDGE GREEN: Is that what --

4 MS. LEVY: I'm sorry.

5 JUDGE GREEN: -- you said?

6 MS. LEVY: I couldn't hear what he said.

7 THE WITNESS: That's got to be correct, if I said it like
8 that, but --

9 JUDGE GREEN: What? I'm sorry, I didn't -- does that
10 refresh your recollection as to that's what happened?

11 THE WITNESS: That's -- yeah.

12 JUDGE GREEN: Okay, good. I don't need the affidavit.
13 You read it. You read it correctly into the record.

14 MS. LEVY: That's all the questions I have.

15 JUDGE GREEN: Do you have any questions?

16 MR. THOMAS: Yeah. Do you want this back?

17 JUDGE GREEN: Please ask questions.

18 MS. LEVY: Yeah --

19 MR. THOMAS: I'm sorry?

20 JUDGE GREEN: Please ask questions.

21 MR. THOMAS: Okay.

22 CROSS EXAMINATION

23 BY MR. THOMAS:

24 Q So we found out just a moment ago why we believe Jon fired
25 -- or not -- or disappointed Luis from his steward position?

1 A Yes.

2 Q He thought he was kind of backtracking on what he had
3 expected from the Union and kind of gone another route with
4 another union.

5 MS. LEVY: But can -- I just --

6 JUDGE GREEN: Alright. Will you please, please -- you
7 know, okay. I'm going to disregard that.

8 MR. THOMAS: Okay.

9 JUDGE GREEN: He test -- whatever testified is what he
10 testified to.

11 MR. THOMAS: Now I testified --

12 MS. LEVY: Could I ask that he ask questions?

13 JUDGE GREEN: I asked him that he ask questions --

14 MR. THOMAS: Yeah.

15 JUDGE GREEN: -- but, you know, we're not going to send
16 him to law school.

17 MS. LEVY: No, I appreciate that, but he should ask --

18 MR. THOMAS: I'm learning.

19 MS. LEVY: He should ask non-leading questions in his
20 exam.

21 JUDGE GREEN: I'm sure he has no idea what non-leading
22 questions are.

23 MR. THOMAS: Okay.

24 JUDGE GREEN: By the way, lots of lawyers have no idea
25 what non-leading questions are.

1 MR. THOMAS: And I would have paid \$2,000 to have somebody
2 do the same thing.

3 JUDGE GREEN: Alright. So listen, do you -- I'm going to
4 ask a couple of questions and then if -- then I'm going to do
5 in a non-leading fashion. And if, when I get finished, you
6 have additional questions you can ask your questions. Alright.
7 Do you remember the day that Luis was fired?

8 THE WITNESS: Yes.

9 JUDGE GREEN: It happened to be February 26th.

10 THE WITNESS: Yes.

11 JUDGE GREEN: Okay. Before that occurred, had various --
12 had you had any conversations with other employees about things
13 that Luis was talking about?

14 THE WITNESS: No, employees were telling me that the one
15 shop -- this one lady aide telling me that he sent them to
16 another job. Something like that. If I want a better job, go
17 over here.

18 JUDGE GREEN: Who was that?

19 THE WITNESS: Oh, shoot. I don't know her name.

20 JUDGE GREEN: Well, what -- did you -- you know, what job
21 she had --

22 THE WITNESS: She was a aide in the bus.

23 JUDGE GREEN: Okay.

24 THE WITNESS: She was a aide in the bus. She was a newer
25 aide. She just started then not that long ago.

1 JUDGE GREEN: Okay. And any other conversations that you
2 had where the subject of Luis was talked about?

3 THE WITNESS: There was Francisco came up to me the other
4 day --

5 JUDGE GREEN: No, we're talking about before he was fired
6 --

7 THE WITNESS: Before --

8 JUDGE GREEN: -- not later.

9 THE WITNESS: No, he's got people complaining that he's
10 aggressive, too aggressive.

11 JUDGE GREEN: Alright. That's sort of general.

12 THE WITNESS: Ah, yeah.

13 JUDGE GREEN: Okay. So one person said that he was asking
14 her or suggesting that she look for another job?

15 THE WITNESS: Yeah.

16 JUDGE GREEN: Anybody else say anything?

17 THE WITNESS: No.

18 JUDGE GREEN: Okay. Did you have any conversations with
19 Mr. Thomas about Luis, before he was fired? And again, within
20 a week, about a week.

21 THE WITNESS: No.

22 JUDGE GREEN: Alright. Do you have any questions?

23 MR. THOMAS: Well, you asked him what I was going to ask.

24 JUDGE GREEN: Well, at least I asked --

25 CONTINUED CROSS EXAMINATION

1 BY MR. THOMAS:

2 Q Were you in agreement with the union contract?

3 A Yes.

4 MS. LEVY: I'm sorry, what's the question?

5 MR. THOMAS: Were you in agreement with the union contract

6 --

7 MS. LEVY: Okay.

8 MR. THOMAS: -- was suitable?

9 THE WITNESS: Yes.

10 MS. LEVY: Objection, relevance.

11 JUDGE GREEN: Alright. It's not relevant, but it's okay.

12 MR. THOMAS: I have no further questions.

13 JUDGE GREEN: Alright. Thank you.

14 THE WITNESS: Okay.

15 JUDGE GREEN: Alright. So where do we stand? Do you want
16 to have lunch, and come back and tell me where we stand or do
17 you want to tell me where we stand right now? Do we need this
18 person from Poughkeepsie?

19 MS. LEVY: I just need a break --

20 JUDGE GREEN: Okay.

21 MS. LEVY: -- and we may be able to close.

22 JUDGE GREEN: Alright.

23 MR. COLON: Do you want me --

24 MS. LEVY: Yes. Wait. Does he have his copy from him?

25 Yes, Oscar, I'll take that back.

1 JUDGE GREEN: Make sure that you have these people sign
2 their vouchers.

3 MR. THOMAS: You got my phone?

4 MS. LEVY: Okay.

5 MR. COLON: Behind ya.

6 (Whereupon, at 11:58 a.m. a luncheon recess was taken)

A F T E R N O O N S E S S I O N

(12:59 P.M.)

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JUDGE GREEN: On the record.

MS. LEVY: Okay. So I'd like to recall Mr. Thomas.

JUDGE GREEN: Okay. You're still under oath.

MS. LEVY: Can you -- can I have GC-3?

JUDGE GREEN: That's this letter. Okay. Do you have a question? He has it in front of him.

MS. LEVY: Okay.

Whereupon,

Ed Thomas

Having been previously sworn was called as a witness and testified as herein follows:

DIRECT EXAMINATION

BY MS. LEVY:

Q Mr. Thomas, you have GC-3 in front of you?

A That's correct.

Q And you're saying that you're -- you believe this was distributed to employees on February 3rd?

A The date stamp on the input into the computer stated February 3rd, yes.

Q But is that when you think it was distributed to employees --

A If it was --

Q -- or do you know?

1 A -- written then and printed out, yes, or soon immediately
2 after.

3 Q Okay. And did you write this?

4 A I did.

5 Q This memo?

6 A Yes.

7 Q And it was based on what Oscar Colon told you?

8 A That's what we were hearing, yes.

9 Q Was it based --

10 A What he told me, yes.

11 Q -- what Oscar Colon told you?

12 A He explained to me what we explained otherwise to your
13 earlier, that there was word going about that -- words were
14 being spoken as to us closing.

15 Q Well, what he said was that one aide told him that Luis
16 was sending people to another job.

17 A Uh-huh.

18 Q Is that correct?

19 A That's what he said, yes.

20 Q And that was all that he said?

21 A And I have the two statements and others that would not
22 write a statement, but didn't seem to be denying it. Although
23 I'm not a psychologist to tell you what the facial look of a
24 person tells you, but when there were asked it's like no, I
25 don't want to get involved.

1 Q Okay. So you asked people and they didn't want to get
2 involved?

3 A Right.

4 Q But you asked -- but two employees -- how did the two
5 employees come to write statements?

6 A They were there for work purposes and while they were
7 there we knew one of them was the mostly likely one to give
8 Oscar the word on what was going about town. And so we saw
9 her. We asked her to come forward and she voluntarily wrote
10 that letter for us. There was another person who happened to
11 be there coming about the same time, who did as well write the
12 statement that we showed you.

13 Q And do you know what dates those statements were written?

14 A Again, I can't tell you that. No, I don't -- can't --

15 Q It was some --

16 A I can't set a date.

17 Q Was it sometime before the 26th?

18 A It would have had to have been, because that was my basis
19 for terminating Luis.

20 Q Right, but was it a week before the 26th?

21 A Oh boy, again --

22 Q Is it early in February?

23 A I hate to answer a question incorrectly, you know? And if
24 it makes that much of a difference as to dates, I really don't
25 want to put a false number in there.

1 Q So you have no idea when those statements --

2 A No.

3 Q -- were written?

4 A No, it could have been three days beforehand, it could
5 have been the very same day, like I said earlier. I really
6 don't know.

7 Q Could it more -- been more than three days before?

8 A I'm not sure I would have waited so long for him to attack
9 or speak to other people. So I took action probably as soon as
10 I heard that this was happening.

11 JUDGE GREEN: Okay. The point though is if you're correct
12 -- I don't know who's correct. But if you're correct that the
13 piece of paper that you're looking at was distributed on
14 February 3rd --

15 THE WITNESS: Uh-huh.

16 JUDGE GREEN: -- and if Oscar (*sic*) was discharged
17 February 26th, that's, you know, quite a month, but it's
18 something --

19 MS. LEVY: I think you mean --

20 JUDGE GREEN: -- like three weeks.

21 MS. LEVY: -- Luis.

22 JUDGE GREEN: Huh?

23 MS. LEVY: Luis was discharged. You said Oscar. Luis.

24 JUDGE GREEN: Correct. That's why I'm retiring, not the
25 other reason. Okay. Sorry. But that gives us a three week --

1 February 3rd to February 26th is approximately three weeks. So
2 I believe that counsel's question is, is if you can place -- if
3 you use these two dates, you know, the two --

4 THE WITNESS: Uh-huh.

5 JUDGE GREEN: -- dates you're talking about, if we can use
6 those as a range, when did -- when do you recall having the
7 conversation with the two women? Is that what you were asking?

8 MS. LEVY: Yes.

9 JUDGE GREEN: As best you can remember. I'm not -- you
10 know, your best memory. You're not a tape machine.

11 THE WITNESS: No.

12 JUDGE GREEN: Closer to one, closer to the other?

13 THE WITNESS: I would say closer to the date of
14 termination.

15 JUDGE GREEN: Okay.

16 CONTINUED DIRECT EXAMINATION

17 BY MS. LEVY:

18 Q But you don't know how long before termination?

19 A No, but like I said, if it had been verified, as I believe
20 it to be in the written statements, I would not have waited
21 much longer for any further possible damage to the business,
22 because I saw this as a hostile situation that we had to take
23 care of. We could lose employees.

24 Q And that was the reason for terminating Luis --

25 A Exactly.

1 Q Wait. I didn't get to ask the --

2 A Oh, I'm sorry.

3 Q -- question. Your reason is that you believe that Luis
4 created a hostile work environment, correct?

5 A I believed that, but I was verified in those two
6 statements that I received in. I was looking through the
7 letters. There's a few yeses in there, but that -- that's not
8 --

9 JUDGE GREEN: Alright.

10 THE WITNESS: -- the issue.

11 JUDGE GREEN: You reached a finding -- you may each
12 defining hostile work relationship (*sic*) or work relationship
13 in different ways. So I don't that that helps us one way or
14 the other.

15 MS. LEVY: Okay. That's all the questions I have for you.

16 JUDGE GREEN: Alright. So do you want to have a little
17 rebuttal?

18 MS. LEVY: Yeah. Then I'm going to call Luis.

19 JUDGE GREEN: Okay. You know typically when people talk
20 about hostile work environment they're talking about sexual
21 harassment or discrimination. I don't believe that that's what
22 --

23 MR. THOMAS: It may not be the proper wording, but it was
24 putting us in --

25 JUDGE GREEN: Okay. Alright, alright.

1 MR. THOMAS: -- possible jeopardy.

2 JUDGE GREEN: Whatever. Again, I don't know that
3 everybody is using the same words in the same way.

4 MS. LEVY: Yes. Okay. General Counsel recall Luis Del
5 Toro.

6 JUDGE GREEN: Okay. You don't have to swear again. Once
7 is enough.

8 Whereupon,

9 LUIS DEL TORO

10 Having been previously duly sworn, was recalled as a witness
11 and testified herein as follows:

12 MS. LEVY: Can you mark this --

13 JUDGE GREEN: Maybe he knows? Was he there when that
14 piece -- what does he say about when that piece of paper was
15 distributed?

16 MS. LEVY: I'm going to ask him.

17 JUDGE GREEN: Oh.

18 MS. LEVY: The employee handbook is in, right?

19 JUDGE GREEN: Yes.

20 MS. LEVY: Okay.

21 DIRECT EXAMINATION

22 BY MS. LEVY:

23 Q Luis, I'm placing before you what's been marked for
24 identification as GC-5. Since you were terminated from Trans-
25 Ed, Inc. have you been receiving unemployment?

1 A Yes.

2 Q Are you receiving it now?

3 A No.

4 Q What happened?

5 A I called unemployment on the 3rd and I was denied. I had
6 to come in to unemployment.

7 Q The 3rd of August?

8 A The 3rd of August. When I went to the unemployment the
9 lady made me a copy that I was fired -- that I quit my job and
10 I wasn't fired.

11 JUDGE GREEN: Are you offering this?

12 MS. LEVY: Yeah. Did -- yes.

13 BY MS. LEVY:

14 Q Did she say who told you (*sic*) that? Who told her that?
15 I'm sorry.

16 A She told me the company called that I quit my job.

17 MS. LEVY: Okay. I'd move to enter GC-5.

18 JUDGE GREEN: Okay. Alright. I'll receive it. Do you
19 have any other questions?

20 (General Counsel's GC-5 received in evidence)

21 MS. LEVY: Yes.

22 BY MS. LEVY:

23 Q Mr. Del Toro, did you ever tell employees at Trans-Ed that
24 they could get a job somewhere else?

25 A No.

1 Q Did you ever tell employee -- any employee or employees at
2 Trans-Ed that the business was going to close down?

3 A No.

4 Q Did you ever tell any employee or employees at Trans-Ed
5 that Ed was going to sell the small buses?

6 A No.

7 Q Did you, before you were terminated, look for another job?

8 A No.

9 Q Showing you GC-3, did you -- is -- did you write on --
10 whose writing is on this document?

11 A This is my writing.

12 Q And what did you write on it?

13 A February 24th 1960 -- 2016.

14 Q And why did you write that date?

15 A Because I was having a problem with Ed. And when I
16 started reading I noticed that it could have been for me or any
17 employees. So when I took this paper it was Naomi that gave it
18 to me --

19 JUDGE GREEN: Who?

20 THE WITNESS: -- the secretary.

21 JUDGE GREEN: Oh, yeah, okay.

22 THE WITNESS: The secretary gave me this paper and she saw
23 everybody gots (*sic*) it. I went home and told my wife. My
24 wife said stop talking to people, because you're going to get
25 fired.

1 BY MS. LEVY:

2 Q I'm just asking you for the date that -- what that date
3 meant.

4 A The 24.

5 Q Is that the date you got that document?

6 A That I got the paper.

7 MS. LEVY: Okay. Thank you. I have no further --

8 THE WITNESS: Because I noticed there was no dates on the
9 paper. Usually he has dates on the paper.

10 JUDGE GREEN: So what did you tell people about? What did
11 you tell the other employees?

12 THE WITNESS: The only employees that I recall as
13 employees is the ones that went with me to the union board to -
14 -

15 JUDGE GREEN: No, what did you tell --

16 THE WITNESS: That was Rafael --

17 JUDGE GREEN: I -- you testified that you told other
18 employees, many of the drivers, and the aides --

19 THE WITNESS: Uh-huh.

20 JUDGE GREEN: -- and mechanics that they should reject the
21 contract, that they should ratify the contract, correct?

22 THE WITNESS: Correct.

23 JUDGE GREEN: Okay. And did you tell them -- and I assume
24 that you told them why.

25 THE WITNESS: Well, I told them because before it was a

1 proposal, which I spoke to you at the same time we came into
2 his office. And that's when he rejected me. And it said 50,
3 50, 50.

4 JUDGE GREEN: Okay. So --

5 THE WITNESS: And the time it came out, the real proposal
6 --

7 JUDGE GREEN: Yeah.

8 THE WITNESS: -- it was --

9 JUDGE GREEN: Well, what made you think that the company
10 was going to automatically agree to the union -- your proposal?

11 THE WITNESS: Well, because they made a meeting. When
12 they made the meeting they asked -- it was 25 people --

13 JUDGE GREEN: Yeah.

14 THE WITNESS: -- in the meeting of the union board.

15 JUDGE GREEN: Yeah.

16 THE WITNESS: So you make a list of what you want.

17 JUDGE GREEN: I understand that, but what makes you think
18 that because you want something the company is going to give it
19 to you?

20 THE WITNESS: Oh, I didn't say the company was going to
21 give it to me.

22 JUDGE GREEN: Okay. So fine.

23 THE WITNESS: I just was suggesting to Jon if you're going
24 to ask for 50, 50, 50 usually when you make a negotiation they
25 drop you down to 25.

1 JUDGE GREEN: I understand that, but at some point the
2 company and the Union apparently made some agreement and that
3 was in January. And they -- and the idea was that they were
4 going to put it before the voters, the people in the shop, to
5 vote on whether to accept the contract or not to accept the
6 contract. And your testimony was that you told other drivers
7 that they -- it would --

8 THE WITNESS: Read the contract.

9 JUDGE GREEN: -- be better to reject the contract --

10 THE WITNESS: No, I said read the contract before you
11 sign.

12 JUDGE GREEN: Did you tell them that -- go ahead, I'm
13 sorry.

14 THE WITNESS: And make sure that you feel the right way,
15 because I don't feel comfortable that we getting ripped off --

16 JUDGE GREEN: Okay.

17 THE WITNESS: -- because you --

18 JUDGE GREEN: You're entitled to your opinion about
19 whether not it's fair or not fair, but I'm not asking you that.
20 I'm not asking what you think is fair or not fair. What I'm
21 trying to find out is what you told the other people about
22 that, about whether or not they should accept the contract or
23 not accept the contract.

24 THE WITNESS: Because that --

25 JUDGE GREEN: Not because. What did you say to them?

1 THE WITNESS: I said to them we need to really study the
2 book, because they gave it the same day that we had to vote.

3 JUDGE GREEN: Okay.

4 THE WITNESS: So you don't have time to read something and
5 vote at that same time. It was a pretty big book.

6 JUDGE GREEN: Okay.

7 THE WITNESS: But I told them look at the difference
8 between the 50, 50, 50, it was supposed to be an equal thing --

9 JUDGE GREEN: Yeah.

10 THE WITNESS: -- and now they want to give 35 cents to a
11 aide, 45 cents to a driver --

12 JUDGE GREEN: Right.

13 THE WITNESS: -- 55 cents to the mechanics, when we all
14 work together.

15 JUDGE GREEN: Okay. I understand that. But you -- did
16 you express the opinion that they should vote yes or vote no?

17 THE WITNESS: I said if you vote yes we got to take what
18 the Union to take.

19 JUDGE GREEN: Right.

20 THE WITNESS: If you vote no, we can change the contract
21 for 50-50.

22 JUDGE GREEN: And what if -- and did you tell them that if
23 the company doesn't agree that you were -- we're going to go on
24 strike or --

25 THE WITNESS: No, I did not say that.

1 JUDGE GREEN: You didn't say anything about a strike?

2 THE WITNESS: No strike, no nothing. I said we're just
3 going stay stable until the contract be final --

4 JUDGE GREEN: Okay.

5 THE WITNESS: -- on what we need.

6 JUDGE GREEN: Okay. And so you're assuming -- okay. So
7 you didn't mention that there might be -- the employees may
8 have to go on strike --

9 THE WITNESS: No, Oscar --

10 JUDGE GREEN: -- in order to get --

11 THE WITNESS: Oscar was --

12 JUDGE GREEN: -- what they want?

13 THE WITNESS: -- the one that told me you just want to
14 make a strike. I said we don't need a strike. I've been too
15 long in this company. I've been part of this company for a
16 long, long time. And I never deny anything to this company.

17 JUDGE GREEN: Okay.

18 THE WITNESS: He knows I'm 100% for the company.

19 JUDGE GREEN: Okay. So you didn't tell other employees
20 that in order to get what we want we're going to have to go on
21 strike?

22 THE WITNESS: No.

23 JUDGE GREEN: Okay. And you didn't tell other employees
24 look, if we don't get we want -- what we want, you -- maybe you
25 should go look for other jobs?

1 THE WITNESS: No.

2 JUDGE GREEN: Okay. So do you know where -- do you -- did
3 you hear rumors about the possibility of the business being
4 sold or some of the --

5 THE WITNESS: Oscar said that.

6 JUDGE GREEN: Oscar had said that? Did he say where he
7 heard those from?

8 THE WITNESS: From the office. He was --

9 JUDGE GREEN: He said he heard that from the office?

10 THE WITNESS: Oscar was in the office, Jackie was in the
11 office. The only -- told him too, when he technically fired me
12 on the spot, I said I wasn't in the office. I cannot say
13 something that I did not hear.

14 JUDGE GREEN: Okay. Alright. Fine. Thank you. You can
15 step down. Alright. Anybody else have any questions or
16 anything else?

17 MR. THOMAS: I'd like to ask Oscar.

18 JUDGE GREEN: Well, go ahead. Fine. You can ask Oscar.

19 MR. THOMAS: Uh-huh.

20 JUDGE GREEN: Anyway, you can step down. But please ask
21 questions.

22 Whereupon,

23 OSCAR COLON

24 Having been previously duly sworn, was recalled as a witness
25 and testified herein as follows:

1 DIRECT EXAMINATION

2 BY MR. THOMAS:

3 Q Did you at anytime in your employ, during the days Luis
4 Del Toro was working there, did you mention that we should go
5 on strike, if we didn't have the right components of the
6 contract that you were looking for?

7 A No.

8 Q It was never talked about?

9 A I never mentioned it.

10 Q The word strike came from?

11 A Luis, that we should.

12 Q That we should go on strike?

13 A Luis said he don't care if we go on strike. He's got
14 three jobs.

15 MR. DEL TORO: And who was with me?

16 MS. LEVY: Shhh.

17 BY MR. THOMAS:

18 Q Now who --

19 JUDGE GREEN: Alright. But --

20 MR. THOMAS: Okay.

21 THE WITNESS: Everybody at that meeting. He told Jon in
22 front of the -- all of us too. He told Jon, he told Larry.

23 BY MR. THOMAS:

24 Q Curtis?

25 A Curtis was there. Your cousin was there. Foriela (ph)

1 was there and George was there. You said that twice, not once.

2 Q Alright. It was mentioned that Oscar was the one that
3 said we were closing. Is that true?

4 A No.

5 Q Because how would you know otherwise? Where would you get
6 the idea that we were closing?

7 MS. LEVY: Objection.

8 JUDGE GREEN: Well, alright. I'm going to -- forget it
9 for a second. I'm going to show what's in evidence. Okay?
10 This is a piece of paper. Did you -- have you seen that
11 before? Everybody agrees that that was a piece of paper that
12 was distributed.

13 THE WITNESS: To all the buses.

14 JUDGE GREEN: Yeah.

15 THE WITNESS: Yes.

16 JUDGE GREEN: Okay. And aren't there -- there seems to be
17 some -- the dates on this document are handwritten. They were
18 not part of the document. So it's a question -- there's some
19 question as to when it was actually given out. I'm not sure
20 anybody really knows for certain when it was given out. Do you
21 have any recollection as to --

22 THE WITNESS: I think it was given out before Luis got
23 fired.

24 JUDGE GREEN: But can you say, in your memory,
25 approximately how much before?

1 THE WITNESS: I don't know.

2 JUDGE GREEN: If you don't know, you don't know. I mean,
3 you know, I don't want you to totally guess.

4 THE WITNESS: It could have been about three weeks, four
5 weeks before he got --

6 JUDGE GREEN: Alright. Let me see that a second. Okay.
7 So there's -- there is -- there's a reference in this thing to
8 a rumor about selling vans.

9 THE WITNESS: Uh-huh.

10 JUDGE GREEN: Okay. Do you know anything about that,
11 other than this piece of paper?

12 THE WITNESS: No.

13 JUDGE GREEN: Had you heard any employees -- anybody
14 talking --

15 THE WITNESS: Oh, three employees came up to me, is that
16 true that they're selling the vans? I said no.

17 JUDGE GREEN: So who were those? Do you remember who
18 those employees were?

19 THE WITNESS: They were all like aides and drivers --

20 JUDGE GREEN: Aides and drivers.

21 THE WITNESS: Carmen, Laura.

22 JUDGE GREEN: Okay. Did you ever hear from anybody,
23 either first or secondhand, where those rumors were coming
24 from?

25 THE WITNESS: The -- not about the selling the vans.

1 Everybody asked me is he selling the vans? Is he selling the
2 van? Is he selling the van? And then all of the sudden they
3 say -- everybody is like Luis is saying this, Luis is saying
4 that.

5 JUDGE GREEN: Well, I don't know what this and that is.

6 THE WITNESS: Then I asked. They told me oh, Luis saying
7 he's going to sell the vans and close the company. I said
8 that's just a rumor. They're not doing that.

9 JUDGE GREEN: Okay. But did Luis ever say that to you?

10 THE WITNESS: No.

11 JUDGE GREEN: Alright. So as far as you know, people
12 saying that they -- you know, you have no direct knowledge that
13 Luis ever said this to anybody?

14 THE WITNESS: No.

15 JUDGE GREEN: Okay.

16 THE WITNESS: Not selling the buses.

17 JUDGE GREEN: Okay. Is there any other questions?

18 MS. LEVY: Yeah.

19 CROSS EXAMINATION

20 BY MS. LEVY:

21 Q You said that Luis said two times that he didn't care if
22 you all went on strike?

23 A Uh-huh.

24 JUDGE GREEN: But he didn't --

25 BY MS. LEVY:

1 Q Yes?

2 JUDGE GREEN: -- actually say we should go on strike?

3 THE WITNESS: He said he didn't care. I said --

4 JUDGE GREEN: Alright --

5 THE WITNESS: -- how about we go on strike? He goes I
6 don't care. I've got three jobs. I don't care.

7 MS. LEVY: Okay. And you said uh-huh, that means yes,
8 right? You need to say yes or no, so the court reporter --

9 THE WITNESS: About what?

10 BY MS. LEVY:

11 Q You said --

12 JUDGE GREEN: When you say uh-huh the reporter has to know
13 whether that means yes or no.

14 THE WITNESS: Yes --

15 JUDGE GREEN: Okay. So --

16 MS. LEVY: Did you tell Ed, Luis had said that?

17 THE WITNESS: About going on strike?

18 BY MS. LEVY:

19 Q Right.

20 A No, I told the Union.

21 Q But you never told Ed?

22 A I --

23 JUDGE GREEN: Alright.

24 THE WITNESS: I told the Union, I told the people in the
25 office.

1 BY MS. LEVY:

2 Q What people in the office?

3 A Bismark I told --

4 Q You told Bismark that Luis had said that he didn't care if
5 people went on strike?

6 A Yes, and Jorge. I told everybody. It was at a meeting
7 where he said it in front of people too.

8 Q Okay.

9 A At a union meeting.

10 Q And you said employees came up to you and asked you if Ed
11 was selling the buses?

12 A Yes.

13 Q That was after the notice went out, right?

14 A I don't recall --

15 Q You don't recall whether it was before or after?

16 A No, I don't, but they did come up to me. Three of them.
17 Three ladies.

18 Q And you think the notice was -- went up a couple weeks
19 before Luis got fired?

20 A Yes, I think --

21 Q You think the notice was distributed --

22 A Yeah, it was before.

23 Q -- a couple weeks before? And you had talked to Ed Thomas
24 before that about rumors?

25 A No.

1 Q No? You hadn't told him about any rumors that you had
2 heard about that was closing the -- closing -- selling buses?

3 A Well, everybody was talking about that.

4 Q Right, but --

5 A Everybody was saying that he's selling the bus, he's
6 saying that. And I asked him are you going to close down? He
7 goes no, I'm not closing down.

8 I asked Ed one time. I said are you closing down? He
9 goes no, I'm not closing down.

10 Q That's the only conversation you had with Ed Thomas,
11 before that notice went up about closing down?

12 A Well, we did have a conversation, because I told -- one
13 day I said I thought you were selling the buses and playing
14 around with him. He goes we're buying buses. He made me go
15 buy a small bus, bus number seven.

16 He said we need more buses. And he made me go make a bid
17 on a bus number seven. And we bought two more buses. It was
18 bus 29 and 57. So we actually bought three buses more.

19 Q Alright. So you had not, before this notice went out,
20 told Ed Thomas that you'd heard anything about selling vans?

21 A No.

22 Q No. You hadn't talked to Ed Thomas about Luis sending
23 people to other jobs, had you?

24 A When they -- the lady came up to me and told me Luis is
25 sending me to another job --

1 JUDGE GREEN: No, but her question is whether or not --

2 BY MS. LEVY:

3 Q One --

4 JUDGE GREEN: -- you told --

5 MS. LEVY: You said one aide told you that Luis was
6 sending her to another job?

7 THE WITNESS: Uh-huh.

8 BY MS. LEVY:

9 Q Did you tell Ed Thomas that?

10 A No.

11 Q You didn't tell him about that?

12 A No.

13 MS. LEVY: I have no further questions.

14 JUDGE GREEN: Do you have any question?

15 MR. THOMAS: No.

16 JUDGE GREEN: Alright. Thank you. Just -- yeah, thank
17 you. I think actually this is my copy. Alright. Is there
18 anything else?

19 MS. LEVY: No, General Counsel closes.

20 JUDGE GREEN: Alright. Do you want to add anything?

21 MR. THOMAS: I have really not anything more than I can
22 say --

23 JUDGE GREEN: Okay.

24 MR. THOMAS: -- and --

25 JUDGE GREEN: Now, both of you have to understand -- all

1 three of you, that I'm not a mind reader. So --

2 MR. THOMAS: I understand.

3 JUDGE GREEN: -- all I can do -- in a way I'm supposed to
4 read your mind, but it's supposed to be based on what evidence
5 I hear in this case. I don't actually read your mind, but my
6 job is to determine what if any -- what the reason was that you
7 discharged this gentleman over here, Luis. But I'm -- you
8 know, I'll do the best I can with whatever I have. So --

9 MR. THOMAS: Thank you.

10 JUDGE GREEN: -- you know, that means I could be wrong for
11 both of you. You know, I could make a decision, but it might
12 be the wrong one, because I can't know absolutely what was in
13 each of your minds, when you had these various conversations.

14 It's just impossible for me to do. So I have to rely on
15 what all these people told me, what you've told me and what
16 you've told me. Okay. So listen, if you want to send me
17 anything in writing as to why you think you should win, please
18 do so by -- what's today's date? The 9th?

19 MS. LEVY: The 9th.

20 JUDGE GREEN: The end of August, August 30th.

21 MS. LEVY: 31st?

22 JUDGE GREEN: 31st. What -- is that the weekend?

23 MS. LEVY: I don't have a calendar.

24 JUDGE GREEN: Oh, yeah, okay. We'll get a calendar.

25 MR. THOMAS: Why I believe I should win?

1 JUDGE GREEN: Well --

2 MR. THOMAS: Why -- I'm learning.

3 JUDGE GREEN: They're going to -- she's going to -- I can
4 assure you that General Counsel is going to send me something
5 in writing as to why she thinks the evidence supports her
6 position.

7 MR. THOMAS: Okay.

8 JUDGE GREEN: And you can or -- you can choose to or not
9 choose. It's up to you. Send me something in writing as to
10 why you think she's wrong and why you think you're right.

11 MR. THOMAS: Okay.

12 JUDGE GREEN: That's all I'm saying. I'm not saying
13 anything more than that.

14 MR. THOMAS: Uh-huh.

15 JUDGE GREEN: Obviously, in the total scheme of things,
16 General Counsel has the burden of proof, but it's not the same
17 as a criminal trial where there's -- you know, General Counsel
18 has to prove by an overwhelming -- beyond a reasonable doubt.
19 Their burden of proof is by a preponderance of the evidence,
20 which means they need more than -- this is an abstraction, more
21 than 51%. You need 49%. So -- but I'm telling you both -- I
22 mean I'm telling you all that it's not within my power to know
23 absolutely what you people were thinking at the time of these
24 events.

25 MR. THOMAS: Uh-huh.

1 JUDGE GREEN: And I'm going to look at a calendar.

2 MR. THOMAS: Does that letter go to you?

3 JUDGE GREEN: Yes.

4 MS. LEVY: No.

5 JUDGE GREEN: It goes to me. Well, a copy --

6 MS. LEVY: Not to me.

7 JUDGE GREEN: -- goes to the other side.

8 MR. THOMAS: And do we know --

9 JUDGE GREEN: So --

10 MR. THOMAS: -- where to send it?

11 MS. LEVY: I get a copy --

12 MR. THOMAS: Do we know where to send it?

13 JUDGE GREEN: Yeah. Alright. 26 Federal Plaza.

14 MR. THOMAS: 26?

15 JUDGE GREEN: Federal Plaza.

16 MR. THOMAS: Federal Plaza.

17 JUDGE GREEN: Off the record.

18 (Whereupon, at 1:25 p.m. the hearing in the above-entitled
19 matter was closed)

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION TWENTY TWO

In the Matter of:

TRANS-ED, INC.,

Respondent,

And

LUIS DEL TORO, An Individual,

Charging Party.

Case No.: 22-CA-170891

Date: August 9, 2016

Place: Newark, NJ

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 206
Wayne, New Jersey 07470
(973) 692-0660

TRANS ED

TRANSPORTING AMERICA'S FUTURE SINCE 1989

Contrary to the stories being told about Trans- Ed, We are not going to sell our Vans, In fact we will be having more jobs available to those that request more hours.

If anyone is being approached by another Trans -Ed employee regarding False Information, Report immediately to the Office Staff along with a written statement.

Trans -Ed has zero tolerance for any situation that will create a Hostile Work Environment.

Contrario a los rumores que se estan hablando sobre la compania , No es cierto. No se va a vender ninguno de lo omnibus pequeno. Sin embargo vamos a tener mas trabajo para los que esten interesado en hacer mas horas.

Si un empleado de Trans Ed le estan dando informacion Falsa por favor de reportarlo imediatament a la oficina con su declaraciones escrita.

Trans -Ed no va aceptar bajo ninguna condiciones tolerancia negativa.

2/24/16

Exh. No. 603 Received Rejected
Case No.: _____
Case Name: TRANS ED
No. Pgs: 1 Date: 2/9/16 Rep.: [Signature]

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RC PETITION

DO NOT WRITE IN THIS SPACE

Case No. 22-RC-150289	Date Filed APRIL 17, 2015
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INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer Trans-Ed	2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 1 Jefferson street, passaic, nj 07055
----------------------------------	--

3a. Employer Representative - Name and Title	3b. Address (if same as 2b - state same)
--	--

3c. Tel. No. 973-365-2100	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
------------------------------	--------------	-------------	--------------------

4a. Type of Establishment (Factory, mine, wholesaler, etc.) School bus company	4b. Principal product or service School bus service	5a. City and State where unit is located Passaic, nj
---	--	---

5b. Description of Unit involved Included: School bus drivers, monitors, mechanics Excluded: Office personnel, supervisors	5a. No. of Employees in Unit 104	5b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
--	-------------------------------------	--

Check One: 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (if no reply received, so state).
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (if none, so state). Na	8b. Address
---	-------------

8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
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8g. Affiliation, if any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
-------------------------	--	---

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? Na
(Name of labor organization) Na has picketed the Employer since (Month, Day, Year) Na

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (if none, so state)

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.	10e. Fax No.	10f. E-Mail Address
-----------	--------------	---------------	---------------	--------------	---------------------

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	11b. Election Date(s)	11c. Election Time(s)	11d. Election Location(s): 1 Jefferson street, passaic, nj 07055
---	-----------------------	-----------------------	---

12a. Full Name of Petitioner (including local name and number) Twu local 226	12b. Address (street and number, city, state, and ZIP code) 200 passaic street, Hackensack, nj 07055
---	---

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)
Transport workers union of America AFL-CIO

12d. Tel No. 202-719-3900	12e. Cell No.	12f. Fax No. 202-347-0454	12g. E-Mail Address
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13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address (street and number, city, state, and ZIP code)
---------------------	---

13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address www.TWU.org
--------------	---------------	--------------	------------------------------------

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Jon Bradford	Signature <i>Jon Bradford</i>	Title President	Date 4/13/15
------------------------------	----------------------------------	--------------------	-----------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to ~~the NLRB~~ an individual will cause the NLRB to decline to invoke its processes.

Case No.: _____
Case Name: TRANS ED
No. Pgs: _____ Date: 4/17/15 Rep.: [Signature]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

TRANS-ED, INC.

Case 22-RC-150289

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Trans-Ed, Inc., is a New Jersey corporation engaged in school bus transportation services from its facility located at 1 Jefferson Street, Passaic, New Jersey, the only facility involved herein. During the past 12 months, the Employer derived gross revenue in excess of \$250,000, and purchased and received at its Passaic, New Jersey facility goods and supplies valued in excess of \$5,000 directly from suppliers located outside of the state of New Jersey.

3. LABOR ORGANIZATION. The Petitioner is an organization 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 and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

DATE: Monday, April 27, 2015 **HOURS:** 5:30 a.m. to 7:30 a.m. and
12:30 p.m. to 2:30 p.m.

PLACE: In the mechanical area of the Employer's facility located at 1
Jefferson Street, Passaic, New Jersey

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time school bus drivers, monitors and mechanics employed by the Employer at its 1 Jefferson Street, Passaic New Jersey facility, but excluding all office clerical employees, office employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

Initials: _____

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending Sunday, April 19, 2015**, including employees who did not work during that period because they were ill, on vacation, or were 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, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are 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 after the designated payroll period for eligibility, (2) 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 (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The voter list must be filed with the Petitioner at the following electronic addresses: cstate@twu.org and local226@twu.org. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, 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. 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. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by LOCAL 226, TRANSPORT WORKERS UNION OF AMERICA ? The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

Initials: _____

falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

10. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

11. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

12. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

TRANS-ED, INC.

(Employer)

LOCAL 226, TRANSPORT WORKERS
UNION OF AMERICA

(Petitioner)

By /s/ Ed Thomas 4/21/2015
(Ed Thomas) (Date)

By /s/ John Bradford 4/21/2015
(John Bradford) (Date)

(Union)

Recommended: /s/ Avinish Kuma 4/21/2015
AVINISH KUMA, Board Agent (Date)

By _____
(Name) (Date)

Date approved: April 21, 2015

/s/ David E. Leach III
Regional Director, Region 22
National Labor Relations Board

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed

TRANS-ED, INC.

(EMPLOYER)

and

LOCAL 226, TRANSPORT WORKERS
UNION OF AMERICA

(PETITIONER)

Case No. 22-RC-150289

04/17/2015

Date Issued April 27, 2015

City Passaic

State NJ

Type of Election:
(Check one:)

(If applicable check
either or both:)

Stipulation

8(b) (7)

Board Direction

Mail Ballot

Consent Agreement

RD Direction
Incumbent Union (Code)

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters 103
- 2. Number of Void ballots 0
- 3. Number of Votes cast for LOCAL 226, TRANSPORT WORKERS UNION OF AMERICA 61
- 4. Number of Votes cast for /
- 5. Number of Votes cast for /
- 6. Number of Votes cast against participating labor organization(s) 33
- 7. Number of Valid votes counted (sum 3, 4, 5, and 6) 94
- 8. Number of challenged ballots 0
- 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 94
- 10. Challenges are (not) sufficient in number to affect the results of the election.
- 11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for

LOCAL 226, TRANSPORT WORKERS UNION OF AMERICA

REGION 22

For the Regional Director [Signature]

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For [Signature]
(EMPLOYER)

For [Signature]
(PETITIONER)

For [Signature]

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

TRANS-ED, INC.

Employer

and

Case 22-RC-150289

LOCAL 226, TRANSPORT WORKERS
UNION OF AMERICA

Petitioner

TYPE OF ELECTION: STIPULATED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

LOCAL 226, TRANSPORT WORKERS UNION OF AMERICA

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Unit: All full-time and regular part-time school bus drivers, monitors and mechanics employed by the Employer at its 1 Jefferson Street, Passaic New Jersey facility, but excluding all office clerical employees, office employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.



May 6, 2015

A handwritten signature in cursive script that reads "David E. Leach III".

DAVID E. LEACH III
Regional Director, Region 22
National Labor Relations Board

TRANS-ED, INC.

and

LUIS DEL TORO

Case 22-CA-170891

GENERAL COUNSEL'S EXHIBIT NO. 1

Exh. No. GC 1 Received Rejected
Case No.: _____
Case Name: TRANS-ED
No. Pgs: _____ Date: 8/9/16 Rep: ED

INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

General Counsel's Exhibit No. 1

- (a) Charge filed in Case 22-CA-170891 on February 29, 2016
- (b) Affidavit of Service of 1(a) dated March 2, 2016
- (c) First Amended Charge filed in Case 22-CA-170891 on April 26, 2016
- (d) Affidavit of Service of 1(c) dated April 26, 2016
- (e) Complaint and Notice of Hearing with NLRB Form 4668 attached dated May 25, 2016
- (f) Affidavit of Service of 1(e) dated May 25, 2016 with two Certified Mail Return Receipt cards attached
- (g) Respondent's Answer to Complaint dated June 1, 2016
- (h) Order Rescheduling Hearing dated Jun 15, 2016
- (i) Affidavit of Service of 1(h) dated June 15, 2016
- (j) Index and Description of Formal Documents

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

TRANS-ED, INC.

and

Case 22-CA-170891

LUIS DEL TORO

AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **June 15, 2016**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

EDWARD THOMAS, OWNER
24 BECKWITH AVE
PATERSON, NJ 07503-2828

LUIS DEL TORO , BUS DRIVER
135 E 18TH ST
PATERSON, NJ 07524-1532

June 15, 2016

Date

Enter NAME, Designated Agent of NLRB

Name


Signature

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

TRANS-ED, INC.,

and

Case 22-CA-170891

LUIS DEL TORO, an Individual

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from July 6, 2016 to August 9, 2016 at 9:30 a.m., at 20 WASHINGTON PL, 5TH FLOOR, NEWARK, NJ 07102-3110. The hearing will continue on consecutive days until concluded.

Dated: June 15, 2016



DAVID E. LEACH III
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 22
20 WASHINGTON PL
FL 5
NEWARK, NJ 07102-3127

TRANS ED

TRANSPORTING AMERICA'S FUTURE SINCE 1989

JUNE 01, 2016

National Labor Relations Board
Region 22
20 Washington Place 5th Floor
Newark, NJ 07102
Case# 22-CA-170891

Answers to Complaint and Notice of Hearing.

In regards to paragraph 1. (A) Yes
(B) Yes

In regards to paragraph 2. Yes

In regards to paragraph 3. (A) Yes
(B) Yes

In regards to paragraph 4. Yes

In regards to paragraph 5. Yes

In regards to paragraph 6. Yes

In regards to paragraph 7. Yes

In regards to paragraph 8. No

In regards to paragraph 9. No

In regards to paragraph 10. No

Respectfully yours,



Edward Thomas

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

TRANS-ED, INC.

and

Case 22-CA-170891

LUIS DEL TORO, an Individual

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **May 25, 2016**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

CERTIFIED MAIL

EDWARD THOMAS, OWNER
24 BECKWITH AVE
PATERSON, NJ 07503-2828

LUIS DEL TORO, BUS DRIVER
135 E 18TH ST
PATERSON, NJ 07524-1532

May 25, 2016

Date

Glenda Freeman
Enter NAME, Designated Agent of NLRB

Name

Glenda Freeman

Signature

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

TRANS-ED, INC.

and

Case 22-CA-170891

LUIS DEL TORO

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing, which is based on a charge filed by Luis Del Toro, an Individual (the Charging Party), is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that Trans-Ed, Inc. (Respondent) has violated the Act as described below:

1. (a) The charge in this proceeding was filed by the Charging Party on February 29, 2016, and a copy thereof was served by regular mail on Respondent on March 2, 2016.

(b) The first amended charge in this proceeding was filed by the Charging Party on April 26, 2016, and a copy thereof was served by regular mail on Respondent on April 26, 2016.

2. At all material times Respondent, has been a corporation with offices and places of business in Paterson, New Jersey (Respondent's Paterson facility) and Passaic, New Jersey (Respondent's Passaic facility), has been engaged in the provision of school bus transportation services.

3. (a) During the preceding 12-months, in conducting its operations described above in paragraph 2, Respondent derived gross revenue in excess of \$250,000.

(b) During the same period of time described above in paragraph 3(a), in conducting its business operations described above in paragraph 3(a), Respondent purchased and received at its Paterson, New Jersey and Passaic, New Jersey facilities goods and supplies valued in excess of \$5,000 directly from suppliers located outside the State of New Jersey.

4. At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. At all material times, Local 226, Transport Workers Union of America (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

Edward Thomas	Shareholder and Officer
Bismark Caraballo	Operations Manager

7. About February 26, 2016, Respondent terminated its employee Luis Del Toro, the Charging Party.

8. Respondent engaged in the conduct described above in paragraph 7 because the named employee of Respondent engaged in a campaign opposing the ratification of the collective-bargaining agreement negotiated by Respondent and the Union.

9. By the conduct described above in paragraphs 7 and 8, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby encouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act

10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

In order to fully remedy the unfair labor practices set forth above, the General Counsel seeks an order requiring that the discriminatee be made whole, including reasonable consequential damages incurred as a result of the Respondent's unlawful conduct.

As part of the remedy for the unfair labor practices alleged above in paragraphs 7 and 8, the General Counsel seeks an Order requiring:

- (a) Respondent to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods; and
- (b) Reimbursement of an amount equal to the difference in taxes owed on receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.
- (c) Reimbursement for all search-for-work and work related expenses regardless of whether the interim earnings exceed these expenses, or at all, during any given quarter, or during the overall backpay period.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 6th day of July, 2016 at 9:30 a.m. at the **Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, New Jersey 07102**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and

any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

ANSWER REQUIREMENT

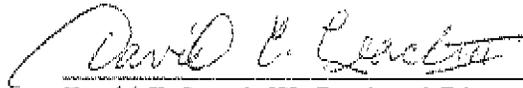
Respondent is notified that, pursuant to Sections 102.20, 102.21, and 102.56 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before June 8, 2016, or postmarked on or before June 7, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer 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. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a

complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

Dated at Newark, New Jersey this 25th day of May, 2016.



David E. Leach III, Regional Director
National Labor Relations Board, Region 22
Veterans Administration Building
20 Washington Place, 5th Floor
Newark, New Jersey 07102

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRANS-ED
Charged Party
and
LUIS DEL TORO
Charging Party

Case 22-CA-170891

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on April 26, 2016, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

BISMARCK CARABELLO
TRANS-ED
24 BECKWITH AVENUE
PATERSON, NJ 07503

April 26, 2016

Date

ALBERT SANTIAGO, Designated Agent
of NLRB

Name



Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER
First Amended Charge

DO NOT WRITE IN THIS SPACE	
Case 22-CA-170891	Date Filed APRIL 26, 2016

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer TRANS-ED, INC.		b. Tel. No. 973-881-8002
		c. Cell No.
		f. Fax No. 973-881-8026
d. Address (Street, city, state, and ZIP code) 24 Beckwith Avenue, Paterson, New Jersey 07503		e. Employer Representative Edward Thomas
		g. e-Mail tyten@msn.com
		h. Number of workers employed 120

i. Type of Establishment (factory, mine, wholesaler, etc.) Bus Company	j. Identify principal product or service Transportation
---	--

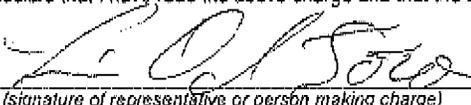
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
About February 26, 2015, the Employer discriminated and retaliated against Luis Del Toro by terminating him because he engaged in protected, concerted activities. The activities include his involvement in practices on behalf and in opposition of the Transport Workers Union of America, Local 226.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
Luis Del Toro

4a. Address (Street and number, city, state, and ZIP code) 135 E 18th St., Paterson, New Jersey 07524-1532		4b. Tel. No. 201-753-1372
		4c. Cell No.
		4d. Fax No.
		4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. 201-753-1372
By  (signature of representative or person making charge)		Office, if any, Cell No.
Luis Del Toro (Print/type name and title or office, if any)		Fax No.
Address 135 E 18th St., Paterson, New Jersey 07524-1532		e-Mail
		4/26/2016 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRANS-ED
Charged Party
and
LUIS DEL TORO
Charging Party

Case 22-CA-170891

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 2, 2016, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

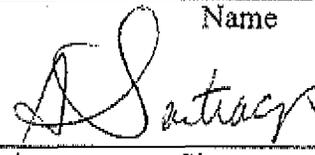
BISMARCK CARABELLO
TRANS-ED
24 BECKWITH AVENUE
PATERSON, NJ 07503

March 2, 2016

Date

ALBERT SANTIAGO, Designated Agent
of NLRB

Name



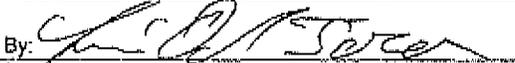
Signature

UNITED STATES OF AMERICA
 NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
22-CA-170891	FEB 29, 2016

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Trans-Ed	b. Tel. No. (973)881-8002	c. Cell No.
d. Address (street, city, state ZIP code) 24 Beckwith Avenue, Paterson, NJ 07503	e. Employer Representative Bismark Carabello	f. Fax No. (973)881-8026
		g. e-Mail
		h. Dispute Location (City and State) Paterson, NJ
i. Type of Establishment (factory, nursing home, hotel) Bus Company	j. Principal Product or Service Transportation	k. Number of workers at dispute location 120
l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a)(1) and (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On February 2, 2016 and February 26, 2016, the Employer discriminated against employees Vivian Solis and Luis Del Toro by terminating Vivian Solis and Luis Del Toro because the Union, Transport Workers Union of America Local 226, requested said employees be terminated for reasons other than said individuals failure to tender uniformly required initiation fees and period dues.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Luis Del Toro		
4a. Address (street and number, city, state, and ZIP code) 135 E 18th St, Paterson, NJ 07524-1532	4b. Tel. No. (201)753-1372	4c. Cell No.
	4d. Fax No.	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	Tel. No. (201)753-1372	Office, if any, Cell No.
By:  (signature of representative or person making charge)	Luis Del Toro Bus Driver Print Name and Title	Fax No.
Address: 135 E 18th St, Paterson, NJ 07524-1532	Date: 2/29/2016	e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 22-CA-170891

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

EDWARD THOMAS, OWNER
24 BECKWITH AVE
PATERSON, NJ 07503-2828

LUIS DEL TORO, BUS DRIVER
135 E 18TH ST
PATERSON, NJ 07524-1532

TRANS-ED

TRANSPORTING AMERICA'S FUTURE SINCE 1989

EMPLOYEE HANDBOOK

Revised July 2015

Exh. No. 624 Received Rejected
Case No.: _____
Case Name: TRANS-ED
No. Pgs: _____ Date: 8/11/16 Rep.: BE



About Trans-Ed, Inc.

Trans-Ed has been servicing school districts throughout New Jersey since 1989. We pride ourselves on providing safe and professional transportation for all of our passengers.

We currently have two office locations in New Jersey:

Passaic Office (headquarters):

1 Jefferson Street, Passaic NJ 07055

Office phone number: (973) 365-2100

Fax: (973) 365-2113

Emergency Number: (973) 445-8227 after 5:00pm

Newark Office:

243 N. Thomas Street, Newark NJ 07114

Office phone number: (862) 240-1087

Fax: (862) 240-1089

Emergency Number: (862) 240-2757 after 5:00pm

On the web: www.trans-ed.net

Facebook: [facebook.com/transedbus](https://www.facebook.com/transedbus)

Revised July, 2015

Chapter 1

Employee Information

DISCLAIMER

The policies stated in this handbook are guidelines only and the exception of our policy on atwill employment, as described below, are subject to change at the sole discretion of Trans-Ed, Inc. As are all other policies, procedures, benefits, or other programs of Trans-Ed. ***THIS HANDBOOK IS NOT A CONTRACT, EXPRESSED OR IMPLIED, GUARANTEEING EMPLOYMENT FOR ANY SPECIFIC DURATION.*** Either you or Trans-Ed may terminate this relationship at any time, for any reason, with or without cause or notice. Please understand that no supervisor, manager, or representative of Trans-Ed other than **Mr. Ed Thomas** has the authority to enter into any agreement with you for employment for any specified period of time or to make any promises or commitments contrary to the foregoing. Further, any employment agreement entered into by **Mr. Ed Thomas** shall not be enforceable unless it is in a formal written agreement and signed by **Mr. Ed Thomas**. Please also understand that no supervisor, manager, or other representative of Trans-Ed, has the authority to make any verbal promises, commitments, or statements of any kind regarding Trans-Ed's policies, procedures, or any other issues that are legally binding on the Company.

Again, this handbook is intended solely as a guide. The language used in the handbook should not be construed as creating a contract, express or implied, between Trans-Ed and any of its employees or a guarantee of employment for any specific duration.

Please also be advised that the guidelines outlined in this handbook may be corrected or changed in regard to future practices or past practices at any time. *You may rely only on the summary plan description of any company benefit plan and you may rely upon Trans-Ed's written answers to specific policy questions you need to have clarified.* Future guideline revisions will be made in writing. Because companies like ours often have problems with misinterpretations of oral statements, you may not rely upon oral comments regarding the company's policies or procedures.

Please also understand that, unless you have a separate written contract with the company, you are an employee at will. This means that the company can lay you off, retire you or terminate you without cause, as long as the reason does not violate an applicable federal, state or local employment law.

Employment

At-Will Employment

Your employment with Trans-Ed is at-will. This means that neither you nor Trans-Ed has entered into a contract regarding the duration of your employment. You are free to terminate your employment with Trans-Ed at any time, with or without reason. Likewise, Trans-Ed has the right to terminate your employment, or otherwise discipline, transfer, or demote you at any time with or without reason, at the discretion of Trans-Ed. No employee of Trans-Ed can enter into an employment contract for a specified period of time, or make any agreement contrary to this policy with out written approval from Mr. Ed Thomas.

Termination of Your Employment

Trans-Ed will consider you have voluntarily terminated your employment if you do nay of the following:

1. Resign from Trans-Ed;
2. Fail to return from an approved leave of absence on the date specified by Trans-Ed; or
3. Fail to report to work or call in for three (3) of more consecutive workdays.

You may be terminated for poor performance, misconduct, excessive absences, tardiness, discrimination, harassment, or other violations of Trans-Ed policies. However your employment is at-will and Trans-Ed has the right to terminate your employment for any or no reason.

Employees desiring to terminate their employment relationship with Trans-Ed are urged to notify the Transportation Supervisor at least two (2) weeks in advance of their intended termination. Such notice should preferably be given in writing to the Transportation Supervisor. Proper notice generally allows Trans-Ed sufficient time to calculate all accrued overtime (if applicable) as well as other monies to which you may be entitled and to include such monies in your final paycheck. Without proper notice, however, you may have to wait until after the end of the next normal pay period to receive such payments. In certain situations, the company may, in its sole discretion, accelerate on employee's effective date of resignation.

Guidelines for Appropriate Conduct

As an integral member of the Trans-Ed team, you are expected to accept certain responsibilities, adhere to acceptable business principles and matters of personal conduct, and exhibit a high degree of personal integrity at all times. This not only involves sincere respect for the rights and feelings of others but also demands that both in your business and in your personal life you refrain from any behavior that might be harmful to you, your coworkers, and/or Trans-Ed, or that might be viewed unfavorably by current or potential customers or by the public at large.

Listed below are some of the rules and regulations of Trans-Ed. This list should not be viewed as being all-inclusive. Types of behavior and conduct that Trans-Ed considers inappropriate and which could lead to disciplinary action up to and including an unpaid suspension or termination of employment without prior warning, at the sole discretion of the company, include, but are not limited to, the following:

1. Falsifying employment or other Trans-Ed records;
2. Violating Trans-Ed's nondiscrimination and/or sexual harassment policy;
3. Establishing a pattern of unexcused excessive absenteeism or tardiness;
4. Engaging in excessive, unnecessary, or unauthorized use of Trans-Ed's supplies, particularly for personal purposes;
5. Engaging in excessive use of an employee's cell phone for personal calls during business hours;
6. Reporting to work intoxicated or under the influence of non-prescribed drugs;
7. Illegally manufacturing, processing, using, selling, distributing, or transporting drugs;
8. Bringing or using alcoholic beverages on Trans-Ed property or using alcoholic beverages while engaged in Trans-Ed business off Trans-Ed's premises, except where authorized;
9. Fighting or using obscene, abusive, or threatening language or gestures;
10. Stealing property from coworkers, customers, or clients or Trans-Ed;
11. Having unauthorized firearms or other weapons on Trans-Ed premises or while on Trans-Ed business;
12. Disregarding safety or security regulations;
13. Engaging in insubordination;
14. Failing to maintain the confidentiality of Trans-Ed, trade secrets and private or confidential information; also failing to maintain the confidentiality of customer, or client information; and
15. Engaging in off-duty misconduct that reflects negatively on Trans-Ed or causes or has the potential to cause harm to Trans-Ed or its reputation.

Continued employment is subject to job performance and the needs of the company; therefore, your employment may be terminated at any time. If your performance, work habits, overall attitude, conduct, or demeanor becomes unsatisfactory in the judgment of Trans-Ed, based on violations either of the above or of any other Trans-Ed policies, rules, or regulations, you will be subject to disciplinary action, up to and including an unpaid suspension or termination.

Employment Opportunities

It is a policy of the company to extend equal opportunities to all present and prospective employees regardless of race, religion, color, age, sex, sexual preference, or national origin. Employment and promotion opportunities are offered to all applicants and employees solely on the basis of individual merit and qualification. The company will provide opportunities for advancement to men and women possessing the ability and ambition to perpetuate the excellence of the company. THE COMPANY IS EXPRESSLY OPPOSED TO HARRASSMENT DUE TO RACE, RELIGION, COLOR, AGE, SEX, SEXUAL PREFERENCE, OR NATIONAL ORIGIN IN THE WORKPLACE.

In furtherance of this policy, any employee who believes that he or she has been harassed should immediately report IN WRITING the times, dates, and the nature of the alleged harassment to the Transportation Supervisor. YOU WILL NOT BE PENALIZED FOR MAKING THIS REPORT AS LONG AS YOU DO NOT CAUSE UNNECESSARY DISRUPTION OF THE COMPANY'S OPERATIONS UNTIL FULL HEARING CAN BE HELD ON YOUR ALLEGATIONS.

Policy on Harassment

All Trans-Ed employees have the right to expect a "Harassment-Free" work atmosphere. Harassment by management or non-management personnel will not be tolerated. This includes any express or implied threat made to an employee which constitutes harassment.

Harassment is (i) the use of words or actions which have nothing to do with the employee's work performance which (ii) threatens or intimidates the employee or insults or embarrasses the employee or others based on handicap, disability, race, color, national origin, weight, marital status, religion, gender, sexual preference or age.

Harassment can include any unnecessary and unwelcome touching or sexual conduct. Annoying behavior which unreasonably interferes with another worker's performance may create a hostile work environment that is also Harassment.

Harassment can be committed by anyone connected to the workplace including any supervisor, manager, coworker, or customer.

Generally two categories of sexual harassment exist the first, "quid pro quo," may be defined as an exchange of sexual favors for improvement in your working conditions and/or compensation. The second category, "hostile, intimidating, or offensive working environment," can be described as a situation in which unwelcome sexual advance advances, requests for sexual favors, or other verbal or physical conduct of sexual nature when such conduct creates and intimidating or offensive environment. Examples of hostile, intimidating and offensive working environment includes, but is not limited to, pictures, cartoons, symbols, or apparatus found to be offensive and which exist in the workplace of an employee. This behavior does not necessarily link improved working conditions in exchange for sexual favors.

Examples of Harassment include:

- Embarrassing or humiliating statements, slurs, or jokes including suggestive or embarrassing comments regarding another person's clothing or appearance;
- Displaying or discussing sexually explicit, embarrassing or humiliating jokes, cartoons, art, posters, or calendars;
- Physical conduct (including unnecessary crowding or touching) except normal business-like hand shaking of fellow workers. You should not embrace, squeeze, pinch, or kiss fellow workers (even on the cheek);
- Staring or leering at persons in a way that might be considered sexual or threatening;
- Basing business decisions on a worker's gender, age, handicap, race, religion, national origin, sexual orientation, height or weight or creating the appearance of such discriminatory behavior;
- Behavior which would generally be considered offensive even if the intended "victim" does not consider it so; and
- Any other conduct which substantially interferes with a person's working conditions or is intended to or creates and intimidating, hostile or offensive employment environment.

Harassment DOES NOT include the actions or words of supervisors or managers that are based on objective business factors.

Trans-Ed will take rigorous action when complaints of harassment are brought to its attention. All persons complaining of Harassment are to be asked to make a written report to the Transportation Supervisor. Any employee violating these policies can expect Trans-Ed to take immediate and appropriate corrective action, which may include disciplinary measures including immediate dismissal from employment.

Trans-Ed Harassment Complaint Procedure

Employees are required to immediately notify the Transportation Supervisor if they: experience any form of harassment, observe conduct prohibited by this policy, or experience retaliation for having opposed harassment, made a harassment complaint, or participated in the complaint process.

If an employee being harassed by a co-worker who is not a supervisor or manager does not wish to report the incident to management, the employee may promptly inform the co-worker in a clear manner that the conduct is unwelcome and ask the co-worker to stop it. The employee should keep a record of this conversation. If the harassment continues, the employee should initiate the Trans-Ed complaint procedure. *However, until management is informed, the company cannot be responsible for that worker's behavior.*

To report a harassment incident to management, the employee should inform Trans-Ed Transportation Supervisor in writing of the problem.

Any supervisor or manager witnessing an incident of what might reasonably be considered harassment must notify the alleged offending party immediately that harassment is inappropriate and will not be tolerated. If there is a question of whether the behavior is harassment, the incident should be discussed with a view towards cautioning the parties. A supervisor or manager must also report all alleged harassment incidents to Mr. Ed Thomas (regardless of how knowledge of the alleged incident was acquired). Mr. Ed Thomas shall determine an appropriate course of action to investigate each complaint expeditiously. Investigation information shall be kept as confidential as practical.

If management determines that an alleged offender engaged in an act of harassment, it shall take prompt and appropriate remedial action to address the policy violation and try to ensure it does not reoccur. This action may include discharge or lesser discipline or moving the offender from contact with the offended party.

Confidential Information

In the course of working for Trans-Ed, individuals, including employees, contractors, directors, temporary agency workers, consultants and vendors, will become aware of information which is confidential to Trans-Ed's business. Individuals who act in breach of this obligation may be subject to disciplinary action up to and including and unpaid suspension or termination of employment or engagement and may also face civil and/or criminal sanctions.

"Confidential Information" is information developed, created, discovered or otherwise owned by or on behalf of Trans-Ed, which is not publicly known and has commercial value. This may include, but is not limited to: (a) formulas, teaching techniques, processes, trade secrets, designs and technology, electronic codes, proprietary techniques, inventions, discoveries, technology, improvements, manufacturing processes and research projects; (b) sales and marketing plans, information about costs, profits, losses, markets, sales, investments, human resources information, information arising in connection with an investigation carried out by the Company, company stock information and customer and client lists; (c) plans of future development and new product concepts or investments, merger and acquisition information; (d) all documents, books, legal documents, papers, drawings, models, sketches, and other data of any kind and description, including electronic data recorded or retrieved by any means, that have been or will be provided to any employee as well as (e) written or verbal instructions or comments and confidential information acquired by Trans-Ed from another company, individual or entity subject to a secrecy and proprietary rights agreement (f) any and all personnel information including (phone numbers, driving records, drug screening results etc.

During the course of working for or with Trans-Ed, and thereafter when the relationship with Trans-Ed has come to an end, employees and relevant non-employees must not disclose to any person or persons, any Confidential Information unless he/she is properly authorized to do so in writing by someone with the appropriate authority to give that authorization.

NEWLY HIRED EMPLOYEES

Probationary Period: All newly hired employees will be placed on a probationary period for the first 90 days of employment. This ninety-day period is used to determine if performance is satisfactory and if employment should be continued. During this period, Trans-Ed has the right to terminate employment without advance notice.

Forms: Each driver must complete a physical and obtain a medical certificate, as well as fingerprints. We DO NOT pay for finger prints or physicals. Trans-Ed, Inc. only pays for Drug and Alcohol Screenings. Physical forms can be requested at the front office.

- Each driver must obtain a yearly Motor Vehicle abstract report and submit a copy to the office. The office can print the abstract for \$15 (same price as DMV).

If an applicant is hired, he or she will be taken on a road test to be evaluated. The potential employee must first be accepted onto our insurance policy and must perform a pre-employment Drug & Alcohol screening, and must subsequently pass these tests.

ALL DRIVERS

It is your responsibility to ensure all of your documents and driver's license is up to date. You MUST report to your manager at least 60 days ahead of time before your license expires in order to begin the renewal process. For medical forms, you should schedule your doctor's appointment PRIOR to the expiration of your medical card.

We recommend trip drivers have their own GPS system.

Driver's license abstracts are to be handed in on a yearly basis. You can request your abstract at a local DMV or from your manager's office (\$15 fee).

Drivers shall wear a properly adjusted and fastened seat belt whenever the vehicle is in motion. The driver will ensure "the direction of vehicle from the last stop shall be along the safest most direct route to the destination." Off route stops and pickups are strictly prohibited. Drivers and/or student transportation aides must not accept notes or transportation changes from the parents (change of address or different pick-up/drop-off location). Parents must make changes directly with the contractor's or district's transportation office. Drivers are not to stop for coffee, shopping, or other activities while children are on the vehicle.

Drivers are to ensure that all students are brought home in a safe timely fashion. If a situation arises where a driver becomes lost and there is a delay in getting students home, the driver shall immediately do the following:

- Contact company dispatcher and advise of situation --- Dispatcher should contact:
 - Principal of School
 - Office of Students Transportation
 - Parents of Students
 - Emergency Number after 4:00pm
- Contact the office if directions are needed.
- Contact the Police Departments if situation warrants it.

Driver's Character; Qualifications

The driver shall be a reliable person of good character who shall possess the qualifications and comply with the rules set forth for drivers in all federal, state, and local regulations including—but not limited to—the Omnibus Transportation Employee Testing Act and N.J.S.A 18 A:39-17 through 20.

The Omnibus Transportation Employee Act requires that all operators of commercial motor vehicles subject to the Commercial Drivers License requirements be randomly tested for controlled substances and alcohol.

If any driver of a vehicle be deemed to be an unsuitable person to drive a school bus because of driving skill, reckless driving including speeding, inability to control students, failure to comply with the rules and regulations, incapacity, unbecoming conduct, or other good cause, Trans-Ed may be required to remove the driver from all district routes.

All drivers are to be completely familiar with the contents of the New Jersey School Bus Driver's Manual and to observe, follow, and obey the contents within the manual.

Pursuant to N.J.S.A. 18 A: 25-2 The driver shall be in full charge of the school bus at all times and shall be responsible for order unless he or she has a bus attendant present, therefore he or she will be responsible for order: he or she shall never exclude a student from the bus, but, if unable to manage any student, the driver or aide shall report the unmanageable student to the principal of the school which he or she attends. The driver and Aide must fill out a conduct report and submit it to the School and make sure it's signed by an authority from the school then submit a copy to the office.

DRIVERS & TRANSPORTATION AIDES

All personnel of Trans-Ed must observe all rules and regulation in effect at each school building served.

Trans-Ed requires that either the bus driver and/or the students' transportation aide on each route speak the English language fluently. It is imperative that directions given by the bus driver and/or aide be clearly understood by the students on the route.

It is the driver and aides' duty to make sure all buses are left clean and all windows are closed and secure. If there is no aide assigned to bus, driver is required to keep bus clean. **Park buses properly and where told.** Failure to park buses in assigned spot will result in a **half-day suspension**. Pre-trips are to be filled out every time a vehicle is used. If there is a problem with a vehicle and it is not addressed in the pre-trip, the driver will be possibly fined and will receive a violation notice. ***Failure to check bus for any remaining students and leaving students onboard will result in immediate dismissal.***

PERFORMANCE EVALUATIONS

Management will perform performance evaluations for each driver and aide annually in the month of June. Opportunity for a raise will be based on each performance evaluation.

COMPANY RULES, STATE LAWS AND REGULATIONS

1. A valid license must be in your possession at all times. Drivers shall obey all state and local motor vehicle laws applicable to the operation of their vehicle. Any flagrant disregard of safety regulations, vehicle, or traffic laws will result in immediate suspension from services with possible termination depending on the severity of the offense. Medical card must be in your possession while driving as well.
2. All drivers are professional drivers and as such are expected to behave in a safe and courteous manner.
 - a. Any complaints from the general public will result in a one-on-one meeting with the manager or supervisor who will explain to the driver the nature of the complaint and allow the driver to provide an explanation.
 - b. The manager or supervisor will then suggest additional training or other.
 - c. All complaints must be referred to the Safety Crew for its regular meetings.
 - d. If you accumulate a total of 3 complaints within a school year, you will be immediately terminated.
3. Failure to notify the Company of any motor vehicle violation immediately will result in termination.
 - a. Any driver authorized to operate company vehicles, who has had his state operators license suspended or revoked shall immediately notify his or her

supervisor of such, either in person or by telephone, and discontinue further operation of any company vehicle.

4. New Jersey law requires drivers and all seat passengers to wear seatbelts.
5. No driver shall operate a company vehicle when his/her ability to do so has been impaired by alcohol, drugs, medications, illness, fatigue, and injury.
6. Drivers must honor posted speed limits and drive safely.
7. All drivers are responsible for obtaining their medical certificates as stated by law.
8. Drivers must submit a Pre-Employment Drug & Alcohol screening.
9. When an employee is asked to submit a Random Drug & Alcohol screening, it must be done immediately after notified. Failure to do so results in termination.
10. All drivers and aides must obtain fingerprints with the Department of Education Criminal History Review Unit at their own expense.
11. Mandatory meetings must be attended by everyone; you will be paid the state minimum wage for your attendance.
12. No buses should go out on route with less than ½ tank fuel. Always make sure you have enough to perform the duties of the day.

Routes; Test Runs

Drivers (and aides, if applicable) shall familiarize themselves with their routes and stops by doing a test run of the route and noting stops before the first day of service. Each driver should write down each street, turn and time in front of each pupils home then submit it to the office prior to starting school route. Drivers will earn two paid hours to perform a dry run at the state minimum per hour pay. Failure to perform the route on schedule on the first day of school, he/she will be removed from route.

EQUIPMENT; SCHOOL BUS VEHICLE

The following equipment must be present on every school bus vehicle as outlined in New Jersey Administrative Code Title 13:



- Fire extinguisher
 - First aid kit
 - Three reflective triangle warning devices
 - Seat belt cutter
 - Other emergency equipment as outlined in code
 - Other equipment as so outlined by federal, state, and local laws.
1. It is the driver's duty to perform daily pre-trips of school bus (A.M. and P.M.)
 2. Any missing safety equipment must be reported to your manager.
 3. At any given time during a school year, you may be assigned to a different bus or route. You are not guaranteed the same bus or route from the first day of school.

FLEET TRACKING

All Trans-Ed buses are equipped with GPS systems and cameras. The management has the right to use disciplinary action against the driver for inappropriate behavior, unsafe driving, unauthorized bus usage, etc.

AM/FM RADIOS

All AM/FM radios are to be turned off while children are on board.

EMERGENCY EXIT DRILLS

Schools will hold two formal School Bus Inspection Days during the school year. The first inspection will be held during fall and the second one in the spring. Among the items that will be checked are:

- Arrival/departure times
- Transportation aide—duties and responsibilities
- Passengers; authorized
- Condition of vehicle
- Equipment; required

SEATING CHART AND SEATBELTS

All students grade PreK-8th are to be given an assigned seat. Your seating chart must be continually updated and available on your bus at all times. In the event of an accident the seating chart becomes part of the police report.

The seating charts are to be handed to your manager by the end of September. Keeping the seating chart is extremely important. If changes are made during the school year, please update your seating chart and forward it to your manager.

In accordance with R.S. 39:3B-11 each passenger on a school bus, which is equipped with seat belts, shall wear a properly adjusted and fastened seat belt or other child restraint system. Passengers are not permitted to stand while the bus is in motion.

EMERGENCY CLOSINGS

Schools may have to dismiss the students earlier than the scheduled times in the event of an emergency. All drivers must still provide the transportation of students as contracted. The transportation company shall receive notice from the principal of the school of emergency closings.

GIFTS TO STUDENTS

Drivers and/or transportation aides are not allowed to give gifts or food/drink products of any sort to any student.

SMOKING, EATING, DRINKING: PROHIBITED

Smoking by driver and aide is prohibited on the school bus vehicle, at all times, whether students are on or off the vehicle.



Eating or drinking on the vehicle by drivers, aides, and/or students is dangerous and strictly prohibited.

FINES

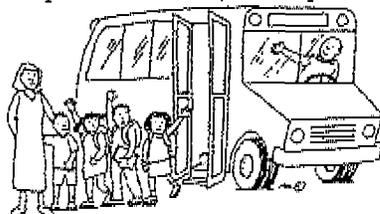
- Trans-Ed will not pay for any fines acquired from breaking laws while driving, including but not limited to, moving and parking violations. This also includes any violations related to idling.
- Drivers are responsible to pay for any preventable damages done to a vehicle or any equipment.
- Many roads and highways have hidden police cameras to track for speeding, making a turn while light is red, driving through a red light, etc. If we receive a ticket in the mail, the driver will be responsible to pay for the violation.

CELL PHONE USAGE

- Cell phone usage is not tolerated while driving a school bus.
- If your dispatcher tries to contact you on your cell phone while on the road, ignore the call and call back the office once you are pulled over safely on the side of the road.
- Trans-Ed will suspend any driver caught on their cell phone while driving.
- Law enforcement issues fines ranging from \$200-\$800 plus 3 points and up to 90 days license suspension.
- **IT IS COMPLETELY PROHIBITED TO USE YOUR CELL PHONES WHILE ON DUTY. DON'T FORGET THAT ALL OUR BUSES ARE EQUIPED WITH CAMERA SYSTEMS.**

SCHOOL BUS AIDES (DUTIES AND RESPONSIBILITIES)

The major duties of a transportation aide, as so prescribed by Trans-Ed, Inc.:



- To assist students getting on and off the transportation vehicle. The aide must get off the vehicle and stand by the door to offer assistance when needed, especially for younger children and the handicapped.
- To maintain order on the transportation vehicle and actively supervise students. Aides must sit in the rear of the bus so they can better observe the students' behavior.
- To assist students in safely riding the transportation vehicle, such as buckling seat belts.
- To participate in all training activities for the protection and safety of all on the transportation vehicle, e.g., exit drills.

- To act in a courteous and professional manner to all students in the vehicle and to all school personnel and parents involved with students transportation.
- To ensure that all students have their seat belts properly fastened while the transportation vehicle is in motion.
- Make sure all students have unloaded the bus before beginning a new route.
- To assist students with any hygiene tasks such as wiping noses, excess salivation and other health care needs as required.
- To encourage students to behave in a proper manner on bus.
- To report any students that misbehaves.
- Be thoroughly familiar with all aspects of assigned bus route and assists substitute drivers to follow route.



All transportation aides are subject to criminal background checks as prescribed by law. Trans-Ed Inc. requires that either the bus driver and/or the student transportation aide on each route speak the English language fluently. It is imperative that directions given by the bus driver and/or transportation aide be clearly understood by the students on the route.

ADDITIONAL DESIRED QUALIFICATIONS FOR BUS AIDE

- Physical ability to perform tasks that involve the ability to exert physical effort, typically involving some combination of climbing and balancing, stooping, kneeling, crawling and which may involve some lifting, carrying, pushing and/or pulling objects and materials of varying weight
- Physical ability to lift and carry small children.
- Physical ability to move through the bus aisle from the front to the back of the bus in 5 seconds.
- Physical ability to maintain footing and balance when walking over uneven or slippery surfaces.
- Physical ability to work in extreme cold and hot weather.

Special Needs Children

- Physical ability to reach behind or under a wheelchair while kneeling on the bus floor and bending forward to secure the wheelchair into the bus.
- Physical Ability to fasten, unfasten, adjust lap belts, car seat straps, harness straps and wheelchair securement straps.
- Additional training and information will be given to those who are assigned to special needs routes.

WORKPLACE HARASSMENT POLICY

Trans-Ed's policy is to provide a work environment that is free from harassment. Therefore, Trans-Ed will not tolerate harassment based on age, race, gender, color, religion, national origin, disability, marital status, covered veteran status, sexual orientation, and other characteristics protected under state federal, or local law. Such conduct is prohibited in any form at the workplace, at work-related functions, or outside of work if it affects the workplace. This policy applies to all Trans-Ed employees, clients, customers, guests, vendors, and persons doing business with Trans-Ed.

Sexual harassment, one type of prohibited harassment, warrants special mention. Sexual harassment has been defined, according to Trans-Ed guidelines, as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- *Submission to such conduct is made a term or condition, either explicitly or implicitly of an individual's employment.*
- *Submission to or rejection of such conduct by an individual is used as a factor in decisions affecting that individual's employment; or*
- *Such conduct has the purpose or effect of interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.*

Examples of conduct prohibited by this policy include, but are not limited to:

- Unwelcome sexual flirtation, advances, or propositions,
- Verbal comments related to an individual's age, race, gender, color, religion, nation origin, disability, or sexual orientation;
- Explicit or degrading verbal comments about another individual or his/her appearance;
- The display of sexually suggestive pictures or objects in any workplace location including transmission or display via computer;
- Any sexually offensive or abusive physical conduct;
- The taking of or the refusal to take any personnel action based on an employee's submission to or rejection of sexual overtures; and
- Displaying cartoons or telling jokes which relate to an individual's age, race, gender, color, religion, national origin, disability, or sexual orientation.

DRIVER AIDE DRESS CODE

Drivers shall be neat and clean and dress in good taste, appropriate for school personnel.

- No bare midriffs, halter tops or tank tops.
- Shorts must be no more than three (3) inches above the knees.
- No shirts with inappropriate advertising
- No pajamas or sweatpants attire
- All shoes must be secured to the foot – open or closed toe with strap around back of foot.
- The Transportation Supervisor may discuss further specific attire with a driver/aide.
- Wear company issued identification tag (If you lose your ID, there will be a \$15 fee to replace tag)

Trans-Ed has the right to dismiss an employee from work if dress code is not followed

RAISES

- Pay raises will be given strictly based on performance, not on an annual basis.
- Pay raises may be capped at a certain level, depending on current hourly rate you receive.

ABSENTEEISM

Unexcused absences are not tolerated in the school bus industry. Given your work schedule, there should be plenty of free time to plan for doctor appointments, errands, and so forth. However, in an unforeseen emergency, you **MUST** show proof of reason for missing work (doctor's note, mechanic bill, etc).

If an employee misses two consecutive days in a row due to illness, a doctor's note **MUST** be given to the manager in order to return back to work.

Chapter 2

Passengers

PASSENGERS

Parents, guardians, relatives, friends of students, and the general public are prohibited from entering a school bus unless invited by the school district in cooperation with the bus company.

The safety of the students is the bus company's paramount concern. There shall be no standees on the transportation vehicle.

Carrying more passengers than the vehicle is designed to carry is illegal.

Arrivals, Departures; Early/Late

Late arrival to destination to discharge students and/or to pickup will not be tolerated by Trans-Ed. You will be fined if deemed necessary.

Unauthorized Stops

Students must be dropped off and picked up at bus stops that are assigned on to your route. Any unauthorized stops that are not assigned on to your route will not be tolerated. Drivers are also not allowed to stop for food/beverages, shopping or any other activities while children are on the vehicle.

Students Absent

If a student fails to show at the assigned pickup stop (home address) three consecutive days, the bus driver must notify the dispatcher.

Students Boarding Bus

Students are not to board a vehicle unless the bus driver is in the vehicle. No student is to be left unattended in the vehicle at any time.

Students Left on Bus

All bus drivers and aides are to inspect every seat of the transportation vehicle at the completion of every run and before leaving school property to ensure no student is left on the vehicle.

The abandonment of students on the vehicle is considered by Trans-Ed, Inc., a serious infraction and would demand that both the driver and the aide be immediately terminated.

DRUG, ALCOHOL, & TOBACCO USE



If the bus driver or aide observes a student violating the policy by possessing, consuming, or distributing drugs or alcohol, or if the student appears to be under the influence of a chemical, that behavior should be reported to Trans-Ed, Inc. as soon as possible.

STOPS: LOADING AND UNLOADING



All students are to be picked up and dropped off at the stops so designated in the official route description. Drivers may not release students at any other stop.

Students may only be released at their home address or at the school destination. Parents, guardians, students, and others may not direct the driver where to release students.

All special education and handicapped students are to be loaded on the bus and unloaded from the bus on the side of the street of which they reside. This does not apply to pick-up and drop-offs on one way streets. On one way streets the aide should get off the bus and make sure that all vehicles have stopped before loading the student on the bus.



When picking up or dropping off students at a school, the bus must be turned off. It is illegal to idle. A stop arm must be used at all times when picking up or dropping off students other than a school. Make sure stop arms and lights are working at all times.



If the student is not waiting for the bus at the time of pick-up or a parent is not waiting outside at the time of drop-off, the driver must make every attempt to pull to the side of the road and wait. A driver is not to wait more than three minutes for a student at the time of pick-up.

An adult (parent, guardian, relative) must be present before a child is allowed to leave the vehicle. If an adult is not present to meet the child (this pertains to 3-11 year olds and all profoundly handicapped students), the driver must make every effort to contact the parent such as:

- Wait for 2-3 minutes;
- Sending aide to ring doorbell;
- Contacting parent by phone;
- Hold child on the bus until the completion of the run and make one more attempt to deliver the child.
-

If then the parent is not at home, the driver shall notify Trans-Ed, Inc.

In the event that there is no parent/guardian at home to receive a student during an early dismissal, in-district students should be returned to their appropriate schools or contact your manager for further instructions.

ARRIVALS, DEPARTURES; EARLY, LATE

School arrival/dismissal hours as shown in the route description will be adhered to throughout the school year, except for any planned early dismissals or emergency closings. All vehicles shall arrive and/or depart the assigned school/destinations as indicated on the route descriptions.

Early/late arrivals and departures will not be tolerated.

In case of a vehicle breakdown, the school bus driver shall immediately ensure the bus is removed from a dangerous situation and that all students on the vehicle are safe.

The driver is then to:

- Contact the company dispatcher to send a backup vehicle AND to notify parents of any delays.
- Contact the police if the need warrants police assistance.
- Contact the receiving school principal of vehicle disability.
- Maintain good order of students on or off the vehicle depending on the situation.

UNMANAGEABLE STUDENTS

All bus drivers are to report unmanageable students to the principal of the receiving school and the Transportation Department through the appropriate written incident/conduct report provided by Trans-Ed, Inc. This must be done as soon as you arrive back to base. *NO EXCUSES.*

Bus drivers are not permitted to exclude students from the bus. Also, no child is to be turned away from boarding your bus. The school is responsible for suspending any children from a route. If a suspended child is at your bus stop, by law, you must allow that child on your bus regardless of suspension. Please inform the dispatcher as soon as possible when there is a suspended child on your bus.

If a transported student becomes extremely aggressive, violent and/or dangerous, the local police should be called immediately. The driver must notify the dispatcher.

If a school employee approaches the driver and informs them not to pick up a student because of suspension, drivers are to advise them that they have to contact the office in a written document. This will prevent any miscommunication between the school and bus company.

ANTI-BULLYING LAW

The law defines harassment, intimidation or bullying as "any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic... that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds ... that substantially disrupts or interferes with the orderly operation of the school or the rights of other students, and that a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging a student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage his property."

Reporting and procedural requirements

The Anti-Bullying Bill of Rights provides detailed procedures and timelines for reporting incidents of bullying. **All school employees and contracted service providers are required to report such incidents.**

- All acts of harassment, intimidation, or bullying must be reported verbally to the school principal on the same day when the school employee or contracted service provider witnesses or receives reliable information regarding any such incident. The school employee or service provider must submit a written report of the incident to the principal within two days.
- The principal must inform the parents or guardians of all students involved in the alleged incident and may discuss the availability of counseling and other intervention services.
- The principal or principal's designee must initiate an investigation of the incident within one school day of the report. The school anti-bullying specialist conducts the investigation. The principal may appoint other staff to assist the specialist.
- The investigation must be completed as soon as possible, but no later than 10 days after the principal had received the initial written report of the incident. The report of the investigation may be amended by the anti-bullying specialist if new information becomes available.
- The superintendent must receive the report of the investigation within two days of its completion. The superintendent may provide intervention services, establish training programs, impose discipline, order counseling, or take other appropriate actions.
- The school board must receive the report at its first meeting following the investigation along with information on actions taken to address the incident or incidents.
- Parents of student involved in the incident are entitled to information about the investigation and may request a hearing with the school board in its executive session. The board may also hear from the anti-bullying specialist at the hearing. At its next meeting, the board must issue a written decision affirming, rejecting, or modifying the superintendent's decision. The board's decision may be appealed to the commissioner of education. Bus drivers or aides who have reasonable cause/suspicion to believe that a child has been subjected to any type of child abuse or neglect shall report any such suspicions immediately to the dispatcher.

Chapter 3

On the Road

ACCIDENT PROCEDURES

What must be reported to your manager:

- A moving violation
- A non-fault accident (note: all accidents will be considered to be at fault without proof)
- At fault accident (accident involving one or more vehicles)

The following steps should be followed when an accident or incident occurs:

1. Keep calm and analyze the situation.
2. No matter how slight or insignificant the accident appears to be, ALWAYS stop and ALWAYS call the police.
3. Protect the scene of the accident. If available, put warning signals (reflectors) 100 feet to the front and rear of the vehicle, and a third reflector 10 feet behind the bus on the left rear side. Unless the bus is severely damaged or in a dangerous position, keep passengers inside.
4. Determine if there are any injured persons. If a passenger complains about any problem, insist on a physician's examination.
5. If YOU are injured, you must inform your manager and he/she will send you to the company's healthcare provider.
6. Make all passengers as safe and comfortable as possible.
7. Never use a fire extinguisher while passengers are on the bus.
8. Exchange other party's information. Make sure you obtain the following information:
 - a. Date, time, and place.
 - b. Name, address, operator's license number, vehicle registration, and insurance company of other party. You should supply the same information to the other driver. **NO OTHER INFORMATION SHOULD BE VOLUNTEERED.**
 - c. Name and addresses of witnesses and license numbers of the first witness on the scene after the accident.
 - d. Name, badge, and organization of investigating police officers.
 - e. As soon as possible after an accident, the driver should return to the office to submit the accident report to the dispatcher.

ACCIDENT REPORTING

All drivers must immediately inform the people listed below following a school bus accident, whether students were on or off the transportation vehicle.

Bus company personnel are to provide immediate and accurate information to the school principal and transportation office.

Officials to Notify

- Dispatcher
- Police and/or ambulance

The school bus driver must complete and quadruplicate the Preliminary School Bus Accident Report and deliver it to the dispatcher. The driver is to obtain all necessary signatures and return the report to Trans-Ed.

Please take photos of damage if you have a camera phone available.

It is the responsibility of the driver to pick up the police report from the Police Department of the town/city where accident occurred. This must be done within 2 days of accident and submitted to the dispatcher.

Failures to adhere to this procedure will result in penalties being assessed.

ANY damage to equipment due to carelessness will be at the driver's expense. This matter is discussed further with your manager.

DAILY ROUTES

- Drivers shall not change stops or routes without approval from the Transportation Manager.
- All students are to be dropped at their assigned bus stop. Drivers are not permitted to deviate from the route without permission from the office. Drivers must contact office if they would like to drive the route differently than scheduled.
- It is school policy to not drop off any elementary students without a parent/guardian or responsible adult present. Please call the office if there is a child with no guardian present at the stop.
- **NO unauthorized passengers. This includes: family members, driver/aide friends, students not assigned to route.**

FIELD TRIPS AND ATHLETIC RUNS

- Drivers are responsible for supervision of their bus at "away" activities.
- Drivers may not drop students anywhere other than the school or pre-designated site.
- Drivers should check over their trip slips in advance to familiarize themselves with the best route. Please review directions prior to trip.
- The teacher, coach, chaperone and driver are responsible for student behavior. Rules must be obeyed at all times.
- When more than one bus is involved, it is recommended that buses keep within sight of each other while traveling.
- Drivers are expected to clean the bus after each trip.
- Driver is NOT to leave the trip site unless it is for bathroom usage or for food nearby (within 5 miles).
- Drivers must complete a bus trip slip after each trip. Chaperones must sign-off on these slips at the end of each trip. Slips are used for billing and payroll purposes and must be turned in to the office immediately after trip.
- Drivers will be paid in "straight time" for any trips and routes that are combined together.
- Collect payment from chaperone if the trip slip indicates doing so. All cash or checks should be given to management as soon as the trip has ended.

IDLING

Due to NJ law, Trans-Ed adopted the "NO IDLE" policy which is enforced on all school bus vehicles. This policy seeks to reduce student and driver exposure to diesel exhaust by limiting unnecessary idling of school buses. All aspects of this policy conform to requirements found in Nj Statute 7:27-14.2.

- When a school bus arrives at loading or unloading areas, drivers should turn off their buses immediately upon arriving to eliminate idling. The school bus should not restart until it is ready to depart and there is a clear path to exit the pick-up/drop-off area.

All vehicles may idle for up to three (3) minutes with the following exceptions:

- If the outside temperature is less than 25 degrees, **diesel vehicles** may idle for no more than **15 minutes** on any property
- You may idle in traffic
- You may idle while actively dropping off or picking up students for **15 minutes**.

State-issued penalties for idling: \$250 for first violation, \$500 for second violation, \$1000 for third and each subsequent violation.

CONCLUSION

You are entrusted with a great responsibility. Safe transportation of children to and from school is our primary purpose. Trans-Ed exerts every effort to provide safe, efficient and convenient transportation services to all passengers. To accomplish this, all members of our department must work together as a team.

We will continue to work with diligence to earn the respect and confidence of our patrons: school administrators, teachers, parents, and the public and of course the students. We are professionals who will see that this image is maintained and improved through our efforts. We CAN make a difference!

TRANS ED

TRANSPORTING AMERICA'S FUTURE SINCE 1989

RECEIPT AND ACKNOWLEDGEMENT OF TRANS-ED EMPLOYEE HANDBOOK

Please read the following statements, sign bellow, make a copy and return the original to the personnel clerk.

"I have received and read a copy of the Trans-Ed Employee Handbook. I understand that the policies and benefits described in it are subject to change at the sole discretion of Trans-Ed, Inc. at anytime."

At-Will Employment

"I further understand that my employment is at will, neither I nor Trans-Ed has entered into a contract regarding the duration of my employment. I am free to terminate my employment with Trans-Ed at any time, with or without reason. Similarly, Trans-Ed has the right to terminate my employment, or otherwise discipline, transfer, or demote me at any time, with or without reason, at the discretion of Trans-Ed. No employee of Trans-Ed can enter into an employment contract for a specific period of time, or make any agreement contrary to this policy without the written approval from Mr. Ed Thomas."

Confidential Information

"I am aware that during the course of my employment, confidential information will be made available to me, for instance, product designs, marketing strategies, report formats, customer lists, pricing and other related information. I understand that this information is proprietary critical to the success of Trans-Ed and must not be given out or used outside of Trans-Ed's premises or with non-Trans-Ed employees. In the event of termination of employment, whether voluntary or involuntary, I hereby agree not to utilize or exploit this information with any other individual or company."

Employee Name (please print)

Employee Signature

Date

Management Witness (please print)

Witness Signature

Date

SSN: 149-64-7989 PC: 10 DOC: 06/19/16

SEQ: 003

	ORIGINAL ENTRY	LAST MODIFIED
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DATE:	07/26/16	
LOCAL OFFICE:	0911	
OPERATOR:	0651	
TITLE:	8/24/2016 AT 09:20	
REMARK:	CLAIMAINT VOLUNTARILY QUIT TRANS ED INC 0200401570 00000-000000 (973)881-8006	

07-LIST

08-PREV

04-FIRST

CLC:

Exh. No. 65 Received Rejected
 Case No.: _____
 Case Name: TRANS ED
 No. Pgs: 1 Date: 8/9/16 Rep: DR

TRANS ED

TRANSPORTING AMERICA'S FUTURE SINCE 1989

Por favor de seleccionar la cajita donde le indique su respuesta y entrar el papel en una cajita marcada RESPUESTAS

En algún momento durante la temporada de empleo del señor Luis Del Toro se acerco a hablar con usted para decirle que la compañía Trans-Ed se iba a cerrar y que usted debería de buscar otro trabajo

Si

o

No

En algún momento durante la temporada de empleo el señor Luis Del Toro los contacto para decirle que la compañía se iba a mudar

Si

o

No

Exh. No. R3 Received Rejected

Case No.: _____

Case Name: TRANS-ED

No. Pgs: _____ Date: 8/19/16 Rep.: BO

TRANS ED

TRANSPORTING AMERICA'S FUTURE SINCE 1989

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TRANS- ED

TRANSPORTING AMERICA'S FUTURE SINCE 1989

Please fill out the appropriate box below and place your response inside box by the office door marked Responses. You are NOT expected to sign your name.

Did Luis Del Toro at any time during his employment approach you or contact you in any way concerning Trans-Ed's closing and that you should look for employment elsewhere.

YES

No

Did Luis Del Toro at any time during his employment approach you or contact you in any way concerning Trans-Ed's move from current location?

YES

No

TRANS ED

TRANSPORTING AMERICA'S FUTURE SINCE 1989

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TRANSPORTING AMERICA'S FUTURE SINCE 1989

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Si

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No

D. MALIBIA JAMBEZ, LI CASOR LUIZ DEL
1010 ME dice que si le da otro trabajo, por que el
papá UNO UNICO que se podía conseguir trabajo
por mas dinero 250 etc. entonces la segunda
vez que me decía mi hijo yo le dije que
yo no había problemas.

Exh. No: 22 Received Rejected
Case No.: _____
Case Name: FRANK ED
No. Pgs: 1 Date: 8/1/16 Rep: ER

2-26-76
yo Andrea Garcia Benja comiendo
por lo yardo y Luis del Toro me dijo
que Eduardo iba a vender las guaguas
pequeñas, que me fuera a buscar trabajo
d. Kudo.

Andrea Garcia

Exh. No. 271 Received Rejected
Case No.: _____
Case Name: TRAN - ED
No. Pgs: 1 Date: 2/27/76 Rep: PEL

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

TRANS-ED, INC.

And

Case 22–CA–170891

LUIS DEL TORO, an individual

Tara Levy, Counsel for the
General Counsel
Edward Thomas, pro se for the
Respondent

Decision

Statement of the Case

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in Newark, New Jersey on August 9, 2016. The charge and the amended charge were filed on February 29 and April 26, 2016. The complaint, which was issued on May 25, 2016, essentially alleges that on or about February 26, 2016, the Respondent discharged Luis Del Toro because he urged employees to vote against the ratification of an agreement made between the Respondent and Local 226, Transport Workers Union of America.

On the entire record in this case, including my observation of the demeanor of the witnesses and after reviewing the briefs filed, I hereby make the following

Findings of Fact

I. Jurisdiction

The parties agree and I find that Trans-Ed Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. It also is agreed and I find that the Union is a labor organization as defined in the Act and is subject to the jurisdiction of the Board.

II. The Alleged Unfair Labor Practices

The Respondent is a school bus company which operates out of two terminals in New Jersey. The owner is Edward Thomas. The General Manager of the Paterson, New Jersey terminal is Bismarck Calobaro. Luis Del Toro, the charging party, has been employed by the company for about 15 years as a driver. There are essentially three categories of employees, apart from office workers. These are drivers, monitors and mechanics. (Monitors are also called aides).

In early 2015, Del Toro, along with other employees, made contact with Local 226, Transport Workers Union of America, whose president is Jon Bradford. According to Del Toro, he was one of the people who solicited union authorization cards for the Union.

Local 226 filed a petition in 22–RC–150289 on April 17, 2015, and pursuant to a Stipulated Election Agreement, an election was held on April 27, 2015, for the full-time and regular part-time drivers, monitors and mechanics employed at the Respondent's Jefferson Street, Passaic facility. (Since moved to Patterson, New Jersey). The Tally of Ballots showed that the votes were 61 to 33 in favor of the Union. The Union was certified by the Board as the bargaining representative on May 6, 2015.

Subsequent to the Certification, the Union appointed Oscar Colon, one of the mechanics, and Del Toro as shop stewards. At a later date, Del Toro ceased being a shop steward after he suffered an accident and was out on Workers' Compensation until December 2015.

At some point, the Union and the company commenced negotiations for a contract. In September 2015, Del Toro was chosen, along with Oscar Colon, to attend a bargaining session. When Del Toro was introduced as a shop steward, Thomas stated that Del Toro should or could not be a shop steward because he was a bully. At that meeting, Del Toro, with the acquiescence of Bradford, did not attend the meeting. He didn't attend any further bargaining sessions.

After presenting initial contract proposals to the employer, Del Toro started telling other employees that in his opinion, the union representatives were not asking for enough.

In January 2016, the company and the Union agreed to a tentative contract that was subject to employee ratification. When Del Toro learned of its terms, he spoke to other employees and urged them to vote against ratification. The evidence shows that Thomas was aware that Del Toro was urging employees to reject the agreement. It was also conceded by Thomas that he had heard that Del Toro, not only was telling employees to vote against the agreement, but that he was also urging them to get rid of the Union and find another one.

The agreement was, in fact, voted down and the parties resumed negotiations. During these negotiations, Thomas refused to make any but the most minor concessions. Another agreement was reached in February 2016, and a ratification vote was scheduled for early March. Prior to the ratification vote, Del Toro again spoke to numerous employees and expressed his opinion that the agreement was not adequate. Again, the evidence establishes that Thomas was aware of Del Toro's activity. Thomas also testified that he was notified by his Manager Caraballo, that Del Toro was urging employees to engage in a strike.

On February 26, Del Toro was at the facility's parking lot and engaged in an argument with Bradford about the terms of the proposed agreement. At one point, Thomas came out of the office and witnessing the argument between Del Toro and Bradford, told the former to leave. At this point, Del Toro went home and then returned for the afternoon run. When he arrived at the facility, Del Toro was told by Thomas that he was fired because he was telling employees that the company was going to sell the buses and would close down. Del Toro denied making such statements. He asserted that Oscar Colon had told him about the company selling buses but that he did not make any such statements to other employees.

Section 7 of the Act gives employees the right to be represented by a union and the right to reject unionization. In this case, Del Toro obviously was engaged in union and concerted activity when he engaged in activity in 2015 to obtain representation by Local 226, Transport Workers Union of America. By the same token, he was engaged in concerted activity when he later engaged in activity to convince employees to reject a ratification of the proposed collective-

bargaining agreement. *London Chop House, Inc.*, 264 NLRB 638 (1982). Moreover, to the extent that Thomas believed that Del Toro was urging other employees to engage in a strike or to seek alternative union representation, those activities would also be protected by Section 7.

5 In my opinion, the evidence, particularly considering the timing of Del Toro's discharge in relation to his activity of urging employees to vote against contract ratification, is sufficient to establish a *prima facie* case within the meaning of *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). I also note that although
10 Thomas asserted that he discharged Del Toro because he was telling employees that the company was going to sell its buses, go out of business and that they should look for other jobs, Thomas also testified as follows:

JUDGE GREEN: Alright. Fine... So what else do you want to tell me?

15 THE WITNESS: I'm -- like I said the issue was so simple to me coming forward. Now -- you know, now we're into this question and answer period. But there's my proof and there's more proof, as to the fact that what I had heard was just -- was not only a rumor, it was true. Luis was opening his mouth to people when he shouldn't have as he did, when he was trying sell off
20 the idea of getting \$2 an hour from the Union. And when they didn't reach that number that's why he wanted them out. He had his agenda. Now, unions and non-unions, you know, we don't need unions in our business, but we have it now thanks to Luis. Yes, it is discomfoting to have to share with one another -
25 - with another person what I want to do... But when it came to that situation of him even going further than that, trying to harm the business more so, that's when I said no. No, we can't deal with this.

Having concluded that the General Counsel has established a *prima facie* case, the burden shifts to the Respondent to show that it would have discharged Del Toro in the absence
30 of his union or concerted activity.

As noted above, the Respondent asserts that the reason Del Toro was discharged was because he was falsely telling other employees that the company was going to sell its buses and go out of business and that they should look for other jobs. In this regard, he testified that
35 such activity on the part of Del Toro would substantially damage his business because if his employees quit their jobs, he would not be able to service his contracts.

Thomas stated that he heard that Del Toro was telling employees about selling buses and closing the business from Oscar Colon who passed along statements that he heard from
40 other employees. Colon, however, testified that he did not talk to Thomas about these alleged statements.

Thomas also testified that at some time in February 2016, after hearing of the rumors from Colon, he asked a number of employees who was telling them that the company was going
45 to sell buses and going to close down. He testified that many of the employees were reluctant to say anything but that two, Andrea Garcia, and Doralinda Ramirez told him that it was Del Toro. In this regard, Thomas offered what purported to be written statements from these two employees, both of which were in Spanish and one of which was dated February 26. (The other was undated). The statement by Garcia was that Del Toro told her that the Employer was going
50 to sell its small buses and that she should look for a job with a company called Rudco. The statement by Ramirez was that Del Toro told her on at least two occasions, that if she wanted another job, he had a friend who could get her a job for more money.

The obvious problem with these “statements” is that they are hearsay as to the truth of the matters asserted and the employer did not call either employee to verify the statements that are attributed to Del Toro and denied by him. The next problem is that only one of the two statements supports the version asserted by Thomas. The final problem is that Thomas could not say when he spoke to these employees or even if the statements were obtained before or after he discharged Del Toro.

In conclusion, I find that the General Counsel, having made out a *prima facie* case that the Respondent discharged Del Toro for union and/or concerted activity, I also find that the Respondent has not presented sufficient evidence to rebut the General Counsel’s case. I shall therefore conclude that the Respondent has violated Section 8(a)(1) and (3) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having concluded that the Respondent unlawfully discharged Luis Del Toro on February 26, 2016, it must offer him reinstatement and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.¹

The make whole remedy shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), the Respondent shall compensate Luis Del Toro for search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra., compounded daily as prescribed in *Kentucky River Medical Center*, supra. In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), the Respondent shall compensate Del Toro for the adverse tax consequences, if any, of receiving lump sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 2 a report allocating backpay to the appropriate calendar year for each employee. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

The Respondent shall be required to expunge from its files any and all references to the unlawful discharge and notify Luis Del Toro in writing that this has been done and that the unlawful action will not be used against him in any way.

As the employees work force consists of many Spanish speaking employees, the Notice to Employees should be in English and Spanish.

¹ By email dated September 19, 2016, the Respondent asserted that the Charging Party engaged in certain improper conduct after his discharge and after the trial in this case had ended. To the extent that the Respondent raises an issue as to the appropriateness of a reinstatement or backpay remedy, the Respondent can raise this issue during the compliance stage of the proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ²

5

ORDER

The Respondent, Trans Ed, Inc., its officers, agents, and representatives, shall

1. Cease and desist from

10

(a) Discharging or otherwise taking adverse actions against employees because they urge other employees to vote against the ratification of a contract between the employer and Local 226, Transport Workers Union of America, or because they oppose that union or because of any other concerted activities for mutual aid or protection.

15

(b) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

20

(a) Make Luis Del Toro whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the Remedy section of this Decision.

25

(b) Within 14 days from the date of this Order, offer Luis Del Toro, full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

30

(c) Remove from its files any reference to the unlawful action against Luis Del Toro and within 3 days thereafter, notify him in writing, that this has been done and that the layoff will not be used against him in any way.

35

(d) Reimburse Luis Del Toro an amount equal to the difference in taxes owed upon receipt of a lump sum backpay payment and taxes that he would have been owed had there been no discrimination against him.

(e) Submit the appropriate documentation to the Social Security Administration so that when backpay is paid to Anthony Gallo it will be allocated to the appropriate periods.

40

(f) Compensate Luis Del Toro for search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

45

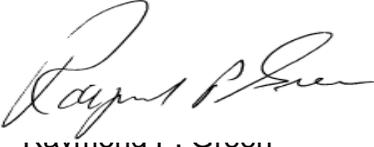
(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

5 (h) Within 14 days after service by the Region, post its Paterson New Jersey facility,
copies of the attached notices marked "Appendix." Copies of the notices, on forms provided by
the Regional Director for Region 22, in English and Spanish, after being signed by the
Employer's authorized representative, shall be posted by the Employer and maintained for 60
consecutive days in conspicuous places including all places where notices to employees are
10 customarily posted. In addition to physical posting of paper notices, notices shall be distributed
electronically, such as by email, posting on an intranet or an internet site, and/or other electronic
means, if the Employer customarily communicates with its employees by such means.
Reasonable steps shall be taken by the Employer to ensure that the notices are not altered,
defaced, or covered by any other material. In the event that, during the pendency of these
15 proceedings, the Employer has gone out of business or closed the facilities involved in these
proceedings, the Employer shall duplicate and mail, at their own expense, a copy of the notice
to all current employees and former employees employed by the Employer at any time since
February 26, 2016.

20 Dated: Washington, D.C. September 22, 2016


25
Raymond F. Green
Administrative Law Judge

Appendix

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise take adverse actions against any employee because he or she urges other employees to vote against the ratification of a contract between the employer and Local 226, Transport Workers Union of America or because they oppose that union or because of any other concerted activities for mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL make Luis Del Toro whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the Remedy section of this Decision.

WE WILL within 14 days from the date of this Order, offer Luis Del Toro, full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL remove from our files any reference to the unlawful action against Luis Del Toro and within 3 days thereafter, notify him in writing, that this has been done and that the layoff will not be used against him in any way.

WE WILL reimburse Luis Del Toro an amount equal to the difference in taxes owed upon receipt of a lump sum backpay payment and taxes that he would have been owed had there been no discrimination against him.

WE WILL compensate Luis Del Toro for search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

TRANS-ED, INC.

(Employer)

Dated _____

By

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

20 Washington Place
5th Floor
Newark, NJ 07102-3110
Phone: (973) 645-2100

The Administrative Law Judge's decision can be found at www.nlr.gov/case/22-CA-170891 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (973) 645-2100

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRANS-ED, INC.

and

LUIS DEL TORO, an individual

Case 22-CA-170891

**ORDER TRANSFERRING PROCEEDING TO
THE NATIONAL LABOR RELATIONS BOARD**

A hearing in the above-entitled proceeding having been held before a duly designated Administrative Law Judge and the Decision of the said Administrative Law Judge, a copy of which is annexed hereto, having been filed with the Board in Washington, D.C.,

IT IS ORDERED, pursuant to Section 102.45 of the National Labor Relations Board's Rules and Regulations, that the above-entitled matter be transferred to and continued before the Board.

Dated, Washington, D.C., September 22, 2016.

By direction of the Board:

Gary Shiners

Executive Secretary

NOTE: Communications concerning compliance with the Decision of the Administrative Law Judge should be with the Director of the Regional Office issuing the complaint.

Attention is specifically directed to the excerpts from the Board's Rules and Regulations and on size of paper, and that requests for extension of time must be served in accordance appearing on the pages attached hereto. **Note particularly the limitations on length of briefs with the requirements of the Board's Rules and Regulations Section 102.114(a) & (i).**

Exceptions to the Decision of the Administrative Law Judge in this proceeding must be received by the Board's Office of the Executive Secretary, 1015 Half Street SE, Washington, DC 20570, on or before **October 20, 2016**.

GLENN M. FINKEL, ESQ.
Attorney ID#025631990
The Levine Law Firm, LLC
0-99 Plaza Road
Fair Lawn, New Jersey 07410
(201) 794-1100
Attorneys for Respondent

TRANS-ED, INC.,	)	UNITED STATES OF AMERICA
	)	BEFORE THE NATIONAL LABOR
Respondent,	)	RELATIONS BOARD DIVISION OF
	)	JUDGES
V.)	
	)	Case 22-CA-170891
LUIS DEL TORO, An Individual,)	
)	
Charging Party.)	

**POST-HEARING BRIEF ON BEHALF OF TRANS-ED INC. IN EXCEPTION TO THE
ADMINISTRATIVE LAW JUDGE**

I. Jurisdiction

Trans-Ed, Inc (“Respondent” or “the Employer”). is an employer, located in Paterson, New Jersey engaged in commerce and agrees that the Union is a labor organization as defined in the Act. Thus, the Employer admits the Board’s jurisdiction over this matter.

II. Statement of Facts and Allegations

Trans-Ed, Inc. is a school bus company that operates in New Jersey. Edward Thomas is the owner. Bismarck Calobaro is the General Manager for the branch that operates out of Paterson, New Jersey. Transport Workers Union (“the Union”) is a labor organization within the meaning of the National Labor Relations Act (“the Act”). Luis Del Toro contacted the Union

and, after filing a petition and holding an election, the Board certified the Union as the bargaining representative on May 6, 2015.

General Counsel alleges that the Employer has violated Section 8(a)(3) of the Act by terminated Luis Del Toro because he engaged in a campaign opposing the ratification of the collective bargaining agreement negotiated by Respondent and the Union.

Luis Del Toro and Oscar Colon were chosen to attend a bargaining session regarding the collective bargaining agreement. (TR 27:2-28:1; 31:21; 69:21-22). At this session, Thomas expressed his opinion that Del Toro was not an exemplary employee by calling him a “bully.” (TR 24:14 – 25:5; 25:21-23; 119:22-25). The Union president removed Del Toro from negotiations and told Del Toro that Thomas did not like him. (TR:26-10-17) Subsequently, Del Toro expressed his opinion that the union representatives were not asking for enough. (TR: 28-6 – 29:12; 30:2-25).

In January 2016, a tentative contract was agreed to by the Employer and the Union, subject to employee ratification. (TR 35:5-8). Thomas was aware that Del Toro was opposed to this contract and was also aware that Del Toro was attempting to sabotage the Employer by spreading rumors that the Employer was selling buses and that they should look for other jobs. (TR 70:13 – 71:8; 71:11-13)

The contract was voted down. (TR 43:19) Bradford asked the employees why they voted the contract down and the employees told Bradford that Del Toro was misleading them. (TR 132:15-16) Thomas expressed again how Del Toro was misleading his employees, specifically, by spreading false rumors about the company selling buses and that they should look for new jobs. (TR 132:17-23)

On February 26, after fighting with another employee and continuing to spread false rumors about the company, Thomas decided to fire Del Toro.

III. Argument

The Employer Did Not Violate Section 8(a)(3).

a. General Counsel Has Not Made a Prima Facie Case.

In order to establish a violation of Section 8(a)(3), the Board requires that General Counsel make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. The burden then shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct. Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cer. Denied 455 U.S. 989 (198), approved in NLRB v. Transportation Management Corp., 462 U.S. 393, 399-403 (1983).

To make a sufficient initial showing of discrimination, General Counsel must show that (1) the employee was engaged in protected activity; (2) the employer was aware of the activity; and (3) that animus towards the protected activity was a substantial or motivating reason for the employer's action.

Judge Green erred when he determined that the timing of Del Toro's discharge in relation to his activity of urging employees to vote against contract ratification was sufficient to establish a prima facie case within the meaning of Wright Line. Specifically, regarding element 3, there is insufficient evidence to suggest that animus towards the protected activity was a substantial or motivating reason for the employer's action.

Thomas discharged Del Toro because he was spreading false rumors that the company was selling its buses and that other employees should look for new jobs. See TR 74:15-23; 75:5-

6; 82:10-22; TR 45:24 – 46:4. Any animus toward Del Toro was as it relates to him spreading rumors about the company selling its buses, not as it relates to any protected activity. The evidence shows that Thomas placed flyers to counteract Del Toro's rumors but did not take any action regarding his activities with the Union. See TR 148: 5-6. In fact, Thomas was in agreement with the other Union representatives and the contract that was ratified, so he had no reason to retaliate against Del Toro. While there may have been animus toward Del Toro's protected activity, the record does not sufficiently support that such animus related to Del Toro's discharge. If said animus was related to Del Toro's protected activity, Thomas would have discharged Del Toro at an earlier date, but he did not. Thomas knew that the activity Del Toro was engaging in was protected so he did not terminate Del Toro because of that activity.

Because General Counsel has not shown that the animus towards the protected activity was a substantial or motivating reason for the employer's actions, General Counsel has not made a prima facie showing under Wright Line.

b. The Employer Has Met It's Burden Of Showing That It Would Have Terminated Del Toro Regardless Of His Engaging In Protected Activities.

The employer cannot meet its burden merely by showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. Bruce Packing Co., 357 NLRB 443, 443 (1984). If the employer's proffered reasons are pretextual the employer fails to show that it would have taken the same action for those reasons regardless of the protected conduct. Metropolitan Transportation Services, 351 NLRB 657, 659 (2007).

Based on Metropolitan, Trans-Ed has met its burden of showing that it would have terminated Del Toro regardless of his protected activities. Terminating Del Toro for spreading false rumors about the company, while they occurred during the same time as the protected

activity, are clearly not pretextual as spreading such rumors could have severely damaged the Employer.

On February 26, Thomas fired Del Toro for telling other employees that the company was selling busses and going out of business. See TR 74:15-23; 75:5-6; 82:10-22; TR 45:24 – 46:4. While Del Toro denies making any such statements, Thomas heard from several employees that Del Toro had made such statements. See TR 70:13 – 71:8. Thomas heard this from Oscar Colon and received written statements of same from Andrea Garcia and Doralinda Ramirez. See Ex 1; Ex 2. To discredit the statements based on when they were received by Thomas is unduly prejudicial because statements of this kind are not needed unless an action may be pending. Therefore, any statements must have been received subsequent to Del Toro's termination.

Furthermore, Thomas placed a box with a slit and provided an anonymous questionnaire asking whether or not Del Toro told employees that the company was selling buses. Five employees answered in the affirmative but Judge Green excluded said evidence.

Judge Green noted that Thomas asserted that he discharged Del Toro because he was telling employees that the company was going to sell its buses, go out of business and that they should look for other jobs. Specifically, Thomas testified that "when it came to that situation of him even going further than that, trying to harm the business more so, that's when I said no. No we can't deal with this." Trans Ed. v. Del Toro, decision - pg. 3, Line 23-25. The testimony is not that Thomas fired Del Toro for engaging in protected activity, but that Thomas fired Del Toro for trying to harm the business by spreading the above rumors. The same is corroborated by the statements from Garcia and Ramirez. See Ex 1; Ex 2. Thomas also testified that many

employees were reluctant to say anything about Del Toro spreading the above rumors. Trans Ed. V. Del Toro, decision - pg 3, Line 47-51.

If anything, Del Toro's actions were in retaliation against a contract deal that he disapproved of. In an act of retaliation, he spread false rumors about the company closing down. Thomas took the only action he could at that point; to let Del Toro go.

Therefore, the Employer met its burden of showing that it would have fired Del Toro regardless of his engaging in protected activities.

IV. CONCLUSION

For the foregoing reasons, it is respectfully submitted that Respondent has not violated Sections 8(a)(1) or (3) as alleged in the Complaint. Respondent has met its burden of establishing that Del Toro would have been terminated regardless of engaging in protected activity. Respondent requests that the order be reversed.

THE LEVINE LAW FIRM, LLC
Attorney for Plaintiff

By: _____


GLENN ENKEL

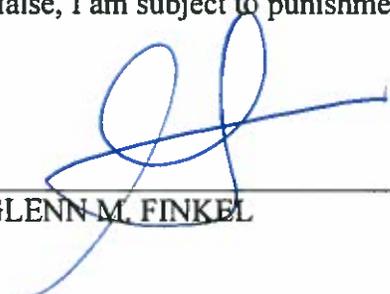
DATED: October 14, 2016

CERTIFICATION OF SERVICE

I, Glenn M. Finkel, of full age, do hereby certify and say:

On October 14, 2016, I filed this Brief by regular mail to the Board's Office of the Executive Secretary, 1015 Half Street SE, Washington, DC 20570 and on the same day served the other parties to this proceeding, Tara Levy, Counsel for the General Counsel, National Labor Relations Board, Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102 by regular mail; Trans Ed, Inc. by email at tyten@msn.com, and Luis Del Toro by UPS Overnight Delivery to him at 135 E. 18th Street, Paterson, New Jersey 07524-1532.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



GLENN M. FINKEL

DATED: October 14, 2016

2-25-76
yo Andres Garcia Benja comiendo
por lo yardo y Luis del Toro me dijo
que Eduardo iba a vender los guaguos
pequeños, que me fuera a buscar trabajo
d. Kudco.

Andres Garcia

YO, DONALINDA Ramirez, El Señor Luiz Del
TOKO me dice que si quería otro trabajo, por que el
Tenia un amigo que me podía conseguir trabajo
por mas dinero. Eso era entonces la segunda
vez que me pedia mi # y yo le dije que
yo no queria problemas.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 22
20 WASHINGTON PL
FL 5
NEWARK, NJ 07102-3127

Agency Website: www.nlr.gov
Telephone: (973)645-2100
Fax: (973)645-3852

November 1, 2016

By E-filing

Gary Shinnars, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: Trans-Ed, Inc.,
Case No. 22-CA-170891

Dear Mr. Shinnars:

I am Counsel for the General Counsel in this case. Respondent Trans-Ed, Inc. has filed exceptions which were due November 20, 2016. The due date for an answer to the exceptions is November 3, 2016

I write on behalf of Counsel for the General Counsel to request an extension of time to file an answer to the exceptions until December 1, 2016. I am requesting additional time due to my workload and the upcoming Thanksgiving holiday.

Respondent and the Charging Party, Luis Del Toro, have consented to my request.

Thank you in advance for your consideration of my request.

Respectfully,

A handwritten signature in black ink, appearing to read "Tara Levy".

Tara Levy, Counsel for the General Counsel
National Labor Relations Board, Region 22
20 Washington Place, 5th Floor
Newark, NJ 07102
tara.levy@nlrb.gov

862.229.7032

cc: by email to:

julie@levinelawyers.com
Glenn M. Finkel, Esq.
The Levine Law Firm, LLC
0-99 Plaza Road
Fair Lawn, New Jersey 07410

by overnight mail to:

Luis Del Toro
135 E. 18th Street
Paterson, NJ 07524-1532



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the Executive Secretary

1015 Half Street, SE

Washington, DC 20570

Telephone: 202/273-2917

Fax: 202-273-4270

www.nlrb.gov

November 2, 2016

Tara Levy
NLRB Region 22
20 Washington Place, 5th Floor
Newark, NJ 07102

Re: Trans-Ed, Inc., Case 22-CA-170891

Dear Ms. Levy:

This is in response to your request for an extension of time to file an answering brief to exceptions in the above-referenced case. Your request was E-Filed with the Office of Executive Secretary at 5:10 pm on Tuesday, November 1, 2016. The due date for answering briefs to exceptions is November 3, 2016. In your request, you state the following as the reason for the requested extension of time: "Workload and Veterans and Thanksgiving holidays." You provide no other reason for seeking an extension.

Section 102.111(b) of the Board's Rules and Regulations specifies that "requests for extensions of time filed within three days of the due date must be grounded upon circumstances not reasonably foreseeable in advance." As the grounds for your extension request do not constitute unforeseen circumstances, I am unable to grant your request. Accordingly, it is denied, and answering briefs to exceptions are due on November 3, 2016. However, if you can provide this office, by close of business tomorrow, an explanation as to why the need for your request for extension of time was not reasonably foreseeable in advance, we may reconsider this decision.

Sincerely,

/s/ Roxanne L. Rothschild
Deputy Executive Secretary

cc: Parties

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

TRANS-ED, INC.,

Respondent,

and

Case 22-CA-170891

LUIS DEL TORO, An Individual,

Charging Party.

**ANSWERING BRIEF ON BEHALF OF THE GENERAL COUNSEL
TO RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE
LAW JUDGE AND CERTIFICATE OF SERVICE**

Tara Levy
Counsel for the General Counsel
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, NJ 07102

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I. ISSUES OF FACT

A. The Respondent Has Relied on Facts Not Supported By the Record and Not Supported by Credible Evidence. The Facts Found by the ALJ Should Be Adopted.

In its Objections, Respondent asserts facts not supported by the record and not supported by credible evidence.¹ These assertions should not replace the findings of fact by the ALJ.

First, on page two of its Objections, Respondent asserts that its owner, Edward Thomas, during bargaining, “expressed his opinion” that Luis Del Toro, the Charging Party and discriminatee, “was not an exemplary employee by calling him a bully,” citing Transcript pages (“TR”) 24:14 – 25:5; 25:21-23 and 119:22-25. This issue of fact is relevant to animus. Thomas did call Del Toro “a bully,” as found by the ALJ (see ALJD p. 2, line 16). However, there is no evidence in the portions of the transcript cited by the Respondent that this characterization related to his job performance, in other words, whether he was an “exemplary employee.” Rather as the Administrative Law Judge found, Thomas called Del Toro “a bully” in the context of his suitability to serve as shop steward. Thus, calling him a “bully” reflected animus to his protected activity. This finding is consistent with the cited portions of the record, which reflect that at the outset of negotiations in September 2015, Thomas said that Del Toro could not be a shop steward because he was a bully.

¹ In addition, Respondent has not followed the rules inasmuch as the rules require specification of objections.

Second, Respondent asserts that Thomas was “aware that Del Toro was attempting to sabotage the Employer,” citing, on page 2 of its Objections, the portion of the transcript at TR 70:13 – 71:8 and 71:11-13. Similarly, on page 3 of its Objections, Respondent asserts that the Employer discharged Del Toro because he was “spreading false rumors that the company was selling its buses and that other employees should look for new jobs,” citing TR 74:15-23, 75:5-6; 82:10-22 and TR 45:24-46:4. None of the cited transcript sections support the premises put forward by the Respondent. Rather, the ALJ correctly found that Thomas’s asserted knowledge that Del Toro was telling employees about the Respondent selling buses and closing its business was contradicted by the testimony of the Employer’s mechanic, Oscar Colon. See ALJD, page 3, lines 37-40. The ALJ found that while the owner, Thomas, testified that he had heard of Del Toro’s misconduct from Colon, Colon did not corroborate this testimony. *Id.* This conclusion is supported by the transcript. See TR 160:19-21 – 161:12. In addition, as the ALJ found, the Employer impermissibly relied on hearsay as set forth in two employee statements, to attempt to support his accusation that the Charging Party was guilty of alleged misconduct. See ALJD, page 4, lines 2-7. The Judge pointed out that apart from information from Colon, the Employer relied on two employee statements, only one of which supported the version of events proffered by Thomas. In addition there was no evidence as to when the statements were obtained. Accordingly, there was no credible evidence that the Employer was aware that Del Toro was allegedly spreading rumors regarding Respondent’s selling buses and closing its business, and thus no credible evidence that this was the reason for Del Toro’s termination.

Third, Respondent asserts, on page two of its Objections, that Thomas expressed that Del Toro was “misleading [Respondent’s] employees, specifically by spreading false rumors about the company selling buses and that they should look for new jobs” citing TR 132:17-23. Once again, neither the ALJD nor the transcript supports this assertion. Rather, the record reflects that the owner told the Union president that Del Toro was misleading employees in the context of deciding whether to reject the contract. After rejecting the contract in about January 2016, employees told the Union President that Del Toro was misleading them. (TR 132:16-17). Jon Bradford, Union President, told Thomas and Colon what the drivers were saying when the three were in Thomas’s office. Thomas responded, “That is how you guys got here in the first place. Luis was misleading people. I told you he was a bully.” Bradford said, “Now I know and that’s why he’s no longer shop steward.” (TR 132:17-23).

As pointed out above, there was no credible evidence that Thomas was informed that Del Toro was allegedly spreading rumors about the company selling buses and that employees should look for jobs.

On page 3 of its Brief, Respondent asserts without citation that the Charging Party was fighting with another employee prior to his discharge. There is no record evidence for this proposition, which should be rejected.

Accordingly, the factual assertions by the Respondent discussed above should be rejected, and the factual conclusions by the ALJ adopted. There was no credible evidence that the Charging Party was interfering with the Employer’s business, or that the Employer was informed of this, and thus such interference was not the motivation for the Charging Party’s discharge.

II. ISSUES OF LAW

A. The ALJ Correctly Found Sufficient Evidence of Animus to Support His Conclusion that Respondent Violated Section 8(a)(3).

In its Objections, Respondent does not take issue with the fundamental components of the prima facie case except insofar as animus was found by the ALJ. To find animus, the ALJ quoted testimony from Thomas which reflected his animus towards Del Toro and correctly relied on this testimony. (ALJD, p. 3, lines 13-25). The ALJ also found that Thomas called Del Toro a “bully” and said that he should not be a shop steward. (ALJD, p. 2, lines 15-16.) Respondent does not dispute any of this evidence.

Rather, Respondent relies on the owner’s asserted knowledge that Del Toro spread rumors about the Employer’s closing, and selling buses. But the ALJ correctly found that there was no credible evidence that Del Toro spread any such rumors. The ALJ also correctly found that while the Employer’s owner testified that he learned that Del Toro was allegedly spreading such rumors from Oscar Colon, Colon denied telling this to the Employer. Moreover, the other basis for the accusation against Del Toro came from unverified hearsay, consisting of undated statements, properly rejected from the record.

B. The ALJ Properly Found That the Employer Did Not Meet Its Burden to Show it Would Have Terminated Del Toro in the Absence of his Protected Activity.

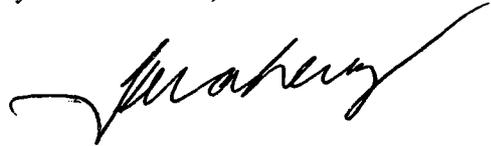
Here again, Respondent relies on evidence properly discredited by the ALJ: the alleged statement by Oscar Colon and the two employee statements. It does not

offer any basis for restoring this evidence. There can be no finding of a legitimate reason for termination based on this evidence.

III. Conclusion

Based on the credible evidence in the record and the foregoing reasoning, as found by the Administrative Law Judge, Respondent has violated Sections 8(a)(1) and (3) as alleged in the Complaint. General Counsel respectfully requests that the Board adopt the ALJD.

Dated at Newark, New Jersey this 3rd day of November, 2016

A handwritten signature in black ink, appearing to read "Tara Levy", written over a horizontal line.

Tara Levy, Counsel for the General
Counsel

CERTIFICATE OF SERVICE

Under penalty of perjury, I declare that I have e-filed this Brief on November 3, 2016 and on the same day served the other parties to this proceeding, Glenn M. Finkel, attorney for Trans-Ed at glennfinkel@ymail.com, Trans-Ed, Inc. by email at tyten@msn.com and Luis Del Toro by next-day delivery to him at 135 E. 18th Street, Paterson, New Jersey 07524-1532.



Tara Levy, Counsel for the General Counsel

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

TRANS-ED, Inc. and Luis Del Toro. Case 22–CA–170891

February 6, 2017

DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS
PEARCE AND MCFERRAN

On September 22, 2016, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions with supporting argument, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions, argument, and brief and has decided to affirm the judge’s rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified and set forth in full below.³

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 226, Transport Workers Union of America is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Luis Del Toro on February 26, 2016.

4. The above unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

¹ In his decision, the judge inadvertently stated that the Respondent’s owner, Edward Thomas, testified that General Manager Bismark Caraballo told him that employee Del Toro was urging employees to engage in a strike. In fact, it was Caraballo who so testified. This error does not affect our disposition of the case.

² The judge neglected to include Conclusions of Law in his decision. We shall correct this inadvertent omission.

³ We shall modify the judge’s recommended Order and substitute a new notice to conform to the Board’s standard remedial language and in accordance with our decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). Acting Chairman Miscimarra joins his colleagues in affirming the judge’s finding that the Respondent violated Sec. 8(a)(3) of the Act when it discharged employee Luis Del Toro. He disagrees, however, with the remedy for this violation to the extent that it requires the Respondent to compensate Del Toro for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings. For the reasons stated in his separate opinion in *King Soopers, Inc.*, 364 NLRB No. 93, slip op. at 12–16 (2016), Acting Chairman Miscimarra would adhere to the Board’s former approach, treating search-for-work and interim employment expenses as an offset against interim earnings.

ORDER

The National Labor Relations Board orders that the Respondent, Trans-Ed, Inc., Paterson, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any of its employees because they engage in union or other protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Luis Del Toro full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Luis Del Toro whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge’s decision, plus reasonable search-for-work and interim employment expenses.

(c) Compensate Luis Del Toro for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Luis Del Toro, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Paterson, New Jersey facility copies of the attached notice in English and Spanish marked “Appendix.”⁴

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 26, 2016.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 6, 2017

Philip A. Miscimarra, Acting Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of our employees because they have engaged in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Luis Del Toro full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Luis Del Toro whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate Luis Del Toro for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful discharge of Luis Del Toro, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

TRANS-ED, INC.

The Board's decision can be found at www.nlr.gov/case/22-CA-170891 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Tara Levy, for the General Counsel.
Edward Thomas, pro se for the Respondent.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in Paterson, New Jersey, on August 9, 2016. The charge and the amended charge were filed on February 29 and April 26, 2016. The complaint, which was issued on May 25, 2016, essentially alleges that on or about February 26, 2016, the Respondent discharged Luis Del Toro because he urged employees to vote against the ratification of an agreement made between the Respondent and Local 226, Transport Workers Union of America.

On the entire record in this case, including my observation of the demeanor of the witnesses and after reviewing the briefs filed, I hereby make the following

FINDINGS OF FACT

I. JURISDICTION

The parties agree and I find that Trans-Ed Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also is agreed and I find that the Union is a labor organization as defined in the Act and is subject to the jurisdiction of the Board.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent is a school bus company which operates out of two terminals in New Jersey. The owner is Edward Thomas. The General Manager of the Paterson, New Jersey terminal is Bismark Caraballo. Luis Del Toro, the charging party, has been employed by the company for about 15 years as a driver. There are essentially three categories of employees, apart from office workers. These are drivers, monitors and mechanics. (Monitors are also called aides).

In early 2015, Del Toro, along with other employees, made contact with Local 226, Transport Workers Union of America, whose president is Jon Bradford. According to Del Toro, he was one of the people who solicited union authorization cards for the Union.

Local 226 filed a petition in 22-RC-150289 on April 17, 2015, and pursuant to a Stipulated Election Agreement, an election was held on April 27, 2015, for the full-time and regular part-time drivers, monitors, and mechanics employed at the Respondent's Jefferson Street, Passaic facility. (Since moved to Paterson, New Jersey). The tally of ballots showed that the votes were 61 to 33 in favor of the Union. The Union was certified by the Board as the bargaining representative on May 6, 2015.

Subsequent to the Certification, the Union appointed Oscar Colon, one of the mechanics, and Del Toro as shop stewards. At a later date, Del Toro ceased being a shop steward after he suffered an accident and was out on workers' compensation until December 2015.

At some point, the Union and the company commenced negotiations for a contract. In September 2015, Del Toro was chosen, along with Oscar Colon, to attend a bargaining session. When Del Toro was introduced as a shop steward, Thomas

stated that Del Toro should or could not be a shop steward because he was a bully. At that meeting, Del Toro, with the acquiescence of Bradford, did not attend the meeting. He didn't attend any further bargaining sessions.

After presenting initial contract proposals to the employer, Del Toro started telling other employees that in his opinion, the union representatives were not asking for enough.

In January 2016, the company and the Union agreed to a tentative contract that was subject to employee ratification. When Del Toro learned of its terms, he spoke to other employees and urged them to vote against ratification. The evidence shows that Thomas was aware that Del Toro was urging employees to reject the agreement. It was also conceded by Thomas that he had heard that Del Toro, not only was telling employees to vote against the agreement, but that he was also urging them to get rid of the Union and find another one.

The agreement was, in fact, voted down and the parties resumed negotiations. During these negotiations, Thomas refused to make any but the most minor concessions. Another agreement was reached in February 2016, and a ratification vote was scheduled for early March. Prior to the ratification vote, Del Toro again spoke to numerous employees and expressed his opinion that the agreement was not adequate. Again, the evidence establishes that Thomas was aware of Del Toro's activity. Thomas also testified that he was notified by his Manager Caraballo, that Del Toro was urging employees to engage in a strike.

On February 26, Del Toro was at the facility's parking lot and engaged in an argument with Bradford about the terms of the proposed agreement. At one point, Thomas came out of the office and witnessing the argument between Del Toro and Bradford, told the former to leave. At this point, Del Toro went home and then returned for the afternoon run. When he arrived at the facility, Del Toro was told by Thomas that he was fired because he was telling employees that the company was going to sell the buses and would close down. Del Toro denied making such statements. He asserted that Oscar Colon had told him about the company selling buses but that he did not make any such statements to other employees.

Section 7 of the Act gives employees the right to be represented by a union and the right to reject unionization. In this case, Del Toro obviously was engaged in union and concerted activity when he engaged in activity in 2015 to obtain representation by Local 226, Transport Workers Union of America. By the same token, he was engaged in concerted activity when he later engaged in activity to convince employees to reject a ratification of the proposed collective-bargaining agreement. *London Chop House, Inc.*, 264 NLRB 638 (1982). Moreover, to the extent that Thomas believed that Del Toro was urging other employees to engage in a strike or to seek alternative union representation, those activities would also be protected by Section 7.

In my opinion, the evidence, particularly considering the timing of Del Toro's discharge in relation to his activity of urging employees to vote against contract ratification, is sufficient to establish a *prima facie* case within the meaning of *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). I also note that

although Thomas asserted that he discharged Del Toro because he was telling employees that the company was going to sell its buses, go out of business and that they should look for other jobs, Thomas also testified as follows:

JUDGE GREEN: Alright. Fine... So what else do you want to tell me?

THE WITNESS: I'm -- like I said the issue was so simple to me coming forward. Now -- you know, now we're into this question and answer period. But there's my proof and there's more proof, as to the fact that what I had heard was just -- was not only a rumor, it was true. Luis was opening his mouth to people when he shouldn't have as he did, when he was trying sell off the idea of getting \$2 an hour from the Union. And when they didn't reach that number that's why he wanted them out. He had his agenda. Now, unions and non-unions, you know, we don't need unions in our business, but we have it now thanks to Luis. Yes, it is discomfoting to have to share with one another -- with another person what I want to do... But when it came to that situation of him even going further than that, trying to harm the business more so, that's when I said no. No, we can't deal with this.

Having concluded that the General Counsel has established a *prima facie* case, the burden shifts to the Respondent to show that it would have discharged Del Toro in the absence of his union or concerted activity.

As noted above, the Respondent asserts that the reason Del Toro was discharged was because he was falsely telling other employees that the company was going to sell its buses and go out of business and that they should look for other jobs. In this regard, he testified that such activity on the part of Del Toro would substantially damage his business because if his employees quit their jobs, he would not be able to service his contracts.

Thomas stated that he heard that Del Toro was telling employees about selling buses and closing the business from Oscar Colon who passed along statements that he heard from other employees. Colon, however, testified that he did not talk to Thomas about these alleged statements.

Thomas also testified that at some time in February 2016, after hearing of the rumors from Colon, he asked a number of employees who was telling them that the company was going to sell buses and going to close down. He testified that many of the employees were reluctant to say anything but that two, Andrea Garcia, and Doralinda Ramirez told him that it was Del Toro. In this regard, Thomas offered what purported to be written statements from these two employees, both of which were in Spanish and one of which was dated February 26. (The other was undated). The statement by Garcia was that Del Toro told her that the Employer was going to sell its small buses and that she should look for a job with a company called Rudco. The statement by Ramirez was that Del Toro told her on at least two occasions, that if she wanted another job, he had a friend who could get her a job for more money.

The obvious problem with these "statements" is that they are hearsay as to the truth of the matters asserted and the employer did not call either employee to verify the statements that are attributed to Del Toro and denied by him. The next problem is that only one of the two statements supports the version assert-

ed by Thomas. The final problem is that Thomas could not say when he spoke to these employees or even if the statements were obtained before or after he discharged Del Toro.

In conclusion, I find that the General Counsel, having made out a *prima facie* case that the Respondent discharged Del Toro for union and/or concerted activity, I also find that the Respondent has not presented sufficient evidence to rebut the General Counsel's case. I shall therefore conclude that the Respondent has violated Section 8(a)(1) and (3) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having concluded that the Respondent unlawfully discharged Luis Del Toro on February 26, 2016, it must offer him reinstatement and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.¹

The make whole remedy shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), the Respondent shall compensate Luis Del Toro for search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), the Respondent shall compensate Del Toro for the adverse tax consequences, if any, of receiving lump sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 22 a report allocating backpay to the appropriate calendar year for each employee. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

The Respondent shall be required to expunge from its files any and all references to the unlawful discharge and notify Luis Del Toro in writing that this has been done and that the unlawful action will not be used against him in any way.

¹ By email dated September 19, 2016, the Respondent asserted that the Charging Party engaged in certain improper conduct after his discharge and after the trial in this case had ended. To the extent that the Respondent raises an issue as to the appropriateness of a reinstatement or backpay remedy, the Respondent can raise this issue during the compliance stage of the proceeding.

As the employees work force consists of many Spanish speaking employees, the Notice to Employees should be in English and Spanish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Trans Ed, Inc., Paterson, New Jersey, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Discharging or otherwise taking adverse actions against employees because they urge other employees to vote against the ratification of a contract between the employer and Local 226, Transport Workers Union of America, or because they oppose that union or because of any other concerted activities for mutual aid or protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Luis Del Toro whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the Remedy section of this Decision.

(b) Within 14 days from the date of this Order, offer Luis Del Toro, full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Remove from its files any reference to the unlawful action against Luis Del Toro and within 3 days thereafter, notify him in writing, that this has been done and that the layoff will not be used against him in any way.

(d) Reimburse Luis Del Toro an amount equal to the difference in taxes owed upon receipt of a lump sum backpay payment and taxes that he would have been owed had there been no discrimination against him.

(e) Submit the appropriate documentation to the Social Security Administration so that when backpay is paid to Anthony Gallo it will be allocated to the appropriate periods.

(f) Compensate Luis Del Toro for search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post its Pat-

erson New Jersey facility, copies of the attached notices marked "Appendix." Copies of the notices, on forms provided by the Regional Director for Region 22, in English and Spanish, after being signed by the Employer's authorized representative, shall be posted by the Employer and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Employer customarily communicates with its employees by such means. Reasonable steps shall be taken by the Employer to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Employer has gone out of business or closed the facilities involved in these proceedings, the Employer shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Employer at any time since February 26, 2016.

Dated, Washington, D.C. September 22, 2016

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise take adverse actions against any employee because he or she urges other employees to vote against the ratification of a contract between the employer and Local 226, Transport Workers Union of America or because they oppose that union or because of any other concerted activities for mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL make Luis Del Toro whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this Decision.

WE WILL within 14 days from the date of this Order, offer Luis Del Toro, full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

WE WILL remove from our files any reference to the unlawful action against Luis Del Toro and within 3 days thereafter, notify him in writing, that this has been done and that the layoff will not be used against him in any way.

WE WILL reimburse Luis Del Toro an amount equal to the difference in taxes owed upon receipt of a lump sum backpay payment and taxes that he would have been owed had there been no discrimination against him.

WE WILL compensate Luis Del Toro for search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

TRANS-ED, INC.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/22-CA-170891 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

