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Transit Connection, Inc. and Amalgamated Transit Union Local 1548. Case 01-CA-179805

October 25, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE
AND KAPLAN

The General Counsel seeks summary judgment in this case on the grounds that there are no genuine issues of material fact as to the allegations in the complaint, and that the Board should find, as a matter of law, that the Respondent failed and refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act by failing and refusing to respond to the Union's requests for information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of a unit of the Respondent's employees, and by failing to furnish the information.

Pursuant to a charge and an amended charge filed on July 8 and August 30, 2016,¹ respectively, by Amalgamated Transit Union Local 1548 (the Union), the General Counsel issued a complaint on October 31, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to respond to the Union's information requests and to furnish the requested information. The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On December 28, the Board issued a Decision and Order granting the General Counsel's Motion for Summary Judgment in a related refusal-to-bargain case in which the Respondent contested the Union's certification in Case 01-RC-145728 as bargaining representative of the employee unit at issue in this proceeding. *Transit Connection, Inc.*, 365 NLRB No. 9 (2016) (*Transit I*). In that case, the Board found that since August 9 the Respondent had failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in violation of Section 8(a)(5) and (1) of the Act. *Id.*

On March 21, 2017, the General Counsel filed a Motion to Transfer Case to the Board and for Summary Judgment in the current proceeding. On June 5, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion

should not be granted. Thereafter, the Respondent filed a response to the Board's Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

At paragraph 10 of the complaint, the General Counsel alleges that, by letters dated May 17 and 24, August 9, and September 9, the Union requested the following information from the Respondent:

- 1) A list of current employees with the following information:
 - a. His or her name;
 - b. Last known address, telephone numbers and email address;
 - c. Date of hire and seniority date if different;
 - d. Rate of pay;
 - e. Job classification;
 - f. Number of hours employee is scheduled to work per week;
 - g. Current work schedule;
 - h. Whether employee participates in available insurance programs and the coverage he or she elected (*e.g.* employee, employee plus one, family);
 - i. Monthly employer contribution to employees' pension and/or tax deferred savings accounts for previous three months; and
 - j. Monthly employee contribution to employees' pension and/or tax deferred savings accounts for previous three months.
- 2) A copy of all current employee handbooks, and any changes or modification thereto from the previous twenty-four months.
- 3) A copy of all current job descriptions and any changes or modification thereto from the previous twenty-four months.
- 4) A copy of the plan document, summary plan description, Form 5500 and any contract with all insurance providers for any health, dental or vision plans.
- 5) A cost breakdown of the health, dental and vision plans, including the premiums paid by the company and by the employees for the different levels of coverage (*i.e.* employee, employee plus one, family).
- 6) A copy of plan document, summary plan description, Form 5500, and the total employer contributions to pension and/or tax deferred savings plans over the prior three years.
- 7) A copy of any life insurance plan, and the employer's monthly premium per employee.

¹ All subsequent dates are in 2016, unless otherwise indicated.

8) A copy of any accidental death and dismemberment plan, and the employer's monthly premium per employee.

9) A copy of any disability insurance plan, and the employer's monthly premium per employee.

10) A copy of all wage scales or policies on wage rates including, but not limited to, policies regarding starting rates, raises and/or step increases, top rates, overtime pay and shift differentials.

11) A copy of all incentive and bonus plans whether applied to all or only certain employees.

12) A copy of all policies related to leave including, but not limited to, those regarding vacations, vacation picks, paid holidays, paid sick leave, paternal leave, paid and unpaid personal leave, bereavement leave, and family and medical leave.

13) A copy of all existing benefit plans including, but not limited to, those regarding child care, health and other flexible spending accounts, and training and tuition reimbursement benefits.

14) A copy of all current employee policies, including, but not limited to, those regarding attendance, discipline, accidents and surveillance such as drive cams.

15) A copy of all current policies regarding job, shift, and route and/or run bidding and picks.

16) Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last twelve months.²

Complaint paragraph 11 alleges that the information described in paragraph 10 "is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit." At complaint paragraph 12, the General Counsel alleges that "[s]ince about May 17 and 24, August 9, and September 9, 2016, Respondent has failed and refused to respond to the information requests described above in paragraph 10 and to furnish the Union with the information requested by it as described above in paragraph 10." Complaint paragraph 13 alleges that by the above conduct the Respondent has refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

In its answer, the Respondent states that it "denies the allegation contained in Paragraph 12 of the complaint that the Respondent has been failing and refusing to bargain collectively and in good faith with the Union since May 17, 2016." It also denies that it has unlawfully re-

fused to bargain. In its response to the show-cause notice, however, the Respondent makes clear that its only factual dispute with the complaint's allegations is based on a claim that it did not receive requests for information dated May 17 and 24. The Respondent admits that it received the information request dated August 9 and does not deny that it received the information request dated September 9. And while its answer to the complaint states that it "is without sufficient knowledge to admit or deny the allegations" in paragraph 11 that the requested information "is necessary for, and relevant to, the Union's performance of its duties" as the bargaining unit's exclusive representative, it is well established that the type of information the Union requested, concerning the terms and conditions of employment of unit employees, is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of this information. Rather, the Respondent explains in its response to the show-cause notice that its refusal to provide the information requested on and after August 9 is necessarily part of its overall refusal to bargain in order to test the Union's certification in the *Transit I* proceeding, which is pending review before the United States Court of Appeals for the Eleventh Circuit.

Based on the foregoing, we find that there are no material issues of fact regarding the complaint's allegations that warrant a hearing. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business located at 11 A Street, Edgartown, Massachusetts (the Edgartown facility), has been engaged, pursuant to an agreement with The Martha's Vineyard Regional Transit Authority (the Authority), as the transit operator for the Authority along such routes and according to such schedules as defined by the Authority on the island of Martha's Vineyard, Massachusetts.

Annually, the Respondent, in conducting its operations described above, provides bus transportation services to the Authority and the public valued in excess of \$250,000 on the island of Martha's Vineyard. The Authority is a component unit of the Massachusetts Department of Transportation, which is a component unit of the Commonwealth of Massachusetts, which is directly engaged in interstate commerce.

² The General Counsel's motion states that the failure to provide item 17 of the request for information ("a copy of the current revenue agreements and all modifications thereto for the services operated by the employees") is not alleged in the complaint.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.³

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time operators employed by the Respondent at its 11 A Street, Edgartown, Massachusetts facility but excluding office clerical employees, managerial employees, dispatchers, mechanics, confidential employees, seasonal employees, guards and supervisors as defined in the Act, and all other employees.

On March 15, the Board certified the Union as the exclusive collective-bargaining representative of the unit. At all times since March 15, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

By letters dated August 9 and September 9, the Union requested that the Respondent furnish information to the Union that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit. Since about August 9, the Respondent has failed and refused to respond to the information requests.⁴ We find that the Respondent's conduct constitutes an unlawful refusal to bargain collectively with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since August 9 to respond to the Union's requests for information that is necessary and relevant to the Union's performance of its duties as

³ The Respondent states in its answer that it "is without sufficient knowledge to admit or deny" the complaint allegation that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. The Respondent made the same statement in answer to the complaint in *Transit I*. The Board found there that the Union was a labor organization, noting that the Respondent had stipulated to the Union's labor organization status in the underlying representation proceeding. For the same reasons, we find here that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

⁴ As noted above, the Respondent denies receiving the Union's May 17 and 24 requests, but specifically admits receiving the August 9 request and does not deny receiving the September 9 request. Because the date on which the Respondent first received the Union's request for information does not affect the remedy, we rely on the uncontested facts that the Respondent received the August 9 and September 9 requests, which included all of the requested information described in par. 10 of the complaint. See *Transit I*, supra slip op. at 2 fn. 3.

the exclusive collective-bargaining representative of the appropriate unit, and by failing to furnish the information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees, we shall order the Respondent to furnish the Union with the information requested on August 9 and September 9, 2016, with the exception of item 17 in each letter.

ORDER

The National Labor Relations Board orders that the Respondent, Transit Connection, Inc., Edgartown, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Amalgamated Transit Union Local 1548 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(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) Furnish to the Union in a timely manner the information requested by the Union on August 9 and September 9, 2016, with the exception of item 17 in each letter.

(b) Within 14 days after service by the Region, post at its facility in Edgartown, Massachusetts, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 1, 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

⁵ 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."

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 August 9, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 1 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. October 25, 2017

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

Marvin E. Kaplan, 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 refuse to bargain collectively with Amalgamated Transit Union Local 1548 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of our unit employees.

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 furnish to the Union in a timely manner the information requested by the Union on August 9 and September 9, 2016, with the exception of item 17 in each letter.

TRANSIT CONNECTION, INC.

The Board's decision can be found at <https://www.nlr.gov/case/01-CA-179805> 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.





United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

January 12, 2018

Margaret Carter, Esquire
Clerk, United States Court of Appeals
for the First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way - Suite 2500
Boston, MA 02210

Re: *NLRB v. Transit Connection, Inc.*
Board Case No. 01-CA-179805

Dear Ms. Carter:

I am enclosing a copy of the National Labor Relations Board's application for enforcement of its order in this case. Within 40 days of the Court's docketing of this application, I will file the agency record and a certified list of its contents.

Please serve a copy of this application on the Respondent, Transit Connection, Inc., whose address appears on the service list. I have served a copy of the application on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of any correspondence the Court sends to counsel in this case. The Board attorneys

directly responsible for this case are Kira Dellinger Vol (202) 273-0656 and Gregoire Sauter (202) 273-1714.

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

Encls.

SERVICE LIST

NLRB v. Transit Connection, Inc.
Board Case No. 01-CA-179805

Timothy D. Zessin, Esquire KP Law, PC 101 Arch Street Floor 12 Boston, MA 02110-1162	Respondent's Counsel
Darren Morris, General Manager Transit Connection, Inc. MVBP RR 1 Box 3 11 A Street Edgartown, MA 02539	Respondent
Charles A. Ryan III, President/Business Agent Amalgamated Transit Union Local 1548 Post Office Box 1230 Plymouth, MA 02362-1230	Charging Party
Elizabeth A. Gemperline NLRB Region 1 10 Causeway Street Boston, MA 02222-1072	Acting Regional Director

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD)
)
) Petitioner)
)
) v.) Board Case No.
) 01-CA-179805
TRANSIT CONNECTION, INC.)
)
) Respondent)

APPLICATION FOR ENFORCEMENT
OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board hereby applies to the Court for enforcement of its Order issued against Transit Connection, Inc. on October 25, 2017, in Board Case No. 01-CA-179805, reported at 365 NLRB No. 143. The Board seeks enforcement of its Order in full.

The Court has jurisdiction over this application pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor practices occurred in Edgartown, Massachusetts.

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

Dated at Washington, DC
this 12th day of January 2018

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD)
)
 Petitioner)
)
 v.) Board Case No.
) 01-CA-179805
 TRANSIT CONNECTION, INC.)
)
 Respondent)

CERTIFICATE OF SERVICE

The undersigned certifies that the Board's application for enforcement of its order in this case is being filed with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the CM/ECF system, and the following counsel, who is a registered CM/ECF user:

Timothy D. Zessin, Esquire
KP Law, PC
101 Arch Street Floor 12
Boston, MA 02110-1162

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570
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Dated at Washington, DC
this 12th day of January 2018