

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

FIRST STUDENT, INC.

Employer

and

Case 03-RD-243112

Billie McClinsey

Petitioner

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 449

Union

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 449
OPPOSITION TO THE PETITIONER'S REQUEST FOR REVIEW**

E. Joseph Giroux, Jr., Esq.
Attorneys for Union – IBT Local 449
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo NY 14209
716-854-0007
jgiroux@cpjglaborlaw.com

Preliminary Statement

The International Brotherhood of Teamsters Local 449 (hereafter “Local 449”) pursuant to Section 102.67(f) of the Rules and Regulations of the National Labor Relations Board (“Board” or “NLRB”) submits this Opposition to Petitioner’s Request for Review of the Regional Director’s Decision and Order Dismissing Petition in Case No. 03-RD-243112. (A copy of the Regional Director’s Decision and Order is attached as Exhibit 1.) Local 449 requests that the Board deny the Petitioner’s Request for Review thereby affirming the Regional Director’s dismissal of the Petition since this case does not present any “compelling reasons for reconsideration of Board rule or policy”. 29 CFR §102.67(d)(4). In addition none of the other grounds for granting review required by the Board’s rules are present in this case. See 29 CFR §102.67(d).

Statement of Fact

This case arises out of a decertification petitioned filed by an employee of First Student Inc. (hereafter “First Student”) in North Tonawanda, New York.

Local 449 was certified by the NLRB at three separate terminals in Buffalo and North Tonawanda in 1998 and 2007.¹ (Collectively referred to as “Buffalo terminals”)

Local 449 and First Student are party to a “Master Supplement” Collective Bargaining Agreement covering all three Buffalo terminals. The current Master Supplement is effective

¹ Local 449 was certified on May 18, 1998 in 3-RC-10671 at the Buffalo terminal, on July 20, 1998 in 3-RC-10690 at the Wheatfield Street, North Tonawanda terminal and on December 17, 2007 in 3-RC-11785 at the Walck Road, North Tonawanda terminal.

from September 1, 2016 to August 31, 2019. (The Master Supplement is attached as Exhibit 2.)

The Master Supplement provides in part:

ARTICLE 1

RECOGNITION

The Company recognizes the Union as the sole collective bargaining agent for all of its employees in the classifications of regular bus driver, regular van driver, attendant, casual driver, maintenance, mechanic and service helper employed at its facility located at 909 Bailey Avenue, Buffalo NY 14206; 455 Wheatfield Street, North Tonawanda, NY 14120; and 655 Walck Road, N. Tonawanda, NY 14120; and any facility that replaces it and excluded from the bargaining unit are all office, clerical employees, professional employees, guards and supervisors as defined in the LABOR MANAGEMENT RELATIONS ACT as specified in the certification of representation case number 3-RC-10671 (Bailey Avenue); 3-RC-10690 (Wheatfield Street); 3-RC-11785 (Walck Road)
(Ex 2)

First Student is a nationwide company providing transportation services primarily to schools. The International Brotherhood of Teamsters (hereafter “Teamsters”), constituent Teamsters Local Unions including Local 449 and First Student negotiated a National Master First Student Agreement with an effective date of June 2011 through March 15, 2015. In 2015, a successor Master First Student Agreement was negotiated. (The 2011 and 2015 Master Agreements are attached as Exhibits 3 & 4.) Those Master Agreements provide:

“It is the intent of the parties that each of the groups of represented employees referenced in Appendix A will be governed by this National Agreement and applicable local agreements, supplements and/or riders.” (Article 2 Section 4 - 2011 and 2015 Master Agreement)

The Buffalo terminals are included and covered by the Master Agreement as a result of an overwhelming ratification by the First Student employees at the Buffalo terminals.

The Petitioner on May 22, 2019, filed a decertification petition in Case 03-RD-241947. That petition was withdrawn presumably because it was filed outside the 60 to 90 day period prior to the expiration of the Local 449 Master Supplement collective bargaining agreement. On June 12, 2019, the Petitioners refilled the petition in the instant case (03-RD-243112).

The Regional Director after careful review of the arguments by Petitioner and Local 449 found that Board precedent dictated that an election of a unit of the Buffalo terminals was inappropriate where there was a multi-location nationwide bargaining unit. The Regional Director found that:

“The Board has held that when an employer or a union agree to merge separately certified or recognized bargaining units into a single overall unit, a decertification petition seeking an election in the original separate unit is subject to dismissal...based on the longstanding principle that a decertification election can only be held in a unit coextensive with the existing certified or recognized unit”. (RD Decision at pg. 3)

The Petitioner seeks review based solely on the grounds that the Board should fundamentally change the long standing precedent in unit merger cases. The Petitioner offers no compelling reason (or other basis under 29 CFR §102.67(d) for either reviewing the Regional Director’s Decision or changing long standing precedent, Local 449 respectfully submits that the Board should decline to grant the request for review.

Argument

A. THE STANDARD FOR REVIEW

Section 102.67(d) of the NLRB Rules and Regulations provides quite succinctly that the “Board will grant a request for review only where compelling reasons exist therefore” 29 CFR

§102.67(d). The Rules and Regulations provide very specific grounds for what constitutes such compelling reasons including “[t]hat there are compelling reasons for reconsideration of an important Board rule or policy”. 29 FR §102.67(d)(4).

B. THE BOARD’S LONG STANIDNG STANDARD

The “well-settled rule” is that “the unit appropriate in a decertification election must be coextensive with the certified or recognized unit.” The Green-Wood Cemetary, 280 NLRB 1359, 1360 (1986); accord Albertson’s, Inc., 307 NLRB 338, 338 (1992); Gibbs & Cox, Inc., 280 NLRB 953, 955 (1986); General Electric Company, 180 NLRB 1094, 1095 (1970). In the present case, the recognized unit is the multi-location national unit recognized in the Master CBA.

In this regard, “[t]he Board has long recognized the “merger doctrine” under which an employer and union can agree to merge separately certified or recognized units into one overall unit.” Wisconsin Bell, Inc., 283 NLRB 1165, 1165 (1987). If such an agreement is reached between the bargaining parties, “the larger, merged unit is the only unit appropriate for purposes of a representation election.” Id. See also White-Westinghouse Corporation, 229 NLRB 667, 675 (1977) (“[a]fter the merger, the single-plant units are not treated as independent bargaining units and they lose their separate identity for bargaining purposes”), Westinghouse Electric Corporation 238 NLRB 763 (1978)²

² The merger doctrine applies not only in representation issues of the scope of the unit but also in certain labor practices cases involving the duty to bargain.

C. PETITIONER HAS NOT PRESENTED A COMPELLING REASON FOR REVIEW OR FOR OVERTURNING THE BOARD'S LONG STANDING MERGER DOCTRINE

Petitioner in the instant case seeks to have the Board overturn the long standing doctrine that parties in a collective bargaining relationship can merge separately certified or recognized units. Rather, the Petitioner, conveniently ignoring that his petitioned for unit in the instant case for decertification is a merged unit, urges the Board to adopt dissents by two (2) former Board members in Wisconsin Bell, 283 NLRB 1165 (1987) (Dotson dissenting) and Gibbs and Cox, 280 NLRB 953 (1986) (Dotson and Dennis dissenting). Petitioner, however ignores that employees at the Buffalo terminals overwhelming voted for the Master Agreement in 2011 which established the merged nationwide multi-location unit. The Board has previously denied review in First Student cases. See First Student Anoka, 18-RD-197717 (2017). See also First Student, 359 NLRB 279 (2012)³

As noted above, the merger doctrine applies not only in representation cases such as this, but in unfair labor practice cases involving the scope and duty to bargain. See for example, Gibbs and Cox, supra., and White-Westinghouse Corporation, supra.

Petitioner's claim that severance of smaller groups of employees from the larger bargaining unit would not destabilize, is similarly misplaced. As the number of cases involving the merger doctrine indicate there are numerous instances of multi-location, indeed nationwide merged bargaining units. To reverse long standing Board precedent for a small minority of employees can only have a destabilizing impact on collective bargaining, one of the underlying principles of the Act.

³ Although decided by a Board majority with an improperly appointed Board member, the decision illustrates the Board's adherence to the merger doctrine and the principle that the petitioned for unit be coextensive with the existing unit.

Finally as pointed out above, the Petitioner ignores the fact that he has petitioned for a merged unit, albeit a smaller merged unit than the nationwide unit. The Petitioner seeks a decertification election at three terminals, each of which involved a separate certification (two in 1998 and one in 2007). Apparently the Petitioner supports the merger doctrine where convenient to his interests, but opposes it where it results in an affirmation of the interests of the majority of First Student employees covered by the Master Agreement and the important rights and benefits, those employees enjoy under that Master Agreement.

Conclusion

For the reasons set forth herein, Local 449 respectfully requests that the Board deny review and affirm the Regional Director's Decision and Order.

Respectfully submitted,

CREIGHTON, JOHNSEN & GIROUX
Counsel for IBT Local 449

By: /s/ E. Joseph Giroux, Jr.
E. Joseph Giroux, Jr., Esq.
1103 Delaware Avenue
Buffalo NY 14209
716-854-0007
jgiroux@cpjglaborlaw.com

Dated: August 5, 2019
Buffalo, New York

CERTIFICATE OF SERVICE

I, E. Joseph Giroux, Jr., certify and affirm that on the 5th day of August, 2019 a true copy of the IBT Local 449's Opposition to Petitioner's Request for Review and separate attachments were e-filed with the NLRB's Executive Secretary and emailed to:

Paul J. Murphy, Regional Director
National Labor Relations Board, Region 3
130 S. Elmwood Ave – Suite 630
Buffalo NY 14202-2456
paul.murphy@nlrb.gov

Robert Strauss
First Student
455 Wheatfield St
North Tonawanda NY 14150
robert.strauss@firstgroup.com

Frank D. Garrison
National Right to Work Legal Defense Foundation
8001 Braddock Rd Suite 600
Springville VA 22160
fdg@nrtw.org

/s/ E. Joseph Giroux, Jr.
E. Joseph Giroux, Jr.