

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

FIRST STUDENT

Employer

and

Case 03-RD-243112

BILLIE MCCLINSEY

Petitioner

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 449**

Union

AFFIDAVIT OF SERVICE OF: Decision and Order Dismissing Petition, dated June 27, 2019 .

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 27, 2019, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

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Date

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Name

/s/ Viola Mathis

Signature

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DECISION AND ORDER DISMISSING PETITION

On June 14, 2019,¹ I issued an Order to Show Cause in the above matter insofar as the petition filed on June 12 presented an issue as to whether the local bargaining unit covering three facilities in North Tonawanda and Buffalo, New York² was merged into a single nationwide bargaining unit subject to a national collective-bargaining agreement.

Thereafter, the Union and the Petitioner timely submitted responses to the Order to Show Cause.³ The Union argued that the petitioned-for unit at the Buffalo-area facilities was merged into a single, nationwide bargaining unit and the petition should be dismissed as it proposes a bargaining unit not coextensive with the current bargaining unit. The Petitioner argues that the Region should find the petitioned-for unit appropriate because the merger of these employees into a nationwide unit effectively insulates the Union from decertification efforts and deprives employees of the right to choose whether or not to remain represented by the Union. As discussed below, I find that the petitioned-for unit is inappropriate given the undisputed evidence that employees at the involved facilities were merged into a nationwide bargaining unit.

Background:

On May 18, 1998 and July 20, 1998, the Union was certified as the collective-bargaining representative of bargaining units at the Bailey Avenue and Wheatfield Street facilities, respectively.⁴ On December 17, 2007, the Union was certified as the collective-bargaining representative of a unit of employees at the Employer's Walck Road facility. Subsequent to these certifications, the Employer consolidated these three bargaining units into a single unit, although

¹ All dates hereafter are in 2019 unless otherwise indicated.

² The three facilities in question are located at 909 Bailey Ave., Buffalo, NY 14206 ("Bailey Avenue"); 455 Wheatfield St., North Tonawanda, NY 14120 ("Wheatfield Street"); and 655 Walck Rd., North Tonawanda, NY 14120 ("Walck Road"). These facilities will be referred to as "the Buffalo-area facilities."

³ The Employer did not file a response to the Order to Show Cause.

⁴ At that time, the employees in those bargaining units were employed by Laidlaw Transit, Inc.

no party submitted details as to the timing or process of this consolidation.⁵ As a result, the three-facility bargaining unit (“the Buffalo unit”) is as follows:⁶

All employees in the classification of regular bus driver, regular van driver, attendant, casual driver, maintenance, mechanic and service helper employed at [the Employer’s] 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).

Per the petition filed by the Petitioner, approximately 375 employees are represented by the Union at the three facilities listed above.

The Employer and the Union have been parties to successive collective-bargaining agreements covering the Buffalo-area unit employees, the two most recent of which have effective dates of September 1, 2013 through August 31, 2016 and September 1, 2016 through August 31, 2019, respectively. The cover pages of both agreements note that the agreements are “Master Supplement[s]” between the Union and the Employer, covering the three Buffalo-area facilities.

The reference to a “Master Supplement” in these contracts refers to nationwide collective-bargaining agreements negotiated between the Employer and the Union’s parent organization, the International Brotherhood of Teamsters (“IBT”). The Employer and IBT first negotiated a “National Master First Student Agreement”⁷ in 2011. This agreement was effective from June 1, 2011 through March 31, 2015. Article 2, Section 4 of this agreement, titled “Single Bargaining Unit,” states in pertinent part:

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...All employees covered by this National Agreement and the various local agreements, supplements and/or riders shall constitute one (1) bargaining unit.

The Buffalo unit represented by Local 449 in the Buffalo area is listed as an affected local union in Appendix A of the Master Agreement.

The 2011-2015 National Agreement was presented to the IBT’s constituent locals for a ratification vote before it took effect. On about April 29, 2012, the IBT sent a newsletter to each member containing a notice regarding the Master Agreement and the provision therein creating a

⁵ I note that no party to this proceeding argues that the consolidation of the Bailey Avenue, Wheatfield Street, and Walck Road units into a single bargaining unit, regardless of when this occurred, was improper.

⁶ This language appears in the recognition article of successive “local” agreements between the Union and the Employer, the history of which will be discussed below.

⁷ Hereafter referred to as “the Master Agreement.”

nationwide bargaining unit. On May 11, 2011, the IBT sent ballot packages, including a copy of the proposed Master Agreement, to all members employed by the Employer, including those members employed in the Employer's Buffalo-area facilities. The Master Agreement was overwhelmingly ratified by the various constituent locals of the IBT. According to a local-by-local breakdown of the ratification vote, 141 members of Local 449 voted in favor of ratification, only five members voting against ratification.

Upon expiration of the 2011-2015 Master Agreement, the Employer and the IBT negotiated a successor Master Agreement effective April 1, 2015 through March 31, 2020. This agreement contains an identical provision regarding the existence of a single, nationwide unit. The IBT distributed a newsletter to members dated July 6, 2015, in which it announced a mail ballot election and recommended ratification of the 2015-2020 Master Agreement. Ballots were mailed to members on September 29, 2015. Local 449 posted notices at each of the three Buffalo-area facilities dated September 23, 2015, reminding members to vote and providing instructions for members who had not received a ballot. Pursuant to a tabulation at the conclusion of the mail ballot election, IBT members again voted overwhelmingly to ratify the 2015-2020 Master Agreement. Local 449 members voted in favor of ratification by a margin of 88-17.

Discussion:

The Board has held that when an employer and 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, provided that the newly-created unit is appropriate. *Wisconsin Bell, Inc.*, 283 NLRB 1165, 1165-1166 (1987); *Albertson's Inc.*, 307 NLRB 338 (1992). The Board's position is based on the longstanding principle that a decertification election can only be held in a unit that is co-extensive with the existing certified or recognized unit. *Albertson's Inc.*, supra, at 339; *Wisconsin Bell, Inc.*, supra; *General Electric Co.*, 180 NLRB 1094,1095 (1970).

The issue presented in the instant case has also been addressed in similar decertification cases involving the Employer and the IBT. See, e.g., *First Student, Inc.*, Case 04-RD-66924; *First Student, Inc.* 03-RD-091035; *First Student Inc.*, 13-RD-102567; and *First Student, Inc.* 15-RD-092716. In each of these cases, the petition sought to decertify another IBT local as the representative of employees in a single location unit. Relying on virtually the same facts present here, the Regional Directors of Regions 3, 4, 13 and 15, dismissed the petitions after concluding that the unit had been effectively merged into the nationwide bargaining unit and that the single-location unit was no longer appropriate. The Board has similarly denied review of the Regional Director's dismissal of a UD petition in Case 19-UD-077098, where the petitioner in that matter sought a deauthorization election among only unit employees at the Employer's Fairbanks, Alaska facilities. In that case, the Board held that the Regional Director properly dismissed the petition on the basis that the bargaining unit was a part of the same merged, nationwide bargaining unit at issue here. *First Student Inc.*, 359 NLRB 279 (2012).⁸

⁸ This case was decided by a Board panel which included a member who was improperly appointed. See *NLRB v. Noel Canning*, 573 U.S. 513 (2014). Although the Board's decision is of limited precedential value on that basis, it

In the instant case, the Buffalo-area facilities were merged into a nationwide bargaining unit in 2011, when the IBT's members in each local voted in favor of ratifying the Master Agreement. The employees at the Buffalo-area facilities overwhelmingly ratified both the 2011-2015 and 2015-2020 Master Agreements, both of which unequivocally specifies that the employees covered by it constitute one bargaining unit.

The Petitioner does not dispute the creation and continued existence of the nationwide bargaining unit. It argues instead that the creation of this nationwide unit has effectively eliminated the ability of the Petitioner (or any other unit employee) from initiating a decertification proceeding, arguing that the creation of this nationwide unit "swallowed" the Buffalo unit into a "massive, sprawling" unit. The Board, however, as noted above has considered this issue and has consistently adhered to the merger doctrine set forth in *Wisconsin Bell*, supra, and I am required to follow that precedent in this case.

In so doing, I find that the petitioned-for unit including only the Employer's Buffalo-area facilities is not co-extensive with the existing recognized unit and is therefore not appropriate.

IT IS HEREBY ORDERED THAT the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **June 11, 2019**.

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

illustrates the Board's continuing adherence to the requirement that a petition filed in an existing unit must be coextensive with the current size of said bargaining unit.

First Student
Case 03-RD-243112

Dated: June 27, 2019



PAUL J. MURPHY
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