

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

ATC/VANCOM OF MICHIGAN, L.P.

Employer

and

CASE 7-RC-21831

**TEAMSTERS LOCAL 243, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO**

Petitioner

APPEARANCES:

Carl Woodson, of Detroit, Michigan, for the Employer

Heather Rastorfer, Attorney, of Milwaukee, Wisconsin, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

¹ The Petitioner filed a brief, which has been carefully considered. After receiving ample notice of the date of the instant hearing, the Employer's general manager, who served as the Employer's representative during the hearing, left the proceeding following examination of the Employer's witnesses and prior to the Petitioner's calling of its witnesses. On the record and before the general manager's departure, the hearing officer advised him of the Employer's right to file a post-hearing brief and of the brief's due date.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²
2. The labor organization involved claims to represent certain employees of the Employer.
3. The Employer is a limited partnership that provides transportation services to impaired and disabled persons within the Michigan cities of Detroit and Holland. Only the Employer's Detroit operation is at issue in this case. The City of Detroit's Department of Transportation refers qualified customers to the Employer's dispatchers and supplies 25 passenger buses and 19 vans to the Employer for this purpose. The vehicles are operated and maintained by the Employer, which is an independent private enterprise not governed by the City of Detroit. In the last 12-month period, the value of the contract between the Employer and the City of Detroit was about \$3 million. The Employer's parent company, Van Der Aa Mobility Group, Inc., an Illinois corporation headquartered in Oakbrook Terrace, Illinois, provides similar passenger services in at least ten states.

The Employer, through its then-general manager, signed a document as recently as December 16, 1999, admitting to facts on which basis the Board could and did assert jurisdiction in previous Case 7-RC-21733.³ Although the Employer herein has not argued or adduced evidence of changed circumstances, it challenges the Board's jurisdiction in this case. The Board's discretionary jurisdictional standard for local intrastate bus services is annual gross revenue of \$250,000. *Springfield Transit Management*, 281 NLRB 72, fn. 2 (1986); *Charleston Transit Co.*, 123 NLRB 1296 (1959). The Employer meets this test. Its contract with the City of Detroit, an exempt entity which otherwise meets the Board's direct, non-retail jurisdictional standard, provides the required nexus to interstate commerce and thus satisfies the Act's test for statutory jurisdiction. *Zimmerman Painting & Decorating*, 302 NLRB 856 (1991); *Peterein & Greenlee Construction Co.*, 172 NLRB 22110 (1968). Consequently, the Employer is

² Over the Employer's objection, the hearing officer received, as probative on the question of jurisdiction, a commerce questionnaire completed and filed about December 16, 1999, by the Employer's then-general manager in Case 7-RC-21733. The Employer objected to the receipt of the document on the ground that the Employer's current general manager lacked personal knowledge of the information contained in the exhibit. I concur in the hearing officer's ruling to receive the exhibit. However, as explained below, I do not rely dispositively on the document in concluding that the Board has jurisdiction.

³ On January 20, 2000, in Case 7-RC-21733, the Petitioner was certified as the collective bargaining representative of the Employer's mechanics.

engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent three individuals at the Detroit facility commonly known as revenue handlers. The Employer contends, contrary to the Petitioner, that all three revenue handlers are ineligible as supervisors and that two should be excluded as temporary employees. There is no history of collective bargaining with respect to these persons.

The Petitioner seeks here to represent three individuals commonly known as revenue handlers. There is no history of collective bargaining with respect to these persons. The Employer contends, contrary to the Petitioner, that all three revenue handlers are ineligible as supervisors and that two should be excluded as temporary employees.

The function of the disputed employees is to count and record fares. As each bus arrives, the revenue handler brings a roll cart to it, opens the vehicle's fare compartment, transfers the monies to the cart, counts the fares in front of the driver, obtains the driver's signature on a document showing the amount counted, and receives the driver's manifest. The latter is a log that shows times of boarding and delivery of passengers, mileage at each stop, cancellations, and requesters who failed to show. The revenue handler reviews the manifest to make sure that it is completed. If it is not, the revenue handler asks the driver for the missing information or, if necessary, completes the manifest using data from a prior manifest as a guide. The review of the manifest is called "scrubbing" or "editing." Once edited, the manifest is submitted by the revenue handler to a road supervisor. This process is repeated many times during a shift with the arrival of each passenger bus and van.

The Employer's highest on-site official is its general manager, currently Carl Woodson. Five managers, including Operations Manager James Boykin, report to Woodson. Under Boykin are 5 "road supervisors" and 6 "dispatchers,"

⁴ The Employer's parent company is itself in interstate commerce. However, there is too little record evidence about the financial and organizational relationship between the Employer and its parent to permit a jurisdictional finding on that basis alone. No party contends that the Employer is exempt as a political subdivision, and the record, replete with evidence that the Employer is entirely separate from the City, forbids such a conclusion. See *Management Training Corp.*, 317 NLRB 1355, 1358 (1995).

who directly oversee the Employer's 58 drivers.⁵ Maintenance Manager Jeff Gonnevillle supervises about 10 mechanics and maintenance employees.

The Employer contends that the senior revenue handler, Sue Lockett, may "discipline" drivers. The record establishes that if she witnesses an incident, she, like any other employee, may write a memorandum about it. Operations Manager Boykin independently investigates all such matters and decides the level of discipline, if any. The revenue handlers have not received training on disciplinary procedures and guidelines, have no access to employees' personnel files, and play no role in the grievance procedure under the Employer's collective bargaining agreement with the Petitioner. Disciplinary notices are signed by Operations Manager Boykin, who has instructed the two less senior revenue handlers if an employee requires immediate counseling to refer the problem to a "seasoned dispatcher." Both of the newer revenue handlers testified that they lacked the authority to discipline a driver who resists completing his record-keeping.

There is virtually no evidence that the Employer has solicited a disciplinary recommendation from any of the revenue handlers. In the only instance revealed in the record that a revenue handler was asked for her opinion, the inquiry was made because she was a witness. All persons who witnessed the incident were similarly asked for an opinion, and the revenue handler's opinion was not followed.

Revenue handler Sue Lockett has apparently participated to an extent in the hiring process by joining interview panels. During these sessions, prospective employees are asked stock questions and the panelists rate the answers. The record does not reveal, however, what use the Employer makes of the ratings, how much weight if any is placed on them, how the scores correlate with hiring decisions, and whether the panelists are asked to make specific hiring recommendations. The Employer adduced evidence that Lockett's opinion has been informally solicited regarding the suitability of an employee for a job transfer, but the witness admitted that the input was not a formal recommendation. One witness offered conclusionary evidence that Sue Lockett has the authority to

⁵ The road supervisors are Thomas Edward, Karen Simmons, Marion Scott, Linda Bond, and Fannie Byrd. The dispatchers are Dwane Armstead, Kim Carter, Monica Hankins, Felicia Johnson, Shirly Williams, and Jerry Hudson. In addition to Boykin, the managers reporting to Woodson are Training Manager Andrea Walton, Maintenance Manager Jeff Gonnevillle, Administrative Assistant Keely Farris, and Payroll/Benefits Manager Barbara Wilson. The parties stipulated that all of these individuals are statutory supervisors. However, the parties did not stipulate as to their possession of particular indicia of supervisory authority, and, their status not being at issue herein, the record was not fully developed regarding their scope of authorities. I therefore concur only in the parties' stipulation concerning James Boykin, who, as the evidence clearly shows, has the authority responsibly to independently direct and discipline employees.

recommend rewards for employees, but no details were supplied about the scope of the authority and it has never been exercised.

Revenue handlers do not possess authority to hire or fire employees. Nor may they promote, transfer, lay off, recall, or evaluate employees, change their assignments, authorize overtime, or grant time off. They have no role in keeping time or attendance records for other employees. Drivers' time sheets are maintained by managers and approved by the general manager. Revenue handlers, who are salaried, are not included in meetings among top-level managers.

The burden of establishing supervisory status is on the party who seeks to exclude an individual on that basis. *Bennett Industries*, 313 NLRB 1363 (1994). The record does not support the Employer's position. There is no evidence that the revenue handlers meet any of the statutory criteria set forth in Section 2(11) of the Act. They do not use independent judgment in the direction of other employees. Their inspection and completion of the drivers' manifests is routine. Moreover, it is unaccompanied by the authority to command drivers' performance or discipline drivers for dereliction. As such, it is, at most, akin to quality control work, which is not supervisory. *Brown & Root, Inc.*, 314 NLRB 19, 21, fn. 6 (1994). Their reportorial role in lodging complaints to management against other employees cannot be considered supervisory because it does not involve independent investigation or the making of effective disciplinary recommendations. *NLRB v. Attleboro Associates, Ltd.*, 176 F.3d 154, 174 (3rd Cir. 1999); *NLRB v. Grancare, Inc.*, 170 F.3d 662, 668 (7th Cir. 1999); *Northern Montana Health Care*, 324 NLRB 752, 753 (1997); *Pepsi-Cola Bottling Co.*, 154 NLRB 490, 493-494 (1965). The conclusionary testimony about rewarding employees and the sketchy evidence of participation on a hiring interview panel, without more, fails as a predicate for a supervisory finding. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). I therefore find the evidence for the supervisory status of the revenue handlers to be lacking.

As to the Employer's assertion that the two junior revenue handlers, Annette Michele Witherspoon and Navell Annette Washington, are ineligible to vote as temporary employees, the test for determining the eligibility of such individuals is whether the duration of their tenure is finite or indefinite. If the length of their employment is uncertain and indefinite, they are entitled to vote. *St. Thomas-St. John Cable TV*, 309 NLRB 712, 713 (1992); *Personal Products Corp.*, 114 NLRB 959 (1955). If they have been hired for a set duration, or have no substantial expectancy of continued employment, and have been notified of this fact, they may be excluded as temporaries. *Boston Medical Center Corp.*, 330 NLRB No. 30, slip op. at 15 (Nov. 26, 1999); *Indiana Bottle Gas Co.*, 128 NLRB 1441 fn. 4 (1960); *Owens-Corning Fiberglas Corp.*, 140 NLRB 1323 (1963).

Sue Lockett formerly shared revenue handling responsibilities with persons on the staff who had other primary jobs. The Employer decided to hire supplemental revenue handlers to ease the pressure on these other staff members. Prior to the time that the prospective supplemental employees were interviewed, the Employer learned that Lockett would undergo surgery and require an extended medical leave. This made the hiring of additional revenue handlers more urgent. However, there is no evidence that when Washington and Witherspoon were interviewed, they were advised that their jobs were limited to the time of Lockett's leave. To the contrary, they were told that they were being hired as part-time employees with the prospect of becoming full time if allowed by the budget. Operations Manager Boykin, who interviewed them, recalled telling them that the length of their employment would be decided as they "went along."

The Employer did not characterize Washington's and Witherspoon's jobs as temporary in either their initial employment papers dated mid-February 2000, or their subsequent job descriptions issued about one month later. During Lockett's medical leave beginning about mid-March 2000, Washington's and Witherspoon's hours increased from part- to full-time. Upon Lockett's return about May 2000, Washington and Witherspoon remained employed at essentially the same expanded number of hours. The Employer offered testimony at the hearing that it hopes to retain both Washington and Witherspoon, believes it can keep at least one of them, and has so informed each. There is evidence that as recently as the Friday prior to the hearing, the general manager expressed to Washington and Witherspoon their importance to the company and assigned them new schedules of 30 work hours per week.

The foregoing evidence fails to establish that the employment of Washington and Witherspoon is temporary since their tenure is uncertain rather than fixed. Consequently both are eligible to vote. *New World Communications of Kansas City*, 328 NLRB No. 10, slip op. at 1 (April 7, 1999).

5. In view of the foregoing, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act⁶:

⁶ The parties stipulated that a unit of revenue handlers is sought by the Petitioner, but not that it is appropriate under Section 9(b). Nonetheless, no evidence or argument was offered that a unit so composed is inappropriate. I therefore find that is an appropriate unit. I note that, according to the Employer, Sue Lockett will be promoted in late June 2000, to a newly created position of customer service manager. As this change had not occurred at the time of the hearing and evidence about the new position would have been merely speculative, the parties did not litigate the question of Lockett's supervisory status in her anticipated job. Consequently, I make no finding now as to how her ascension to that post may affect her eligibility to vote in the election directed herein.

All full-time and regular part-time revenue collectors/handlers employed by the Employer at its facility located at 4111 Central Avenue; but excluding drivers, lead mechanics, mechanics, maintenance employees, managerial employees, office clerical employees, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 13th day of July, 2000.

(SEAL) /s/ William C. Schaub, Jr.
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