

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

TRANSIT MANAGEMENT OF CHARLOTTE, INC.¹

Employer

and

UNITED TRANSPORTATION UNION, LOCAL 1166

11-RC-6547

Petitioner

and

TEAMSTERS LOCAL UNION NO. 71, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Intervenor

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Petitioner, a constituent Local of the United Transportation Union, has filed a petition seeking to become the certified bargaining representative of a unit comprised of all maintenance employees employed at the Employer's Charlotte, North Carolina bus transportation facility, excluding all bus operators, office clerical employees, and guards, professional employees and supervisors as defined in the Act. The Intervenor, although stipulating that the proposed bargaining unit is appropriate in itself, asserts that the petition is barred because it was filed outside the window period of the current collective bargaining agreement between the United Transportation Union and the Employer. Both parties filed briefs, which have been carefully considered. Because I find that the Petitioner is entitled to file its petition outside of the window period of the current collective bargaining agreement under the doctrine of General Box Company, 82 NLRB 678 (1949), as set forth more fully below, I will direct an election in the petitioned-for unit.

¹ The Employer's name appears as amended at hearing.

In this decision I will first set out background information concerning the Employer's operations and the history of collective bargaining at that facility. I will then describe the operative events leading up to the filing of the petition, after which I will set out my analysis and conclusions concerning the contract bar issue.

I. THE EMPLOYER'S OPERATIONS

The Employer operates a bus transportation facility in Charlotte, North Carolina, where it provides passenger bus services for individuals in the extended Charlotte area. The Employer employs both bus operators and maintenance employees at its facility. The facility includes the Administration Building, from which the bus operators are dispatched, and the Maintenance Building, where bus maintenance work is performed.

II. COLLECTIVE BARGAINING HISTORY AT THE EMPLOYER'S FACILITY

For at least the past ten years, the United Transportation Union (hereinafter referred to as "International") has been recognized as the exclusive collective bargaining representative of the maintenance employees covered in the petition filed in this proceeding by Local 1166. This recognition has been embodied in successive collective bargaining agreements, the most recent of which expires on January 31, 2004.² The International has likewise been recognized as the exclusive representative of all bus operators at the Employer's Charlotte facility, which recognition has been embodied in a separate series of collective bargaining agreements that contain the same expiration dates as the maintenance agreements. Each of the recognition clauses in the foregoing agreements identifies the International as the exclusive bargaining representative, and defines "Union" to mean the International and "any Committee or representative duly authorized to act on behalf of" the International. The cover page of each agreement identifies Local 1715, United Transportation Union as the labor organization that is party to the agreement.

²The window period for the filing of a representation petition has not yet opened.

Collective bargaining for each of the separate agreements was accomplished by union representatives serving on the Maintenance Committee and the Operators Committee, each of which met separately with the Employer to negotiate their respective agreements. Each committee had a General Chairman, Vice-General Chairman, and Secretary, and, up until August 2003, each committee functioned as part of Local 1715. The agreements contain the signatures of the foregoing Committee officers as well as the International Vice President-Director, Bus Operations.

In addition to being responsible for local contract negotiations, these local committees also performed the representative functions of contract administration and grievance handling for the employees in each craft at the Employer's facility.

Despite the foregoing lengthy history of recognition, there is no record of any prior representation proceedings that resulted in the certification of the International or Local 1715 as the exclusive bargaining representative for either the maintenance employees or the bus operators at the Charlotte facility.

III. THE EVENTS LEADING TO THE FILING OF THE PETITION

Beginning in April or May 2003, the Maintenance Committee began to explore ways in which to establish the maintenance employees as a separate bargaining unit with their own certified collective bargaining representative. After consultation with the International, and after circulating a petition among the maintenance employees who were members of Local 1715,³ the Maintenance Committee petitioned the International in July 2003 to change its affiliation to Local 1166, a local that historically had represented employees in the rail industry. The International acceded to this request, and in August, the first union meeting under the aegis of Local 1166 took place, with International officers in attendance.

³ About 63 individuals signed this petition, which stated that the undersigned were interested in the creation of a maintenance local union separate from the drivers. There were approximately 80 maintenance employees who were union members.

After the change in affiliation, the officers of the Maintenance Committee remained the same. The General Chairman of the Maintenance Committee submitted a written request to the Employer to open negotiations, and the Employer responded. The Employer also began remitting dues to Local 1166.

IV. ANALYSIS

The determination of this matter turns on whether the Petitioner properly may avail itself of the exception to the contract bar doctrine under General Box, supra, under which a recognized but uncertified union may file a representation petition in order to become the certified collective bargaining representative of the employees it represents, notwithstanding the presence of a collective bargaining agreement. As the Board has underscored, the salutary purpose underlying this doctrine is to give a recognized union the opportunity to realize the benefits of certification. See General Box, 82 NLRB at 680-82. The doctrine is predicated, in part, on the policy that certification affords specific protections for recognized unions against the claims of a rival union. Id.

The determination whether General Box applies here presents two specific issues: 1) whether the recent change in affiliation from Local 1715 to Local 1166 affects the application of the General Box doctrine to the petition filed in this proceeding; and 2) whether the General Box doctrine is inapplicable because the petitioner here is Local 1166 rather than the International. I will address each of these issues in turn, after which I will address additional arguments of the Intervenor.

A. The recent change in affiliation

The recent change in affiliation from Local 1715 to Local 1166 does not defeat the application of the General Box principle to this case for two reasons. First, the record makes clear that the affiliation change was not accompanied by any basic change in the structure or functioning of the Maintenance Committee, which is the entity authorized by the International to

perform the representative functions under the collective bargaining agreement. That is, the Maintenance Committee operates as a part of the local union structure, with the primary functions of performing contract negotiation, contract administration, and grievance adjustment for maintenance employees, all under the authority of the International. In contrast, the primary function of the Local itself appears to be performing administrative duties, at least in regard to the membership of the newly affiliated maintenance employees. Therefore, the change in Local affiliation did not interrupt or significantly affect the ongoing representational conduct that had been performed by the Maintenance Committee for the employees covered in the petition. Second, the Employer plainly recognized Local 1166 as collective bargaining representative for its maintenance employees, as it began remitting dues to Local 1166. Thus, at the time the petition was filed, Local 1166 was undeniably the recognized and incumbent representative of the employees in the bargaining unit set out in the petition.

B. The identity of the Petitioner

The petition was filed by Local 1166, with the General Chairman of the Maintenance Committee signing as representative of the Local. The International granted authority to the General Chairman to file the petition. It is clear that the three union entities here, that is, the International, Local 1166, and the Maintenance Committee, are closely related. The functional integration among the Union entities appears to be longstanding, and, in fact, is illustrated by the current collective bargaining agreement, which includes: 1) a cover page identifying the former Local as party to the contract; 2) a recognition clause identifying the International as the party to the contract; and 3) a signature page including both officers of the Maintenance Committee and the International.

Given this functional integration, it would elevate form over substance to find that the General Box doctrine does not apply to the petition filed by Local 1166 based on a theory that the International, rather than Local 1166, is the actual entity currently representing the

maintenance employees. The International, which clearly is signatory to the current collective bargaining agreement, has given its authority for the filing of the petition. I find, therefore, that the policy underlying General Box is most closely served by applying the doctrine to this circumstance.

C. Intervenor's additional arguments

Intervenor apparently asserts that the change in Local affiliation was performed in violation of the International's Constitution and that, therefore, Local 1166 is not a valid successor to Local 1715. Intervenor also cites Acme-Evans Company, 90 NLRB 2107 for the proposition that the General Box doctrine has only been applied to a successor union when the members were unanimous in their choice to change their union affiliation.

Although the facts in the Acme-Evans case did involve the members' unanimous choice to disaffiliate with one union and affiliate with another, the Board did not rely upon this circumstance as a predicate for applying the General Box doctrine to the petition filed by the successor union. Moreover, the Acme-Evans case is distinguishable from the current case as it involved completely separate unions, rather than, as here, constituent Locals of the same International, combined with the continuous operation of a representational committee.

Moreover, by analogy, in cases in which the Board has evaluated whether a petitioner is a labor organization, the Board has found that "structural formalities are not prerequisites to labor organization status." Yale New Haven Hospital, 309 NLRB 363 (1992) (no constitution, bylaws, meetings or filings with the Department of Labor) ; Betances Health Unit, 283 NLRB 369, 375 (1987) (no formal structure and no documents filed with the Department of Labor) Given this teaching, it would appear irrelevant for purposes of processing this petition to determine whether the proper procedural requirements were followed during the change of Local affiliation.

Intervenor also contends that Petitioner filed the petition in an improper attempt to preclude the Intervenor from filing a representation petition seeking to represent a combined unit

of both bus operators and maintenance employees. In support of this argument, Intervenor cites the Board's decision in National Electric Coil Division, 199 NLRB 1017, 1018 (1972), in which the Board dismissed a petition filed by a recognized but uncertified union because the petitioner was not actually seeking to achieve its own certification, but rather had filed the petition as a subterfuge to allow another union to circumvent the contract bar doctrine.

Intervenor's argument in this regard is unavailing, as one of the acknowledged policies of the General Box doctrine is to afford an incumbent union the opportunity to become certified to achieve some measure of protection from the claims of a rival union. Moreover, the Intervenor will be afforded full due process by having the opportunity to participate in the election process. Finally, the Board's decision in National Electric Coil Division is inapposite, as there is no suggestion here that Petitioner does not affirmatively seek certification.

Based on the foregoing, I find that both the letter and the spirit of the General Box doctrine apply to the facts of this case. As the Employer plainly has recognized the Petitioner as the bargaining representative of its maintenance employees, processing the petition furthers the salutary policy of giving a recognized union the opportunity to seek the benefits of certification. Accordingly, as set out below, I will direct an election in the unit found appropriate herein.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Unions involved claim to represent certain employees of the Employer.

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

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All maintenance employees employed at the Employer's Charlotte, North Carolina facility; excluding all bus operators, office clerical employees, and guards, professional employees and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Transportation Union, Local 1166 or by Teamsters Local Union No. 71, a/w International Brotherhood of Teamsters, or by neither. The date time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to the Decision.

A. Voting Eligibility

Eligibility to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or 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, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employee who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 12367 (1966); NLRB v. Wyman-Gordon Company, 395 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting processes, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, North Carolina, 27116-1467, **on or before October 29, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever

proper objections are filed. The list may be submitted by facsimile transmission at (336) 631-5210. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. received by the Board in Washington **by November 5, 2003.**

Dated at Winston-Salem, North Carolina, on the 22nd day of October 2003.

/s/Willie L. Clark, Jr.
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