

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

BAUMANN & SONS BUSES, INC.

Employer

and

CASE NO. 2-RD-1484

**STANLEY REBACKOFF,
BAUMANN EMPLOYEES—BEDFORD
HILLS YARD**

Petitioner

BAUMANN & SONS BUSES, INC.

Employer

and

CASE NO. 2-RC-22649

**STANLEY REBACKOFF,
BAUMANN EMPLOYEES—BEDFORD
HILLS YARD**

Petitioner

BAUMANN & SONS BUSES, INC.

Employer

and

CASE NO. 2-RC-22653

**LOCAL 456, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO**

Petitioner

**DECISION AND ORDER DISMISSING PETITION
IN CASE NO. 2-RC-22653 AND
DECISION AND DIRECTION OF ELECTION
IN CASE NOS. 2-RD-1484 AND 2-RC-22649**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended,¹ a hearing was held before Gregory B. Davis, a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region

¹ These cases were consolidated by Order Consolidating Cases and Notice of Hearing dated October 31, 2002.

2. The issues raised by the parties at the hearing included (1) whether Stanley Rebeckoff, Bedford Employees – Bedford Hills Yard (Rebeckoff) meets the criteria for a labor organization under section 2(5) of the Act; (2) whether there is a contract bar to the further processing of the Petitions; and (3) whether I should bifurcate the historical unit and direct an election in two separate units. For the reasons set forth below, I have concluded that Rebeckoff meets the statutory criteria to act as a petitioner herein and that there is no contract bar to an election. I further find that the record fails to provide any basis to bifurcate the historical bargaining unit. Inasmuch as the petition in Case No. 2-RC-22653 fails to seek an election in an appropriate unit, I have directed that it be dismissed.

Upon the entire record in this proceeding, it is found that:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that Baumann & Sons Buses, Inc. (the Employer) is a New York Corporation with an office and place of business located at 35 Norm Avenue, Bedford Hills, New York where it is engaged in the operation of a bus transportation company. Annually, in the course and conduct of its business operations, the Employer generates gross revenues in excess of \$500,000 and purchases and receives at its New York facility goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York. Based upon the record and the stipulations of the parties, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that Local 456, International Brotherhood of Teamsters AFL-CIO, (Local 456) is a labor organization within the meaning of Section 2(5) of the Act. At the hearing, both the Employer and Local 456

contended that Rebackoff, the Petitioner in Case Nos. 2-RD-1484 and 2-RC-22649, was not a labor organization within the meaning of the Act as to the purpose of his petition. Rebackoff, an employee of the Employer, testified at the hearing, that the purpose of the petition he filed as “Stanley Rebackoff, Bedford Employees -- Bedford Hills Yard” was to make sure that, in the event employees voted for decertification of Local 456, the “drivers and monitors would have somebody other than seventy or eighty people go into management’s office all at one time and there’s be one spokesman for the people.” Rebackoff additionally testified that this Petitioner contains no duly elected officers, does not have a constitution or by-laws and is unaffiliated with any labor organization.

Under Section 9(c)(1)(A)(i) of the Act, a petition for certification may be filed by an “employee or group of employees or any individual or labor organization acting on their behalf,” alleging that a substantive number of employees wish to be represented for collective-bargaining purposes and that their employer declined to recognize such representative. Unions usually file such petitions; however, under the clear language of the Act, this need not be the case. It is also well-settled that under 9(C)(1)(A)(ii), an “employee, group of employees, individual or labor organization” may file a decertification petition asserting that the currently certified or recognized bargaining representative no longer represents employees in the bargaining unit. As is apparent from the foregoing, Rebackoff is an employee of the Employer and is further acting as a spokesperson for his coworkers. Under the unambiguous language of the Act, Rebackoff is an appropriate Petitioner herein.

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

5. The petitions in Case Nos. 2-RD-1484, and 2-RC-22649 filed by Rebackoff, as amended at hearing, seek an election in a unit comprised of “all

maintenance employees, including mechanics, and all non-maintenance employees, including regular school bus drivers, regular van drivers, regular charter bus drivers, regular charter van drivers and regular monitors at the Bedford School District excluding officers, managers, and supervisors as defined by the Act and clerical and office employees.” This unit is coextensive with the unit set forth in the collective-bargaining agreement between Local 456 and the Employer. The petition in Case No. 2-RC-22653 filed by Local 456 seeks a election only in a unit comprised of “all full-time and part-time mechanics employed by the Employer at its facility at 35 Norm Avenue, Bedford Hills, New York, excluding all other employees, clerical employees and guards and supervisors as defined in the Act.” Despite the fact that Local 456 asserts that the overall unit set forth in the collective-bargaining agreement constitutes an appropriate unit for the purposes of collective bargaining, it requests that the Board conduct elections in two units. In essence it wants the contractual unit bifurcated and an election conducted in two units: one comprised of all full-time and regular part-time mechanics and the other comprised of all full-time and regular part-time drivers and monitors². The Employer appears not to oppose Local 456’s position on two units, yet asserts that there is a contract bar to the processing of the petitions herein. Rebackoff took no position on the contract bar issue, but would agree to go to an election in either an overall unit or in the units proposed by Local 456. The petitioners have both expressed their willingness to proceed to elections in any unit found appropriate herein.

² As counsel for Local 456 stated at the hearing, it is not being urged that the current bargaining unit is not appropriate; rather Local 456 desires that the mechanics be allowed to vote separately as to whether they wish to continue to be represented for purposes of collective bargaining by Local 456.

Contract Bar Issue

The Employer contends that there is a contract bar to the processing of the petitions filed herein. The record establishes that Local 456 has been the exclusive collective-bargaining representative of certain employees of the Employer for some period of time. The most recent collective-bargaining agreement between Local 456 and the Employer was effective by its terms from July 1, 1998 through June 30, 2002. The bargaining unit covered by that agreement consists of “all maintenance employees, (including mechanics), and all non-maintenance employees, (including regular school bus drivers, regular van drivers, regular charter bus drivers, regular charter van drivers and regular monitors) at the Bedford School District excluding officers, managers, and supervisors as defined by the Act and clerical and office employees.” Thereafter, the parties entered into a supplemental agreement, (the supplemental agreement) which, among other things, states that it was entered into by the parties “in an attempt to resolve their differences and . . . continue negotiations and schedule additional meetings.” The supplemental agreement provides for a day-to-day extension of the parties’ collective-bargaining contract during which time, the Employer would provisionally implement its last offer with the understanding that any negotiated improvements will be retroactive. This supplemental agreement does not set forth terms and conditions of employment which were to be implemented.

The Board has long held that a contract with no fixed term does not bar an election for any period of time. *Pacific Coast Assoc. of Pulp & Paper Mfrs.*, 121 NLRB 990 (1958); *McLean County Roofing*, 290 NLRB 685 n.5 (1988). Agreements found not to constitute a bar to election proceedings include those of indefinite duration and temporary agreements. A contract of indefinite duration is a contract without stated provisions for termination or which terminates on the occurrence of some event, the date of which cannot be established with certainty before its occurrence. *W. Horace Williams*

Co., 130 NLRB 223 (1961); *Pacific Coast Assoc. of Pulp & Paper Mfrs.*, supra.

Moreover, temporary agreements, which are defined as those which are intended to be effective until a complete and final agreement can be negotiated, will not act as a bar to an election. *Bridgeport Brass Co.*, 110 NLRB 997 (1955).

As is apparent from the foregoing, the supplemental agreement, by its terms, is both of infinite duration and temporary. I conclude, therefore, that it does not act as a bar to the processing of the petitions herein.

The Appropriate Bargaining Unit

As noted above, the petitions in Case No. 2-RD-1484 and 2-RC-22649 seek an election in bargaining units which are consistent with the historical and contractual unit. The petition in Case No. 2-RC-22653 seeks an election in a fragment of that unit. It appears from the record that this unit is comprised of merely two out of more than eighty employees. For the following reasons, I conclude that the unit sought in 2-RC-22653 is not an appropriate unit and, accordingly, order that this petition be dismissed.

In determining the scope of bargaining units, the Act does not require that it be the “only” or “most” appropriate unit; it is merely required that the unit be “appropriate,” that is, to insure to employees in each case, “the fullest freedom in exercising the rights guaranteed by the Act.” *Overnite Transportation Co.*, 322 NLRB 723 (1996). A union is therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballentine & Sons*, 141 NLRB 1103 (1963).

It is also the case, however, that the Board normally will not disturb an historical unit absent compelling circumstances. *Trident Seafoods*, 318 NLRB 738 (1995). The party challenging an historical unit bears a “heavy burden” of showing the unit is no longer an appropriate one. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). Moreover, as a general rule, a bargaining unit in which a decertification election is held must be

coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955). While I am mindful that the parties have apparently indicated their willingness to proceed to an election in bifurcated units, under all the circumstances herein, I conclude that the record fails to support a departure from the historical unit. In the instant case, the record fails to establish changed circumstances which would render the historical unit inappropriate. I additionally note that no party herein has taken that position, and that the petitioners have expressed a desire to proceed to an election in any unit found to be appropriate.

ORDER DISMISSING PETITION

I find that the unit sought by the petition in Case No. 2-RC-22653 is not an appropriate unit for the purposes of collective bargaining, and accordingly, I HEREBY ORDER that the petition in Case No. 2-CA-22653, be, and it hereby is, dismissed. I have considered the fact that Local 456 appeared in these proceedings as the incumbent exclusive collective-bargaining representative of the historical unit and filed its own petition herein to be tantamount to a motion to intervene in Case Nos. 2-RD-1484 and 2-RC-22649, and further order that Local 456 appear on the ballot in the election directed herein.

THE APPROPRIATE BARGAINING UNIT

Based upon the record, I find that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All maintenance employees, (including mechanics), and all non-maintenance employees, (including regular school bus drivers, regular van drivers, regular charter bus drivers, regular charter van drivers and regular monitors) employed by the Employer at the Bedford School District.

Excluded: officers, managers, clerical and office employees and guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time³ and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.⁴ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the 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 strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁵ Those eligible shall vote on whether or not they desire to

³ Pursuant to Section 101.21(d) of the Board's Statement of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

⁴ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least three full working days prior to 12:01am on the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

⁵ In order to assure 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

be represented for collective-bargaining purposes by Stanley Rebackoff, Baumann Employees – Bedford Hills Yard, Local 456, International Brotherhood of Teamsters, AFL-CIO or neither.⁶

Dated at New York, New York
January 17, 2003

(s) _____
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Rm. 3614
New York, New York 10278

Code: 316-6700
316-6733
355-3350
420-1200

list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **January 24, 2003**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

⁶ 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, Franklin Court, 1099 Fourteenth St., NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by **January 31, 2003**.