Illinois School Bus Co., Inc. *and* Nick Nickon,[1] Petitioner, and Illinois Bus Drivers Union. Case 13-UD-179

July 28, 1977

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND WALTHER

Upon a petition duly filed under Section 9(e)(1) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Mary Ellen Larson. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 13 transferred the case to the National Labor Relations Board for decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings[2] made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is an Illinois corporation with its principal place of business at 13939 S. Cicero, Crestwood, Illinois, engaged in providing public and private school bus service and charter trips for both public schools and private groups. During calendar year 1976, the Employer's gross revenues totaled approximately $2-1/4 million, of which more than $250,000 was derived from sources other than the public school routes and charters and more than $60,000 was derived from interstate charter work.

We find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Illinois Bus Drivers Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union was recognized by the Employer as the collective-bargaining representative for a unit of all its busdrivers. Pursuant to a contract executed by the Union and the Employer and effective from July 1, 1975, to June 30, 1977, membership in the Union is required as a condition of continuing employment.

4. A petition has been filed asserting that 30 percent of the employees in the bargaining unit desire that the Union's authority to make a union-security agreement be rescinded. The Union and the Employer contend that, since many of the busdrivers spend the great majority of their time providing exempt public school bus services, they should not be permitted to vote in the deauthorization election.

It is true that we ordinarily do not assert jurisdiction over employees who do not spend a significant amount of time performing nonexempt services.[3] However, in a union-security deauthorization case, the Board does not define the bargaining unit. Rather, the unit has been established earlier, either through Board procedures or, as here, through voluntary agreement between the Union and the Employer. As it is settled law that the unit for a deauthorization election must be coextensive with the contractual unit,[4] and as the Employer meets our jurisdictional standards, we shall direct an election in a unit of all busdrivers employed by the Employer.

[Direction of Election and *Excelsior* footnote omitted from publication.]

[1] The name of the Petitioner appears as amended at the hearing.

[2] The Employer herein has moved for a "Protective Order" on grounds that certain commerce information supplied to the Board is commercial and financial information exempt from public disclosure or inspection under 5 U.S.C. § 552(b), more commonly known as the Freedom of Information Act (FOIA). The Employer requests that the Board issue an order protecting such information from disclosure to the public or its competitors.

We find it unnecessary to determine whether the information in question falls within a category exempt from disclosure under the FOIA as commercial and financial information. The resolution of that issue is one appropriately made pursuant to Sec. 102.117 of the Board's Rules in the event of a request for the information. Furthermore, in cases such as this where jurisdiction is asserted on the basis of an administrative investigation, the commerce data submitted to the Board by an employer is deemed confidential and not available for public inspection. As the need for a protective order has not been established, the motion is denied.

[3] *Roesch Lines, Inc.*, 224 NLRB 203 (1976). We additionally note that in this case it would be very difficult to determine what percentage of time each driver spends performing exempt and nonexempt services. Chairman Fanning adheres to the view expressed in his dissent in *Rural Fire Protection Company*, 216 NLRB 584 (1975), that in resolving the jurisdictional issue the Board should focus upon the amount of control the employer exercises over the employment conditions of its employees. Careful consideration of the record herein persuades him that the Employer has retained sufficient control over the employment conditions of all of its employees to warrant the exercise of the Board's jurisdiction.

[4] *Romac Containers, Inc.*, 190 NLRB 238 (1971).