

New Britain Transportation Co. and Amalgamated Transit Union, Local 1706, AFL-CIO, CLC, Petitioner. Case 34-RC-1690

December 30, 1999

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN
AND BRAME

On February 5, 1999, the Regional Director for Region 34 issued a Decision and Direction of Election in which he found that the petitioned-for schoolbus, car and van drivers, and monitors/aides at the Employer's Berlin, Connecticut facility constitute a separate appropriate unit. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision, contending that the unit must also include employees at the Employer's two other facilities located in Southington and Meriden, Connecticut. By order dated March 5, 1999, the Board granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the entire record, including the Employer's brief on review, we conclude, in agreement with the Regional Director, that the petitioned-for unit, limited to employees at the Berlin facility, is an appropriate unit. We do so for the reasons set forth in the Regional Director's decision (relevant portions of which are attached as an appendix), and for the additional reasons set forth below.

The Employer is a transportation company engaged in providing public bus transportation for Berlin, and school transportation and related services for Berlin, Southington, and Meriden. Its headquarters are located at its Berlin facility. The Employer employs approximately 172-179 schoolbus, van and car drivers, and 13 aides at its three facilities. The petitioned-for unit at Berlin is composed of 32-34 drivers, 1 runner, and 2 monitors/aides.¹ There are 70 drivers and about 10 monitors/aides at Southington, and 70-75 drivers and 1 monitor/emergency medical technician at Meriden.

The facilities are located in contiguous towns. The Berlin location is about 6 miles from the Meriden facility and about 12 miles from the Southington facility. The Meriden and Southington facilities are about 6 miles apart.

A single plant or store unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *J&L Plate, Inc.*, 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board considers such factors

¹ The unit excludes all other employees, office clerical employees, dispatchers, guards, professional employees, and other supervisors.

as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *J&L Plate*, supra; *Bowie Hall Trucking*, 290 NLRB 41 (1988); *D&L Transportation, Inc.*, 324 NLRB 160 (1997); *Esco Corp.*, 298 NLRB 837, 839 (1990), and cases cited therein. Analyzing the instant facts in light of the applicable criteria, we agree with the Regional Director's conclusion that the presumption has not been rebutted.

The Employer has centralized control over personnel and labor relations policies, including accounting, recordkeeping, payroll, and wages and benefits, and over such matters as formal discipline, new-hire training, and safety training. Centralized control over personnel and labor relations alone, however, is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations. See, e.g., *Carter Hawley Hale Stores*, 273 NLRB 621, 623 (1984). It is clear from the record here that the dispatchers and facility managers at each location have an important role in performing labor relations functions.

In this regard, it is undisputed that local dispatchers determine the need for and make decisions regarding employee schedules and assignments, including making temporary transfers. They handle problems encountered by drivers during their routes. They also approve time off, short-term vacation, and sick leave. Dispatchers independently address minor disciplinary problems. Dispatchers are also responsible for carrying out the Employer's decisions involving formal discipline.² Prior to the start of a new school year, dispatchers are responsible for contacting employees who work at their facilities to arrange for their return.

The manager at Southington, the operations supervisor at Meriden, and the managers at Berlin oversee their facilities' operations, supervise dispatchers, and deal directly with the respective school boards. They are authorized to buy supplies on credit and oversee paycheck distribution to employees at their facilities.³ At least one manager, the manager of the Southington facility, has authority to hire and fire, and has negotiated contracts on behalf of the Employer. The Employer's own witness, Vice President Shirley Galnick, repeatedly described the dispatchers and facility managers as "supervisors" and as

² See *D&L Transportation*, supra, where the Board found that headquarters' involvement in formal discipline and approval of wage increases was not sufficient to rebut the presumption where terminal managers and dispatchers had local control over hiring, assignments, and dispatching, time off, and minor discipline.

³ We note the fact that there is no single-facility manager at Berlin because it is the Company's headquarters and houses the offices of the president, vice president, and treasurer, who appear to share management duties, although the vice president appears to take the lead role as Berlin's manager.

“in charge,” which we find to be a significant indicator of their responsibility.

In addition, while new-hire training initially occurs at Berlin, subsequent training is conducted at the facility from which new-hires will operate and is performed by drivers/instructors who work at that facility. Safety training is conducted at each facility and involves each facility’s safety committee staffed by local employees. Some employee safety evaluations are conducted on-site by local drivers/instructors.⁴ Thus, the existence of centralized administration and control of some labor relations policies and procedures is not inconsistent with a finding, as here, that there exists sufficient local autonomy to support the single location presumption. *Rental Uniform Service*, 330 NLRB 334 (1999); *D&L Transportation*, 324 NLRB at 161.

There also is a lack of significant interchange involving the Berlin facility. The Employer notes more than 200 instances of temporary employee interchange from August 31, 1998, to January 29, 1999. Almost 100 of these temporary transfers involved employees from Meriden and Southington working at Berlin, or Berlin drivers working at one of the other facilities, according to the Employer. This is virtually the only evidence noted by the Employer to support its claim that there has been significant temporary employee interchange.

Assuming, as the Regional Director did, that there were 200 bona fide instances of temporary employee interchange, that data alone lacks any context and, thus, is of little evidentiary value because the Employer did not present evidence on the percentage of the total number of routes and charters involving temporary interchange or the percentage of the total employees involved in temporary interchange. The party opposing the single-facility presumption has the burden of presenting sufficient evidence to rebut it. *J&L Plate*, 310 NLRB at 429. We find that the Employer has failed to meet its burden to introduce relevant affirmative evidence to rebut the single location unit presumption.⁵ The presumption has not been rebutted where an employer’s interchange data is represented in aggregate form rather than as a percentage of total employees. *Dunbar Armored, Inc. v. NLRB*, 186 F.3d 844, 849 fn. 5 (7th Cir. 1999), citing *Walgreen v. NLRB*, 564 F.2d 751, 754 (7th Cir. 1977). Employee contact of the kind described here may be considered “interchange” where there is evidence that a significant portion of the work force is involved and that the work force is actually supervised by the local branch, factors the Employer failed to show. Even if it were possible to put the Employer’s asserted number of temporary em-

ployee interchanges into context, we find that significant temporary employee interchange has not been established and does not approach the degree of interchange typically present in cases where the Board has found it to be significant. Compare *Purolator Courier Corp.*, 265 NLRB 659, 661 (1982) (interchange factor met where 50 percent of the work force came within the jurisdiction of other branches on a daily basis and there existed a greater degree of supervision from supervisors at other terminals than from the supervisors at their own terminals); *Dayton Transport Corp.*, 270 NLRB 1114 (1984) (Board found the presumption rebutted where in 1-year there were approximately 400–425 temporary employee interchanges between terminals among a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the point of dispatch).

We also note that of the 190 bona fide temporary employee transfers,⁶ 118 involved charter or special events for which drivers voluntarily sign up. Such voluntary interchange is given less weight in determining if employees from different locations share a common identity. *D&L Transportation*, 324 NLRB at 162 fn. 7. Moreover, there has been little permanent employee interchange, with only six instances (two of which were voluntary) in one recent year, and only one involving a permanent transfer to Berlin. *Id.* at 161.⁷

Additionally, the facilities are located 6 to 12 miles apart. This geographic separation, while not determinative, gains significance where, as here, there are other persuasive factors supporting the single-facility unit. *Bowie Hall Trucking*, 290 NLRB at 43. We note in this regard the Employer’s vice president’s testimony that the Employer does not permanently transfer individuals to other facilities against their wishes because the employees prefer to work near their homes. Finally, that there is no bargaining history, and no other labor organization seeks to represent the employees on a broader basis, are factors that also support the Petitioner’s requested single-facility unit. *Id.*

In sum, we find that the evidence presented does not establish that the Berlin facility has been so effectively merged into the Southington and/or Meriden facilities, or that the three facilities are so functionally integrated that they have lost their separate identities to the point where the presumptive appropriateness of the petitioned-for Berlin unit has been rebutted, such that the only appro-

⁶ Based on our analysis of Emp. Exh. 3, a chart created from dispatch books that purportedly shows when an employee from one facility was sent to cover a route or a charter originating from another facility and includes the employee’s name, we identified approximately 190 bona fide instances of temporary employee interchange involving unit employees performing unit work.

⁷ Member Hurtgen does not necessarily agree that the degree of temporary interchange is insignificant. Rather, in his view, it is not so significant as to outweigh other factors supporting the appropriateness of the single-facility unit.

⁴ That nearly all vehicle maintenance and repair work is performed at Berlin because it is the only facility with a garage big enough to accommodate buses, does not require a finding that the employees’ interests in working conditions have been merged.

⁵ *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999), citing *J&L Plate*, *supra*.

priate unit is one including employees from all locations. *D&L Transportation; Bowie Hall Trucking*.⁸

ORDER

The Regional Director's decision is affirmed. This proceeding is remanded to the Regional Director for further appropriate action.

APPENDIX

DECISION AND DIRECTION OF ELECTION

5. The Employer, a Connecticut corporation with its principal office located in Berlin, Connecticut, is engaged in providing public bus transportation for the town of Berlin and schoolbus services for Berlin, Southington, and Meriden, Connecticut. The Petitioner seeks to represent a unit limited to the following employees employed at Berlin, Connecticut: 32 to 34 schoolbus, car and van drivers; a runner; and 2 bus monitors and aides. The Employer contends that the unit sought is inappropriate, and the only appropriate unit is one which must also encompass a total of approximately 165 drivers, monitors and aides, fuelers, mechanics, and maintenance employees employed at its Southington and Meriden facilities. The record indicates that the Berlin facilities are located approximately 6 miles from the Meriden facilities and approximately 12 miles from the Southington facilities, and that the Meriden and Southington facilities are approximately 6 miles apart.

There is no history of collective bargaining covering any of the positions at issue herein. However, the record reveals that for over 27 years the Petitioner and its predecessor have represented a separate unit at Berlin, composed of the Employer's line drivers performing public bus transportation, mechanics, and maintenance employees.

In addition to the Employer's main office, the Berlin, Connecticut location is also the site of the Employer's main garage. It is at the Berlin facilities where the Employer performs its

⁸ Contrary to the Employer's contention, we find no basis on which to reconsider or overrule the Board's decision in *D&L Transportation* or *Dattco, Inc.*, 324 NLRB 323 (1997). In each of those cases, as here, the Board has applied its traditional test where a union seeks to represent employees at a single-location facility. *R&D Trucking*, 327 NLRB 531 (1999), cited by the Employer, is not to the contrary. Rather, in that case, the Board found that the presumption was rebutted based on evidence of lack of local autonomy, centralized control over operations, personnel functions and labor relations, common supervision, regular and substantial interchange of drivers between the two facilities, permanent transfers, common employee skills, common benefits, holidays, and employee policies, and the small number of employees involved. Those factors differ considerably from those in *D&L Transportation* and *Dattco*, 324 NLRB 323 (1997), and from those under consideration here.

major bus repairs,² all of its accounting and payroll functions, and most of its safety, training, and hiring functions. In this regard, all schoolbus, van and car drivers are compensated under a uniform wage structure; receive the same fringe benefits; and are subject to the same rules and policies.

Situated at the Berlin office are the Employer's president, vice president, secretary, safety director, and a dispatcher. The overall responsibility for managing the operations at Berlin is vested in the vice president. Direct supervision of the Berlin bus operations is vested in the Berlin dispatcher.

The Employer's Southington facilities include an office, and a garage where minor repairs and servicing is performed. Situated at the Southington office are the Employer's treasurer, who is also responsible for managing the overall operations at Southington, and a dispatcher, who directly supervises the Southington bus operations. The Employer's Meriden facilities include an office, and a garage where minor repairs and servicing is performed. Situated at the Southington office are an operations supervisor, who is responsible for managing the overall operations at Meriden, and a dispatcher, who directly supervises the Meriden bus operations.

The record indicates that the school bus service that the Employer performs for the three towns is provided pursuant to three separate contracts it has with each of the respective towns. The record reveals a total of only six drivers permanently transferred among any of the three locations during the past year, and that only one of these involved the Berlin facilities. Although the record reveals approximately 200 instances of temporary driver interchange during the period from August 31, 1998, to January 29, 1999, less than half of these involved the Berlin facility and only 11 involved temporary reassignments from Berlin to one of the other locations.

In *D&L Transportation, Inc.*, 324 NLRB 160 (1997), and *Dattco, Inc.*, 324 NLRB 323 (1997), the Board reaffirmed the application of the single location presumption to bus operations strikingly similar to those in the case at bar, and found that the presumption had not been overcome. Accordingly, based upon the foregoing and the record as a whole, I find that 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 Act:

All full-time and regular part-time school bus drivers, van drivers, car drivers, bus monitors and aides, and the runner employed by the Employer at Berlin, Connecticut; but excluding all other employees, office clerical, employees, dispatchers, and guards, professional employees and other supervisors as defined in the Act.

² The record indicates that the Employer maintains a number of spare buses, which are housed at Berlin and are used to replace inoperative buses at all three locations.