UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

TRANSIT GROUP INC., AND CHALLENGER TRANSPORTATION, INC., AS SUCCESSORS, ALTER EGOS, AND A SINGLE EMPLOYER

Employer

and Case 05-AC-353957

AMALGAMATED TRANSIT UNION, LOCAL 1777 A/W AMALGAMATED TRANSIT UNION, AFL-CIO, CLC

Petitioner

DECISION AND ORDER

This petition, filed on November 1, 2024, by Amalgamated Transit Union, Local 1777 a/w Amalgamated Transit Union, AFL-CIO, CLC (Petitioner or Local 1177) seeks to amend a certification issued in Case 05-RC-225000 on September 7, 2018, which certified Amalgamated Transit Union (ATU) as the exclusive collective-bargaining representative of a unit of employees employed by Challenger Transportation, Inc. (Challenger). As set forth in the petition, Petitioner seeks to amend the certification to change the employer's name from Challenger to "Transit Group, Inc., and Challenger Transportation, Inc., as successors, alter egos, and a single employer" (individually, Transit Group and Challenger, and collectively, the Employer). The Employer has not consented to the proposed amendment. Based on an administrative investigation, I conclude the petition should be dismissed for the reasons set forth below.

The certification of representative issued in Case 05-RC-225200 certified ATU as the exclusive collective-bargaining representative of the following unit of Challenger's employees:

> All full-time and regular part-time operators and trainers employed by Challenger at its Gaithersburg, Maryland facility, but excluding all other employees, road supervisors, office clerical employees, guards, managers, and supervisors as defined by the Act.

On September 12, 2022, Petitioner—i.e., Local 1777, not ATU—filed a petition in Case 05-RC-303240 seeking a self-determination election pursuant to *Armour & Co.*, 40 NLRB 1333 (1942) and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937) to determine whether certain additional employees wished to join the existing unit of Challenger's employees described above. In that petition, Local 1777 sought an *Armour-Globe* self-determination election in the following unit:

> All employees employed by [Challenger] at or out of [Challenger's] facility located at 8210 Beechcraft Avenue in Gaithersburg, MD, including road supervisors, dispatchers, lot supervisors, utility workers, classroom instructors, and lead lot/supervisor/road supervisors, excluding all drivers, customer service employees, and managers and guards and supervisors as defined in the Act.

On October 3, 2022, the undersigned approved Local 1777's request to withdraw the petition in Case 05-RC-303240, after Local 1777 reached a voluntary recognition agreement with Challenger. That voluntary recognition agreement, which is between Local 1777 and Challenger and dated September 30, 2022, recites that Local 1777 has an existing unit of drivers/operators and behind-the-wheel trainers at Challenger's facility located at 8210 Beechcraft Avenue in Gaithersburg, Maryland. The agreement further provides that in exchange for Local 1777 withdrawing the petition in Case 05-RC-303240, the parties would conduct a "card check" through the Federal Mediation and Conciliation Service (FMCS) to confirm Local 1777's majority status among the group of employees Local 1777 proposed adding to its existing unit

(the *Armour-Globe* group). Provided the card check showed Local 1777 represented a majority of this group, Challenger agreed to recognize Local 1777 as the exclusive collective-bargaining representative of employees in the *Armour-Globe* group and to add the *Armour-Globe* group to the existing unit of Challenger's drivers/operators (including behind-the-wheel trainers) represented by Local 1777. The agreement describes the *Armour-Globe* group as:

> All employees employed by [Challenger] at or out of [Challenger's] facility located at 8210 Beechcraft Avenue in Gaithersburg, M[aryland], including road supervisors, shift supervisors/dispatchers, classroom trainers, and lead shift supervisors/dispatchers, excluding [a]ll driver/operators (including behind-the-wheel trainers), cleaners, customer service employees, and managers, guards, and supervisors under the Act.[1]

Contemporaneous with the filing of the petition in this case, Local 1777 filed a position statement and supporting exhibits. In its position statement, Local 1777 represents that there are two collective-bargaining agreements covering the unit: one for the pre-existing unit and one for the group added on afterwards through the voluntary recognition agreement. Among the exhibits to the position statement are two collective-bargaining agreements.

[1] The voluntary recognition agreement states the *Armour-Globe* group was to be added to the "existing unit of drivers/operators (including behind-the-wheel trainers)" but specifically lists "All drivers/operators (including behind-the-wheel trainers)" as among the excluded classifications in the *Armour-Globe* group. I interpret this to mean only that the drivers/operators, including behind-the-wheel trainers, were excluded from the group of employees in which Local 1777 would have to demonstrate majority support through the card check, and that the parties intended to continue the inclusion of the driver/operators, including behind-the-wheel trainers, as part of the overall unit.

The first contract (the Driver CBA), which is between Local 1777 and Challenger, is effective September 1, 2022, through August 31, 2025.[2] Article 1, Section 1 of the Driver CBA recites that,

> [Local 1777] represents that it has been designated by a majority of [Challenger]'s employees in the bargaining unit…and has exhibited to [Challenger], collective bargaining authorization signed by a majority of a (sic) such present employees of [Challenger].

Article 1, Section 2 of the Driver CBA contains the following recognition clause:

> [Challenger] recognizes [Local 1777] as the duly authorized representative and exclusive bargaining agent with respect to wages, hours and all other terms and conditions of employment for the WMATA MetroAccess Operation work locations in Montgomery County, Maryland (hereinafter referred "the bargaining unit") of all drivers employed by [Challenger] in the paratransit service business at such [Challenger] facilities represented by [Local 1777]. The bargaining unit excludes office and clerical employees, dispatchers, schedulers, reservationists, mechanics, utility persons and professional employees, guards and supervisors.[3]

In addition to the classifications described above, the Driver CBA contains provisions providing premium pay for employees acting in the capacity of "instructor, behind-the-wheel instructor, or trainer." (Article 5, Section 2).

[2] The copy of this collective-bargaining agreement provided with the position statement is unsigned. For the purpose of this decision, I have accepted Local 1777's representation that this CBA is in effect.

[3] I take administrative notice that "WMATA" is the Washington Metropolitan Area Transit Authority and that Challenger's facility located at 8210 Beechcraft Avenue, Gaithersburg, Maryland is located in Montgomery County, Maryland.

The second collective-bargaining agreement (the Add-On CBA) is also between Local 1777 and Challenger, and bears signatures from the parties dated February 24, 2023. The Add-On CBA states it is effective from February 5, 2023, through August 31, 2025. Article 1, Section 1 of the Add-On CBA recites,

> [Local 1777] represents that it has been designated by a majority of [Challenger]'s employees in a unit consisting of shift supervisors, payroll supervisors, customer service supervisors, road supervisors, lead dispatchers, dispatchers, lot supervisors, utility workers, trainer/classroom instructors, lead lot supervisor, and road supervisors to be included in the existing unit set forth in Section 2 below.

Article 1, Section 2 of the Add-On CBA provides,

> [Challenger] recognizes [Local 1777] as the duly authorized representative and exclusive bargaining agent with respect to wages, hours and all other terms and conditions of employment for the WMATA MetroAccess Operation work locations in Montgomery County, Maryland (hereinafter referred "the bargaining unit") of all drivers and staff described in Section 1 employed by [Challenger] in the paratransit service business at such [Challenger] facilities represented by [Local 1777].

Petitioner contends that "[a]n AC Petition is an appropriate vehicle through which to determine disputed successorships and single employer status. *Motor City Dodge, Inc.*, 185 NLRB 629, 630 (1970) (successorship); *Miami Indus. Trucks, Inc.*, 221 NLRB 1223, 1224–25 (1975) (single employer and successorship)."[4] While the Board may have made such

[4] In a companion unit clarification petition filed simultaneously in Case 05-UC-353963, Petitioner argues that such a proceeding is an appropriate vehicle for determining another critical issue here, i.e., whether the unit sought by Petitioner consists of independent contractors rather than employees. I will address that petition in a separate Decision.

determinations in the two cited cases, I am not persuaded that an AC proceeding is an appropriate vehicle for deciding those issues in this case.

A threshold matter is that the certification that Petitioner seeks to amend differs substantially from the facts revealed by the investigation. First, the representative certified in Case 05-RC-225000 is ATU, not Local 1777, and there is no contention that ATU does not continue to exist as a separate entity.[5] Second, the unit Local 1777 asks me to amend into the Certification of Representative is not the same as the unit described in that document.[6] I have found no authority supporting the position that either of these proposed changes is appropriately addressed in an AC proceeding, particularly where a petitioning union seeks to represent employees not already included in an already-certified unit. To the contrary, the Board has found that if an AC petition clearly presents a question concerning representation, it must be dismissed, even in the absence of objections by any of the parties, because an amendment of certification is not intended to change the representative itself. *Uniroyal, Inc*., 194 NLRB 268 (1972); *Missouri Beef Packers*, 175 NLRB 1100 (1969). Regarding the unit description in particular, the *Armour-Globe* group and unit covered by the Add-On CBA not only include classifications not included in the certification, they include classifications that are *specifically excluded* in the certification. I find that amending the certification to include the voluntarily-recognized classifications would contravene the rationale underlying the Board's *General Box* rule, which is that even voluntarily-recognized unions, including those that have current collective-bargaining agreements, may

[5] I presume Local 1777 is a subordinate local union of ATU.

[6] Nor is it, as noted above, the same as the unit described in the intervening voluntary recognition agreement.

obtain the additional benefits that only come with a Board certification achieved through a Board-supervised election. *General Box Co.*, 82 NLRB 678 (1949); *General Dynamics Corp.*, 148 NLRB 338, 338 fn.2 (1964). For these reasons alone, I find that the most appropriate action for me to take is to dismiss the petition.

I find the cases cited by Petitioner inapposite. In *Motor City Dodge, Inc.*, 185 NLRB 629 (1970), the Board found that the employer's RM petition failed to raise a question concerning representation because the employer constituted a successor to the entity named in the relevant certification of representation. Id. at 630. In turn, the Board granted the union's contemporaneous AC petition by substituting the successor's name for that of the defunct original employer. In other words, the only change effected by the amendment—and the only change sought by the petitioning union—was to establish the successorship as to the same employees described in the original certification, a majority of whom now performed the same work at a different facility. In light of the evolution of the unit description discussed above, such is not the case here. Likewise, in *Miami Indus. Trucks, Inc.*, 221 NLRB 1223 (1975), the Board's determinations involved a unit description unchanged from that in the original certification. In reversing the Regional Director's finding of single employer status, but finding instead a successor relationship, the Board ordered amendment of the certification to reflect the carving out of a second unit of the successor entity's employees, consisting of *identical classifications*. Id. at 1224-25. Again, the circumstances here are substantially distinguishable, given that Petitioner seeks wholesale revision of every component—employer, labor organization, and unit description—of the certification.

Notwithstanding the above deficiencies, which I find themselves preclude further processing of this petition, I would dismiss the petition anyway because I consider that the issues Petitioner raises are not appropriately addressed by way of an amendment of certification. The dispute here centers on Petitioner's belief that the Employer has attempted to evade the collective-bargaining agreement by assigning work outside the bargaining unit and/or to evade its bargaining obligations altogether by operating an alter ego. With respect to that challenged work, the issues raised in this petition are not ancillary to the bargaining relationship, but seek to establish whether there is a bargaining relationship in the first place. Furthermore, resolving those issues through the processing of this petition would not remedy any harm caused by the conduct that Petitioner alleges. Even if this matter were resolved entirely in Petitioner's favor, i.e. that the single employer/alter ego entity was diverting bargaining unit work, a remedial order would only be available through an unfair labor practice proceeding, which is currently under investigation.[7]

Furthermore, I note that the dearth of precedent supporting Petitioner's contentions is not surprising. As the Board's Casehandling Manual (Part Two) Representation Proceedings, Section 11002.1(d) provides: "An AC case is initiated by the filing of a petition under Section 9(b) of the Act, seeking amendment of a certification. Amendments of certifications are most frequently sought when there is a change in the name or affiliation of the employer or the certified labor organization." Similarly, Section 11490.2 explains that "an AC petition is usually

[7] Petitioner has filed a charge in Case 05-CA-357053, encompassing the same allegations raised in Petitioner's position statement in this case.

used to confirm a change in the name of the employer or labor organization involved or to reflect a change in the affiliation of the labor organization." Petitioner here seeks a different kind of change that, if made, would impose a bargaining obligation on Transit Group where one has not previously been recognized or established. Absent authority that the Board has agreed that such a change is properly addressed in an AC proceeding, I find that further processing of this petition would not effectuate the purposes of the Act.

Finally, I find this situation is an exception to the normal process described in Section 11490.3, Concurrent Unfair Labor Practice Charge, which states,

> When a UC or AC petition and an 8(a)(2) or (5) charge raise the same issue, the UC or AC petition *may* be the more effective way of resolving the issue. Ordinarily, the UC or AC petition should be processed while the 8(a)(2) or (5) charge is held in abeyance, *unless the potential for excessively lengthy or duplicative proceedings warrants a determination to process the issue through the unfair labor practice case.* (emphasis added)

Not only is the above guidance permissive, rather than mandatory, I find for the reasons explained earlier, that it would be more efficient to resolve the issues raised in this petition through the unfair labor practice charge in Case 05-CA-357053. In that case, I can resolve, among other things, whether the Employer is a single employer or Transit Group is an alter ego, whether there has been a failure to bargain or unlawful transfer of bargaining unit work, and if so, seek a remedy for any violations so found.[8]

[8] Similarly, I have concluded there is no useful purpose in holding this AC petition in abeyance while the unfair labor practice case is processed. Setting aside the petition's infirmities regarding changing the bargaining representative and unit from those in the certification, once the unfair labor practice case is disposed of—whether by dismissal because it lacks merit, or by a complaint, settlement, or Board order—the identity and status of the employing entity and that entity's obligation to bargain with Petitioner as the representative of the bargaining unit(s) will

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director. Upon the entire file in this case, I find:[9]

(1) Each of Transit Group, Inc. and Challenger Transportation, Inc. is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[10]

(2) Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

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have been decided. Moreover, even if there would be some hypothetical residual issue that was susceptible to resolution through an amendment of certification, nothing would preclude Petitioner from filing a new petition at that time, unlike Section 10(b) or the various restrictions/bars that could preclude the filing of a charge or representation petition, which might justify holding those proceedings in abeyance.

[9] In addition to the parties' submissions comprising the file in this case, I take administrative notice of the files in Cases 05-RC-225000, 05-RC-303240, and 05-RM-352227, which involve the same parties and employees involved here.

[10] Transit Group, Inc. (Transit Group), a corporation with a principal place of business in Gaithersburg, Maryland, has been engaged in the business of providing transportation services of passengers. In conducting its operations during the 12-month period ending February 28, 2025, Transit Group provided services valued in excess of $50,000 directly to customers outside the State of Maryland.

Extrapolating the information provided in 05-RC-225000, I find the following: Challenger Transportation, Inc. (Challenger), a corporation with a principal place of business in Gaithersburg, Maryland, has been engaged in the business of providing transportation services of passengers. In conducting its operations during the 12-month period ending February 28, 2025, Challenger provided services valued in excess of $50,000 directly to customers outside the State of Maryland.

(3) Amendment of the Certification of Representative issued in Case 05-RC-225000

is not appropriate.

ORDER

The petition is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review*: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on April 7, 2025**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on April 7, 2025.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated at Baltimore, Maryland this 24th day of March 2025.

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Regional Director
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