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Transdev Services, Inc. and Amalgamated Transit Union Local 1764 A/W Amalgamated Transit Union, AFL-CIO, CLC. Case 05-CA-352917

February 10, 2026

DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

This is a refusal-to-bargain case in which Transdev Services, Inc. (the Respondent) is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 17, 2024, by the Amalgamated Transit Union Local 1764 a/w Amalgamated Transit Union, AFL-CIO CLC (the Union), the General Counsel issued a complaint on November 25, 2024, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 05-RC-303421. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and

¹ On February 3, 2025, President Trump appointed William B. Cowen Acting General Counsel.

² In its answer to the complaint the Respondent denies the paragraphs alleging that the Union has been the unit employees' exclusive collective-bargaining representative (par. 5(g)); that it unlawfully refused to bargain with the Union (par. 6(b)); that it has violated the Act (par. 7); and that its unfair labor practices affect commerce (par. 8). In addition, it advances various affirmative defenses attesting to the lawfulness of its conduct (fourth, fifth, and thirteenth affirmative defenses), asserting that the Union is not entitled to relief (third affirmative defense), and advancing various claims raised in the representation proceeding (sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth affirmative defenses). In its response to the Notice to Show Cause, it continues to argue that the certified bargaining unit includes statutory supervisors. All representation issues were fully litigated and resolved in the underlying representation proceeding; thus, we conclude that the Respondent's denials and affirmative defenses do not raise any issues warranting a hearing. Further, by letter dated October 17, 2024, the Respondent informed the Union of its refusal to bargain as a means of testing the Union's certification. The General Counsel attached this letter to her Motion for Summary Judgment and the Respondent does not dispute its authenticity. Based on this admission, we find that the Respondent has failed and refused to recognize and bargain with the Union, notwithstanding its assertions otherwise. *Biewer Wisconsin Sawmill*, 306 NLRB 732, 732 (1992).

The Respondent's answer also advances additional affirmative defenses, including that the complaint fails to state a claim (first affirmative defense); the complaint lacks factual specificity (second affirmative defense); and laches (nineteenth affirmative defense). Further, its affirmative defenses assert that the Board members and the Board's administrative law judges are unconstitutionally insulated from removal because the President does not have unfettered power to remove them, in violation of Article II of the Constitution and that it is entitled to a jury trial

under the Fifth and Seventh Amendments of the Constitution (fourteenth, fifteenth, sixteenth, seventeenth, and eighteenth affirmative defenses). For all but the removal claims, the Respondent has not offered any explanation or evidence to support its bare assertions. We therefore find them insufficient to warrant denial of the General Counsel's Motion for Summary Judgment. See, e.g., *Sysco Central California, Inc.*, 371 NLRB No. 95, slip op. at 1 fn. 1 (2022); *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1 fn. 1 (2018) (citing cases), enfd. sub nom. *Operating Engineers Local 501 v. NLRB*, 949 F.3d 477 (9th Cir. 2020).

Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses. On January 14, 2025, the General Counsel filed a Motion for Summary Judgment. On January 17, 2025, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 31, 2025, the Respondent filed a Response to Notice to Show Cause, and the Acting General Counsel¹ and the Union filed replies to the Respondent's response.

Ruling on Motion for Summary Judgment

The Respondent admits that it has refused to bargain but asserts that it has no duty to bargain and contests the validity of the Union's certification of representative based on its contention, raised and rejected in the underlying representation proceeding, that the certified bargaining unit includes statutory supervisors.²

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.³ The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it established any special circumstances

under the Fifth and Seventh Amendments of the Constitution (fourteenth, fifteenth, sixteenth, seventeenth, and eighteenth affirmative defenses). For all but the removal claims, the Respondent has not offered any explanation or evidence to support its bare assertions. We therefore find them insufficient to warrant denial of the General Counsel's Motion for Summary Judgment. See, e.g., *Sysco Central California, Inc.*, 371 NLRB No. 95, slip op. at 1 fn. 1 (2022); *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1 fn. 1 (2018) (citing cases), enfd. sub nom. *Operating Engineers Local 501 v. NLRB*, 949 F.3d 477 (9th Cir. 2020).

In addition, contrary to the Respondent's claim in its response to the Board's Notice to Show Cause, the underlying representation proceeding was before a Board Hearing Officer, not an administrative law judge. Further, there is no merit to the Respondent's claim that it is entitled to a trial by jury pursuant to the Seventh Amendment, as the Supreme Court has considered, and rejected, this contention. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48-49 (1937). Lastly, because there is no evidence that the Respondent suffered any harm from the Board members' or administrative law judges' removal protections, its Article II claims are denied. See *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1 fn. 4 (2023) (citing *Collins v. Yellen*, 594 U.S. 220, 257-258 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), revd. per curiam on other grounds, 598 U.S. 623 (2023)); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 148-149 (4th Cir. 2023) ("[R]egardless of how we answer the constitutional question presented by the removal provisions, we would be required to deny the petition because K & R has not asserted any harm resulting from the allegedly unconstitutional statutes[.]").

³ Members Murphy and Mayer did not participate in the prior representation proceeding. They agree, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment and deny the Respondent's request to dismiss the complaint.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Baltimore, Maryland, and has been engaged in the business of providing intrastate transportation to private and government clients.

In conducting its operations during the 12-month period ending October 31, 2024, the Respondent performed services valued in excess of \$50,000 in states other than the State of Maryland.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following a self-determination election held on May 18, 2023, in Case 05-RC-303421, the Regional Director issued a Certification of Representative on May 26, 2023, certifying the Union as the exclusive collective-bargaining representative of "[a]ll full-time and regular part-time customer service representatives, dispatchers, and schedulers employed by the Employer at its facility currently located at 1601 Wicomico Street, Baltimore, Maryland" as part of the existing unit of road supervisors, safety trainers, ready desk clerks, quality assurance employees, schedule analysts, and starter employees already represented by the Union.

On September 30, 2024, the Board issued a Decision on Review and Order. The Board found that the Employer had not met its burden of establishing the supervisory status of three "operations supervisors" and concluded that the Regional Director had therefore incorrectly excluded them from the petitioned-for voting group. Consistent

with the Board majority's directive, on remand, the Regional Director on October 2, 2024, issued a Revised Certification of Representative including the operations supervisors in the existing unit.

Based on the certification, the following employees of the Respondent, as part of the existing unit of road supervisors, safety trainers, ready desk clerks, quality assurance employees, schedule analysts, and starter employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time customer service representatives, dispatchers, schedulers, and operations supervisors employed by the Employer at its facility currently located at 1601 Wicomico Street, Baltimore, Maryland.

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

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

At all material times, Arlette Whitley has held the position of the Respondent's General Manager and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

About October 4, 2024, the Union, by email, requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit. About October 17, 2024, the Respondent, by letter, refused to recognize and bargain with the Union, stating that it would test the Union's certification. Since about October 17, 2024, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about October 17, 2024, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in

⁴ The Respondent has filed various pleadings based on President Trump's January 27, 2025 removal of Member Wilcox from her position as Board Member and the Board's resulting loss of a quorum. The Board currently has a quorum. Accordingly, we deny as moot, the Respondent's claim, in response to the Board's Notice to Show Cause, that the Board cannot act on the Motion for Summary Judgment. We also deny

as moot the Respondent's pending motion for a stay based on the Board's lack of quorum. Lastly, we grant the Respondent's motion for leave to amend its answer to the complaint to add a lack-of-quorum affirmative defense. However, we find that affirmative defense does not preclude summary judgment, given the Board currently has the requisite three-member quorum.

the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.⁵

ORDER

The National Labor Relations Board orders that the Respondent, Transdev Services, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the Amalgamated Transit Union Local 1764 a/w Amalgamated Transit Union, AFL-CIO CLC (the Union) as the exclusive collective-bargaining representative of all full-time and regular part-time customer service representatives, dispatchers, schedulers, and operations supervisors employed by the Employer at its facility currently located at 1601 Wicomico Street, Baltimore, Maryland, as part of the existing bargaining unit of road supervisors, safety trainers, ready desk clerks, quality assurance employees, schedule analysts, and starter employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the following group of employees, as part of the existing unit of road supervisors, safety trainers, ready desk clerks, quality assurance employees, schedule analysts, and starter employees at the Respondent's Baltimore facility, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time customer service representatives, dispatchers, schedulers, and operations supervisors employed by the Employer at its facility currently located at 1601 Wicomico Street, Baltimore, Maryland.

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

(b) Within 14 days of service by the Region, post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 17, 2024.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 10, 2026

David M. Prouty, Member

James R. Murphy, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁵ The General Counsel requests that the Board extend the certification year pursuant to the Board's decision in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *Winkie Mfg. Co.*, 338 NLRB 787, 788 fn. 3 (2003), aff'd, 348 F.3d 254, 254 (7th Cir. 2003); *White Cap, Inc.*, 323 NLRB 477, 478 fn.3 (1997) (citing cases).

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
 NOTICE TO EMPLOYEES
 POSTED BY ORDER OF THE
 NATIONAL LABOR RELATIONS BOARD
 An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the Amalgamated Transit Union Local 1764 a/w Amalgamated Transit Union, AFL-CIO CLC (the Union) as the exclusive collective-bargaining representative of all full-time and regular part-time customer service representatives, dispatchers, schedulers, and operations supervisors employed by us at our facility currently located at 1601 Wicomico Street, Baltimore, Maryland, as part of the existing bargaining unit of road supervisors, safety trainers, ready desk clerks, quality assurance employees, schedule analysts, and starter employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the following group of employees, as part of the existing unit of road supervisors, safety trainers, ready desk clerks, quality assurance employees, schedule analysts, and starter employees at our Baltimore facility, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time customer service representatives, dispatchers, schedulers, and operations supervisors employed by the Employer at its facility currently located at 1601 Wicomico Street, Baltimore, Maryland.

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

TRANSDEV SERVICES, INC.

The Board's decision can be found at www.nlr.gov/case/05-CA-352917 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

