

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

**Carrier Coach, Inc.,**

Employer

and

**Case 3-RC-11763**

**Amalgamated Transit Union,  
Local 1625<sup>1</sup>**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

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

The parties stipulated that Carrier Coach, Inc. (hereinafter the Employer) is a New York State corporation, with its main facility located in Gowanda, New York and other facilities located at 2323 Niagara Falls Boulevard, Niagara Falls, New York (hereinafter the Niagara Falls dispatch facility) and 4740 Genesee Street, Cheektowaga, New York (hereinafter the Buffalo

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<sup>1</sup> Although Amalgamated Transit Union, Local 1625 is the Petitioner herein, various formal documents inadvertently list the United Food and Commercial Workers International Union, Local 1, AFL-CIO, LLC or Robert P. Leo as the Petitioner. The transcript of the proceedings herein also incorrectly states the name of the Petitioner. The transcript and formal documents are hereby amended to reflect Amalgamated Transit Union, Local 1625 as the Petitioner.

dispatch facility). The Employer provides transportation services. During the past twelve months, the Employer derived gross revenues in excess of \$250,000 and purchased and received at its New York facilities goods, valued in excess of \$10,000, directly from points outside the State of New York. Based on the parties' stipulation<sup>2</sup> and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

The parties stipulated, and I find, that Amalgamated Transit Union, Local 1625 (hereinafter the Petitioner) is a labor organization within the meaning of Section 2(5) of the Act.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The petition, filed on June 12, 2007, seeks a bargaining unit of all drivers, monitors and dispatchers located at the Employer's Niagara Falls dispatch facility. At issue is whether the unit sought by Petitioner constitutes an appropriate bargaining unit. The Employer contends, contrary to the Petitioner, that the unit sought does not constitute an appropriate bargaining unit because the only appropriate unit would encompass the employees at the Niagara Falls dispatch facility as well as the employees at the Buffalo dispatch facility. The employees at the Buffalo dispatch facility are represented by the United Food and Commercial Workers International Union (hereinafter UFCW), Local 1.<sup>3</sup>

The parties agreed that any unit found appropriate would include drivers and monitors, but would exclude dispatchers on the basis that dispatchers are supervisors within the meaning of Section 2(11) of the Act.

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<sup>2</sup> I hereby take administrative notice that a post-hearing stipulation was entered into by the parties in order to correct their commerce stipulation set forth in Board Exhibit 2. The record is hereby re-opened solely for the purpose of receiving this stipulation as Board Exhibit 3.

<sup>3</sup> UFCW, Local 1 was notified of the petition and this hearing and was given the opportunity intervene but failed to do so.

## **Facts**

The Employer provides transportation services primarily to handicapped and disabled adults and children located in the seven counties of Western New York. In addition, the Employer provides transportation services for the Lancaster and Olean, New York school districts.

The Employer has two operational units. One unit is referred to by the Employer as “Northern” (hereinafter North), which consists of the Buffalo and Niagara Falls dispatch facilities. These two facilities are located approximately 21 miles apart. The Niagara Falls dispatch facility was acquired by the Employer in March 2004 from Opportunities Unlimited. The other operational unit is referred to by the Employer as “Southern” (hereinafter South), which consists of dispatch facilities located in Gowanda, Olean and Jamestown, New York.<sup>4</sup> The Employer’s corporate headquarters are located at the Gowanda, New York dispatch facility.

The Buffalo dispatch facility was organized by UFCW, Local 1 in or about 1990. The current collective-bargaining agreement between UFCW, Local 1 and the Employer, which expires on August 17, 2007,<sup>5</sup> covers the drivers and monitors dispatched from the Buffalo dispatch facility. There is no history of collective-bargaining involving the drivers and monitors dispatched from the Niagara Falls dispatch facility.

The Employer employs an Operations Manager for each of the North and South operations. The Operations Manager is responsible for overall operations within his operational

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<sup>4</sup> The record does not establish whether the employees at these facilities are represented by UFCW, Local 1 or any other labor organization. However, no party is asserting that the appropriate unit herein should include any of the South dispatch facilities.

<sup>5</sup> The Employer’s brief indicates that the collective-bargaining agreement between the parties encompasses the period between August 18, 2004 and August 18, 2007. The record merely states that the agreement expires on August 17, 2007. A copy of the collective-bargaining agreement was not proffered as an exhibit at the hearing. The record does not contain any evidence regarding the agreement’s recognition clause or any evidence as to whether the agreement contains an after-acquired clause. Any dates or information related to the collective-bargaining agreement in this decision are in the record through witness testimony.

unit, and has no responsibilities related to the other operational unit. North's Operations Manager is currently Leamon Turner. South's Operations Manager is currently Scott Howard. The record reflects that within North, Turner is responsible for reassigning routes, drivers and dispatchers from one dispatch facility to another as needed.

At each dispatch facility, the Employer employs dispatchers who serve as first-line supervisors. Dispatchers are responsible for the drivers and monitors operating out of their designated dispatch facility. Dispatchers' primary duty is to provide those drivers and monitors with a daily schedule. Dispatchers assign routes to drivers and alter routes based on customer need. Dispatchers are responsible for scheduling replacements for drivers that are ill or taking a scheduled day off. Dispatchers assign vehicles to drivers on a daily basis. Throughout the day, dispatchers monitor the location and progress of the drivers.

The Employer, through advertisements, requests that applicants for available driver positions at either the Buffalo or Niagara Falls dispatch facilities, submit their applications to the Buffalo dispatch facility. The record reflects that dispatchers at both the Buffalo and Niagara Falls dispatch facilities are responsible for interviewing and hiring applicants at their respective facilities. The record further reflects that Turner "signs off" on the dispatchers' hiring decisions.<sup>6</sup> Dispatchers are responsible for disciplining the drivers and monitors at each facility.

The Employer's witness testified that there are currently two dispatchers working at the Niagara Falls dispatch facility and two dispatchers working at the Buffalo dispatch facility. The Employer claims that Buffalo dispatchers cover for Niagara Falls dispatchers on a regular basis. Testimony in the record indicates this occurs when a Niagara Falls dispatcher either calls in sick or is on vacation. When reassigned to the Niagara Falls dispatch facility, the Buffalo dispatchers supervise Niagara Falls employees. The record contains no evidence that a Buffalo dispatcher

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<sup>6</sup> The record does not establish what, if any, other involvement Turner has in the hiring process.

retains any supervisory authority over Buffalo employees while temporarily assigned to the Niagara Falls dispatch facility. The record fails to reflect how often these dispatcher reassignments actually occur and also fails to establish their duration.

The Employer employs drivers to operate vehicles to transport its customers. Each driver is assigned to a particular dispatch facility, and reports to the dispatchers employed at that dispatch facility. The record reflects that each driver is assigned to a particular route. The record fails to reflect how many routes are dispatched out of either the Niagara Falls or Buffalo dispatch facilities. The Employer also employs monitors to assist in the loading and unloading of passengers. Not all vehicles operated by the Employer have monitors. The customer's needs determine whether or not a monitor is used on a particular run. The Employer employs approximately 80 drivers and 50 monitors at the Buffalo dispatch facility, and approximately 35 drivers and monitors at the Niagara Falls dispatch facility. Although the drivers and monitors dispatched from the Buffalo facility are represented by UFCW, Local 1, and are covered by a collective-bargaining agreement, and the drivers and monitors dispatched from Niagara Falls facility are unrepresented, all drivers dispatched from the Niagara Falls and Buffalo dispatch facilities generally receive the same pay and benefits,<sup>7</sup> and are subject to the same holiday, bereavement leave, military leave and vacation leave policies. Drivers at both locations are required to wear the same uniform, and the uniforms do not distinguish a driver's dispatch facility.<sup>8</sup>

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<sup>7</sup> Drivers dispatched from the Buffalo facility operating buses as part of school district contracts receive higher pay because of the contract between the Employer and the school district. The record does not reflect how many Buffalo drivers are assigned to school district routes. The record clearly states that there are no school district routes dispatched out of the Niagara Falls dispatch facility.

<sup>8</sup> There is no discussion on the record regarding whether the Employer's personnel policies which apply to North employees also apply to South employees.

While each driver is assigned to a particular facility, the record establishes that drivers, for various reasons, may be permanently or temporarily reassigned to another facility within the operational unit. Drivers assigned to the Buffalo dispatch facility are sometimes temporarily reassigned to the Niagara Falls dispatch facility to cover for another driver that may be sick or on vacation, but the record clearly reflects that the drivers in Niagara Falls have never been temporarily reassigned to the Buffalo dispatch facility, because there is never a shortage of Buffalo drivers.<sup>9</sup> In those instances when Buffalo drivers are temporarily reassigned, they report to dispatchers at the Niagara Falls dispatch facility. The record is unclear as to how often these temporary reassignments occur. The Employer, as part of Employer's Exhibit Two, provides a list of six Buffalo drivers and dispatchers that have worked at the Niagara Falls dispatch facility. The exhibit does not indicate when, under what circumstances, or for how long these employees worked in Niagara Falls. Moreover, this exhibit does not indicate if these were temporary or permanent reassignments. The document was admitted into evidence through the testimony of Employer's Chief Financial Officer Holly Miller. Velda Knox, a dispatcher, prepared the document but did not testify at the hearing. A review of this document indicates that various routes were transferred between the Niagara Falls and Buffalo facilities. However, the document does not reflect when the routes were transferred, whether the transfer was temporary or permanent, or the duration of the transfer. In addition, Leamon Turner testified that although Exhibit Two listed a number of routes that were transferred, on only one occasion did a driver actually transfer with that route. At various points within the record, the Employer's witness claims that reassignments occur on a daily basis but no detailed information is provided about those reassignments. At another point in the record, the Employer's witness claims that only one

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<sup>9</sup> It should be noted that dispatchers are also sometimes used as temporary replacements for sick or vacationing drivers.

driver per week is affected by such a reassignment. The record provides no details of any named driver (not dispatcher) who has worked on a temporary basis in Niagara Falls while being permanently assigned to the Buffalo dispatch facility. Rather, specific examples were provided of three drivers who were permanently transferred.

Employer Exhibit Two lists only six Buffalo employees who have worked out of the Niagara Falls dispatch facility. Of those employees, three were dispatchers, who the parties stipulated are supervisors. From the testimony regarding Exhibit Two and on the issue of temporary transfers, it appears that although only six employees are listed as having worked in Niagara Falls, employees may have been more frequently affected by temporary reassignments. However, it is unclear how many drivers have ever been reassigned, the duration of such reassignments and the percentage of drivers and routes reassigned.

The record reflects that routes may be permanently reassigned from one facility to another based on customer need. When this occurs the drivers have the option of continuing to cover the modified route from the new dispatch facility, or being reassigned to a different route. Drivers opting to remain on a changed route remain reassigned to a different facility until such time as customers' needs necessitate that route being reassigned to another facility. When a driver is permanently reassigned to a different facility, the driver reports to the dispatcher at that facility.

As noted above, the Employer, as part of Employer Exhibit Two, provided a list of routes that have been reassigned between the Buffalo and Niagara Falls dispatch facilities. The document also lists a driver's name along with each route, although neither the document nor the record indicates whether that individual currently drives the route or whether that individual was merely the driver of the route at the time it was transferred. As noted above, the record does

provide some concrete examples of permanent reassignments, but fails to place those examples in context by providing either the total number or percentage of routes or drivers affected by permanent reassignments.

### **Analysis**

A petitioned-for unit need only be an appropriate unit for collective-bargaining purposes, not the most appropriate unit. Omni International Hotel, 283 NLRB 475 (1987). 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). The party opposing the single-facility unit has the burden of presenting sufficient evidence to rebut it. Id. at 429. To determine whether the presumption has been rebutted, the Board considers such factors 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. New Britain Transportation Co., 330 NLRB 397 (1999); J&L Plate, Inc., *supra*; Bowie Hall Trucking, 290 NLRB 41 (1988); D&L Transportation, Inc., 324 NLRB 160 (1997); Esco Corp., 298 NLRB 837, 839 (1990). It should be noted that the Board gives “considerable weight” to employee interchange. First Security Services Corp., 329 NLRB 235, 237 (1999). I will consider each of these factors in turn.

#### **A. Centralized Control and Local Autonomy**

In the instant case, the Employer does have some centralized control over personnel policies. The record reflects that Leamon Turner, North’s Operations Manager, oversees the dispatchers and drivers at both the Buffalo and Niagara Falls locations, and is responsible for reassigning drivers, dispatchers and routes between the Niagara Falls and Buffalo dispatch



facilities as needed. The record also reflects that the drivers dispatched from the Buffalo and Niagara Falls dispatch facilities receive the same pay and benefits,<sup>10</sup> and are subject to the same holiday, bereavement leave, military leave and vacation leave policies. In addition, all drivers are subject to the Employer's uniform policy. However, "[c]entralized control over personnel and labor relations policies, alone ... is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy." New Britain Transportation Co., 330 NLRB at 397 *citing* Carter Hawley Hale Stores, 273 NLRB 621, 623 (1984).

Local autonomy is best measured by the degree to which the employees are separately supervised and the amount of discretion given to on-site supervisors. *See generally* New Britain Transportation Co., *supra*; D&L Transportation, 324 NLRB at 161. While Respondent asserts that Operations Manager Turner is the daily hands-on supervisor at both the Buffalo and Niagara Falls dispatch facilities, the record establishes that it is the dispatchers at each site who exercise a substantial degree of control over daily operations at each dispatch facility. Dispatchers hire drivers, assign routes and vehicles to drivers, monitor drivers throughout the day, alter routes, perform scheduling, and are responsible for disciplining drivers. While the record does reflect that Turner has ultimate control over the overall operations of the Buffalo and Niagara Falls dispatch facilities, which includes reassignment of drivers and routes between facilities, it does not establish that Turner is involved in the daily supervision of drivers at each dispatch facility.

While it is clear that dispatchers provide the requisite supervision of drivers and monitors to support the single-facility presumption, it should also be noted that the record shows that Buffalo dispatchers do cover for Niagara Falls dispatchers when Niagara Falls dispatchers are sick or on vacation. The record further establishes that when this occurs, the Buffalo dispatchers

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<sup>10</sup> Unless the route is a school district route in the Buffalo dispatch area, whose drivers receive a higher pay rate than other drivers.

exercise supervisory control over Niagara Falls drivers and monitors. However, the record clearly illustrates that this only occurs when Niagara Falls dispatchers are absent from work. This occasional supervision of Niagara Falls employees by Buffalo supervisors does not establish common day-to-day supervision for Niagara Falls and Buffalo employees or warrant a finding of the lack of local autonomy necessary to overcome the single-facility presumption. *See generally Kroger Limited Partnership*, 348 NLRB No. 82, slip op. at 4 (2006). (“[T]he Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.”)

The Employer states that Employer’s Exhibit Three, an advertisement soliciting job applications for both the Niagara Falls and Buffalo dispatch facilities, illustrates the centralized control of the hiring process. The Employer asserts that the process is centralized because the advertisement requests all applicants to apply at the Buffalo dispatch facility regardless of whether they desire to be dispatched out of Buffalo or Niagara Falls. Notwithstanding the location to which applicants send their applications, the record clearly establishes that it is the dispatchers at each dispatch facility that perform all job interviews and make hiring decisions. While the record does indicate that Turner “signs off” on hiring decisions, there is no specific explanation as to Turner’s role in the hiring process.

Therefore, the record establishes, and I find, that each site possesses significant local autonomy.

## **B. Similarity of Skills, Functions and Working Conditions**

The record establishes that both the Buffalo and Niagara Falls dispatch facilities' drivers and monitors possess similar skill sets and perform similar functions. The record also reflects that routes dispatched out of each facility may venture into the other facility's territory. However, the record fails to establish exactly how many routes, or what percentage of routes, dispatched out of either dispatch facility, venture into territory also covered by the other dispatch facility. Moreover, there is no evidence of contact between the drivers from the different dispatch facilities as a result of overlapping routes, driver meetings or for any other purpose.

## **C. Degree of Employee Interchange**

The Employer has asserted that the interchange of routes and personnel between the Buffalo and Niagara Falls dispatch facilities is sufficient to rebut the single-facility unit presumption. The record provides no specific examples of temporary interchange, and establishes only three occasions of permanent interchange of drivers between the Buffalo and Niagara Falls dispatch facilities. The Board has consistently found that when analyzing the interchange between locations, permanent reassignment of employees to other locations is given less weight than the temporary reassignment of employees. *See Red Lobster*, 300 NLRB 908, 911 (1990); *Dean Transportation Inc.*, 350 NLRB No. 4 slip op. at 12 (2007) *citing* *Frontier Telephone of Rochester Corp.*, 344 NLRB No. 153. (2005).

The record also shows that while the Employer claims there are occurrences of temporary interchange involving drivers dispatched from the Buffalo dispatch facility to the Niagara Falls dispatch facility, the Employer's witness testified that drivers dispatched from the Niagara Falls dispatch facility are not temporarily reassigned to Buffalo because there is no shortage of Buffalo employees. A showing of interchange requires evidence of employees moving between one

facility and another, not merely evidence of employees moving from one facility to another. *See D&L Transportation*, 324 NLRB at 161. The Employer's Exhibit Two, submitted to buttress its claim of substantial temporary interchange of drivers between Buffalo and Niagara Falls, fails to do so. The document does not establish whether the route transfers were temporary or permanent, their duration or whether they also involved the transfer of employees. Given that the exhibit lists only six Buffalo drivers out of eighty who have worked at the Niagara Falls dispatch facility, Employer's Exhibit Two does not establish evidence of driver interchange between the two facilities.

The Employer has also failed to establish the context of any interchange within the Employer's overall operation. "The presumption [of a single-facility unit] has not been rebutted where an employer's interchange data is represented in aggregate form rather than as a percentage of total employees." *New Britain Transportation Co.*, 330 NLRB at 398 *citing Dunbar Armored, Inc. v. NLRB*, 186 F.3d 844, 849 fn. 5 (7<sup>th</sup> Cir. 1999). The evidence provided in the record merely shows that three drivers have, at some point, been permanently reassigned. There is no evidence regarding the total number or the percentage of runs or drivers affected by reassignment on a temporary or permanent basis. While Exhibit Two lists nine transferred runs and names the drivers associated with those runs, it does not establish that the drivers named were reassigned along with these runs or what percentage of North's runs or drivers were affected by these reassignments. In short, the record is completely devoid of any statistical representation regarding the amount of employee interchange between the Buffalo and Niagara Falls dispatch facilities.

The record further establishes that if a route is moved to a different dispatch facility, the driver assigned to that route is not required to stay with that route. Therefore, any permanent

driver interchange is voluntary. Voluntary interchange is given less weight than involuntary transfers in determining if employees from different locations should be included in the same bargaining unit. D&L Transportation, Inc., 324 NLRB at 162 fn. 7; New Britain Transportation Co., 330 NLRB at 398.

The Employer further contends, both through testimony and in Employer Exhibit Two, that it is common practice for dispatchers from the Buffalo dispatch facility to be temporarily reassigned to the Niagara Falls dispatch facility to cover for absent dispatchers. Dispatchers are supervisors, and a finding of supervisory interchange does not rebut the single-facility presumption. Further, as previously mentioned, these temporary reassignments do not establish common day-to-day supervision.

Based on the facts in the record, I find that there is insufficient evidence of interchange between the Buffalo and Niagara Falls dispatch facilities on either a permanent or temporary basis to overcome the presumption that the single-facility unit is appropriate.

#### **D. Geographic Proximity**

The record establishes that the Buffalo and Niagara Falls dispatch facilities are located approximately 21 miles apart. The Board has held that a 6 mile distance between locations does not, by itself, weigh in favor of a multi-facility unit. See New Britain Transportation Co., 330 NLRB at 397; see also Super Value Stores, 283 NLRB 134 (1987)(where the Board held that a 10-12 mile distance between locations did not favor a finding of a multi-facility unit). Geographic separation of facilities “gains significance where there are other factors supporting a single-facility unit.” New Britain Transportation Co., 330 NLRB at 398 citing Bowie Hall Trucking, 290 NLRB at 43. In the instant case, other factors, such as the lack of employee interchange and the local autonomy given dispatchers at each facility weigh in favor of a single-

facility unit. Therefore, I find that the geographic proximity between the two sites does not favor a multi-facility unit.

### **E. Bargaining History**

The Employer and the Petitioner do not have a bargaining history pertaining to drivers and monitors employed by the Employer at either the Buffalo or Niagara Falls dispatch facilities. Employees at the Buffalo facility are represented by UFCW Local 1. There is no history of collective bargaining at the Niagara Falls dispatch facility. UFCW, Local 1 has not sought to represent these employees or to intervene in this proceeding. Thus, there is currently no union that is seeking to represent a broader unit consisting of employees at both the Buffalo and Niagara Falls facilities.

### **Conclusion**

Based on the above, I find that the Employer has failed to rebut the presumption that the petitioned-for single-facility unit consisting of the drivers and monitors dispatched from the Niagara Falls dispatch facility is an appropriate unit. The unit sought is an appropriate unit. Therefore, I shall direct an election for the drivers and monitors dispatched from the Niagara Falls dispatch facility.

Accordingly, I find that the following employees constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act<sup>11</sup>:

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<sup>11</sup> If I were to adopt the Employer's position that a unit consisting of the drivers and monitors from both the Buffalo and Niagara Falls dispatch facilities is the only appropriate unit herein, that would require me to find that the Niagara Falls dispatch facility employees may never vote regarding their representational interests. Rather, I would have to find appropriate an accretion of the Niagara Falls employees into the unit of Buffalo dispatch facility employees represented by UFCW, Local 1, or the Niagara Falls employees would never be entitled to union representation if they desired it because they would not constitute a separate appropriate unit. No party to this case seeks an accretion finding. UFCW, Local 1, the union which represents the Buffalo employees, the unit to which Niagara Falls employees would be accreted, has never sought to represent the Buffalo dispatch facility employees. Thus, I make no finding regarding the appropriateness of an accretion of the Niagara Falls employees into the Buffalo dispatch facility bargaining unit.

All full-time and regular part-time drivers and monitors employed by the Employer and dispatched from the Niagara Falls dispatch facility located at 2393 Niagara Falls Boulevard, Niagara Falls, New York; excluding all office clerical employees, supervisors (including the site supervisor) as defined in the Act, and all non-guard employees.

There are approximately 35 employees in the unit herein found appropriate.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Amalgamated Transit Union, Local 1625. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that 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 as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure 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 list of voters and their addresses, which may be used to communicate with them. 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, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **July 27, 2007**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website [www.nlr.gov](http://www.nlr.gov),<sup>12</sup> by mail, by hand or courier delivery, or by

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<sup>12</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts



facsimile transmission at (716) 551-4972. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed.

Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

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the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

## **RIGHT TO REQUEST REVIEW**

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, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT August 3, 2007. The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>13</sup> but may not be filed by facsimile.

**DATED** at Buffalo, New York this 20<sup>th</sup> day of July 2007.

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**HELEN MARSH**, Regional Director  
National Labor Relations Board  
Region Three  
130 South Elmwood Ave., Suite 630  
Buffalo, New York 14202

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<sup>13</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).