

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

TOWNE BUS LLC

Employer

And

Case No. 29-RC-11389

LOCAL 854, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner ¹

TOWNE BUS LLC

And

Case No. 29-RC-11390

AMALGAMATED TRANSIT UNION
LOCAL 1181-1061, AFL-CIO

Petitioner ²

REPORT ON OBJECTIONS AND NOTICE OF HEARING

Upon a petition filed on October 27, 2006,³ by Amalgamated Transit Union Local 1181-1061, AFL-CIO, herein called Petitioner 1181, and pursuant to a Stipulated Election Agreement executed by Petitioner 1181, International Brotherhood of Teamsters, Local 854, herein called Petitioner 854, and Towne Bus LLC, herein called the Employer, and approved by the undersigned Regional Director on November 9, an

¹ Petitioner Local 854 did not file objections to the election conducted December 12, 2006.

² Petitioner Local 1181 and Petitioner Local 854 filed Petitions for Representation with the requisite showings of interest on the same date, October 27, 2006. Accordingly, a Stipulated Election Agreement was reached with all three parties, and one election was conducted.

³ All dates hereinafter are in 2006 unless otherwise indicated.

election by secret ballot was conducted on December 8, among the employees in the following unit:

All full-time and regular part-time drivers and escorts employed by Towne Bus LLC at its facility located at 825 Waverly Avenue, Holtsville, New York; excluding all drivers and escorts not employed by Towne Bus LLC who work out of the 825 Waverly Avenue facility under school transportation contracts involving business entities other than Towne Bus LLC, and who are already represented by Local 1181-1061, Amalgamated Transit Union, AFL-CIO, mechanics, dispatchers, office clerical employees, guards, and supervisors as defined in Section 2(11) of the Act.

The Tally of Ballots immediately made available to the parties at the conclusion of the election pursuant to the Board's Rules and Regulations showed the following results:

Approximate number of eligible voters.	137
Number of void ballots.	0
Number of votes cast for Local 1181-1061, ATU	5
Number of votes cast for Local 854, IBT	36
Number of votes cast against participating labor organization(s)	80
Number of valid votes counted.	121
Number of challenged ballots.	6
Number of valid votes counted plus challenged ballots.	127

Challenges are not sufficient in number to affect the results of the election.
A majority of the valid votes counted plus challenged ballots has not been cast for either Petitioners 1181 or 854.

Thereafter, on December 12, the Petitioner 1181 filed timely objections to conduct affecting the results of the election. Petitioner 1181's objections allege, verbatim, the following:

1. Prior to the December 8, 2006 election, the Employer promised its unit employees that it would adjust grievances to their satisfaction if they voted against the Union.

2. Prior to the December 8, 2006 election, the Employer promised its unit employees benefits in order to induce them to abandon their support for the Union.
3. On December 1, 2006, just prior to the December 8, 2006 election, the Employer distributed to its unit employees a document entitled the "Waverly Avenue Employee Manual". In distributing this document, the Employer represented to the employees that it was the Waverly Avenue Policy and Procedures Pamphlet. This document, except for deletion of any reference to the Union, certain union required provisions, and other union related activities, mimics the collective bargaining agreement ("Agreement") between the Union and the Employer's affiliated companies. This Agreement covers the employees employed at the affiliated companies' facilities. The Employer distributed the "Employee Manual" to its unit employees in order to induce them to abandon their support for the Union.
4. Prior to the December 8, 2006 election, the Employer, by and through its representatives, agents and employees, distributed to its unit employees an undated letter addressed "To Our Fellow Employees". This letter, among other things, makes reference to the Waverly Avenue Policy and Procedures Pamphlet, and states that "[T]he company has followed the policy of local (sic) 1181 and treated us all equally without us having to pay union dues". The Employer distributed the "Employee Manual" to its unit employees in order to induce them to abandon their support for the Union.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned objections during which the parties were afforded full opportunity to submit evidence bearing on the issues. The undersigned also caused an independent investigation to be conducted. The investigation revealed the following:

The Employer, with its principal office and place of business located at 75 Commercial Street, Plainview, New York, and another facility located at 825 Waverly

Avenue, Holtsville, New York, is engaged in the transportation of public school students under contract with public school districts located within Suffolk County, New York.

THE OBJECTIONS

Objection No. 1:

In this objection, Petitioner 1181 asserts that during the critical period, the Employer promised unit employees that it would adjust their grievances to their satisfaction if they voted against Petitioner 1181. The Employer and Petitioner 854 took no position regarding this objection.

In support of this objection, Petitioner 1181 submitted an offer of proof which consists of a document, a letter entitled, "To Our Fellow Employees," written by an unknown author. A copy of this letter is attached as Exhibit A. Petitioner 1181 contends that the last paragraph of this letter describes the Employer's offer to meet with an employee committee after the election to adjust grievances. For the reasons noted herein, I direct a hearing be held on this objection.

To overturn a Board-supervised election, a party must present "specific evidence of specific events from or about specific people" to support its allegations. See, *Boston Insulated Wire & Cable*, 703 F.2d 876, 880 (5th Cir. 1983) (quoting *NLRB v. Douglas County Electric Membership Corp.*, 358 F.2d 125, 130 (5th Cir. 1966), enforcing a bargaining order issued pursuant to certification of representative in 259 NLRB 1118 (1982)). Further, the Board requires a specific showing that the conduct occurred during the critical period between the filing of the petition and the election date. *Accubuilt, Inc.*, 340 NLRB 1337 (2003); *Dollar Rent-A-Car*, 314 NLRB 1089 fn. 4 (1994). Thus,

evidence sufficient to present a *prima facie* case must include a summary of the evidence and names of the witnesses who will testify as to the facts alleged. *The Daily Grind*, 337 NLRB 655 (2002), and *Heartland of Martinsburg*, 313 NLRB 655(1994). Allegations of “suspicious” circumstances are not probative and do not warrant a Board investigation. *Allen Tyler & Son, Inc.*, 234 NLRB 212, fn. 2 (1978). Nor is it enough for the objecting party’s evidence to merely imply or suggest that some form of prohibited conduct has occurred. *Cumberland Nursing & Convalescent Center*, 248 NLRB 322, 323 (1980).

While I find that this offer of proof was minimal, and that it does not provide specific names of witnesses who will testify that the alleged objectionable conduct occurred within the critical period, in my view, the better course is to set this objection for hearing based on the hearsay evidence contained in the document attributing to the Employer misconduct during the critical period. By doing so, the parties will be afforded the chance to present direct evidence on the issue, pursuant to subpoena, if necessary. In this regard, I note that the Board will commit the resources necessary to protect its election process, even where the nature of the evidence is hearsay. *The Holladay Corporation*, 266 NLRB 621 (1983). The conduct attributed to the Employer, soliciting employee grievances during an organizational campaign, and implicitly promising to correct them in order to influence how employees vote, if true, would warrant setting aside the election. See *Traction Wholesale Center Co.*, 328 NLRB 1058, citing *Reliance Electric Co.*, 191 NLRB 44, 46 (1971), *enfd.* 457 F.2d 503 (6th Cir. 1972).

Accordingly, I direct that Objection No. 1 be set for hearing.

Objections No. 2, 3 and 4:

In these objections, Petitioner 1181 essentially contends that during the critical period, the Employer promised and granted benefits to its unit employees in order to induce them to vote against Petitioner 1181. The Employer denies these allegations. Petitioner 854 took no position on these objections.

In support of these objections, Petitioner 1181 provided as its offer of proof the “Waverly Avenue Employee Manual,” which it asserts was distributed to employees during a meeting of employees conducted by the Employer on December 1, and the letter written by an anonymous author, attached as Exhibit A. I note that the manual is effective from July 1, 2004 to June 30, 2008. It is not objectionable for an Employer to choose to provide organized and non-organized employees with identical or similar wages and benefits, as long as it does not make changes to that effect during the critical period. See: *Allegheny Aggregates, Inc.*, 327 NLRB 658, 659 (1999), where announcement of show up pay policy during the critical period was not objectionable because it was not a new benefit. However, during the investigation the Employer was unable to confirm whether this document had been handed out to employees prior to December 1. Documents such as these, handed out during the critical period, which include changes or promises of benefits, have been found objectionable. In *Southgate Village, Inc.*, 319 NLRB 916, 925 (1995), the Board affirmed the administrative law judge’s finding that the timing of the distribution of a new employee manual four days before the election, which announced a few changes in benefits, was timed by the Employer “in order to heighten the impact of those benefits and thereby influence the outcome of the election.” See also *Sun Mart Foods*, 341 NLRB 161, 162 (2004), where

the Board “will infer that an announcement or grant of benefits during the critical period is objectionable; however, the employer may rebut the inference by establishing an explanation other than the pending election for the timing of the announcement or the bestowal of the benefit.” (citing *Star, Inc.*, 337 NLRB 962, 963 (2002)).

Accordingly, I direct that Petitioner 1181’s Objection Nos. 2, 3 and 4 be set for hearing regarding the timing of the release of the employee manual, whether the manual had been previously distributed, and whether it contains any promised changes in terms and conditions of employment.

SUMMARY AND RECOMMENDATIONS

In summary, I have directed that Objection Nos. 1, 2, 3, and 4 be heard before a duly designated hearing officer.

Accordingly, pursuant to the authority vested in the undersigned Regional Director by the National Labor Relations Board, herein called the Board,

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer with respect to the issues raised by Petitioner 1181’s Objections.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board, as to the issues raised. Within fourteen (14) days from the date of the issuance of such report, any party may file with the Board, an original and seven copies of Exceptions to the report, with supporting briefs, if desired. Immediately upon the filing of such Exceptions, the party filing the same shall serve a copy thereof, together

with a copy of any brief filed, upon the other parties. A statement of service shall be made to the Board simultaneously with the filing of Exceptions. If no Exceptions are filed thereto, the Board, upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record or make any other disposition of the case.

PLEASE TAKE NOTICE that at 9:30 a.m. on January 29, 2007, and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a Hearing Officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

In view of the Agency's emphasis on the expeditious resolution of questions concerning representation, the hearing in this matter has been scheduled at the earliest practical date. Please be further advised that requests for postponements of the hearing herein will not be granted, absent good cause, and that the hearing will be conducted on consecutive days until completed. Any postponement requests should be made in accordance with the attached Form NLRB 4669.

Dated at Brooklyn, New York this 18th day of January, 2007.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Fifth Floor
Brooklyn, New York 11201