

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20

USF REDDAWAY,

Employer  
and

WILL ANDERSON, An Individual

Petitioner  
and

Case 20-RD-2440

TEAMSTERS LOCAL 150,

Incumbent Union.

DECISION AND DIRECTION OF ELECTION

USF Reddaway, herein the Employer, is an interstate trucking company with an office and place of business in West Sacramento, California, and with facilities located throughout the United States. The instant decertification petition is filed in a unit comprised of all full-time and regular part-time drivers and dock workers employed by the Employer at its West Sacramento facility; excluding all other employees, guards and supervisors as defined by the Act. Teamsters Local 150, herein called the Union, contends that the petition should be dismissed because it is barred by the recognition bar doctrine; because the petitioned-for unit is not the recognized multi-location unit; and because the requisite showing of interest has not been made based on the larger multi-location unit.

There are approximately 37 employees in the petitioned-for unit and a much larger but unknown number of employees in the unit that the Union contends is the recognized unit.

For the reasons discussed below, I find that no recognition bar exists in this case; that the recognized unit is a unit limited to employees at the West Sacramento facility; and that the showing of interest in that unit is sufficient. Thus, I find that the appropriate unit is coextensive with the recognized unit, which is comprised of road drivers, city delivery drivers and dock employees employed only at the Employer's West Sacramento facility.

The Employer and Bestway. As discussed below, the record shows that the Employer is a successor company to USF Bestway, Inc. (Bestway), both of which are owned by parent company, YRC Worldwide. The Employer is a regional interstate trucking company, which prior to purchasing Bestway in approximately January 2007, had trucking operations in the Western United States. Prior to its purchase by the Employer, Bestway was an interstate trucking company with operations in several states, including Texas, Oklahoma, Mississippi, Arkansas, Louisiana, California, New Mexico and Arizona.

Bargaining History of the Employer's Predecessor Bestway. Included in the record are portions of a collective-bargaining agreement (the Bestway Agreement) effective from January 1, 2006, to December 31, 2010, between Bestway and Teamsters National Freight Industry Negotiating Committee (TNFINC) and local unions affiliated with the International Brotherhood of Teamsters (IBT), which had been certified or recognized by Bestway as the exclusive collective-bargaining representatives at Bestway facilities in the states of Texas, Oklahoma, Mississippi, Arkansas and Louisiana. The Bestway Agreement includes neutrality and card check recognition provisions, and a provision stating that the "employees, Unions and Employer covered under this Agreement shall constitute one (1) bargaining unit covering road and local operations or garage operations" of Bestway in the Bestway Agreement area, which is defined as Bestway's operations within the states of Texas, Oklahoma, Mississippi, Arkansas and

Louisiana. The Bestway Agreement also contains a section providing that the terms of the Bestway Agreement are binding upon any successor to the parties to that Agreement.

Also included in the record is a Memorandum of Understanding (MOA) between Bestway and TNFINC, signed June 16, 2006, effective for the same period as the Bestway Agreement. In the MOA, the parties agree that the card check and neutrality provisions of the Bestway Agreement are in full force and effect throughout Bestway's system-wide operations and not only within the Bestway Agreement Area. Union Business Agent and Freight Director Chris Folkman testified while the parties to the Bestway Agreement agreed to extend the card check recognition provisions of the Bestway Agreement to Bestway's operations in western states, including California, they did not agree to extend the other terms of the Bestway Agreement to such operations. Accordingly, in the summer of 2006, the affiliated unions of the IBT set about organizing Bestway facilities in California, New Mexico and Arizona, with the intention of negotiating a separate western regional contract with Bestway. Pursuant to the card check recognition provision contained in the above MOA, Bestway granted recognition to IBT locals at the following locations on the following dates: Local 386 at Modesto, California, on July 31, 2006; the Union at West Sacramento, California, on August 1, 2006; Local 70 at Oakland, California, on September 28, 2006; Local 104 at Phoenix, Arizona, on November 22, 2006; Local 492 at Albuquerque, New Mexico, on December 1, 2006; Local 63 at Los Angeles, California, on December 13, 2006; and Local 63 at Pomona, California, on February 1, 2007.

Bestway's recognition of the Union is contained in a letter dated August 1, 2006, in which Bestway recognized the Union as the representative for purposes of collective bargaining of "road drivers, city deliver[y] and dock employees only at the Company's Sacramento Facility located at 830 E. Street, West Sacramento, California 95605."

Folkman testified that bargaining with Bestway was initially postponed in order to allow other IBT-affiliated locals to organize and be recognized by Bestway at other facilities so that negotiations could be conducted on a regional basis. According to Folkman, negotiations were initially scheduled for October and November 2006, but Bestway cancelled these meetings. In about mid-November 2006, the Union was notified that Bestway was in financial trouble; that the parent company of both Bestway and the Employer would be holding a board of directors meeting in December 2006, to decide Bestway's fate; and that Bestway did not wish to bargain until the outcome of this meeting was known.

In approximately January 2007, the Employer purchased Bestway's assets and Bestway went out of business. The parties stipulated that the Employer hired a majority of Bestway's employees, continued Bestway's operations, and agreed to recognize the Union as the representative of Bestway's employees. At the time the Employer recognized the Union, the Employer already had an existing collective-bargaining agreement (the Northwest Agreement) with IBT-affiliated local unions covering employees at multiple Employer facilities in Oregon and Washington.

Folkman testified that representatives of the IBT-affiliated unions, including the Union, and the Employer held their first negotiating session on February 1, 2007. At that meeting, the Employer's Vice President of Labor, Tom Walters, stated that the Employer's preference was not to bargain separately with each individual IBT local and to negotiate a single collective-bargaining agreement that would serve as a template for any future facilities that would be covered by the agreement. According to Folkman, at the February 1 meeting, the Employer advanced a bargaining proposal based on the terms of the Bestway Agreement, and the Union advanced a proposal based on the terms of the Employer's Northwest Agreement. According to

Folkman, it was his understanding that the agreement reached will be a regional agreement that will cover all of the Employer's western operations not covered by the Northwest Agreement or by the Bestway Agreement. Specifically, Folkman testified that the new agreement will be a stand-alone agreement covering employees at facilities where IBT locals had been recognized by the Employer in California, Arizona, New Mexico, Nevada, Idaho and Utah.

The petition in the instant case was filed on February 21, 2007, seeking a decertification election only among employees at the West Sacramento facility.

The parties met again on March 7, 8 and 9, 2007. According to Folkman, at these sessions, the Employer adopted the Northwest Agreement as the basis for its contract proposals, which was the same as the Union's position. Folkman testified that the Northwest Agreement includes a provision for a single bargaining unit covering multiple facilities. However, the record does not include any portions of the Northwest Agreement. According to Folkman, at the March 7 meeting, tentative agreements were reached on several provisions, including on the scope of the agreement being comprised of all "road and local operations and garage operations of the Employer," except for those covered by other agreements or where a signatory union had not been recognized by the Employer or certified as the exclusive collective-bargaining representative. Folkman also testified that the parties reached agreement that the employees at all of these facilities would constitute a single bargaining unit. In addition, according to Folkman, the parties also reached a tentative agreement on a provision concerning the transfer of the Employer's title or assets. While the parties agreed on March 7 that Teamsters Locals 63, 70, 104, 150, 386 and 492, would be covered by the new agreement, they disputed whether Local 952, which claimed to represent employees at an Orange County, California Employer facility, should be included in the agreement. Folkman also testified that at the time of the hearing, IBT-

affiliated locals were still organizing additional facilities that the IBT and TNFINC would seek to include under a new agreement. At the time of the hearing, the parties disputed the terms of the card check neutrality provision. Lastly, Folkman testified as of the date of the hearing, the parties had not begun bargaining over wages and benefits. Nevertheless, Folkman testified that he anticipated completing negotiations within a week after the hearing in this case, which was held on March 12, 2007.

Analysis. The Union contends that the petition is barred by the application of the recognition bar doctrine; that the recognized unit is a multi-location unit and not a unit comprised of only the West Sacramento employees; and that the Petitioner has not made a sufficient showing of interest in the recognized multi-location unit. The Petitioner takes a contrary position and the Employer has expressed no position on these issues. For the reasons discussed below, I have decided that there is no recognition bar to the instant petition; that the appropriate unit is a unit limited to employees at the West Sacramento facility of the Employer; and that the showing of interest requirements have been satisfied.

The Board has held that “an incumbent union in a successorship situation is entitled to—and only to—a *rebuttable* presumption of continuing majority status, which will not serve as a bar to an otherwise valid decertification, rival union, or employer petition, or other valid challenge to the union's majority status.” *MV Transportation*, 337 NLRB 770 (2002).

In the instant case, it is undisputed that Bestway, by letter dated August 1, 2006, recognized the Union in a unit comprised of “road drivers, city deliver[y] and dock employees only at the Company’s Sacramento Facility located at 830 E. Street, West Sacramento, California 95605.” At the time Bestway was sold to the Employer, Bestway had no contract with the Union or the IBT-affiliated locals that covered the West Sacramento facility. It is stipulated that in

January 2007, the Employer purchased Bestway, continued Bestway's operations and hired a majority of Bestway's employees. Assuming *arguendo*, that the Employer was a legal successor to Bestway under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the Employer's legal obligation was to recognize the Union in the unit in which Bestway had recognized the Union, which was in the single-facility unit described above, based on a presumption of continued majority status. However, as held in *MV Transportation, supra*, the presumption of majority status is only a *rebuttable* presumption that cannot serve to bar a valid petition such as the decertification petition filed in the instant case. Accordingly, I find that there is no recognition bar.

In reaching this conclusion, I have considered the arguments made by the Union in reliance on *MGM Grand Hotel*, 329 NLRB 464 (1999), that an employer's voluntary recognition bars a decertification petition for a reasonable period of time. However, I do not find that *MGM* is applicable here, given that *MGM* did not involve a successor employer situation as does the instant case. Rather, I find that the instant case is controlled by *MV Transportation*.

The Union further contends that by virtue of its card check recognition agreement with Bestway, and its negotiations with the Employer, the West Sacramento unit became merged with other units that will be covered under the multi-location regional agreement currently being negotiated with the Employer. However, it is well-established that the Board will only find a merger in cases where there is "unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized or certified units." See *Utility Workers Union of America, AFL-CIO, (Ohio Power Company)*, 158 NLRB 994, 996 (1966). In determining whether there exists "unmistakable evidence" of the parties' mutual agreement to merge groups of employees into a single unit, the Board initially examines the language of the

parties' contractual recognition clause to determine the parties' intent. In cases where the language of the recognition clause clearly describes a merged unit, the Board has generally found that a merger has taken place. *The Green-Wood Cemetery*, 280 NLRB 1359 (1986); *Gibbs & Cox, Inc.*, 280 NLRB 953 (1986); *Armstrong Rubber Company*, 208 NLRB 513 (1974); *W.T. Grant Co.*, 179 NLRB 670, (1969). In cases where the recognition clause specifically refers to separate units or is ambiguous, the Board generally has not found that a merger has taken place absent other evidence establishing the parties' intent to merge existing units. See *Arrow Uniform Rental, supra*; *Sears Roebuck and Co.*, 253 NLRB 211 (1980); *Duval Corporation*, 234 NLRB 160 (1978); *Remington Office Machines*, 158 NLRB 994, 996 (1966); *Metropolitan Life Insurance Company*, 172 NLRB 1257 (1968). In addition, the Board also examines other factors to determine the parties' intent, such as whether bargaining was done jointly or separately by the parties to the agreement; the length of time that bargaining on a merged or non-merged basis has taken place; whether the agreement contains separate provisions for grievances, layoffs, seniority and wages and benefits; and whether ratification votes are pooled among the merged units. The Board also examines whether the merged unit is one which the Board would have certified in an initial unit determination by examining whether the merged unit contravenes Board policy and whether it is supported by traditional community of interest considerations. See *Arrow Uniform Rental, supra*; *Albertson's, Inc.*, 273 NLRB 286 (1984).

In the instant case, application of the above considerations to the facts herein does not support a finding that the West Sacramento unit has been merged into a larger multi-location unit. Thus, the Employer's predecessor Bestway granted recognition to the Union as the representative of the employees only at its West Sacramento facility. At the time the Employer purchased Bestway, no collective-bargaining agreement had been reached covering the West



Sacramento employees. As of the date of the filing of the petition in this case, no contract had been reached between the Employer and the Union covering the West Sacramento employees. Indeed, the parties had met on only one occasion to negotiate such an agreement. Folkman's testimony shows that the earliest point at which the Employer may arguably have recognized the Union in a larger merged unit was on March 7, which was a few weeks after the filing of the decertification petition herein. Further, Folkman's testimony shows that at the time of the hearing, the parties were still disputing which facilities would be covered under the agreement and the terms of a card check recognition and/or expedited election provision. The parties had not even reached the issue of wages and benefits. In such circumstances, I cannot find unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized West Sacramento unit prior to the filing of this petition.

It is well-established that units in decertification cases must generally be coextensive with the recognized unit. See *Arrow Uniform Rental*, 300 NLRB 246, 247 (1990); *Campbell Soup Co.*, 111 NLRB 234 (1955). Accordingly, I conclude that the unit of employees at the West Sacramento facility that was recognized by Bestway and by the Employer when it purchased Bestway is the recognized unit and the appropriate unit within which to conduct this decertification election.

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record, I conclude and find as follows:

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

2 The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.

4. 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.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time road drivers, city delivery drivers and dock employees employed at the Employer's Sacramento Facility located at 830 E. Street, West Sacramento, California 95605; excluding all other employees, guards and supervisors as defined in the Act.

### **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 Teamsters Local 150. 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 **March 30, 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>1</sup> by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of **two** 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.

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<sup>1</sup> To file the 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, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the election eligibility list, and clicks 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).

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 nonposting of the election notice.

### **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 by **April 6, 2007**. The request may be filed electronically through E-Gov on the Board's web site, [www.nlrb.gov](http://www.nlrb.gov),<sup>2</sup> but may not be filed by facsimile.

**DATED** at San Francisco, California, this 23<sup>rd</sup> day of March 2007.

*/s/ Joseph P. Norelli*

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Joseph P. Norelli, Regional Director  
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<sup>2</sup> Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.