STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: TEAMSTERS, WAREHOUSEMEN, GARAGE EMPLOYEES AND HELPERS UNION, LOCAL 839 Involving certain employees of: BEN FRANKLIN TRANSIT (Dial-A-Ride Service)	CASE NO. 5627-E-85-1013 DECISION NO. 2357 - PECB
In the matter of the petition of: AMALGAMATED TRANSIT UNION LOCAL 1599 For clarification of an existing bargaining unit of employees of: BEN FRANKLIN TRANSIT	CASE NO. 5741-C-85-286 FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

Hafer, Price, Rinehart and Schwerin, by Michael McGrorey, Attorney at Law, and M. Lee Price, Attorney at Law, appeared on behalf of Teamsters Local 839.

Frank and Rosen, by Jon Howard Rosen, Attorney at Law, appeared on behalf of Amalgamated Transit Union Local 1599.

Elofson, Vincent, Hurst, Crossland, Menke and Putney, by Anthony F. Menke, Attorney at Law, appeared on behalf of Ben Franklin Transit and Ben Franklin Dial-A-Ride.

On January 7, 1985, Teamsters Local 839 filed a letter request with the Public Employment Relations Commission seeking "a letter of certification" in a bargaining unit described in a certification of representative issued by the National Labor Relations Board on August 23, 1984. That request was

based on a claim that the operation had been transferred from private to public ownership. A case was docketed under Case No. 5627-E-85-1013, and a pre-hearing conference was held on March 5, 1985.

On March 22, 1985, Amalgamated Transit Union, Local 1599 filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, seeking to have the positions and employees involved in Case No. 5627-E-85-1013 accreted to an existing unit of coach operators employed by Ben Franklin Transit, for which it is the exclusive bargaining representative. That petition was docketed under Case No. 5741-C-85-286.

A consolidated hearing was held on May 9, 1985, before J. Martin Smith, Hearing Officer. Following the conclusion of the hearing, both Teamsters Local 839 and Amalgamated Transit Union Local 1599 filed post-hearing briefs to complete the record. The employer did not submit a post-hearing brief.

BACKGROUND

Ben Franklin Transit is a public transit benefit authority, a public employer which provides bus and van transportation services to citizens in the Tri-Cities area of Washington that includes Benton City, Richland, Pasco and Kennewick. In existence since 1981, Ben Franklin Transit operates wholly within the confines of Benton and Franklin Counties. Ben Franklin Transit has its main office and its main coach garage in Pasco. It has a satellite facility in Kennewick, Washington.

Since 1981, Ben Franklin Transit has operated up to 46 MCI and GMC transit coaches, which carry from 38 to 45 passengers each. Service is conducted along regular route patterns supplemented by commuter or "express" routes to points of high employment in the Tri-Cities area. These fixed routes are operated according to route service maps and schedules. The basic fare is $0.25 per adult passenger. For that service, the employer presently employs 85 full-time and part-time coach operators based at the Pasco facility.

The coach operators in the employer's transit operation organized their own association in 1982, and that organization was certified by the Public Employment Relations Commission as exclusive representative under Chapter 41.56 RCW. See: Ben Franklin Transit, Decision 1509 (1982). The employer and the independent organization negotiated a collective bargaining agreement which was effective from 1982 to July 31, 1984. On March 5, 1984, the ATU filed a petition with the Commission, seeking to represent the coach operators. Another organization intervened in the proceedings, and an election was conducted. The ATU was certified as exclusive bargaining representative on May 21, 1984, supplanting the Ben Franklin Coach Operators' Association. See: Ben Franklin Transit, Decision 1941 (PECB, 1984). The employer and the ATU thereafter reached agreement on a labor contract for the period July 1, 1984 through May 31, 1986.

A demand-responsive public transportation system, traditionally referred to as "Dial-A-Ride", is also available in the Tri-Cities area. This service uses vans and small bus vehicles to provide transportation for the elderly and the handicapped. Originally, the service was offered to the public by the American Red Cross and a sponsoring agency, the "Tri-Cities Residential Services" group. Richard Burnett was hired to direct this service, and a staff of drivers was hired. So far as it appears, the employees were not organized for the purposes of collective bargaining.

The Benton-Franklin Support Network, Inc. took over the Dial-A-Ride operation early in 1982. The Benton Franklin Support Network, Inc., was a private corporation which maintained its own board of directors from at least 1982 until January, 1985. Burnett continued to direct the operation. Several persons who had been drivers for the Red Cross continued driving vans for the successor agency. During the next three years, Benton-Franklin Support Network, Inc. expanded its fleet of vehicles and expanded its workforce to include 16 drivers. The vans and mini-busses were stored and maintained at a facility in Kennewick. Typically, Dial-A-Ride drivers reported to the dispatch station in Kennewick at 7:00 AM, where each driver inspected their assigned vehicle and began service prior to 7:30 AM. Some drivers had fixed,

daily routes to accomplish in the morning, such as transporting Head Start program youngsters, but the bulk of the drivers worked from daily dispatch sheets listing people who had called in for service. Passengers were picked up at their door, and drivers assisted elderly or disabled people in entering the vehicles. Hydraulic lift-gates were available on six of the vehicles to accept wheelchair passengers. A basic fare of $0.50 per trip was charged. The Dial-A-Ride service included returning passengers from their daily destinations, including grocery stores and medical facilities, to their homes or other points of origin. The dispatch schedules varied from day to day and were often altered by radio message. Drivers in the Dial-A-Ride program were given two manuals, one termed a "Bus Operator's Rules and Policy Manual", and the other entitled "Personnel Policies".

In January, 1983, Ben Franklin Transit entered into a contractual arrangement with Benton-Franklin Support Network, Inc., whereby the private corporation supplied Dial-A-Ride services to patrons within the Ben Franklin Transit service area. Richard Burnett remained as head of the Dial-A-Ride operation. The private corporation contributed its own three vehicles as well as the use of others which were on loan from other agencies. Ben Franklin Transit supplied the remainder of the mini-buses and vans. Dial-A-Ride was independently managed by the Benton-Franklin Support Network, Inc. and Burnett, although Ben Franklin Transit apparently supplied certain promotional and training functions.

On April 9, 1984, Teamsters Local 839 filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of full-time and regular part-time drivers employed by "Dial-A-Ride (Ben Franklin Transit)". That petition was docketed as Case No. 5197-E-84-929. Notice is taken of the records of the Public Employment Relations Commission in that case. A routine inquiry was directed to Burnett on April 12, 1984, seeking a list of employees and copies of any existing collective bargaining agreements. A response was received under date of April 16, 1984, written by Burnett on printed letterhead stating: "Ben Franklin Transit/Dial-A-Ride".

In that response, Burnett stated that the employees involved were employees of Benton Franklin Support Network, a private corporation, and asked that the Commission decline to assert jurisdiction in the matter.

On April 24, 1984, Amalgamated Transit Union both moved for intervention in Case No. 5197-E-84-929 and filed its own petition for investigation of a question concerning representation with the Commission, seeking certification as exclusive bargaining representative of "all operators that drive the specialized transportation vehicles that serve the disabled and elderly citizens" employed by "Ben Franklin Transit". The separate petition was docketed as Case No. 5215-E-84-939. Notice is also taken of the records of the Public Employment Relations Commission in that case. Another routine inquiry was directed to the employer on April 25, 1984, based on the petition filed by the ATU.

On April 27, 1984, the parties to both of the cases then pending were notified, by letter, that a hearing would be necessary to take evidence on which to base a ruling as to the jurisdiction of the Public Employment Relations Commission. The request for a list of employees was reiterated at the same time.

An April 30, 1984 letter directed by Burnett to the Commission in response to the April 25, 1984 request for a list of employees was written on the same letterhead as the April 16, 1984 letter mentioned above. Burnett again asserted that the employees were employed by a private entity, and that the Commission had no jurisdiction in the matter.

On May 7, 1984, Burnett directed a letter to the Commission under a typewritten heading stating: "Benton-Franklin Support Network, Inc./Dial-A-Ride", restating the claim that the Commission lacked jurisdiction but supplying a list containing the names of 16 Dial-A-Ride vehicle operators.

The cases were assigned to a member of the Commission staff and steps were taken to begin their processing, but the two unions involved jointly filed a letter with the Commission on June 25, 1984, asking that the proceedings before the Commission be held in abeyance pending a decision by the National Labor Relations Board (NLRB) as to its jurisdiction in the matter.

On September 7, 1984, Teamsters Local 839 filed a letter with the Commission, enclosing a copy of the certification of representative issued by the NLRB in its Case Nos. 19--RC--11013 and 19--RC-11016, and requesting withdrawal of the petition pending before the Public Employment Relations Commission in Case No. 5197-E-84-929. On October 11, 1984, the Amalgamated Transit Union was ordered to show cause why the petition pending before the Public Employment Relations Commission in Case No. 5215-E-84-939 should not be dismissed for lack of jurisdiction. Nothing further was received from the ATU, and both of the cases pending before the Public Employment Relations Commission were dismissed by orders issued on November 1, 1984.

From the record in the instant case, it is learned that on July 27, 1984, while the representation proceedings before the Commission were being held in abeyance, both of the unions involved here and the Benton-Franklin Support Network, Inc. entered into a "Stipulation for Certification Upon Consent Election" under the procedures of the NLRB in a unit of regular full and part-time demand responsive Dial-A-Ride vehicle operators, excluding clericals, dispatchers, guards and supervisors. An election was conducted by the NLRB with both the Teamsters and the ATU on the ballot, along with a choice for no representative. Teamsters Local 839 prevailed in the election, and was certified by the NLRB in the order issued on August 23, 1984.

Sometime in mid-1984, a proposal surfaced to offer to the Benton Franklin Support Network, Inc. an opportunity to become integrated with Ben Franklin Transit. By October 31, 1984, both boards of directors had approved the merger, and Ben Franklin Transit personnel had interviewed the Dial-A-Ride drivers then working for Benton-Franklin Support Network, Inc., with a view towards offering them full-time employment with Ben Franklin Transit. All of

the Dial-A-Ride drivers were offered employment with Ben Franklin Transit beginning January 1, 1985, and all but one of them accepted employment with Ben Franklin Transit.

Superimposed upon the relationship between Ben Franklin Transit and the Benton-Franklin Support Network, Inc., is the employer-employee relationship in the Dial-A-Ride operation. Following its certification by the NLRB, Teamsters Local 839 commenced contract negotiations in September of 1984 with Richard Burnett, who continued to run the Dial-A-Ride operation. No contract was reached in two months of bargaining. Negotiations apparently came to a halt in November of 1984, when the Dial-A-Ride administration team was being phased out in anticipation of the merger with Ben Franklin Transit to be made effective January 1, 1985. On the same day in January, 1985, that it sent its request to the Public Employment Relations Commission to initiate Case No. 5627-E-85-1013, Teamsters Local 839 requested that Ben Franklin Transit extend voluntary recognition to it, based upon the prior NLRB certification. Ben Franklin Transit declined to recognize or continue bargaining with Teamsters Local 839 after Dial-A-Ride became a public entity on January 1, 1985.

POSITIONS OF THE PARTIES

Teamsters Local 839 argues that its certification issued by the NLRB for the unit of Dial-A-Ride drivers should not be disturbed for a minimum of one year following issuance of the certification. While recognizing that Ben Franklin Transit is a public employer not subject to the jurisdiction of the NLRB, Local 839 argues that it is the successor to Benton Franklin Support Network, Inc., and that a irrebuttable presumption should be made that Local 839 continues to represent a majority of the employees driving vehicles in the demand-responsive service. Further, Local 839 contends that the drivers in the demand-responsive service have separate duties and working conditions in a separate operation, justifying continuation of a separate unit under RCW 41.56.060.

Amalgamated Transit Union Local 1599 contends that the Dial-A-Ride drivers have duties, skills and working conditions similar to those of the employees in its transit bus unit, so that they should be accreted to the larger unit. This argument was first advanced at the pre-hearing conference held in March, 1985, when Local 1599 made a motion to intervene in the representation case initiated by Teamsters Local 839. The ATU later filed the unit clarification petition in Case No. 5741-C-85-286, consistent with its view that no question concerning representation does or can exist involving a separate unit of Dial-A-Ride drivers.

Ben Franklin Transit participated in the pre-hearing conference and hearing on this case, but has not filed a brief. At hearing, the employer indicated its desire merely to have the dispute resolved by the Commission, so that it might bargain with the proper exclusive bargaining representative for the Dial-A-Ride drivers.

DISCUSSION

This case involves conflicting claims by two unions. The employer does not seek to influence which organization will represent its employees. The union claims in this case are each based on separate, viable lines of legal precedent and reasoning.

Successorship

The claim by Teamsters Local 839 arises out of the "successorship" doctrine, i.e. that Ben Franklin Transit is a successor employer to Benton-Franklin Support Network, Inc. as of January 1, 1985, so that the bargaining relationship which was in existence prior to that date continues in effect.

The law on successorship was extensively discussed in Spokane Airport Board, Decision 919 (PECB, 1980). Key considerations are whether there is continuity in the employing and continuity in the workforce. In NLRB v. Burns

International Security Services, Inc., 406 U.S. 272 (1972), the test applied by the Supreme Court in considering "continuity of workforce" in the context of an unfair labor practice case arising under the National Labor Relations Act was that continuity exists if the successor's workforce is a majority of hold-overs from the previous employer. Two years later, in Howard Johnson Company, Inc. v. Detroit Local Joint Executive Board of Hotel Employees, 417 U.S. 249 (1974), the test applied by the Supreme Court in considering "continuity of workforce" in the context of a violation of contract suit was that continuity exists if the successor has hired a majority of the previous employer's workforce.

The claim by Teamsters Local 839 in the present case is supported by the facts showing a clear continuity in the operation. That continuity dates back to 1982, with the same type of service now being provided by Ben Franklin Transit.

The claim by Teamsters Local 839 is also supported by the facts showing that the Dial-A-Ride service operated by Ben Franklin Transit continued to use the same 16 drivers which had performed that work while it was a Benton-Franklin Support Network operation, and that all of the drivers employed by Benton-Franklin Support Network, Inc. were offered positions by Ben Franklin Transit in their same job classifications.

Inherent in "successorship" cases, however, is the question of whether the bargaining unit involved continues to be an appropriate unit within the meaning of the applicable statute. The determination of bargaining units is a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060. A unit which is appropriate at one point in time may become inappropriate by reason of a change of circumstances. City of Richland, Decision 279-A (PECB, 1978). Status as exclusive bargaining representative in an appropriate bargaining unit is a condition precedent to the existence of a duty to bargain under the statute. South Kitsap School District, Decision 1541 (PECB, 1983). Thus, if the group of employees could no longer constitute an appropriate bargaining unit following the change of

employer transaction, the bargaining relationship could not be continued under "successorship" principles.

Accretion

The claim by Amalgamated Transit Union Local 1599 arises out of the "accretion" doctrine, i.e. that upon becoming employees of an expanded Ben Franklin Transit operation as of January 1, 1985, the former employees of Benton-Franklin Support Network Inc., are to be subsumed within the bargaining unit and relationship which was in existence at Ben Franklin Transit prior to that date.

The accretion doctrine has been set out in numerous decisions of the NLRB. Under that doctrine, if an additional facility is accreted to an existing operation, the pre-existing contract may be extended to cover employees in the new operation and will bar an election in the expanded unit. Great Atlantic & Pacific Tea Co. (A & P Stores), 140 NLRB 1011, 52 LRRM 1155 (1963); Horn and Hardart Co., 173 NLRB 1077, 69 LRRM 1522 (1968); Renaissance Center Partnership, 239 NLRB 180, 100 LRRM 1121 (1979); Panda Terminals, 161 NLRB 1215, 636 LRRM 1419 (1966).

The Public Employment Relations Commission applied the accretion doctrine in Oak Harbor School District, Decision 1319 (PECB, 1981), where the new class of employees consisted of non-certificated traffic safety instructors. Their function was originally performed by certificated employees who were members of the district's teaching staff and corresponding bargaining unit. Later, the traffic safety education program was contracted out to a commercial driver training firm. When the school district once again resumed operation of the driver safety program, three new employees were hired who held special limited certifications from the Superintendent of Public Instruction, but were not certificated employees within the meaning of Chapter 41.59 RCW. They were, therefore, classified employees subject to Chapter 41.56 RCW. An appropriate bargaining unit already existed under Chapter 41.56 RCW consisting of all of the classified employees of the school district, and the new

traffic safety positions were accreted to the existing collective bargaining unit. In San Juan County, Decision 358 (PECB, 1978), a newly created job category of "office engineers" was accreted to a pre-existing unit which included all of the employees of the county road department. The alternative was creation of a fragmentary separate unit consisting of three employees. These employees had never bargained separately, and they had a clear community of interest with the remainder of their department.

The claim of Amalgamated Transit Union Local 1599 in the present case is supported by the fact that it was the exclusive bargaining representative of an appropriate "wall-to wall" bargaining unit at Ben Franklin Transit on and prior to January 1, 1985.

The claim of Amalgamated Transit Union Local 1599 is further supported by the fact that the disputed employees, like the bulk of the employees in the existing unit represented by Local 1599, are engaged in the work of driving vehicles for the transportation of persons in the Tri-cities area.

It must be remembered, however, that the question of "appropriate bargaining unit" also arises when considering whether an accretion exists. The proponent of an accretion must show that the expanded unit created by accretion would comprise an appropriate unit within the meaning of RCW 41.56.060. An accretion will be necessary where the group of employees in question cannot stand alone as an appropriate bargaining unit. See: Tacoma School District, Decision 1908 (PECB, 1984); Lake Washington School District, Decision 1020 (EDUC, 1980). On the other hand, unit clarification procedures cannot be used to effect an accretion where a question concerning representation exists. Under NLRB precedent, a "new" facility would likely be treated as an independent operation, and not as an accretion where:

(1) New employees are hired specifically for the new facility;

(2) The facility is separately managed;

(3) There is no interchange of employees between new and previous operations;

(4) Either the facilities are geographically distant or the operation of the new facility is autonomous despite close geographical proximity.

Renaissance Center Partnership, 239 NLRB 180, 100 LRRM 1121 (1979).

See, also: City of Anacortes, Decision 452 (PECB, 1979); City of Dayton, Decision 1432 (PECB, 1982); North Thurston School District, Decision 2085 (PECB, 1985). A conclusion that the disputed group of employees could stand alone as an appropriate bargaining unit would indicate that a question concerning representation could exist, barring an accretion.

The Appropriate Unit

RCW 41.56.060 sets forth the criteria to be used by the Commission in making determinations on bargaining units, as follows:

(1) The duties, skills and working conditions of the employees;

(2) The history of bargaining by the public employees and their bargaining representatives;

(3) Extent of organization among the public employees;

(4) The desire of the public employees.

The first inquiry is whether, in the abstract and apart from any historical facts pertaining here, a single unit consisting of all drivers working for Ben Franklin Transit (i.e. those driving conventional transit buses as well as those driving in the demand-responsive service) could constitute "an appropriate unit". An affirmative answer is easy. Nobody seriously argues otherwise. If this were a case of initial organizing of the employees of this employer, there would be no apparent reason to reject a unit consisting of all of the employees of the employer.

The analysis is turned next to the opposite end of the spectrum, to the question of whether the separate unit certified by the NLRB in August of 1984 is, given the intervening changes of circumstances, an appropriate unit within the meaning of RCW 41.56.060.

No party contests the validity of the NLRB certification at the time it was issued. Indeed, it is clear from both the form and content of the correspondence in the earlier representation proceedings before PERC, as well as from the stipulations of all of the parties to invoke the jurisdiction of the NLRB, that Benton-Franklin Support Network, Inc. was a private entity which kept some distance between itself and Ben Franklin Transit. The unit agreed to consisted of all of the non-supervisory employees of Benton-Franklin Support Network, Inc. A finding that the unit was appropriate was a necessary pre-condition to the NLRB certification.

Were this a petition for a separate unit of Dial-A-Ride drivers in a context of initial organizing of any employees of Ben Franklin Transit, the "duties, skills and working conditions" and "extent of organization" criteria of the statute could present some difficulties for a petitioner. In the event of employer opposition or a claim by another organization for a unit consisting of all employees of Ben Franklin Transit, it would be necessary for a petitioner seeking a separate Dial-A-Ride unit to justify fragmentation of the employer's overall workforce. On the other hand, there are facts which indicate that a petitioner seeking a separate unit of Dial-A-Ride drivers would not face an impossible task. Of course, this is not initial organizing. Rather, there is a history of bargaining which is entitled to consideration.

The Dial-A-Ride workforce was specifically hired by Ben Franklin Transit for its commencement of demand-responsive transportation services on January 1, 1985. The employees in both groups fall within the generic "driver" employee type, but there would seem to be a substantial difference of duties and skills between driving a "van" and driving a full-sized transit bus. All of the Dial-A-Ride drivers had been trained by the predecessor employer,

Benton-Franklin Support Network, Inc., for their specific type of operation. The training of Dial-A-Ride drivers put emphasis on dealing with the elderly and the handicapped. While it is true that coach operators in Ben Franklin Transit's regular transit operation are trained to deal with emergency situations involving all passengers, including the elderly and the handicapped, it seems evident that their exposure to such problems has been limited because of the availability of the Dial-A-Ride service. Distinct differences continue to exist with respect to Dial-A-Ride drivers' wages, grievance rights, and benefits.[1]

The Dial-A-Ride service had, and continues to have, its own facility separate and apart from the main Ben Franklin Transit operation, and it continues to be separately managed. The day-to-day administration of the Dial-A-Ride operation has not changed dramatically because of the January, 1985, merger. Richard Burnett was hired by Ben Franklin Transit to continue in his previous role as supervisor of the Dial-A-Ride service, and he remains primarily responsible for the operation. The demand-responsive service continues to be dispatched by John Nunmaker, another hold-over employee hired by Ben Franklin Transit from the Benton-Franklin Support Network, Inc. The routes and schedules of drivers in the demand-responsive service continue to be set by Burnett and Nunmaker. Burnett handled labor negotiations for the private employer from September, 1984 through December of 1984. The record shows that Burnett retains considerable autonomy in the areas of hiring and discipline, and over personnel relations generally.

The employees who transferred to Ben Franklin Transit on January 1, 1985 have consistently composed the entire workforce for the demand responsive operation since the change from private management to public management. There is no evidence of assignment of employees from the Dial-A-Ride operation to

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[1] No labor agreement has as yet been negotiated for the Dial-A-Ride people. The wages and benefits they now receive are typical of those they had as employees of the Benton-Franklin Support Network, Inc., augmented by additional benefits provided by Ben Franklin Transit to its unrepresented employees.

work in the employer's conventional transit bus operation. The operating methods used by the two divisions are quite separate and distinct from one another. Even though some Dial-A-Ride drivers perform some regular route assignments, their job duties are predominantly demand-responsive. The record reveals no demand-responsive duties whatever for coach operators in the conventional Ben Franklin Transit operation. [2]

The circumstance of separate dispatch centers (at Kennewick for Dial-A-Ride and at Pasco for the coach operators) means that the two work forces remain geographically distant from one another even though their paths may cross as they conduct their daily activities in the Tri-cities area. The separation of reporting locations does not lend itself to employee interchange or to a community of interest between the two groups of employees.

The subcontracting clause contained in Article III of the collective bargaining agreement between ATU Local 1599 and Ben Franklin Transit is not an accretion clause and could not, in any case, compel an accretion in conflict with the unit determination authority of the Commission. On its face, that contract language demonstrates that the Coach Operators Association, the ATU and Ben Franklin Transit all regarded the Dial-A-Ride operation as being distinct from the job duties of coach operators and dispatchers in the conventional transit operation. It is not material that accretion of Dial-A-Ride people was discussed during collective bargaining, since the history of this situation also includes the ATU's acceptance of the description of the separate Dial-A-Ride unit in the 1984 representation proceedings before the NLRB. ATU lost that election to Teamsters Local 839.

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[2] Indeed, the "regular route" services performed by Dial-A-Ride drivers are limited to subscription routes for various human service agencies in the Tri-Cities area. Eight drivers have a daily run carrying developmentally disabled children previously specifically identified to a special education program; some carry specific children to Head Start programs. None of the Dial-A-Ride vehicles serve a route picking up such passengers as may be waiting at a bus stop, similar to the conventional transit routes throughout the area.

All of this leads to the conclusion that the Dial-A-Ride drivers share a community of interest separate from that of the coach operators, so that the Dial-A-Ride drivers could stand alone as a separate appropriate unit. When compared to the NLRB criteria set forth above, the facts preclude the accretion of the Dial-A-Ride drivers to the pre-existing unit of coach operators employed by Ben Franklin Transit. There is no evident reason to distinguish Spokane Airport Board, supra. The examiner in that case ruled that the public employer was a successor once it had assumed the management of an operation previously conducted by a private contractor, that the incumbent exclusive bargaining representative continued to represent an appropriate unit, and that the employer had failed to show that there were any justifiable doubts as to the continued majority status of the incumbent. The same tests are met in the instant case.

Certification Bar

A unit which has been through a "successorship" transaction will eventually be subject under the statute to a petition for investigation of a question concerning representation. With the possibility of an accretion having been ruled out, the focus of attention turns to the possible existence of a question concerning representation in the Dial-A-Ride unit. Under RCW 41.56.060 and .070, a question concerning representation arises where: (1) one or more labor organizations claims to have the support of a majority of the employees in an appropriate bargaining unit and seeks to attain status as an exclusive bargaining representative of those employees; or (2) an employer or the employees in an existing bargaining unit demonstrate a doubt as to whether the incumbent exclusive bargaining representative continues to enjoy the support of a majority of the employees in the unit.

RCW 41.56.070 however precludes raising a question concerning representation within one year following a certification or attempted certification. The federal law contains a similar one-year "certification bar". Had there been no merger, there would have been no occasion for either of the unions involved here to raise a question concerning representation before the NLRB in January of 1985.

An employer, too, is prohibited by RCW 41.56.070 from raising a question concerning representation during the certification bar year. The employer is obligated to bargain in good faith with the certified exclusive bargaining representative throughout the certification bar year. Lewis County, Decision 644 (PECB, 1979). Here, however, Teamsters Local 839 has not enjoyed a full year of bargaining under its NLRB certification. Although there was some bargaining during the September - November, 1984 period, Ben Franklin Transit refused to bargain with Local 839 following the January 1, 1985 merger. [3] Ben Franklin Transit has not even attempted to show that it doubted the support for Teamsters Local 839 among its employees in the Dial-A-Ride unit; any doubts were based upon the conflicting claims of ATU Local 1599 already disposed of, above.

The Examiner in Spokane Airport Board, supra, applied the collective bargaining agreement negotiated by the private employer under the federal law as a contract barring an election under the "contract bar" provision of RCW 41.56.070, citing NLRB v. Band-Age Inc., 534 F.2d 1 (1st Cir. 1976). There is no evident reason to refuse giving similar effect under the parallel "certification bar" provision of RCW 41.56.070 to an NLRB certification covering an appropriate unit. No question concerning representation exists at the present time. The employer is obligated to recognize and bargain with Teamsters Local 839 as the exclusive bargaining representative of the Dial-a-Ride drivers. In order to replicate the remaining certification bar period to which Teamsters Local 839 was entitled when bargaining ceased through no fault of its own on January 1, 1985, no petition for investigation of a question concerning representation affecting the Dial-A-Ride driver unit will be entertained for 7 months and 22 days following the date on which the

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[3] Ben Franklin Transit may have felt that it had no other choice. The employer is also obligated to suspend bargaining with an incumbent union where there is a case pending before the Commission which casts doubt on the majority status of the incumbent in either the whole or a portion of the historical unit. Yelm School District, Decision 704-A (PECB, 1980); Pierce County, Decision 1588 (PECB, 1983).

dismissal of this proceeding becomes final. [4] See: Kitsap County, Decision 2116 (PECB, 1984).

FINDINGS OF FACT

1. Ben Franklin Transit is a municipal corporation existing under the laws of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

2. Amalgamated Transit Union, Local 1599, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of coach operators and coach operators/dispatchers employed by Ben Franklin Transit in its conventional transit bus operations.

3. Teamsters Union, Local 839, a bargaining representative within the meaning of RCW 41.56.030(3), was certified by the National Labor Relations Board on August 23, 1984 as the exclusive bargaining representative of all drivers employed by Benton-Franklin Support Network, Inc., in a demand-responsive (Dial-A-Ride) service operated by Benton-Franklin Support Network Inc., a private corporation. That certification was issued pursuant to an election held by the National Labor Relations Board under its authority in Sections 7 and 9 of the National Labor Relations Act. Choices were made available on the election ballot for Teamsters Local 839, for Amalgamated Transit Union Local 1599 and for "no representative".

4. On January 1, 1985, Ben Franklin Transit assumed ownership and control over the Dial-A-Ride operation theretofore operated by Benton-Franklin Support Network, Inc. Ben Franklin Transit offered employment to all of

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[4] Teamsters Local 839 had 4 months and 8 days available to it for bargaining between its certification by the NLRB and the effective date of the merger.

the employees in the bargaining unit described in paragraph 3 of these findings of fact, specifically for positions as drivers in a demand-responsive (Dial-A-Ride) service to be conducted by Ben Franklin Transit. In addition, Ben Franklin Transit hired Richard Burnett and John Nunmaker, who had been the manager and dispatcher of the Dial-A-Ride service operated by Benton-Franklin Support Network, Inc. Ben Franklin Transit made no major revisions in the management of the Dial-A-Ride service, and continued to operate the Dial-A-Ride service separately from its conventional transit bus operation, using the facility in Kennewick, Washington which had been headquarters for the Dial-A-Ride service under the Benton-Franklin Support Network, Inc.

5. Benton-Franklin Support Network Inc. commenced bargaining with Teamsters Local 839 in September, 1984. All bargaining ceased on and after January 1, 1985, when Ben Franklin Transit assumed operation of the Dial-A-Ride service.

6. On January 7, 1985, Teamsters Union, Local 839 invoked the authority of the Public Employment Relations Commission to ascertain its status in the bargaining unit described in paragraph 3 of these findings of fact. Teamsters Local 839 supported its petition with a showing of interest under RCW 41.56.070.

7. On March 21, 1985, Amalgamated Transit Union, Local 1599 filed a unit clarification petition with the Public Employment Relations Commission, seeking to have the Dial-A-Ride drivers accreted to the existing unit of coach operators and dispatchers described in paragraph 2 of these findings of fact.

8. Dial-A-Ride drivers working for Ben Franklin Transit perform essentially the same service as was provided by the Benton-Franklin Support Network, Inc. A majority of the present complement of Dial-A-Ride drivers previously worked for the predecessor employers.

9. The duties, skills and working conditions of the Dial-A-Ride drivers (including their training, pay and benefits and the service performed) differ in important respects from those of the coach operators.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. A unit comprised of full-time and regular part-time drivers employed by Ben Franklin Transit in its demand-responsive (Dial-A-Ride) service was, and continues to be, an appropriate separate unit for collective bargaining within the meaning of RCW 41.56.060.

3. Accretion of the Dial-A-Ride drivers of the employer to the unit comprised of coach operators and dispatchers would raise a question concerning representation in the appropriate separate unit described in paragraph 2 of these conclusions of law.

4. At the time these proceedings were filed, raising of a question concerning representation was barred under RCW 41.56.070 by the certification issued by the National Labor Relations Board.

ORDER

1. Teamsters Union, Local 839, is the exclusive bargaining representative of the employees in the appropriate separate bargaining unit described in paragraph 2 of the foregoing conclusions of law.

2. Filing of a petition for investigation of a question concerning representation involving Dial-A-Ride drivers employed by Ben Franklin Transit shall be barred for seven (7) months and twenty-two (22) days following the date on which this order becomes final.

DATED at Olympia, Washington, this 30th day of December, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission within 20 days following the date of this Order.