

In the Matter of EVEREADY TRANSFER COMPANY *and* DRIVERS, CHAUFFEURS & HELPERS, LOCAL 639, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, A. F. OF L.

Case No. 5-R-1407.—Decided November 30, 1943

Mr. George L. Weasler, for the Board.

Mr. Louis A. Spiess, of Washington, D. C., for the Company.

Messrs. Joseph A. Padway and I. B. Padway, of Washington, D. C., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Drivers, Chauffeurs & Helpers, Local 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Eveready Transfer Co., Washington, District of Columbia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William B. Barton, Trial Examiner. Said hearing was held at Washington, District of Columbia, on November 10, 1943. The Board, the Company, and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the Company moved to dismiss the petition. The Trial Examiner reserved ruling. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Eveready Transfer Co., is a partnership with its principal office at Washington, District of Columbia, where it is engaged in hauling cinders and trash. During the 12-month period ending October 1, 1943, the Company received \$146,000 for its services, \$40,000 of which was for operations in the States of Virginia and Maryland. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Drivers, Chauffeurs & Helpers, Local 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During July and August 1943, the Union requested the Company to recognize it as exclusive collective bargaining representative of the truck drivers and helpers. The Company refused this request.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all drivers and helpers of the Company, excluding Thomas Baker and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

¹ The Field Examiner reported that the Union submitted 16 authorization cards bearing apparently genuine signatures of persons whose names appear on the October 4, 1943, pay roll of the Company. There are 35 employees in the appropriate unit.

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot. The Union urges that a pay roll in October 1943, be used to determine eligibility to vote. Inasmuch as no persuasive reason appears as to why we should depart from our usual practice, we shall direct that those eligible to vote shall be the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The parties are in dispute with respect to the eligibility of George Spencer. Spencer drives a truck 40 to 50 percent of his time and spends the balance of his time performing body repair work and miscellaneous duties. He is not classified as a driver or helper by the Company and he receives a higher rate of pay than the drivers. Under the circumstances, we find that Spencer is not eligible to vote in the election.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Eveready Transfer Co., Washington, District of Columbia, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Drivers, Chauffeurs & Helpers, Local 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining.