

In the Matter of ADIRONDACK TRANSIT LINES, INC. and AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, A. F. OF L.

Case No. 2-R-4332.—Decided January 28, 1944

Mr. Martin J. Kelly, Jr., of New York City, for the Company.

Mr. Leonard Lazarus, of Jamaica, N. Y., for the A. F. L.

Mr. F. K. Fisk, of Cleveland, Ohio, for the B. R. T.

Mr. William R. Cameron, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Adirondack Transit Lines, Inc., Kingston, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David H. Werther, Trial Examiner. Said hearing was held at New York City on December 1, 1943. The Company, the A. F. L., and Brotherhood of Railroad Trainmen, herein called the B. R. T., appeared, participated and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing the B. R. T. moved the dismissal of the petition. For reasons appearing herein-after 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

Adirondack Transit Lines, Inc., a New York corporation having its principal office in Kingston, New York, is engaged in the operation of

motor busses and transportation of passengers along regularly defined routes between New York City, Fairview and Hackensack, New Jersey, Kingston and numerous other points in the eastern part of the State of New York. The Company maintains ticket offices and terminals in New York City and at various points along its routes. During the period of a year preceding November 30, 1943, the Company's total revenue from fares on its regularly defined routes exceeded \$800,000. The Company is licensed by the Interstate Commerce Commission and its operations are subject to the Commission's rulings. The Company concedes, for the purposes of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Brotherhood of Railroad Trainmen is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The A. F. L., by letter dated October 19, 1943, notified the Company that it claimed to represent a majority of the Company's employees and requested a collective bargaining conference. Although this letter was received by the Company on October 21, 1943, the Company has not replied thereto or indicated willingness to bargain with the A. F. L.

The B. R. T. contends that it has a presently existing contract with the Company, which precludes a determination of representatives at this time. The record discloses that the B. R. T. has been in contractual relationship with the Company continuously since October 4, 1937. The contract upon which it relies was executed November 10, 1941, for the term of 1 year, and on November 10, 1942, was renewed for the additional period of 1 year by operation of an automatic renewal clause which provides that the contract shall be automatically extended for successive yearly periods in the absence of written notice for the purpose of termination served by either party on the other not less than 30 days prior to the expiration of its term or of any renewal period.¹

¹This contract was amended in August 1943, as to certain provisions, by a written agreement which did not, however, alter or extend its term, and which specifically reaffirmed application of its automatic renewal clause to the current yearly expiration date. Cf. *Matter of Memphis Furniture Mfg. Co.*, 51 N. L. R. B. 1447.

Dispute arose at the hearing as to whether this contract was again automatically renewed for the period of 1 year commencing as of November 10, 1943. The record discloses that shortly prior to October 11, 1943, the automatic renewal date, the secretary of the local committee of the B. R. T. served notice upon the Company, by telegram signed by himself as secretary of such committee, of intention to terminate the contract. The B. R. T. contends, and so notified the Company, that this purported notice of termination was not authorized, and that the manner of such termination was not in accord with the B. R. T. constitution and the laws of its organization. However, nothing appears upon the face of the notice itself to indicate such lack of authorization. The record indicates, moreover, that all members of the local committee concurred in the giving of such notice.² Under these circumstances we are of the opinion that the notice of termination operated to prevent automatic renewal of the contract, and that in consequence thereof the notice given by the A. F. L. to the Company on October 21, 1943, regarding its claims of representation was timely. Accordingly, we find that the contract of November 10, 1941, as amended, is not a bar to a present determination of representatives.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the A. F. L. represents a substantial number of employees in the unit hereinafter found appropriate.³

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

The A. F. L. contends that the appropriate unit consists of all drivers, mechanics, mechanics' helpers, washers, greasers, stockroom clerks, and stockroom helpers employed by the Company, excluding passenger traffic manager, operating manager, passenger agents, district supervisor, safety inspector, assistant treasurer, clerks, assistant secretary, switchboard operator, work board supervisor, porters, station clerks, dispatchers, and supervisory employees. The B. R. T. would confine the unit to operators or bus drivers, and would exclude

² The secretary and the two other members of the local committee above mentioned were also the same parties who signed the modification agreement of August 1943.

³ The Regional Director reported that the A. F. L. submitted 50 authorization cards, of which 44 bore apparently genuine original signatures, and 1 a printed name, of employees whose names appear on the Company's pay roll of November 8, 1943, containing 85 names of employees within the unit claimed by the A. F. L. to be appropriate. Of such cards corresponding to names on said pay roll, all were dated from October 6 to October 11, 1943. The Regional Director further reported, however, that all of the 45 authorization cards corresponding to names on the pay roll were signed by members of the smaller or drivers unit contended for by the B. R. T., containing 52 persons.

The B. R. T. relies on the contract above mentioned as sufficiently establishing its interest in this proceeding.

the garage or shop employees, i. e. the mechanics, mechanics' helpers, washers, greasers, stockroom clerks, and stockroom helpers, whom the A. F. L. seeks to include.

Although the B. R. T. has for a number of years represented the Company's operators or drivers, no labor organization has represented the garage or shop employees and they have not participated in collective bargaining. The B. R. T. does not admit them to membership, and they have not been included in the provisions of the B. R. T. contracts with the Company. Although the A. F. L. desires to include the garage or shop employees within the unit which it is seeking to represent, the statement of the Regional Director relating to claims of authorization for the purpose of representation indicates,⁴ and it was admitted at the hearing by the A. F. L. representative in charge of organizational activities among the Company's employees, that the A. F. L. had submitted no authorization cards on behalf of the garage or shop employees. In view of the history of collective bargaining by the B. R. T. and the lack of showing of representation by the A. F. L. of garage or shop employees, we are of the opinion that such employees should be excluded from the appropriate unit herein.

We find that all operators or bus drivers employed by the Company, excluding mechanics, mechanics' helpers, washers, greasers, stockroom clerks, stockroom helpers, passenger traffic manager, operating manager, passenger agents, district supervisor, safety inspector, assistant treasurer, assistant secretary, clerks, switchboard operator, work board supervisor, porters, station clerks, dispatchers, and all 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.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.⁵ The Regional Director is hereby authorized to conduct the election in whole or in part by mail.

⁴ See footnote 3, above

⁵ The parties respectively requested that their names appear on the ballot as follows: Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, affiliated with the A. F. of L.; and Brotherhood of Railroad Trainmen, Lodge 682. These requests are hereby granted

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 Adirondack Transit Lines, Inc., Kingston, New York, 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 Second 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 they desire to be represented by Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, affiliated with the A. F. of L., or by Brotherhood of Railroad Trainmen, Lodge 682, for the purposes of collective bargaining, or by neither.