

In the Matter of OHIO VALLEY BUS CO. and TRANSPORT WORKERS  
UNION OF AMERICA, AFFILIATED WITH THE C. I. O.

*Case No. 9-R-1296.—Decided January 31, 1944.*

*Mr. Harry Scherr*, of Huntington, W. Va., for the Company.  
*Mr. F. P. Raines*, of West Huntington, W. Va., for the CIO.  
*Mr. C. E. Bartlebaugh*, of Huntington, W. Va., for the AFL.  
*Mr. Robert Silagi*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Transport Workers Union of America, affiliated with the C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Ohio Valley Bus Co., Huntington, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis M. Groeniger, Trial Examiner. Said hearing was held at Huntington, West Virginia, on December 15, 1943. The Company, the CIO, and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 1171, herein called the AFL, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

Ohio Valley Bus Co., an Ohio corporation, maintains its principal place of business in Huntington, West Virginia. The Company oper-

ates as a common carrier for passengers and newspapers in West Virginia and portions of Kentucky and Ohio. The annual business of the Company exceeds \$500,000, about 10 percent of said revenue being derived from its interstate business.

The Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

Transport Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 1171, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company and the AFL are parties to a closed-shop contract which by its terms, became effective on July 1, 1943, and continued to January 15, 1944. Said contract provides for automatic renewals from year to year unless terminated or amended upon 30 days' notice by either party prior to the anniversary date. On November 23, 1943, the CIO requested a conference with the Company for the purposes of reaching a collective bargaining agreement. This request was refused by the Company 3 days later, on the ground that it was precluded from negotiating with the CIO because of its agreement with the AFL.

The AFL contends that its contract operates as a bar to a present determination of representatives in view of the fact that it has entered into or, as of the date of the hearing, was about to enter into negotiations with the Company for a new contract. There is no merit to this contention. The letter of November 23 by the CIO to the Company was sufficient to apprise the Company of the petitioner's claims and prevent the creation of a bar to the determination of those claims by the expedient of making or renewing a contract with another labor organization.<sup>1</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

<sup>1</sup> See *Matter of Johnston Brothers, Inc.*, 53 N. L. R. B. 1191.

<sup>2</sup> The Field Examiner reported that the CIO submitted 61 application for membership cards all of which bore apparently genuine original signatures, that the names of 58 persons appearing on the cards were listed on the Company's pay roll dated on or about December 4, 1943, which contained the names of 138 employees in the appropriate unit;

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 parties agree that the contract unit of bus operators and maintenance employees should comprise the appropriate unit. In addition, both unions desire to bargain for the storekeeper who works under the purchasing agent, and for all janitors, including the office janitor, but would exclude from the unit the night foreman, the purchasing agent-storekeeper (assistant to the superintendent), instructors, supervisors, and dispatchers. The only disagreement arises over two so-called pensioners whom the CIO would include and the AFL exclude. The Company takes no position as to these men.

The Company employs one Garwood, formerly a dispatcher, but now too old and infirm for outside work. His duties consist of taking care of the Company's clubroom. His pay is substantially lower than that of the other employees. The Company likewise employs an elderly man named Jordan. His principal duty consists of having a supply of change at designated points on the bus routes so that operators are assured of having enough small coins to make change. He also answers telephones and does various odd jobs about the dispatching office. His pay is about the same as Garwood's.

The AFL contends that neither Garwood nor Jordan is connected with production or maintenance and hence should be excluded from the unit. However, the AFL seeks to bargain for the office janitor, whose connection with production or maintenance is even more remote. We see no reason for depriving these employees of representation. We shall, accordingly, include Garwood and Jordan in the appropriate unit.

We find that all bus operators and maintenance employees of the Company,<sup>3</sup> the storekeeper, and all janitors, but excluding the night foreman, purchasing agent-storekeeper, instructors, supervisors, dispatchers, 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.

and that the cards were all dated, with one exception, during the month of November 1943. The AFL relies upon its contract with the Company as evidence of its representation. Moreover, the AFL argues that since the CIO did not produce cards for a majority of its employees, it has not shown a substantial interest in this matter. There is no merit in this contention. See *Matter of James Doak, Jr., Company*, 52 N L R B 378.

<sup>3</sup> Garwood and Jordan are deemed included in this description.

## 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the direction.<sup>4</sup> The Regional Director is hereby authorized to conduct the election in whole or in part by mail.

## 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 Ohio Valley Bus Co., Huntington, West Virginia, 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 those employees 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 T. W. U. A. (C. I. O.), or by A. A. S. E. R. M. C. E. A., Division 1171 (A. F. of L.), for the purposes of collective bargaining or by neither.

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<sup>4</sup> A request by the Unions to be designated on the ballots by their initials is hereby granted.