

In the Matter of CINCINNATI, NEWPORT AND COVINGTON RAILWAY COMPANY and AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION No. 628

Case No. 9-R-1346.—Decided May 23, 1944

Mr. Fred R. Rauch, of Cincinnati, Ohio, for the Company.

Mr. J. Richard Udry, of Covington, Ky., for the Amalgamated.

Mr. Ralph Becker, of Cincinnati, Ohio, for the Independent.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division No. 628, herein called the Amalgamated, alleging that a question affecting commerce had arisen concerning the representation of employees of Cincinnati, Newport and Covington Railway Company, Covington, Kentucky, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on April 14, 1944. The Company, the Amalgamated, and The Independent Utilities Union, herein called the Independent, 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

Cincinnati, Newport and Covington Railway Company, a Kentucky corporation with its principal office in Covington, Kentucky, 56 N. L. R. B., No. 152.

is engaged in the business of transporting passengers and newspapers in electric streetcars, trolley busses and motor busses between points in the Commonwealth of Kentucky and points in the State of Ohio.

The Company owns and operates approximately 25 electric streetcars, 31 trolley busses, and 54 gasoline busses. All of the gasoline busses carry licenses and license plates issued by the Interstate Commerce Commission. The Company employs approximately 217 operators who are periodically given physical examinations in accordance with the requirements of the Interstate Commerce Commission.

In the past year the Company has transported 213,901,247 passengers across the State line, collecting revenue of \$1,375,963 from such passengers.

We find that the Company 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, Division No. 628, is a labor organization admitting to membership employees of the Company.

The Independent Utilities Union is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On November 8, 1943, the Amalgamated, by letter, notified the Company that it claimed to represent a majority of the Company's terminal cashiers and watchmen, and requested recognition as exclusive bargaining representative of such employees. On January 7, 1944, the Amalgamated made the same request with reference to the employees in the Company's Track Department. The Company refused both requests, contending that the employees here sought to be represented by the Amalgamated are covered by a valid and existing contract, and further contending that the said employees do not constitute an appropriate bargaining unit. Since the contract is terminable upon sixty (60) days' written notice of either party, it is clearly no bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Amalgamated represents a substantial number of the employees affected by this proceeding.¹

¹ The agent reported that the Amalgamated submitted 4 membership and 25 application-for-membership cards bearing apparently genuine original signatures of persons listed on the Company's pay roll of April 5, 1944, which contained the names of 30 employees in the categories involved. The Independent relies upon its contract to establish its interest.

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 8 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Amalgamated has bargained with the Company for over 20 years on behalf of its vehicle operators and car barn employees. In 1937, shortly after the Company instituted motor bus service, the Amalgamated organized the shop, storeroom, and garage employees and thereafter included them in the unit which it represented. In 1937 the Independent organized the remainder of the Company's non-supervisory employees, consisting of the employees in the Track Department, garage shop and terminal watchmen,² terminal cashiers, and office employees. The Amalgamated now claims to be the majority representative of each of these categories, with the exception of the office employees, and asks that they be added to the unit for which it is already bargaining.

The Track Department maintains the Company's tracks, buildings, and other stationary equipment. Its personnel includes two carpenters, two truck drivers, a welder, a curve cleaner, and seven laborers, all of whose titles adequately indicate the character of their work. The Company owns a toll bridge and employs three collectors, usually former track crew employees, who collect tolls on the bridge. For convenience in administration, they are under the supervision of the superintendent of engineering and maintenance-of-way, and are therefore considered to be in the Track Department.³ The Track Department employees have a shop, located in a separate building, but in the general area in which some of the Company's barns and garages are located. They are all hourly paid employees.

There are three watchmen employed at the Company's Dixie terminal in Cincinnati, the focal point of the Company's transportation system, and through which over 50 percent of the passengers pass. These men are usually superannuated or disabled employees. They are not uniformed and are unarmed. Their principal function is to prevent passengers from entering the terminal through any but the regular entrance, since fares are paid at turnstiles at the entrances

² Although the Independent's contract refers to "garage and shop watchmen," it is clear from the record that this designation was intended to include the terminal watchmen as well.

³ Actually, the toll collectors should report to the cashier, but the latter is an elderly woman who is unable to maintain immediate supervision over the toll collectors and terminal cashiers. Hence they are supervised by the supervisors who are in immediate contact with them.

to the terminal. They are responsible to the terminal supervisor, who has charge of the entire terminal. The terminal supervisor is responsible to the Superintendent of Operations. The Company employs one other watchman, who is night watchman at the barn and shops. He patrols the area where these buildings are located, and does a little cleaning and general janitor work.

The terminal cashiers are all employed at the Dixie Terminal, where they provide information, make change, sell tokens, and operate the turnstiles. At the end of the day, they make out written reports of collections and monies due. Although, like the bridge toll collectors, they are nominally under the supervision of the cashier, actually they are supervised by the terminal supervisor. Their *locus operandi* and their supervision by a supervisor of operations, make them comparable to shop clerical employees in an industrial establishment.

The only other employees in the unit presently represented by the Independent are the office clerical employees. The Amalgamated, although it admits clerical employees to membership, does not seek to represent them. They are all employed in the Company's main office and are all weekly rather than hourly paid.

From the foregoing, it is apparent that the Amalgamated is seeking to broaden its existing bargaining unit to make it company-wide, excluding only office clerical and supervisory employees. That such a unit may be appropriate is so obvious as to require no citation of authority or further discussion. On the other hand, in view of the history of separate bargaining by the Independent on behalf of the groups here involved, we will not hold that they may not appropriately remain a part of the unit presently represented by the Independent.⁴ Before determining whether or not to enlarge the unit presently represented by the Amalgamated, we shall first ascertain the desires of the employees themselves. We shall direct an election by secret ballot among the Track Department employees, the terminal, garage and shop watchmen, and the terminal cashiers, to determine whether they wish to be represented by the Amalgamated, by the Independent, or by neither. If a majority of those participating in said election vote for the Amalgamated, they will thereby have indicated their desire to become part of the unit presently represented by said union, and will be deemed to be part of said unit; otherwise the petition will be dismissed.

⁴The unit covered by the Independent's contract comprises such heterogeneous groups of employees, both clerical and manual workers, that we do not regard the history of collective bargaining between the Company and the Independent as entitled to controlling weight with respect to the issue of the appropriate unit. See *Matter of Boston Edison Company*, 51 N. L. R. B. 118, and *Matter of Indianapolis Power & Light Company*, 51 N. L. R. B. 670.

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 Cincinnati, Newport and Covington Railway Company 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 Ninth 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 all Track Department employees, garage and terminal watchmen, and terminal cashiers, in the employ of the Company, 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, Division No. 628, or by The Independent Utilities Union for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.