

In the Matter of CENTRAL GREYHOUND LINES, INC. *and* AMALGAMATED
ASSOCIATION OF STREET, ELECTRIC RAILWAY, AND MOTOR COACH
EMPLOYEES OF AMERICA (AFL)

Case No. 8-R-1338

SUPPLEMENTAL DECISION
AND
AMENDED DIRECTION OF ELECTIONS

June 13, 1944

On March 15, 1944, the Board issued its Decision and Direction of Election herein,¹ directing the conduct of an election among maintenance employees of the Company, with the exclusion of maintenance employees on the New York lines, who the Board found were already represented by Interstate Motor Coach Employees Association, Inc., herein called the Interstate, under an unexpired collective bargaining contract. Thereafter, Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America (AFL), herein called the Amalgamated, filed a petition for reconsideration alleging that the decision was contrary to the evidence, and that the Interstate was not functioning as bargaining representative of the Company's employees on the New York lines. On March 24, 1944, the Board issued an Order staying the election, reopening the record, and directing a further hearing herein. Pursuant thereto, and upon due notice, a further hearing was held in Cleveland, Ohio, on April 20 and 21, 1944, before John A. Hull, Jr., Trial Examiner. The Company, the Amalgamated, and the Interstate appeared, participated, and 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 further hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

¹ 55 N. L. R. B. 504.

56 N. L. R. B., No. 245.

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

SUPPLEMENTAL FINDINGS OF FACT

I. THE QUESTION CONCERNING REPRESENTATION

In our original decision we found, on the basis of the record then made, that the Interstate has for several years represented the Company's maintenance employees on the New York lines² as a separate bargaining unit and that it is presently the exclusive bargaining representative of such employees pursuant to a contract effective December 1, 1940, which was renewed for another year by operation of an automatic renewal provision, 60 days prior to December 1, 1943. Since the Amalgamated did not request the Company to recognize it as the exclusive bargaining representative of the employees involved in this proceeding until October 12, 1943, we held the Interstate's contract to bar the conduct of an election among the maintenance employees on the New York lines. We believe that the evidence at the further hearing rebuts our prior conclusion as to the effect of the Interstate's contract. It appears that since 1941 the Amalgamated, recognized by the Company as the bargaining representative of its members among the Company's maintenance employees, has steadily encroached on the Interstate's membership among the maintenance employees on the New York lines and has represented a substantial number of such employees in the presentation of grievances to the Company. At Scranton and Long Island City, maintenance employees have been discharged for failure to maintain membership in the Amalgamated pursuant to maintenance-of-membership provisions in a contract between the Amalgamated and the Company covering the Amalgamated's members. At Buffalo where the Interstate now claims no membership, the Company checks off dues for the Amalgamated and notifies the Amalgamated of the hiring of new maintenance employees.

A situation thus has developed where two bargaining agencies are representing segments of a bargaining unit, each acting under color of authority of a collective bargaining agreement.³ The conflicting claims and practices of the two unions negate the illusion of stability in labor relations created by their contracts. In fact, neither the Amalgamated nor the Interstate is functioning presently as the exclusive bargaining representative of all maintenance employees of the Company on its New York lines, nor has either labor organization

² These employees are located principally at Buffalo, Syracuse, and Long Island City, New York, and Scranton, Pennsylvania.

³ The Amalgamated's most recent contract expired October 31, 1943, and, at the time of the first hearing herein, negotiations for a new contract had resulted in proceedings before the National War Labor Board.

so functioned for a considerable period of time. Our usual rule,⁴ that a determination of representatives will not be made in the face of an unexpired, exclusive, collective bargaining contract, has no application where the exclusive recognition features of the contract have been abrogated in practice, and the employer is, in fact, extending recognition to two labor organizations whose claims are in conflict. We find that the Interstate contract does not constitute a bar to the conduct of an election among the maintenance employees of the Company on the New York lines.⁵

We find that a question affecting commerce has arisen concerning the representation of maintenance employees of the Company throughout its system, including such employees on the New York lines within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

II. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

As stated in our earlier decision the Amalgamated has been recognized by the Company for a period of years as exclusive bargaining representative of drivers and terminal employees in a system-wide unit and seeks here to be designated also as exclusive bargaining representative of the maintenance employees in a system-wide unit. If successful, the Amalgamated would include the maintenance employees in the unit it already represents.

The Interstate seeks only to retain its asserted status as the exclusive bargaining representative of the maintenance employees on the New York lines. We have heretofore provided that the maintenance employees other than those on the New York lines shall be afforded the opportunity to decide in an election whether or not they desire to be represented by the Amalgamated in the same unit with drivers and terminal employees. It is clear that the maintenance employees on the New York lines, also, may appropriately function as part of this existing bargaining unit, as the Amalgamated contends. On the other hand, the history of collective bargaining on their behalf indicates that the New York maintenance employees may, if they so desire, constitute a separate appropriate unit. Accordingly, we shall make no determination of the appropriate bargaining unit for such employees pending the outcome of an election in which they may register their choice between the Amalgamated, the Interstate, or neither, and by means of which the question concerning representation

⁴ See *Matter of Mill B, Inc*, 40 N. L. R. B. 346

⁵ The Interstate argues in its brief that a limitation on expenditure of Board funds contained in *Labor-Federal Security Appropriation Act, 1944*, 57 Stat. 494, precludes the Board from proceeding in this matter. Since the limitation referred to has no application to representation proceedings, we find no merit in this contention. See *Matter of California Door Company*, 52 N. L. R. B. 68, 70.

which has arisen affecting them will be in part resolved. If a majority of the maintenance employees on the New York lines vote for the Amalgamated, they will have indicated thereby their desire to be included in the system-wide unit of drivers and terminal employees, and will be a part of such unit; if they choose the Interstate, they will remain a separate bargaining unit.

In accordance with the foregoing, our Direction of Election herein will be amended to provide for a separate election among all maintenance employees and Cardex employees on the New York lines of the Company, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, to determine whether they desire to be represented by the Amalgamated or the Interstate for the purposes of collective bargaining, or by neither. In view of the lapse of time since the issuance of our original Decision and Direction of Election, we will also direct that the employees in both voting groups eligible to participate in the elections shall be those who were employed during the pay-roll period immediately preceding the date of the Amended Direction of Elections hereinafter set forth, subject to the limitations and additions specified therein. The Regional Director is hereby authorized to conduct the elections by mail, either in whole or in part.

AMENDED DIRECTION OF ELECTIONS

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 Central Greyhound Lines, Inc., Cleveland, Ohio, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Amended Direction, under the direction and supervision of the Regional Director for the Eighth 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 maintenance and cardex employees of the Company in the groups set forth below, who were employed during the said pay-roll period immediately preceding the date of this Amended 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 elections:

(1) all maintenance employees of the Company, including Cardex employees, but excluding maintenance employees and Cardex employees on the New York lines and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, to determine whether or not they desire to be represented by Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America (AFL), for the purposes of collective bargaining;

(2) all maintenance employees and Cardex employees on the New York lines of the Company, excluding supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America (AFL), or by Interstate Motor Coach Employees Association, Inc., for the purposes of collective bargaining, or by neither.