

In the Matter of OKLAHOMA TRANSPORTATION COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN

Case No. 16-R-911.—Decided June 27, 1944

Mr. Harold E. Mueller, of Fort Worth, Tex., for the Company.

Mr. Harlan Bell, of Oklahoma City, Okla., for the Union.

Mr. Joseph C. Wells, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Brotherhood of Railroad Trainmen, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Oklahoma Transportation Company, Oklahoma City, Oklahoma, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Oklahoma City, Oklahoma, on May 19, 1944. The Company and the Union 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

Oklahoma Transportation Company, an Oklahoma corporation, is engaged as a common carrier in the transportation of passengers, property, and United States mail by motorbus. It operates as an interstate carrier under Interstate Commerce Commission Docket No. 460, pursuant to the Motor Carrier Act of 1935. It has its own interstate schedules and makes connection with other motor carriers

which do interstate business. During the period from June 1941 to June 1942 the Company transported 1,386,438 passengers and operated a total of 4,255,903 miles; and during the period from January to April 1944 it transported 943,435 passengers and operated a total of 2,033,384 miles. The Company operates 83 busses and employs 263 employees of whom 91 are drivers.

The Company admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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

The Union alleges to be appropriate a unit of all bus drivers employed by 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.² The parties are in agreement as to the appropriateness of the proposed unit. The sole dispute between the parties concerns the classifications of the master operator and the dispatcher. The Union contends that both should be excluded from the unit on the ground that they exercise supervisory functions; the Company, on the other hand, maintains that they should be included on the grounds that both positions are occupied and have always been occupied by regular bus drivers on a temporary assignment and that the incumbents of these positions do not possess or exercise any supervisory duties.

¹The Field Examiner reported that the Union had submitted 66 designations which bore the names of employees within the claimed appropriate unit containing approximately 93 employees, and that, of these designations, 64 were dated April 1944 and 2 were dated March 1944.

²The petition describes the unit as "all bus operators." At the hearing, the petition was amended so as to state the exclusion of all supervisory employees, etc.

The positions of master operator and dispatcher were created by the Company in August 1943, for the dual purpose of (1) alleviating a condition occasioned by an increase in the turn-over of personnel, and another condition occasioned by a substantial increase in the Company's business which necessitated the employment of a dispatcher at the Oklahoma City depot; and (2) affording some of the regular bus drivers an opportunity to enjoy an intermission in their duties as bus drivers. The master operator instructs new drivers in their duties, accompanying them on their first schedules, and offers suggestions to them as to their methods of operation. The dispatcher works at the Oklahoma City depot and is responsible for seeing to it that busses are loaded, unloaded, and leave on schedule. The record indicates that the only requisite for either position is experience as a bus driver for 4 or 5 years. The bus drivers assigned to the positions of master operator and dispatcher receive a salary based upon their average earnings as bus drivers.

The master operator and dispatcher are entered on the Company's pay roll as bus drivers during their incumbency of these positions, and heretofore have returned to their former duties as bus drivers after performing the duties of master operator or dispatcher for periods of from approximately 1 to 5 months.³ Upon returning to their duties as bus drivers they resume their former place on the seniority list and their former schedules. Acceptance of the assignment to the position of master operator or dispatcher by a bus driver is optional, and the assignments have been offered to some bus drivers who have declined to accept.

It is clear from the foregoing that positions as master operator and dispatcher are held by ordinary employees as rotating assignments. It is undisputed that the incumbents of these positions for the time being do not hire, promote, discharge, or discipline; and there is no convincing evidence that they are vested with or exercise the power effectively to recommend such action.⁴ Although such positions in this industry have been regarded, in other circumstances,⁵ as involving the exercise of supervisory authority, we find, in the circumstances here present, that the master operator and the dispatcher are not super-

³ The position of master operator was held by different drivers from August 18 to October 2, 1943; from October 5 to November 5, 1943, and from November 16, 1943, to April 1, 1944. The present incumbent was assigned on April 1, 1944. The position of dispatcher was held by different drivers from, August 26 to September 30, 1943; from October 1, to November 1, 1943; and from November 1, 1943 to April 7, 1944. The present incumbent was assigned on April 7, 1944.

⁴ The only evidence detracting from the conclusion that these positions are not supervisory is the testimony of a company official to the effect that the master operator in isolated instances has reported to the Company irregularities on the part of bus drivers who, as a result of the reports, were admonished by the Company to discontinue the irregularities. There is no showing that he recommended appropriate disciplinary action.

⁵ See *Matter of Santa Fe Transportation Company*, 52 N. L. R. B. 895.

visory employees within the meaning of our usual definition.⁶ We shall therefore include them in the unit.

We find that all bus drivers of the Company, including the master operator and dispatcher, 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, 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.

Due to the difficulties which may occur in balloting various drivers on duty at distant points at the time the election is held, and in order to avoid delay in a successful conclusion of the balloting, the Regional Director is hereby authorized to use the mail for balloting purposes whenever, in his discretion, expediency will be served thereby.

The Company requests that employees who are members of the armed services be permitted to vote by mail if the performance of their present duties precludes their being present at the polls. The Union does not object to this request. In accordance with our established policy, recently affirmed after a full review of the reasons for the policy,⁷ we shall deny the Company's request and permit only those employees on military leave to vote who present themselves in person at the polls.

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 Oklahoma Transportation Company, Oklahoma City, Oklahoma, 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 Sixteenth Region, acting

⁶ See *Matter of Dixie Greyhound Lines, Inc.*, 52 N. L. R. B. 424; *Matter of Reid Murdoch and Co.*, 56 N. L. R. B. 284.

⁷ See *Matter of Mine Safety Appliances Co.*, 55 N. L. R. B. 1190.

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 Brotherhood of Railroad Trainmen, for the purposes of collective bargaining.