

In the Matter of ENGLISH FREIGHT COMPANY *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 745, AFL

Case No. 16-R-978.—Decided September 5, 1944

Callaway and Reed, by Mr. Carl B. Callaway, of Dallas, Tex., for the Company.

Messrs. Jack L. Davis and T. T. Neal, of Dallas, Tex., for the Union.

Messrs. Robert Silagi and Wallace E. Royster, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION.

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of English Freight Company, Dallas, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Dallas, Texas, on July 26, 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.

At the outset of the hearing, the Company moved for a dismissal of the petition for failure of the Regional Attorney to give due Notice of Hearing, or in the alternative, for a continuance of the hearing. The Trial Examiner denied the continuance and referred the motion to dismiss to the Board. The Company contends that it has been prejudiced by the fact that only 4 days elapsed between the service of the Notice of Hearing and the date of the hearing. We disagree. Our Rules and Regulations do not provide for any specific interval between service of Notice of Hearing and the hearing itself. In any event we are convinced that under the circumstances present in this case the Company received adequate notice and in no way was preju-

diced by the shortness of the time. The record is clear that for over a month prior to the hearing, the Company was aware of the Union's demands and that a strike of the Company's drivers was precipitated by the Company's refusal to extend recognition to the Union. During the strike, on July 17, 1944, representatives of the Board, the Company, and the Union conferred with a Department of Labor Conciliator in an effort to return the employees to work and to arrange for a consent election.

At that time, the Field Examiner of the Board advised the Company that failure to accept a consent election would result in a Board hearing in the near future. The employees continued out on strike until July 24 when they returned to work only after assurance by the National War Labor Board that the question concerning representation would be determined in a hearing scheduled a few days later by the Board. The Company admits that its primary object, the cessation of the strike, was contingent upon an early hearing and hence refrained from requesting a continuance until the day of the hearing. We therefore fail to perceive how the Company can plead surprise as a bar to the hearing, or, deny the propriety of holding the hearing forthwith. Nor are we impressed with the Company's argument that its general manager and counsel had no time in which to prepare their case. The same counsel who represented the Company in the hearing herein likewise represented the Company during the entire course of its labor difficulties and was well conversant with all the facts necessary to prepare his case. The same is true with respect to the Company's general manager. Under these circumstances we hereby sustain the Trial Examiner's ruling and deny the Company's motion to dismiss.

The Trial Examiner's other 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

English Freight Company is a Texas corporation having its principal office and place of business in Dallas, Texas. Pursuant to the authorization of the Interstate Commerce Commission the Company is engaged in transporting general commodities in the States of Texas and Oklahoma. During the year 1943, the Company hauled 140,000,000 pounds of freight producing a revenue of approximately \$1,250,000. Of this amount 35,000,000 pounds represented freight transported to and through States of the Union other than Texas producing

about \$400,000 in revenue. More than 60 percent of the Company's efforts is directed toward hauling war materials.

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

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, 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 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 seeks a unit comprised of all "over-the-road" truck drivers of the Company, with the exception of those presently represented by Local 523, an affiliate of the parent international union. These latter drivers work out of Tulsa, Oklahoma, in contrast to the drivers presently sought who operate from 14 terminals in Texas. While the Company declined to take any positive position with respect to unit, it is apparent from the record that it considers as appropriate only a unit which embraces terminal or dock workers, and local pick-up and delivery men as well as the over-the-road drivers who operate trucks from city to city.

The evidence shows that over-the-road drivers are paid on the basis of miles driven, receiving $2\frac{3}{4}$ cents per mile; whereas the pick-up and delivery drivers are paid 50 cents per hour plus a commission on the merchandise picked up; and the dock hands receive a straight 50 cents per hour rate. The hours of employment of the over-the-road drivers are different from those of the local drivers because the former

¹ The Field Examiner reported that the Union submitted 21 applications, 20 of which were dated in June 1944, and 1 was undated. The unit which the Union seeks contains approximately 25 employees. The application blanks were not checked against a pay roll since the Company refused to submit one.

are subject to the jurisdiction of the Interstate Commerce Commission and must comply with its regulations. Similarly, all over-the-road drivers are supervised by one truck superintendent who is located at the central office in Dallas, whereas the local drivers and dock men come under the jurisdiction of the separate dock foremen at the respective terminals throughout the State of Texas. The qualifications for the different classifications of employees vary greatly; thus the ability of over-the-road drivers to handle large tractor-trailer combinations is dependent upon skill, experience, and physical endurance to drive under all conditions. The local drivers, on the other hand, operate smaller pick-up trucks and must be good salesmen as well as drivers since their wages, and to an appreciable extent the amount of business done by the Company, is dependent upon their sales ability. The chief qualification of dock hands, however, is the ability to move heavy objects. The parties are agreed that the other terminal employees such as clerical workers and maintenance mechanics should be excluded from the unit.

In view of the foregoing differences, the pattern of collective bargaining established by the Company in its separate contract for over-the-road drivers in Tulsa, and the numerous contracts held by the Union for over-the-road drivers, we are of the opinion that the employees comprising the unit sought herein are a clearly defined, homogeneous, and functionally distinct group which can effectively be represented as a separate unit for bargaining purposes.² Accordingly, we find that all over-the-road drivers employed by the Company, but excluding those operating out of Tulsa, Oklahoma, local pick-up and delivery drivers, dock hands, maintenance mechanics, clerical employees 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

² See *Matter of Texas, New Mexico & Oklahoma Coaches, Inc.*, 46 N. L. R. B. 343; see also *Matter of East Texas Motor Freight Lines*, 55 N. L. R. B. 967, wherein a unit of terminal employees and local drivers, apart from over-the-road drivers, was found appropriate.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with English Freight Company, Dallas, Texas, 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 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 the 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 or not they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, for the purposes of collective bargaining.

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