

In the Matter of ALBERT BRYGGER, L. A. TANNER, F. I. STAFFORD, W. R. WAYLAND, FRED G. HOLMES, RINEY B. SALMON, IRVING A. JENNINGS, CO-PARTNERS DOING BUSINESS AS MENDERSON BUS LINES and AMALGAMATED ASSOCIATION OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 1325, A. F. L.

In the Matter of ALBERT BRYGGER, L. A. TANNER, F. I. STAFFORD, W. R. WAYLAND, FRED G. HOLMES, RINEY B. SALMON, IRVING A. JENNINGS, CO-PARTNERS DOING BUSINESS AS MENDERSON BUS LINES and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 49, A. F. L.

*Cases Nos. 21-R-2427 and 21-R-2444 respectively.—Decided October 7, 1944*

*Mr. George H. O'Brien*, of Los Angeles, Calif., for the Board.

*Mr. Irving A. Jennings*, of Phoenix, Ariz., for the Company.

*Messrs. Wade Church and W. J. Eden*, of Phoenix, Ariz., for the Amalgamated.

*Mr. Frank S. Fash*, of Phoenix, Ariz., for the I. A. M.

*Mr. Erwin A. Peterson*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, Division 1325, affiliated with the American Federation of Labor, herein called the Amalgamated, and by International Association of Machinists, District 49, affiliated with the American Federation of Labor, herein called the I. A. M., alleging that questions affecting commerce had arisen concerning the representation of employees of Albert Brygger, L. A. Tanner, F. I. Stafford, W. R. Wayland, Fred G. Holmes, Riney B. Salmon, Irving A. Jennings, co-partners doing business as Mender-son Bus Lines, Phoenix, Arizona,<sup>1</sup> herein called the Company, the National Labor Relations Board provided for an appropriate consoli-

<sup>1</sup> The name of the Company thus appears as corrected by stipulation entered into by the parties at the hearing.

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dated hearing upon due notice before Louis Plost, Trial Examiner. Said hearing was held at Phoenix, Arizona, on September 7 and 8, 1944. The Company, the Amalgamated, and the I. A. M. 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 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

Albert Brygger, L. A. Tanner, F. I. Stafford, W. R. Wayland, Fred G. Holmes, Riney B. Salmon, Irving A. Jennings, were co-partners doing business as Menderson Bus Lines.<sup>2</sup> The Company is a public carrier operating a bus transportation passenger service between, in and about metropolitan Phoenix, Arizona. The Company presently operates 41 busses.

Metropolitan Phoenix has a population of 145,142. It has 2 major transit companies, The City of Phoenix Lines, a municipally owned and operated streetcar and bus line, and the Company involved in this proceeding. The Company transports 26.7 percent of all passengers using the public transportation systems in metropolitan Phoenix. It was stipulated that among the business establishments in Phoenix engaged in commerce or operations affecting commerce there are 49 named manufacturing plants the employees of which are engaged in production of goods for interstate commerce; that the taxable sales of these plants last year amounted to \$40,948,419.21; that these 49 concerns employ 12,712 employees; and that approximately 20 percent of such employees relies upon the public transportation systems to get to and from work.<sup>3</sup>

<sup>2</sup> Stafford recently died and under Arizona law, death of one partner automatically dissolves the partnership. Irving A. Jennings, one of the partners and attorney for the Company stipulated that the Company would not raise any technical questions as to the entity of the Company. Jennings also requested that for the purposes of this proceeding the Company be designated as Menderson Bus Lines, a copartnership. The stipulation is approved, and the request is hereby granted.

<sup>3</sup> The parties each conducted surveys as to the number of employees of these concerns who use the Company's lines exclusively or in part to go to and from work. There was a wide discrepancy in the results of the surveys. The surveys were conducted among only 49 out of 160 companies in metropolitan Phoenix which are listed by the State Tax Commission of Arizona as manufacturers. The surveys also did not include employees of such interstate businesses as The Central Arizona Light and Power Company, Mountain States Telephone and Telegraph Company, Santa Fe Railroad, The Southern Pacific Railroad, The P. F. L. Freight Lines, Salt River Valley Water Users Association, Western Union, United States Post Office and other Federal agencies, oil companies, airports, and radio stations. The record also reveals that the Company is the only public transportation system which

During the past year the Company transported a total of 8,179,140 passengers and its busses traveled 2,640,000 miles. The Company purchased various materials for operation purposes valued at \$171,703.94, of which \$8,436.56 worth was purchased directly outside the State of Arizona. The parties stipulated that all the other materials used by the Company were purchased from local concerns but were manufactured outside the State of Arizona.

In view of the foregoing facts, we are of the opinion and we find that the Company's operations affect commerce within the meaning of the National Labor Relations Act.<sup>4</sup>

## II. THE ORGANIZATIONS INVOLVED

Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, Division 1325, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Association of Machinists, District 49, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to either the Amalgamated or the I. A. M. as the exclusive bargaining representatives of its employees and contests the jurisdiction of the National Labor Relations Board.

A statement of the Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Amalgamated and the I. A. M. each represents a substantial number of employees in the unit it alleges to be appropriate.<sup>5</sup>

We find that questions affecting commerce have 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.

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serves certain military establishments, namely the Papago Prison Camp and Thunderbird Airfield.

In view of the inconclusive and incomplete character of this evidence we make no finding as to the number of persons employed by concerns engaged in commerce in Phoenix who use the Company's lines in traveling to and from work

<sup>4</sup> See *N. L. R. B. v. Baltimore Transit Company*, 140 F. (2d) 61 (C. C. A. 4); cert. den., 321 U. S. 795. See also *Matter of Charleston Transit Company*, 57 N. L. R. B. 1164.

<sup>5</sup> The Field Examiner reported that the Amalgamated submitted 54 authorization cards, all of which bore apparently genuine original signatures; that the names of 32 persons appearing on the cards were listed on the Company's pay roll of July 18, 1944, which contained the names of 66 employees in the appropriate unit, and that 27 of the cards were dated in May 1944 and 27 were undated. The I. A. M. submitted 11 application for membership cards, all of which bore apparently genuine original signatures. The names of 9 persons appearing on the cards were listed on the Company's pay roll of July 18, 1944, which contained the names of 23 employees in the appropriate unit. Four of the cards were dated in February, 3 in May, 3 in July 1944, and 1 was undated.

## IV. THE APPROPRIATE UNITS

Substantially in accordance with an agreement of the parties at the hearing, we find that the following constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(1) All employees of the Company, excluding all mechanics, mechanics' helpers, office 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; and

(2) All mechanics and mechanics' helpers of the Company, 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.

## V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

## 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, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Menderson Bus Lines, a copartnership, Phoenix, Arizona, separate elections 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 Twenty-first 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 following groups of employees 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 elections,

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 :

(1) All employees of the Company, excluding mechanics, mechanics' helpers, and office employees, to determine whether or not they desire to be represented by Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, Division 1325, affiliated with the American Federation of Labor, for the purposes of collective bargaining;

(2) All mechanics and mechanics' helpers of the Company, to determine whether or not they desire to be represented by the International Association of Machinists, District 49, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.