

In the Matter of WILEY H. MERRILL, AN INDIVIDUAL, D/B/A MERRILL MOTOR LINE and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, LOCAL UNION No. 47

Case No. 16-R-997.—Decided October 7, 1944

Mr. Wiley H. Merrill, of Greenville, Tex., and *Callaway & Reed*, by *Mr. Carl B. Callaway*, of Dallas, Tex., for the Company.

Mr. W. F. Darden, of Fort Worth, Tex., for the Union.

Mr. Louis Cokin, 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 and Helpers of America, AFL, Local Union No. 47, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Wiley H. Merrill, an individual doing business as Merrill Motor Line, Greenville, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer Davis, Trial Examiner. Said hearing was held at Greenville, Texas, on September 8, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. At the opening of the hearing Merrill, on behalf of the Company, protested proceeding with the hearing on the grounds that he had not received reasonable notice and consequently had not had an opportunity to consult counsel, and in substance requested that the hearing be postponed. The Trial Examiner at that point denied the request for a continuance, but stated that he would entertain the motion again after hearing evidence. At the close of the hearing the Trial Examiner ruled that no continuance would be granted, stat-

ing that in his opinion the record seemed complete. In his brief, counsel for the Company urged that a further hearing be held, for the reason that an adequate opportunity to be heard had not been accorded the Company; in the alternative, counsel urged that the proceeding be dismissed because the evidence did not warrant the Board in finding that a question of representation existed or that the unit sought by the Union is appropriate.

Notice of Hearing was issued by the Regional Director on Saturday, September 2, and received by the Company the morning of September 5, 3 days before the hearing. It appears that counsel for the Company, who customarily handles the Company's legal affairs, returned to his office in Dallas on the morning of the hearing after an absence of 3 weeks. Upon receipt of the Notice of Hearing on September 5, Merrill wired the Regional Director requesting a postponement until after September 13. The Regional Director, on the same day, denied the request. Upon examination of the record, we are satisfied that adequate notice was given the Company and that it has not been prejudiced by the absence of counsel at the hearing. The Trial Examiner assisted in adducing evidence relevant and material in representation cases and appears to us to have been solicitous of the interests of the Company. Counsel for the Company has not, in his brief, pointed to any matters of a relevant nature which the Company would adduce if the record were reopened. Accordingly, the Trial Examiner's ruling denying a continuance is affirmed, and the request to reopen, or in the alternative to dismiss the proceeding, is denied. The Trial Examiner's other rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Wiley H. Merrill, operating from Greenville, Texas, under the name of Merrill Motor Line, is engaged as a contract carrier licensed by the Interstate Commerce Commission in the transportation of packing-house products for Swift and Company, Wilson and Company, and Cudahy Packing Company to military establishments, as well as for civilian needs, in Texas and Oklahoma. Products from the Fort Worth, Texas, plant of Swift and Company are transported by the Company to points in Texas and Oklahoma; shipments from the Oklahoma City plant of Wilson and Company are delivered in Texas. Products from the plant of Cudahy Packing Company in Wichita, Kansas, are transported to Oklahoma City by another carrier and then transported by the Company, which does not operate in Kansas, to points

in Texas. The Company is authorized to operate 43 trucks, but at present operates only 20. Its annual volume of business is about \$100,000, of which about two-thirds is attributable to deliveries in Texas and the balance to deliveries in Oklahoma.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 47, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Union began organizing employees of the Company about July 1, 1944. On July 6, Derden, representative of the Union, advised Merrill that he had organized a majority of the Company's employees and requested a collective bargaining conference. At a conference between union representatives and Merrill on July 8, Merrill requested further time to consider the matter. About a week later Derden called Merrill and was advised that the latter had not had sufficient opportunity to discuss the Union with his employees. Later Derden unsuccessfully attempted to meet Merrill, and thereupon filed the petition herein on July 26. Thereafter the Regional Office attempted to dispose of the petition informally.

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 of the Company's drivers and helpers engaged in over-the-road driving, excluding office and clerical employees, maintenance crews, and supervisory employees within the Board's customary definition. Merrill, on behalf of the Company, testified that he would include all employees except himself and his wife who assists in conducting the business, on the ground that the services of all employees are necessary to conduct the business.

¹ The Field Examiner reported that the Union submitted 14 application cards, all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll as of September 2, 1944, which contained the names of 19 employees in the appropriate unit; and that 13 of the cards were dated July 1944, and 1 undated.

As of the date of the hearing, the Company employed 16 drivers and 1 helper, 4 office and clerical employees, a general manager, a service manager, 5 mechanics, 3 greasemen, 1 warehouseman, a shop superintendent, and 2 plant foremen. The record clearly shows that the general manager, the service manager, the warehouseman, the shop superintendent, and the 2 plant foremen are supervisory employees; we shall therefore exclude them. The office and clerical workers perform the usual duties of such employees and, in accordance with our settled practice, we shall exclude them. The mechanics are engaged in maintenance of the equipment; the greasemen wash and grease the trucks. These maintenance employees work under considerably different conditions than the drivers, and are paid on a weekly basis whereas the drivers are paid on a trip basis. We have on many occasions found that drivers and helpers, engaged in over-the-road transportation, constitute a separate unit apart from other employees who may be engaged in related manual work.² Accordingly, we shall exclude the mechanics and greasemen from the unit.

We find that all over-the-road drivers and helpers of the Company, but excluding office and clerical employees, mechanics, greasemen, the general manager, the service manager, the warehouseman, the shop superintendent, plant foremen, and any other 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.³

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

² See, e. g., *Matter of Sutherland Paper Co.*, 55 N. L. R. B. 38; *Matter of English Freight Company*, 58 N. L. R. B. 67.

³ In his brief, counsel for the Company suggests that some of the employees are now in military service and that no evidence concerning their eligibility to vote was adduced at the hearing. Our policy with respect to employees in the armed forces is well known; we do not provide for mail balloting but such of them as appear in person are eligible to vote. See *Matter of Mine Safety Appliances Company*, 55 N. L. R. B. 1190.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Wiley H. Merrill, d/b/a Merrill Motor Line, Greenville, 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 and Helpers of America, Local Union No. 47, 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 Election.