

In the Matter of SPOKANE UNITED RAILWAYS and LODGE 86, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

Case No. 19-R-1394.—Decided January 15, 1945

Mr. Alan G. Paine, of Spokane, Wash., for the Company.

Mr. C. L. Bentley, of Seattle, Wash., and *Mr. John T. Curtis*, of Spokane, Wash., for the Machinists.

Messrs. C. L. Tanner and *William Cooper*, of Portland, Oreg., and *Messrs. Frank E. Flynn*, and *Thomas D. McLaughlin*, of Spokane, Wash., for the Amalgamated.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by Lodge 86, International Association of Machinists, AFL, herein called the Machinists, alleging that a question affecting commerce had arisen concerning the representation of employees of Spokane United Railways, Spokane, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William E. Spencer, Trial Examiner. Said hearing was held at Spokane, Washington, on October 13, 1944. The Company, the Machinists, and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, herein called the Amalgamated, 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 opportunity to file briefs with the Board. The request of the Amalgamated for oral argument is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Spokane United Railways has its principal office and place of business at Spokane, Washington, where it is engaged in operating motor
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buses for the carriage of passengers along certain fixed bus routes in that city and its suburbs. The Company is a wholly owned subsidiary of The Washington Water Power Company, the president and vice president of which serve as the president and vice president, respectively, of the Company. The Washington Water Power Company operates electric distribution lines in Washington and Idaho, owning and operating hydroelectric generating plants in both States. Electric energy so generated crosses the Washington-Idaho boundary line in both directions. The Company uses electric power generated by the parent corporation to light its various buildings.

In the operation of its motor buses in and about Spokane, the Company uses gas, oil, butane, and such miscellaneous maintenance supplies as engine and repair parts, lumber, paint, and glass. During August 1944, the Company purchased gas, oil, and butane valued at \$15,296.02, nearly all of which was received at Spokane from sources outside Washington. During the same period the Company purchased other miscellaneous supplies to the amount of \$11,568.84, the major part of which was secured from local distributors.

The Company leases space on its buses for the display of advertising posters. Approximately 43 percent of such poster display involves products advertised and sold on a national basis. Four interstate railroads and four interstate bus transportation companies provide passenger depot facilities within Spokane, and bus routes maintained by the Company pass directly before or within a block of such terminals. Thus, the transportation services provided by the Company are available for the use of persons arriving or departing on any of these interstate carriers on the same basis as they are available to other persons within the city. Except for taxicabs, there are no local public transportation facilities in Spokane other than the Company's buses.

Within the corporate limits of Spokane there are 28 producers whose products move in interstate commerce, each of which employs more than 100 persons and which as a group employ approximately 7,500 persons. A majority of these employees use the facilities of the Company on one or more days per week for transportation to and from work. Outside of the city limits are other business concerns and major military installations engaged in operations contributing directly to the war effort, employing in excess of 14,000 persons, a majority of whom use the facilities provided by the Company on one or more days per week as part of their transportation to and from work. During the month of August 1944, the Company carried a total of 2,322,326 passengers.

We find, contrary to the contention of the Company, that it is engaged in commerce, within the meaning of the National Labor Relations Act.¹

II. THE ORGANIZATIONS INVOLVED

Lodge 86, International Association of Machinists, and Amalgamated Association of Street Electric Railway and Motor Coast Employees of America are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED APPROPRIATE UNIT

As noted above, the Company is engaged in operating motor buses in and about Spokane, Washington. The president of the Company and its vice president and general manager established company policies, which are uniform throughout its system. Aside from its office work, the Company divides its operations administratively into two departments (1) the transportation department and (2) the maintenance and street service department, under the charge of a superintendent of transportation and a superintendent of maintenance and street service, respectively. The superintendent of transportation has his headquarters at the Company's main garage and all employees subject to his supervision work in and out of the main garage. The superintendent of maintenance and street service also has his headquarters in the main garage, but a supervisor subject to his general direction is in charge of street service with headquarters at the Cedar Street Yards, a shop and yard one block distant from the main garage, where the Company maintains a blacksmith shop and keeps its snow plows, sand, and other equipment for street service. The Company's employees include the bus operators, dispatchers, register readers, and road men, who principally constitute the transportation department, and cleaners and washers, utility men, repairmen, and laborers, who principally constitute the maintenance and street service department, more particularly described below.

Phrasing its proposed unit in terms indicative of its special jurisdiction, rather than in phrases indicative of employee classifications used by the Company, the Machinists contends that all employees of the Company eligible to its craft membership, who are engaged in assembling, dismantling, maintaining, repairing, rebuilding, and fabricating automotive and mechanical equipment and appurtenances thereto, constitute an appropriate bargaining unit. The Company and the Amalgamated contend that all employees of the Company, excluding supervisory and office employees, constitute the appropriate

¹ *Matter of Charleston Transit Company*, 57 N. L. R. B. 1164, and cases cited therein.

unit and urge that the past bargaining history between the Company and its employees has conclusively demonstrated its effectiveness for this purpose. They further urge that the unit proposed by the Machinists is not *per se* an appropriate bargaining unit.

In 1934 the National Labor Board certified the Amalgamated as bargaining representative of the Company's employees, including bus operators and maintenance workers in a company-wide unit. Between 1934 and 1940 the Company recognized the Amalgamated as the bargaining representative of these employees and negotiated with the Amalgamated orally on their behalf.

For a long period of time prior to 1934, the Amalgamated and the Machinists, both of whom are affiliated with the American Federation of Labor, had been generally engaged in a jurisdictional dispute with respect to the representation of certain employees of streetcar and bus companies, eligible to craft membership in the Machinists but frequently included by the Amalgamated, organizing on industrial lines, in broader company-wide units. In 1940, when the Amalgamated was about to enter into its first written contract with the Company, the Machinists actively challenged the jurisdiction of the Amalgamated as an industrial organization affiliated with the same parent body to represent certain employees of the Company claimed as craftsmen by the Machinists. The two labor organizations, in abatement of their dispute, finally agreed that they would refer the matter to their respective internationals for submission to the executive council of the American Federation of Labor for decision and that, pending final action by the American Federation of Labor on the issue, each organization should retain among the Company's employees the members which it then listed in its roster. Accordingly, on January 2, 1941, when the Amalgamated and the Company executed their first written agreement, effective for 1 year, they provided, *inter alia*, that employees of the Company covered by the contract should be required after 1 month's continuous employment to share equally in the cost of maintaining and operating the bargaining agency in accordance with its rules "except those certain employees who are of this date *bona fide* members of International Association of Machinists, Local No. 86." Appended to the contract was a clarifying statement of the history of the dispute between the Amalgamated and the Machinists concerning employees in street railway service and a list of seven named employees of the Company, then claimed as members of the Machinists and identified as covered by the exception in the contract noted above. Thereafter, on December 22, 1941, and on January 4, 1943, respectively, the Company and the Amalgamated executed new contracts, each for a year's duration, and each providing for membership of all employees covered by the con-

tract in the Amalgamated "except those certain employees who were, as of January 2, 1941, *bona fide* members of International Association of Machinists, Local No. 86." A list attached to the December 22, 1941, contract discloses that four of the seven employees named in the January 2, 1941, agreement as members of the Machinists were in the Company's employ at the later time. A list attached to the January 4, 1943, contract indicates that, at its execution, three of the original seven members of the Machinists were then listed as employees of the Company and that one of these was in military service. On August 23, 1944, the Amalgamated and the Company executed their fourth written contract, also containing closed-shop provisions, with a similar exception for members of the Machinists in 1941.² A list similar to that attached to the January 4, 1943, contract is appended thereto.

From 1940 to August 1944, the Machinists took no step to represent as bargaining agent employees of the Company claimed as members or subject to its craft jurisdiction or to press its claim through the American Federation of Labor for settlement of its long standing dispute with the Amalgamated. So far as the record discloses, the internationals of the claimants have made no attempt to effect a compromise or to work out any other solution of the issue. Since 1934 the Amalgamated has continued to bargain for bus operators and maintenance employees of the Company at the main garage and at the Cedar Street Yards in a single unit. Although the certain named members of the Machinists continuing in the Company's employ have been regularly excepted from the operation of the closed-shop provisions of the several contracts between the Amalgamated and the Company, all such employees have been duly represented by the Amalgamated.

The Machinists in August 1944, however, requested recognition as bargaining representative of certain repairmen and utility men at the Company's main garage, who it presently contends constitute an appropriate bargaining unit. The Machinists describes its proposed unit in the general terms noted above. During the course of the hearing, however, it developed that included in the proposed unit are repairmen and utility men described as doing "mechanical" work on buses, and excluded therefrom are repairmen and utility men who do greasing and other services as distinguished from "mechanical" work on buses, utility men who test brakes and equipment as they transfer refueled buses about the yard and the main garage, employees classi-

² This contract was the result of negotiations begun on October 18, 1943, when the Amalgamated advised the Company that it desired to negotiate a new working agreement and a new wage scale for the Company's employees. Pending the settlement of certain issues before the War Labor Board, the parties agreed to operate under their 1943 contract until the new contract should be signed. On August 22, 1944, the Machinists made its claim to represent the Company's employees. On August 23, the Amalgamated and the Company entered into their new agreement, made retroactive to January 2, 1944. Contrary to the contention of the Amalgamated, we find that the contract executed August 23, 1944, does not constitute a bar to a consideration of the petition upon its merits.

fied as bus washers and cleaners, other maintenance employees at the main garage,³ and all utility men and laborers at the Cedar Street Yards, who clean and work about both garages and make the streets passable and safe for bus transportation during the winter season.⁴ Bus operators and other employees in the transportation department are likewise excluded from the unit proposed by the Machinists. All repairmen and utility men employed by the Company are concerned with its public transportation operations, which are necessarily closely integrated and require a high degree of coordination among all employees in the several work categories in the two major departments. The Company's long practice of upgrading employees capable of filling vacancies occurring in higher paid work categories results not only in the general competence of its employees and in their adaptability for, and interest in, the varied work necessary for the rendering of its important public service, but especially in their common concern in all employment problems. We question whether employees who fall within the unit proposed by the Machinists constitute a comprehensive group or are even clearly identifiable among the Company's repairmen and utility men and, further, whether, if identifiable, such employees as the Machinists would group in a separate unit enjoy a special community of interest apart from other maintenance employees of the Company which would justify their inclusion in a restricted bargaining unit at this stage of organization among the Company's employees. In the absence of affirmative showing on these points, we cannot conclude that the unit proposed by the Machinists constitutes an appropriate bargaining unit.⁵ In support of its proposed unit, however, the Machinists urges that the desire of employees in the proposed unit to constitute a separate bargaining group alone justifies a finding that they constitute an appropriate unit for bargaining purposes.⁶ We do not agree. Under other circumstances, where employees in clearly defined groups have been organized by two rival labor unions for inclusion in departmental or craft and industrial groups, respectively, and other factors persuasive of unit finding are balanced, we have sought to learn the desire of the employees primarily concerned before making a final determination upon the appropriateness of their unit placement. In the instant case, how-

³ Included in this group are an engineer in charge of the boiler, a fuel dispenser, a painter, a plumber, two lathe men, and a combination leather worker and blacksmith

⁴ The Company employs 11 men at the Cedar Street Yards, of whom 8 are utility men who drive trucks and snow plows in the winter, help trim trees and take sand from the curbs in the spring, and otherwise do general maintenance work for bus service, and 3 laborers who assist the utility men, and dig sand, load trucks, empty trash barrels, and clean the garage.

⁵ *Matter of Triangle Publications, Inc.*, 40 N. L. R. B. 1330; *Matter of Edward C. Fiedler, et al.*, 55 N. L. R. B. 678

⁶ In support of its claim to represent the Company's employees, the Machinists submitted 33 cards dated in August 1944. There are approximately 85 employees in its proposed unit.

ever, the employees claimed by the Machinists have bargained with their employer for 10 years as part of a system-wide unit. The continued exemption of 3 of these employees, among a proposed group of 85 employees, from the payment of dues to the Amalgamated does not indicate any specific cleavage of the proposed group from other maintenance employees for bargaining purposes. The Amalgamated has diligently represented all categories of employees covered by its contracts with the Company during the entire period of its service as representative. Stability acquired through the experience of such collective bargaining relations cannot be lightly sacrificed to the desire of a craft or miscellaneous group of employees who subsequently seek separate bargaining rights against the will of other employees, who, through long comprehensive bargaining on a broad scale, have gained substantial rights in their common employment. In view of this long bargaining history, and the interests accruing to the Company's employees therefrom, we are of the opinion that to attempt to carve out from the established unit a bargaining group of such employees as the Machinists claims to represent would not insure to employees as a whole the rights guaranteed under the Act.⁷ For the reasons above stated, we find that the bargaining group proposed by the Machinists is not a unit appropriate for the purposes of collective bargaining, and we shall dismiss the petition filed herein.

ORDER

Upon the basis of the foregoing finding of fact, and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of employees of Spokane United Railways, Spokane, Washington, filed by Lodge 86, International Association of Machinists, AFL, be, and it hereby is, dismissed.

⁷ *Matter of American Can Company*, 13 N L R. B 1252.