

In the Matter of NORFOLK SOUTHERN BUS CORPORATION and BROTHERHOOD OF RAILROAD TRAINMEN

*Case No. 5-R-1776.—Decided February 15, 1945*

*Messrs. S. Burnell Bragg and Arthur J. Winder, of Norfolk, Va., for the Company.*

*Mr. James W. Brennan, of Long Island City, N. Y., for the Union.*

*Mr. Bernard Goldberg, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the Brotherhood of Railroad Trainmen, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of the Norfolk Southern Bus Corporation, Norfolk, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earle K. Shawe, Trial Examiner. Said hearing was held at Norfolk, Virginia, on January 10 and 11, 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 hearing, the Company moved to dismiss the petition. For reasons stated hereinafter, the said motion is hereby denied. 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

Norfolk Southern Bus Corporation, a Virginia corporation, is a wholly owned subsidiary of the Norfolk Southern Railway Company and is engaged in the transportation of passengers and freight for hire

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between certain cities and towns in the eastern sections of Virginia and North Carolina. All of the operations of the Company are subject to the public utility laws of the States of Virginia and North Carolina as well as to the regulations of the Interstate Commerce Commission. During the calendar year 1944, the Company transported approximately 4,000,000 passengers on its busses, of whom about 30 percent were transported across State lines.

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

## II. THE ORGANIZATION INVOLVED

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

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the Union as the bargaining representative of any of its employees on the ground that the unit sought to be represented by the Union is too restricted in scope.

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.<sup>1</sup>

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 comprising all bus drivers and conductors of the Virginia division, excluding bus cleaners, mechanics, transportation clerks, road men or inspectors, dispatchers and bus masters. The Company contends that an appropriate unit should include the bus drivers of both its North Carolina and Virginia divisions; it would also exclude conductors.

The Company's bus operations are organized into two divisions, known respectively, as the Virginia division, which comprises routes confined, with one exception, to the State of Virginia, and the North Carolina division, which includes routes in the two States of Virginia and North Carolina, with the greater part of the runs in the latter State. For certain purposes, the two divisions are treated by the Company as distinct entities. Each division, for example, has its own

<sup>1</sup>The Field Examiner reported that the Union submitted 35 authorization cards; that the names of 34 persons appearing on the cards were listed on the Company's pay roll for the first half of November 1944, which contained the names of 63 employees in the appropriate unit; and that the cards were all dated in November 1944.

seniority list,<sup>2</sup> so that if a driver transfers from one division to the other, he does not carry his seniority with him but goes to the bottom of the seniority list in his new division. Each driver or conductor is definitely assigned to one division or the other and among regular drivers there is very infrequent interchange on a permanent basis; in case of emergency, a regular driver in one division may, on a purely voluntary basis, accept a run in the other division. Further, each division is in charge of a separate bus master.

While the factors adverted to indicate the propriety of a division unit, there are other considerations which point up the equal propriety of a company-wide unit: wages and working conditions are the same for employees throughout the system; all busses are serviced at the same garage; the dispatcher at Norfolk acts in his capacity for the two divisions; and general administration and employment policies are handled centrally. However, the Union has limited its organizational activities to employees of the Virginia division since those in the North Carolina division have indicated their hostility to the Union and there is no present possibility of organizing the latter division.<sup>3</sup> In view of the foregoing, and in the absence of any bargaining history, we are of the opinion that at this time a unit confined to employees of the Virginia division is appropriate.<sup>4</sup> We do not thereby preclude future reconsideration of the appropriateness of a larger unit, should organization of the Company's employees be extended.

The Union desires to include in the unit conductors who work on trailer type busses and in general perform duties similar to those of street car conductors. The Company objects to their inclusion principally on the ground that the trailer type bus will be abandoned on the termination of the war and the job of conductor will be abolished. Notwithstanding the fact that an employee's position may cease to exist at some time in the indefinite future, such employee has the same present right of self-organization under the Act as has any other employee.<sup>5</sup> The conductors work closely with the bus drivers, receive the same pay and have the same working conditions as the latter. Since the conductors have a community of interest with the drivers, we shall include them in the unit.

We find that all bus drivers and conductors of the Virginia division, excluding bus cleaners, mechanics, transportation clerks, road men or inspectors, dispatchers, bus masters and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively rec-

<sup>2</sup> The seniority lists are used in bidding for routes.

<sup>3</sup> Practically all of the drivers in the North Carolina division signed a petition indicating that they do not desire to be represented by the Union.

<sup>4</sup> Cf. *Matter of Newnan Cotton Mills*, 57 N. L. R. B. 917.

<sup>5</sup> *Matter of Major Aircraft Foundry*, 57 N. L. R. B. 734.

commend 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.

The Company employs a number of part-time drivers and conductors who have regular employment elsewhere. The Union urges that all part-time employees be declared ineligible to participate in the election since they do not acquire seniority with the Company. The latter, while agreeing generally with the Union's position, asserts that an exception should be made in the case of city firemen, whom it considers part of its permanent staff. For a number of years the Company has been utilizing firemen employed by the city of Norfolk on a part-time basis. The firemen work every other day for the Company with the permission of city officials;<sup>6</sup> they get the same rate of pay as other employees similarly situated and are subject to the same working conditions. As a general principle employees who do sufficient work to give them an interest in the conditions of employment also have a sufficient interest in the outcome of an election to entitle them to vote therein. We believe this principle to be no less applicable in the case of regular part-time employees who also happen to have regular employment elsewhere. We shall, therefore, permit all regular part-time employees of the Company to vote in the election.<sup>7</sup>

#### 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 the Norfolk Southern Bus Corporation, Norfolk, Virginia, an election by secret ballot shall be conducted as early as possible, but not later than thirty

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<sup>6</sup> During the December 16–31, 1944, pay period, the city firemen worked an average of about 75 hours for the Company.

<sup>7</sup> *Matter of Wagner Folding Box Corporation*, 49 N. L. R. B. 346; *Matter of The New Britain Machine Company*, 48 N. L. R. B. 263; *Matter of Armour Creameries*, 51 N. L. R. B. 28.

(30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifth 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, and regular part-time employees, 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.