

In the Matter of M. P. NUSSBAUM, G. F. NUSSBAUM, W. F. NUSSBAUM,
A. G. NUSSBAUM AND L. J. NUSSBAUM, D/B/A AMARILLO BUS COM-
PANY, EMPLOYER and LOCAL DIVISION 1424, AMALGAMATED ASSOCIA-
TION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES
OF AMERICA, AFL, PETITIONER

Case No. 16-RC-46.—Decided August 18, 1948

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the Board finds:

1. The Employer¹ is the only local bus company in Amarillo, Texas, a city of about 70,000 population. The only other means of public transportation is by taxicab. The Employer furnishes bus service to or near three railroad depots and to many manufacturing establishments whose products move in interstate commerce.

The record contains explicit testimony concerning the service that the Employer's busses provide for the employees of 10 such establishments, including The American Smelting & Refining Co., The General Mills Corporation, and other national enterprises. For example, a representative of one of these companies, producing over \$4,000,000 worth of goods annually, nine-tenths of which are shipped out of the State, testified that almost 40 percent of its 300 employees depend upon the Employer's busses to get to and from work, and that, if bus service became unavailable, the plant's operations would be seriously impaired. We are not ready to join in the assumptions contained in the dissenting opinion concerning the habits of visitors to Amarillo and of the working population of that substantial community.

¹ M. P. Nussbaum, G. F. Nussbaum, W. F. Nussbaum, A. G. Nussbaum and L. J. Nussbaum are a partnership doing business as Amarillo Bus Company. The petition and other formal papers are amended to show the correct name of the Employer.

During 1947 the Employer, at an approximate cost of \$7,400 each, purchased through Texas agencies five Ford busses, all of which were manufactured outside the State of Texas. During the same period, the Employer purchased, outside the State of Texas, money changers valued at approximately \$600. During the same period, the Employer expended approximately \$7,000 on tires through a tire rental arrangement with the sales agency of B. F. Goodrich Tire Company in Dallas, Texas. The tires are manufactured in Ohio.

On these facts, and particularly the dependence of this city's principal industries upon the Employer's services, we find, contrary to the contention of the Employer, that the Employer is engaged in activities affecting commerce within the meaning of the Act. The Employer's motion to dismiss on the above basis is hereby denied.²

2. The labor organization named below claims to represent employees of the Employer.³

3. A question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner desires to represent a unit limited to employees classified as bus drivers. In the alternative, it is willing to represent a unit including bus drivers and maintenance employees. The position of the Employer is not clear, but, from the testimony at the hearing, the Employer seems to be in favor of the larger unit.

The Employer employs approximately 80 drivers, 10 mechanics, 7 of whom do part-time or occasional driving, 3 clean-up men, and 1 lubrication employee, and a token man.

Drivers operate under an established seniority system and receive a progressive rate of pay from approximately 85 cents to \$1 per hour. One driver of 15 years' seniority was, at the time of the hearing, because of ill health, selling tokens and checking records instead of driving. Mechanics operate under no regular seniority system and their rate of pay varies from 85 cents to \$1.40 per hour. Most mechanics receive \$1.15 per hour. Two mechanics drive a regular school bus run at 9 a. m. and at 3 p. m. They work as mechanics during the remainder of the day. They accumulate seniority as drivers, but are paid as mechanics whether they are driving or working in the shop. Five other mechanics who do part-time driving may be called to drive for a double-head or emergency trip, transporting passengers

² See *Matter of Safety Motor Transit Company*, 78 N. L. R. B. 831, and cases cited therein; *Matter of Baltimore Transit Co.*, 47 N. L. R. B. 109, enf'd 140 F. (2d) 51, cert. den. 321 U. S. 795.

³ Inasmuch as our investigation discloses that the Petitioner is in compliance with Section 9 (f), (g), and (h) of the Act, the Employer's motion to dismiss, on the basis of non-compliance, is hereby denied.

over a regular bus route. They acquire no seniority as drivers and are paid as mechanics whether they are driving or working in the shop. Other maintenance men do not drive busses to transport passengers.

In numerous cases the Board has held that either a unit of drivers and maintenance employees or a unit limited to drivers may be appropriate for collective bargaining.⁴ There has been no past bargaining history concerning the employees of the Employer. The Petitioner would preferably limit the unit to drivers. Due to the close integration of activities and interchange among the Employer's drivers and mechanics, however, it is our opinion that the combined unit of drivers and maintenance employees is more appropriate.

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees of the Employer, including bus drivers, mechanics, part-time driver-mechanics, clean-up men, lubricating men, and token men, but excluding office and clerical employees, guards, professional employees, and supervisors as defined by the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Local Division 1424, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL.

⁴ See *Matter of Norfolk Southern Bus Co*, 76 N. L. R. B. 488; *Matter of Illinois Coach Company*, 72 N. L. R. B. 408; and *Matter of Auto Interurban Company*, 73 N. L. R. B. 214 and cases cited therein.

MEMBER GRAY, dissenting:

In taking jurisdiction in this case, the majority relies upon the transit lines serving railroad depots and manufacturing establishments, whose products move in interstate commerce, and upon the Employer's purchase of busses and bus equipment during the year 1947, totaling \$44,600, which came from outside the State of Texas.

Persons arriving at or leaving railroad stations fall into two categories: commercial travelers and "pleasure" travelers. The first customarily have baggage, including sample cases and catalogs. That group, strangers to the community, unfamiliar with locations of their places of visit, and with a load of baggage, normally use taxicabs to reach their local destinations.

"Pleasure" travelers are mostly accompanied between home and station by relatives who convey the traveler in privately owned automobiles. So, in case of a stoppage over labor disputes in this case, there could be little, if any, effect upon interstate commerce.

Employees of manufacturing establishments, whose operations are regarded as affecting commerce, generally do not in any substantial degree use or depend upon public transportation lines to get to or from their work in small communities. Today they use their own automobiles or double up with others. Those living nearby, walk. The proportion of employees riding public transportation is very small, especially in communities of this size.

When a labor dispute disrupts operations of a local transit line, residents in reality would not be prevented from getting to work. People do not stay home from work for lack of one means of transportation when other means are available, or when, in small communities, short distances make walking easy.

Because in my judgment there would be little, if any, interference with the flow of interstate commerce should a labor dispute interfere with the operations of Amarillo Bus Company, I would not assert jurisdiction, and would dismiss the petition.