In the Matter of TRANS-BRIDGE LINES, INC. *and* TRANSPORT WORKERS UNION OF AMERICA, CIO

Case No. 4–R–1447.—Decided April 4, 1945

Mr. Alfred J. Ferraro, of Broadway, N. J., for the Company.
Mr. Robert High, of Philadelphia, Pa., for the CIO.
Syme & Simons, by *Mr. Maurice Abrams*, of Philadelphia, Pa., for the AFL.
Mr. Harry Nathanson, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Transport Workers Union of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Trans-Bridge Lines, Inc., Broadway, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman Lazarus, Trial Examiner. Said hearing was held at Easton, Pennsylvania, on February 13, 1945. The Company, the CIO, and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 1184, AFL, herein called the AFL, 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 AFL moved to dismiss the petition and the Trial Examiner referred the motion to the Board for determination. For reasons set forth in Section III, *infra*, the motion is 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

Trans-Bridge Lines, Inc., a New Jersey corporation with its principal office at Broadway, New Jersey, is engaged in the operation of

a bus line between Easton, Pennsylvania, and Phillipsburg and Washington, New Jersey. In 1943, the Company's receipts were approximately $80,000 of which approximately 90 percent represents fares paid in interstate travel.

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

II. THE ORGANIZATIONS INVOLVED

Transport Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 1184, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On May 20, 1944, the CIO filed its petition,[1] and on or about May 23, 1944, the Company was advised of such action by letter from the Board's Fourth Region.

On August 14, 1943, the Company and the AFL entered into a 1-year, closed-shop collective bargaining agreement which provided, in part, as follows:

> This agreement, and the provisions thereof, shall continue in force and be binding upon the respective parties hereto until the 14th day of August A. D. 1944, and from year to year thereafter, unless changed by the parties hereunto, either of the parties hereunto desiring a change in any section or sections of this agreement shall notify the other party, in writing, of the desired changes thirty days prior to the end of each year; after such notice, the agreement shall be opened * * *

Neither the Company nor the AFL gave such notice before July 14, 1944. The AFL contends that, on that date, the contract was automatically renewed for 1 year, and that it therefore constitutes a bar to this proceeding. We find no bar to exist, since, as hereinbefore noted, the CIO filed its petition and the Company was apprised of this fact prior to the effective date of the automatic renewal clause.[2]

[1] The AFL asks that the petition be dismissed because the CIO failed to request recognition prior to the filing thereof. It is clear, however, that the Company refuses to recognize the CIO in the absence of certification by the Board. Consequently, we do not believe that dismissal is warranted. *Matter of Houston Blow Pipe and Sheet Metal Works*, 53 N. R. L. B. 184.

[2] See *Matter of Portland Lumber Mills*, 56 N. L. R. B. 1336.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.[3]

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

All parties agree that the appropriate unit should consist of all the Company's bus drivers and maintenance employees, excluding clerical and supervisory employees. However, the AFL would exclude an employee, who is a driver-dispatcher,[4] on the ground that he has supervisory status, whereas the Company would include him. The CIO takes no position with respect to this employee.

The driver-dispatcher has been employed by the Company for approximately 1 year and earns about the same amount as other bus drivers. He spends approximately 50 percent of his time as a dispatcher and the balance of his time is devoted either to bus driving or performing odd jobs and repair work. The record is clear that this employee has no authority to hire, promote, discharge, discipline, or effectively recommend changes in the status of employees. We shall include him.

We find that all the Company's bus drivers and maintenance employees, including the driver-dispatcher, but excluding clerical 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, 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 em-

[3] The Field Examiner reported that the CIO submitted 13 application for membership cards bearing apparently genuine signatures; that the cards were dated as follows: 1 in April 1944, 7 in May 1944, and 5 were undated; and that there were 14 employees in the alleged appropriate unit.

The AFL submitted a petition dated July 19, 1944, signed by 12 employees, stating their desire to remain members of the AFL and rescinding any authorization they may have given to the CIO. Eleven of these names correspond to names appearing on the cards submitted by the CIO. The AFL claims that the petition should be dismissed for the reason that the cards submitted by the CIO allegedly have no force and effect However, in view of the closed-shop provision contained in the agreement of August 14, 1943, we attach no importance to the petition submitted by the AFL insofar as its signatories purport to revoke the authorizations given the CIO. See *Matter of Russell Heel Company,* 41 N. L. R. B. 47.

[4] Howard Wolffe.

ployees 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.

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 Trans-Bridge Lines, Inc., Broadway, New Jersey, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth 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 they desire to be represented by Transport Workers Union of America, CIO, or by Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 1184, AFL, for the purposes of collective bargaining, or by neither.