

In the Matter of CITY LINES OF WEST VIRGINIA, INC. and
BROTHERHOOD OF RAILROAD TRAINMEN

Case No. 6-R-1269.—Decided March 18, 1946

Messrs. Steptoe & Johnson, by Mr. Oscar J. Andre, of Clarksburg, W. Va., and Messrs. B. J. Zewski and Henry C. Church, of Clarksburg, W. Va., for the Company.

Messrs. F. K. Fisk and Carl E. Burgy, of Cleveland, Ohio, for the Brotherhood.

Mr. William L. Robinson, of Pittsburgh, Pa., and Mr. Russel Hall, of Clarksburg, W. Va., for the Amalgamated.

Mr. John A. Nevros, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Brotherhood of Railroad Trainmen, herein called the Brotherhood, alleging that a question affecting commerce had arisen concerning the representation of employees of City Lines of West Virginia, Inc., Clarksburg, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. The hearing was held at Clarksburg, West Virginia, on October 24 and 25, 1945. The Company, the Brotherhood, and Divisions 812, 813, and 815 of Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, herein called the Amalgamated,¹ 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 Amalgamated moved to dismiss the petition on the grounds (1) that the Brotherhood does not "represent a majority of the membership of the group" it wishes to represent, and (2) that the unit sought is inappropriate. The

¹ The Motion of the Amalgamated to intervene was granted at the commencement of the hearing

Trial Examiner reserved ruling on this motion for the Board. For reasons set forth in Section III and IV, *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 opportunity to file briefs with the Board. After the hearing, the Company and the Amalgamated filed briefs in which each urged that the unit sought by the Brotherhood is inappropriate and that the petition should be dismissed. For the reasons stated in Section IV, *infra*, the motions are denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

City Lines of West Virginia, Inc., a West Virginia corporation, having its principal office in Clarksburg, West Virginia, operates and maintains local transportation facilities in and around Fairmont, Clarksburg, and Parkersburg, West Virginia, and also the following interurban lines over which it has exclusive transportation rights: Clarksburg to Fairmont, Clarksburg to Weston, Clarksburg to Wolf Summit, Clarksburg to Northview, Fairmont to Rivesville, and Parkersburg to Marietta, Ohio. All the afore-mentioned communities are in West Virginia except Marietta, Ohio. In its operations the Company utilizes both electric streetcars and motor coaches. At the terminal operated by the Company at Fairmont, West Virginia, it sells tickets on a commission basis for all connecting lines, including the Greyhound and the Blue Ridge Transportation Company. The Company carries United States Mail between Clarksburg and Fairmont, West Virginia.

During the first 10 months of 1945, the Company purchased operating equipment valued in excess of \$50,000, all of which was procured from sources outside the State of West Virginia. During the same period, the gross operating revenue of the Company was in excess of \$1,400,000.

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

II. THE ORGANIZATIONS INVOLVED

Brotherhood of Railroad Trainmen is a labor organization admitting to membership employees of the Company. Divisions 812, 813, and 815 of Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America are labor organizations

affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Brotherhood as the exclusive bargaining representative of certain of the Company's employees in its Fairmont (West Virginia) Division until the Brotherhood had been certified by the Board in an appropriate unit.

The Amalgamated urges that the contract of July 1, 1942, as extended, between its Divisions 812 and 813 and the Company, is still in effect and a bar to this proceeding. However, both Divisions 812 and 813 gave timely notice on May 26, 1945, and May 30, 1945,² respectively of their desire to negotiate a new contract. The Amalgamated attacks the effectiveness of this notice on the ground that notices to amend or modify are not in effect notices of termination. The specific provision in question states: "This agreement shall remain in force and during the period of one year from date hereof, unless continued or dissolved by mutual agreement of the parties hereto, provided, however, that this agreement shall continue in force from year to year following the period specified above unless one of the parties hereto shall serve written notice upon the other thirty days before the expiration of the agreement of their desire to terminate it." The communication dated May 30, 1945, from Division 813 stated: "In view of the fact that our contract will expire on July 1st, 1945, we desire to negotiate a new contract for the coming year, for Local 813, Fairmont, West Virginia."³ We find that the timely notice served to terminate the contract pursuant to the provisions of the agreement, and that the agreement of July 1, 1942, as extended, does not constitute a bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Brotherhood represents a substantial number of employees in the unit hereinafter found appropriate.⁴

² Although dated May 30, 1945, the notice was actually received by the Company on May 26, 1945.

³ The Brotherhood asserted that Division 813 of the Amalgamated was defunct but it failed to adduce proof thereof. It is reasonable to infer that Local 813 is a functioning labor organization.

⁴ The Field Examiner reported that the Brotherhood submitted 59 personal authorization statements, of which 57 bear the names of employees listed on the Company's pay roll for the period ending September 15, 1945, and that there are approximately 59 employees in the unit sought.

The Amalgamated relies upon its contract, referred to above, as evidence of its interest in the proceeding.

At the hearing the Trial Examiner refused the Amalgamated's offer to introduce evidence and testimony that the Brotherhood used fraud and misrepresentation in securing its membership among the employees of the Company's Fairmont Division, which the Brotherhood denies. His ruling is hereby upheld. As noted above, one of the grounds

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 DETERMINATION OF REPRESENTATIVES

The Brotherhood seeks a unit consisting of all bus drivers, streetcar operators, and maintenance employees working in the Fairmont Division of the Company, at Fairmont, West Virginia, but excluding dispatchers, executives, and supervisory employees.⁵ The Amalgamated and the Company contend that such a unit is inappropriate and that the appropriate unit should comprise these classifications of employees in all three of the Company's divisions,⁶ or in the alternative should be composed of at least these employees in the Fairmont and Clarksburg Divisions. Further, the Amalgamated would include dispatchers whereas the Company, like the Brotherhood, would exclude them.

The Amalgamated and the Company base their contentions for a company-wide unit, or in the alternative for a unit covering the Fairmont and Clarksburg Divisions, upon the integration of the Company's operations and upon the collective bargaining history extending back to 1918.

Although the Company operates transportation facilities, streetcars, and busses, in and about Clarksburg, Fairmont, and Parkersburg, West Virginia, and also operates and maintains interurban lines from out of each of the afore-mentioned communities, the administration of the system is centralized in Clarksburg where the Company's general offices are located. All orders, directions, and authorizations originate there; the Company's labor relations and personnel policies are handled there; and all hiring and discharging must be approved by the president of the Company at the main offices. There is a single accounting and pay-roll system at Clarksburg for the entire Company, where checks are issued for all employees and all cost accounting records are maintained on a system-wide basis, and where fare receipts from both the Fairmont and Clarksburg Divisions are counted and accounted for daily. Procurement authority for all major

of the Amalgamated's motion to dismiss the petition was, that the Brotherhood does not "represent a majority of the membership of the group" it wishes to represent. This contention was based on the alleged fraud and misrepresentation practiced by the Brotherhood in enrolling members at the Fairmont Division of the Company. We have frequently held that the authenticity of cards or authorizations submitted for the purpose of showing the interest of a labor organization in a proceeding before the Board is not a subject matter for challenge by the other parties thereto since the cards are submitted only in order to satisfy the Board's own administrative requirements. Accordingly, we find no merit in the first ground of the motion to dismiss. See *Matter of Rubin E. Rappeport, et al.*, 62 N. L. R. B. 1118, and cases therein cited.

⁵ At the hearing the Brotherhood amended the unit sought as shown above.

⁶ Clarksburg, Fairmont, and Parkersburg.

purchases is centralized in Clarksburg although local purchases are authorized in each of the two other divisions, and Fairmont does some purchasing of small items for Parkersburg as well. All heavy streetcar repair work and overhauling is done in the Company's shop at Fairmont where busses are also painted for the Clarksburg Division, while the Company's garage at Clarksburg repairs busses for both the Clarksburg and the Fairmont Divisions and rebuilds motors for the latter division; however, all repair and maintenance facilities will be located in Clarksburg and the shop in Fairmont will be closed upon the replacement of streetcars by busses. At the present time Clarksburg is connected by interurban streetcar lines with Fairmont and Weston, West Virginia, each of which is approximately 25 miles from Clarksburg, and the operation of these interurban streetcars is controlled by dispatchers at Clarksburg, whose supervision on the Clarksburg-Fairmont interurban line extends as far as Edgemont Junction on the outskirts of Fairmont.

The Company and its predecessor, the Monongahela West Penn Public Service Company, herein called Monongahela, from which it acquired the system on December 1, 1944, have been bargaining with the Intervenors, Locals 812, 813, and 815 of the Amalgamated, since 1918. Thus, from 1918 to 1941 Local 812 (Clarksburg) and Local 813 (Fairmont) of the Amalgamated jointly negotiated and entered into joint contracts with Monongahela. During those years, Local 815 (Parkersburg) was under separate contract with Monongahela. For 1 year, from July 1941 to July 1942, all three locals joined in a single contract with Monongahela. In July 1942, Local 812 and Local 813 resumed their joint negotiations apart from Local 815, and entered into a separate contract from that of Local 815. These latter contracts, after unsuccessful negotiations and submission of the disputed issues to an arbitrator, were extended verbally to December 1, 1944. In the course of the arbitration the three locals of the Amalgamated asked, and the arbitrator ordered, that the issues be considered jointly on a company-wide basis. The picture changed again after the Company purchased the system on December 1, 1944. Thereafter, Local 812 (Clarksburg) on April 6, 1945, and Local 815 (Parkersburg) on May 24, 1945, each signed separate contracts retroactive from December 1, 1944, to July 1, 1945, and Local 813 (Fairmont) on May 25, 1945, signed an addendum extending the July 1942 contract, originally entered into jointly with Local 812 (Clarksburg), until July 1, 1945. All agreements since 1918 for the three divisions have been closed-shop contracts.

In our opinion, the evidence points to the equal propriety either of a single division unit as sought by the Brotherhood, or of either a two-division unit embracing the Clarksburg and Fairmont Divi-

sions, or a system-wide unit comprising all three of the Company's divisions, as urged by the Amalgamated and the Company.

Favoring the establishment of a separate unit covering only the Fairmont Division are the following facts: the most recent bargaining history, as indicated above, has been on a divisional basis,⁷ and there has been no previous Board approval of any appropriate unit; there is a distance of approximately 25 miles separating the Fairmont Division from Clarksburg and 105 miles separating Fairmont from Parkersburg; although an interurban streetcar line connects Fairmont with Clarksburg, the Company does not operate either an interurban streetcar line or motor coach route between Parkersburg and Fairmont; seniority is on a division-wide basis although provisions exist for transfer of individual seniority under certain circumstances; grievances are handled separately in each division; although there has been some intermingling of personnel, there has been little or no interchange of employees between Clarksburg and Fairmont since the Company acquired the system on December 1, 1944; and aside from its interurban lines, the Company operates local transportation systems in each of the three cities: Fairmont, Clarksburg, and Parkersburg, which appear to be independent of one another.

On the other hand, there are *indicia* of integration, set forth above, of the Fairmont Division with the Clarksburg and Parkersburg Division, and even more clearly apparent, between Fairmont and Clarksburg. Thus, in the latter connection, the track gang of approximately 60 employees working out of Clarksburg maintains the track and roadbed between Clarksburg and Fairmont, and half of the operating personnel on the Clarksburg-Fairmont interurban streetcar line comes from Fairmont, the others from Clarksburg, there being three "runs" daily each way between Clarksburg and Fairmont. Furthermore, wages, hours, and working conditions are substantially the same for employees in all three divisions, and all enjoy similar vacation privileges.

Divisions 812, 813, and 815 of the Amalgamated have acted both jointly and severally in the course of their bargaining relations with

⁷ The Company, in its brief, advanced the argument that several factors relating to the execution of the separate agreements in 1945 tend to minimize the effect of this separate execution and do not offset or outweigh the previous 27 years of joint bargaining for Clarksburg and Fairmont. Thus, the Company contends that the separate agreements were all signed by the same union, and embodied identical terms, and that their separate execution is in effect nothing more than a meaningless formality. We have treated a somewhat similar contention in the *Matter of Cobbs and Mitchell Company*, 65 N. L. R. B. 488, where the intervening union contended that "for the past two years the two locals have attempted to keep the contracts covering the two units as uniform as possible and that some of the contract negotiations have been conducted simultaneously." No attempt had been made, however, to write one contract covering both operations. There we found that the separate units established by the history of collective bargaining and already approved by the Board were appropriate.

the Company. It is evident, therefore, that the bargaining history does not conclusively establish the appropriateness of separate units or a single unit, and that the groups respectively represented by the Amalgamated may either function as separate units or as a single unit for collective bargaining purposes. We have held that a system-wide unit of a public utility or a transportation system is appropriate whenever there is a labor organization in a position to represent employees throughout the system.⁸ However, in view of the absence of any question concerning representation among the employees in the Clarksburg and Parkersburg Divisions, we shall direct an election only among the employees in the Fairmont Division wherein a question concerning representation has arisen. Under the circumstances, we shall make no final unit determination at this time, but shall be guided, in part, by the desires of the employees involved as expressed in the election directed hereinafter. In the event that the employees in the voting group described hereinafter select the Brotherhood, they will have expressed a desire that the Fairmont Division constitute an appropriate unit; but if the employees select the Amalgamated, the latter should notify the Board whether it desires to represent them as a separate appropriate unit or desires dismissal of the Brotherhood's petition.

Dispatchers: There remains for consideration the question whether dispatchers should be included or excluded. The Brotherhood and the Company would exclude them as supervisory employees. The Amalgamated would include them in view of the fact that they have an equity in the union's insurance coverage. The dispatchers operate a telephone board through which they control the operation of the streetcars on both the interurban and intracity lines. They are in direct contact with the streetcar operators and transmit orders and instructions to them by telephone. They can effectively recommend the discharge or discipline of streetcar operators. Accordingly, it is clear that dispatchers are supervisory employees within our customary definition.⁹ Therefore, we shall exclude them.¹⁰

We shall direct that an election by secret ballot be held among the employees in the following voting group 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: all bus drivers, streetcar operators, and

⁸ See *Matter of Northern States Power Company of Wisconsin*, 37 N. L. R. B. 991, and cases therein cited; and *Matter of T. S. C. Motor Freight Lines*, 61 N. L. R. B. 638, and cases therein cited.

⁹ See *Matter of Kerrville Bus Company*, 60 N. L. R. B. 1192; *Matter of Central Freight Lines, Incorporated*, and *Central Forwarding, Inc.*, 58 N. L. R. B. 263; and *Matter of Blue Ribbon Lines*, 43 N. L. R. B. 381.

¹⁰ Furthermore, dispatchers never have been included in any of the contracts between the Amalgamated and the Company, or its predecessor, and it is our practice not to disturb the established contract unit. See *Matter of Petersen & Lytle*, 60 N. L. R. B. 1070.

maintenance employees working in the Fairmont Division of the Company, at Fairmont, West Virginia, but excluding dispatchers, executives, and all or 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.

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 City Lines of West Virginia, Inc., Clarksburg, West Virginia, 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 Sixth 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 voting group described 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 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 Brotherhood of Railroad Trainmen, or by Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, for the purposes of collective bargaining, or by neither.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.