

for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁹

5. The record shows that there is one employee at the Employer's operation who divides his time equally between driving one of the Employer's trucks and working as a laborer in the Employer's receiving department.

We are of the opinion, and we find, that the part-time truck driver has a sufficiently substantial interest in the conditions of employment in both the plant unit and the truck drivers' unit and in the outcome of both directed elections to entitle him to vote in each election. Accordingly, we shall permit the part-time truck driver to vote in both elections.¹⁰

[Text of Direction of Elections omitted from publication in this volume.]

⁹ *International Paper Company, Southern Kraft Division, et al.*, 94 NLRB 483.

¹⁰ Cf. *Swift and Company*, 58 NLRB 657; *Wadham's Division of Socony-Vacuum Oil Company*, 54 NLRB 1164.

SEASHORE TRANSPORTATION COMPANY and AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AFL, PETITIONER. *Case No. 34-RC-288. August 23, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John H. Pickens, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Murdock].

¹ At the hearing, the Employer moved to dismiss the petition on the ground that the Petitioner had presented no proof of an adequate showing of interest among the employees in the unit requested. The hearing officer overruled the motion, stating that the question of whether or not a petitioner has made an adequate showing of interest is an administrative matter not subject to attack at the hearing. We affirm the hearing officer's ruling. *J. P. Stevens & Co., Inc.*, 93 NLRB 1513; *Ballantine Produce Co., Inc.*, 81 NLRB 629.

The Employer also moved to dismiss the petition (a) on grounds relating to the compliance status of the Petitioner, and (b) on the grounds that its operations do not affect interstate commerce, and that its operations are so local in nature that assertion of jurisdiction by the Board in this case would not effectuate the policies of the Act. The hearing officer referred these motions to the Board. As to (a), the fact of compliance, by a labor organization which is required to comply, is a matter for administrative determination and is not litigable by the parties. Moreover, the Board is administratively satisfied that the Petitioner is in compliance. See *Sunbeam Corporation*, 94 NLRB 844; *Swift & Company*, 94 NLRB 917; Cf. *Highland Park Manufacturing Co.*, 71 S. Ct. 489. As to (b), we find, for the reasons appearing in paragraph 1, *infra*, that the Employer is engaged in commerce and that it would effectuate the purposes of the Act to assert jurisdiction. The Employer's motions to dismiss are hereby denied.

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

1. The Employer, a North Carolina corporation, is engaged in the business of transporting passengers by bus between New Bern, North Carolina, and various other points within the State. It also operates, by virtue of a lease agreement between itself and the Norfolk Southern Bus Corporation, two runs daily between Washington, North Carolina, and Norfolk, Virginia, the only out-of-State point it services. The Employer is licensed by both the North Carolina State Utilities Commission and the Interstate Commerce Commission. The Employer owns and operates its own bus terminals at five locations. At other points it shares the facilities of union bus terminals. Tickets sold at any of these terminals are accepted as fare to points of destination on the Employer's busses and on the busses of other connecting lines extending throughout the United States and Canada.

Although the Employer purchased no vehicles during 1950, it obtained 5 new busses in 1951 from D. C. Beck Company of Cleveland, Ohio, the total value of which was \$90,000. During the calendar year of 1950, the Employer's volume of business amounted to approximately \$756,000. During this same period the Employer purchased \$58,544 worth of gasoline from the Shell Oil Company, rented tires under a mileage contract agreement from B. F. Goodrich Company of Atlanta, Georgia, at a cost of \$22,159, and secured its lubricant requirements in amount of \$3,808 from several oil companies, including Gulf and Kendall. The record fails to disclose the number of passengers carried during the 1950 period, but it does reveal that during the month of March 1950, over 142,700 passengers were transported on the Employer's approximately 60 busses.

Upon the foregoing facts, we find that the Employer is engaged in commerce within the meaning of the Act. And for the reasons stated in *W. C. King d/b/a Local Transit Lines*, 91 NLRB 623, we find that it would effectuate the policies of the Act to assert jurisdiction in this case.

2. The labor organization involved claims to represent certain employees of the Employer.

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 asks for a unit consisting of the Employer's bus operators and maintenance employees, excluding all other employees. The Employer contends that the appropriate unit should also include all its other employees, including supervisors, but excluding its officers.

The Employer's operations are divided into 4 main divisions: The traffic department with a total complement of 15 persons, including a traffic manager, various station managers, ticket agents, and baggage

porters; the transportation department with 70 persons, among whom are 60 full-time and part-time bus drivers, a superintendent of transportation, and various division managers and dispatchers; the maintenance department employing 45 persons, including a superintendent of maintenance, several shop foremen,² cleanup employees, greasers, and several categories of skilled mechanics; and the auditing department which has 11 clerical employees. The Employer also maintains 3 watchmen at the New Bern location. There does not appear to have been any history of bargaining among the Employer's employees.

As there is no disagreement between the parties as to the inclusion of bus drivers and nonsupervisory maintenance employees in a single bargaining unit, and as the Board has frequently found that these two categories of employees may appropriately bargain together, we find that a unit including them both is appropriate.³

The dispatchers, as their title indicates, perform the function of dispatching busses; seeing that bus drivers report on time, and making sure that schedules are punctually met. The record discloses that occasionally they suspend drivers for cause during the absence of the division manager. It was also testified without contradiction that the dispatchers possess authority effectively to recommend discharge or discipline of the bus drivers, although on such occasions the division manager makes an independent investigation before taking final action. In several cases the Board has held that dispatchers who performed duties similar to those of the dispatchers involved herein were not supervisors.⁴ Unlike those cases where the authority of the dispatchers merely consisted of routine direction of their subordinates in a manner not requiring the exercise of independent judgment or of any supervisory authority, the present record contains uncontroverted evidence that the dispatchers possess and exercise sufficient discretionary authority over the drivers as to place them within the Act's definition of supervisor. Although the division manager conducts an independent investigation concerning recommendations made by the dispatchers, we are persuaded by the record that the Employer nevertheless accords considerable weight to such recommendations before taking final action. Under all the circumstances, we find that the dispatchers are supervisors and shall exclude them from the unit.⁵

The record establishes that the superintendent of transportation, the division managers, the superintendent of maintenance, and the foreman of the Jacksonville shops have the authority to hire and dis-

² The Employer maintains shops at the New Bern, Jacksonville, Beaufort, and Aurora, North Carolina, locations.

³ *Tennessee Coach Co.*, 88 NLRB 253; *Central Bus Lines*, 88 NLRB 1223.

⁴ See, e. g., *New England Transportation Company*, 90 NLRB 539; and *The McMahon Transportation Company*, 89 NLRB 1652.

⁵ See *Tennessee Coach Company*, *supra*.

charge and to discipline employees working under them. We find that they are supervisors as defined in the Act and shall exclude them from the unit.

As the Employer's New Bern shop is its largest one and is the working headquarters of the superintendent of maintenance, the foreman of that location does not independently hire and discharge employees but "works through the superintendent." However, there are some 30 employees under his direction, and as it is clear from the record that he disciplines such employees, we find that he is a supervisor and shall exclude him from the unit.

Though the record is silent as to the duties and authority of the foreman of the Employer's Beaufort shop, the record discloses that there are presently three employees working under him. As he appears to occupy a position in the Beaufort shop similar to that of the shop foreman at the Jacksonville location, we find that he is a supervisor and shall exclude him. The "foreman" of the Aurora shop, however, works alone and has no one under him to supervise. We shall include him in the unit.

The ticket agents and baggage porters whom the Employer would also include perform their work within the several terminals. They work under the general supervision of the traffic manager and under the immediate supervision of the respective station managers. As the interests of these employees are closely related to those of the bus drivers and maintenance employees included in the unit hereinafter established, we shall include them.

The auditing department employees work in the Employer's main office in New Bern, performing duties which apparently include all clerical and book work necessary to the operation of the Employer's extensive business. We find them to be office clerical employees and, in accord with our general policy as to such employees, shall exclude them from the unit.

The watchmen, three in number, spend all their working time in the performance of watchmen's duties. We find that they are guards within the meaning of the Act, and shall exclude them from the unit.

We find that all bus operators and maintenance employees employed by the Employer, including regular part-time bus operators,⁶ and the

⁶ The total complement of drivers includes an undisclosed number of part-time employees who substitute for the regular full-time drivers, usually on the week ends, and work during peak periods. They work from 4 or 5 hours to 30 hours per week. There are also about 10 work-drivers who themselves work regularly for other employers, and who drive the Employer's busses from their homes to their places of work, returning at the close of their work shift, and transporting workers and other passengers on their route. The work-drivers spend an average of 2 hours a day driving the busses. Though it is not clear from the record, there is some indication that a number of these substitute drivers and work-drivers may not work on a regular basis, but "skip" one or several weeks at a time before being called back to work. As set forth above, all regular part-time drivers are included in the unit. However, if any of the part-time drivers are not employed on a regular, but only a casual basis, they are deemed to be excluded.

foreman at the Aurora shop, ticket agents, and baggage porters, but excluding watchmen, all employees in the auditing department, the superintendents of transportation and maintenance, the foremen of the Jacksonville, New Bern, and Beaufort shops, dispatchers, and all other supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

MEMBER HOUSTON, dissenting in part:

I believe these dispatchers are nonsupervisory employees and would include them in the unit. What recommendations they do make are subject to an independent investigation and cannot, on this record, be characterized as having the necessary effectiveness to justify a finding that the dispatchers are anything more than minor functionaries performing routine administrative duties.

GERBER PRODUCTS COMPANY *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 3-RC-606. August 23, 1951*

Supplemental Decision and Certification of Representatives

On June 15, 1951, pursuant to a Decision and Direction of Election issued by the Board herein,¹ an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Third Region, among the employees in the unit found appropriate. Upon completion of the election, a tally of ballots was furnished the parties. The tally shows that, of the 112 valid votes counted, 23 were for the Petitioner, 87 for the Intervenor (Federal Labor Union No. 23933, AFL), and 2 against the participating labor organizations. In addition, there were 23 challenged, and 3 void, ballots.

On June 19, 1951, the Petitioner filed objections to conduct affecting the election. In accordance with the rules and regulations of the Board, the Regional Director conducted an investigation, and, on July 12, 1951, issued and served upon the parties his report on objections to the election. In his report, the Regional Director found that the Petitioner's objections raised no substantial or material issues with respect to conduct affecting the results of the election, and recommended that the objections be overruled and that the Intervenor be certified as the exclusive bargaining representative of the employees

¹ 93 NLRB 1668.

95 NLRB No. 172.