

In the Matter of W. D. GEORGE AND THOMAS FITZGERALD, TRUSTEES FOR PITTSBURGH RAILWAYS COMPANY, DEBTOR, EMPLOYER, and DIVISION 1327, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, A. F. L., PETITIONER

Case No. 6-R-1310.—Decided August 26, 1946

Mr. William Anderson, of Pittsburgh, Pa., for the Employer.

Mr. M. Herbert Syme, of Philadelphia, Pa., for the Petitioner.

Mr. James Zett, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Pittsburgh, Pennsylvania, on June 12, 1946, before Henry Shore, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer moved to dismiss the petition, asserting, *inter alia*, that the matter is *res judicata*,¹ and that Sections 9 (c) and 2 (3) of the Act are unconstitutional. We find no merit in these contentions, and the motion is denied.²

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Pittsburgh Railways System, a common carrier, provides the major mass transportation in the Pittsburgh district, and operates interurban service between Pittsburgh and Charleroi and between Pittsburgh and Washington, Pennsylvania. Included in the urban

¹ The Employer's contention of *res judicata* is predicated upon the Pennsylvania Labor Relations Board's dismissal, in February 1944, of a petition for certification of a unit of supervisors of the Employer filed by the Petitioner herein, which dismissal was later sustained by the Supreme Court of Pennsylvania.

² See *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 46-47; *American Federation of Labor v. N. L. R. B.*, 308 U. S. 401, 411; *Pittsburgh Plate Glass Company v. N. L. R. B.*, 313 U. S. 146, 165; *N. L. R. B. v. Hearst Publications, Incorporated*, 322 U. S. 111, 129-131.

system are 74 routes using 474 miles of track and reaching a total population of approximately 1,700,000 people; the interurban system, consisting of 69 miles of track, operates through various municipalities having a total population of 140,000. All streetcars are operated by electricity purchased from the Duquesne Light Company, a Pennsylvania public utility corporation. The Employer operates 11 manual and 4 automatic substations, 14 car houses, 1 shop plant consisting of several buildings, several material yards, and a number of small terminal buildings. During the first 4 months of 1946, the more than 1,000 passenger streetcars carried approximately 87,000,000 revenue passengers, and traveled about 12,500,000 car miles. The gross income of the Employer for the first 4 months of 1946 exceeded \$7,400,000.

The Employer transports to and from work a major portion of the employees in the Pittsburgh area who are engaged in the production of goods that flow in interstate commerce, although the cars of the Employer do not cross any State lines. The principal industries in the Pittsburgh district are iron and steel and allied products, bituminous coal mining, stone, clay, glass, food products, electrical apparatus, production and refining of oil, and rail and river transportation. In addition, the Employer services the Greyhound Bus Terminal and each of the five main passenger stations and many of the freight stations of the three railroads engaged in the interstate movement of passengers, mail, and freight to and from the city of Pittsburgh.

In connection with its operations, the Employer utilizes large quantities of materials and supplies brought from points outside the State of Pennsylvania. During the month of March 1946 these extra-State purchases exceeded \$52,000. The Employer has also purchased 365 new street cars since June 14, 1938, at an approximate cost of \$7,900,000. All these cars were manufactured by the St. Louis Car Company at St. Louis, Missouri.

We find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act.³

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.⁴

³ See *N. L. R. B. v. Baltimore Transit Company*, 140 F. (2d) 51 (C. C. A. 4), cert. denied 321 U. S. 795; *Matter of Louisville Railway Company*, 69 N. L. R. B. 691, cf. *Matter of Chicago Motor Coach Company*, 62 N. L. R. B. 890.

⁴ The Employer contends that the Petitioner is not a labor organization within the meaning of the Act. The Petitioner seeks to bargain collectively in behalf of supervisory employees of the Employer in respect to wages, hours, and working conditions. It is, therefore, clearly a labor organization within the meaning of Section 2 (5) of the Act. See *Matter of Jones & Laughlin Steel Corporation*, 66 N. L. R. B. 386. Division 85 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL, a affiliate of Division 1327, the Petitioner herein, represents the non-supervisory employees of the Employer, and functions independently of the Petitioner.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of certain supervisory employees of the Employer, contending that supervisory employees are part of management and are not "employees" within the meaning of the Act. This contention has been advanced on numerous occasions and we have held that a supervisor in relation to his employer concerning his own working conditions, is an employee within the meaning of the Act.⁵ Accordingly, we find that, for the purpose of this proceeding, the supervisors herein considered are employees within the meaning of Section 2 (3) of the Act.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner seeks a unit of supervisory employees in the transportation and traffic department⁶ generally on the first level of supervision above the rank and file employees. This unit consists of 34 route foremen (inspectors), 5 district route foremen, 51 car house dispatchers, 13 instructors, and 7 traffic dispatchers. The Employer contends that any unit of supervisory employees is inappropriate, and that in any event its supervisors should not be represented by the Petitioner for the reason that the Petitioner is affiliated with the representative⁷ of the Employer's rank and file employees. These contentions are without merit.⁸ The Employer additionally contends that the composition of the unit contended for is inappropriate in that the 5 district-route foremen should be excluded.

The Employer's supervisory hierarchy above the level sought to be included in the unit contended for is as follows:

Trustees and general manager
 General Superintendent of traffic and transportation
 Superintendents of car house operation, operating instruction,
 and road operations
 Supervisors of car house operation, school and road construction,
 and the chief traffic dispatcher
 District superintendents

⁵ *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4 and 64 N. L. R. B. 1212, 1214, and cases cited therein, enfd August 12, 1946, 157 F. (2d) 80 (C. C. A. 6).

⁶ In addition to the above department, Division 85 represents rank and file employees in the maintenance department and miscellaneous categories, both of which were excluded from the scope of the supervisory unit by express agreement of the parties.

⁷ See footnote 3, *supra*.

⁸ *Matter of Midland Steel Products Company*, 65 N. L. R. B. 997, and cases cited therein; *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannon Coal Division*, 66 N. L. R. B. 386.

Instructors: The instructors⁹ supervise the training of student trainees and the retraining of regular trainmen who have been absent for certain periods of time or who have been involved in serious accidents. The instructor makes progress reports of the trainees to the superintendent of operating instruction, upon which reports the decision as to the hiring of the trainee is based. The instructors also report to the superintendent of car house operation whether the trainmen placed under their supervision can operate in accordance with satisfactory standards of performance. The decision, however, of further appropriate action as to such trainmen is made by the superintendent of car house operation.

Car House Dispatchers: The car house dispatcher is in charge of the car house office. He provides the trainmen with all supplies necessary to the conduct of business on the cars and receives from the trainmen at the end of the day's work their receipts and accounts for all money received. He supervises the assignment of runs from the schedules and is responsible for the proper recording and operating of the time for which trainmen are paid. It is his responsibility to ensure that men reporting for duty are in proper physical condition and are properly qualified to do the work. He can withhold a man from duty if, in his judgment, it is necessary. He can apply certain fixed disciplinary action as provided for by the rules, or make recommendations to the district superintendents with respect to the trainmen. The dispatchers are recognized by the trainmen as their immediate supervisors at all times except when the trainmen are operating cars.

Route Foremen: The route foremen supervise the operation of the service on a route or a group of routes and supervise the trainmen in their operations along the route. The route foreman can remove a trainman from a car if, in his judgment, such removal is necessary. He makes all reports about the trainmen to the district route foreman and written reports to the superintendent of road operations. The route foremen are recognized by the trainmen as their immediate supervisors from the time the trainmen take charge of their cars until the time they are relieved. The route foremen also have a small number of street aids under their supervision who assist them in their work on the routes but who are not operating trainmen.

Traffic Dispatcher: A traffic dispatcher is equipped with a telephone and a radio for receiving reports and information from all points on the system, is kept advised of the adherence to the schedule on the routes and conveys the official information to the route foremen so that disrupted schedules can be corrected. He arranges, through emer-

⁹ Temporary instructors were excluded from the proposed unit by agreement of the parties

gency men, to supply assistance and services in eliminating blockades caused by accidents or by inclement weather. He has the duty of directing trainmen when the route foreman is unavailable and also directing route foremen in deviations in the handling of major interruptions.

District Route Foremen: The Employer's operations in the traffic and transportation department are divided into five districts, each supervised by a district route foreman whom the Petitioner would include, and the Employer exclude, from the proposed unit. This classification is on a slightly higher level of supervision than the other supervisors in question and are promoted from the ranks of route foremen. District route foremen supervise, and assign routes to, the route foremen and receive oral reports from the latter. The district route foremen in turn make recommendations concerning route foremen to the superintendent of road operations who gives effective weight to such recommendations.

The supervisors in question are all in the traffic and transportation department, the Employer's operating division, and are all salaried and subject to the same personnel policies relating to vacations, sick benefits, and the like. None of them has the power to hire or discharge, although they can effectively recommend changes in the status of employees. All, with the exception of the traffic dispatchers, handle grievances in the initial stage, but the ultimate disposition of these grievances is made by higher management. Matters of general policy are determined by the trustees and by the upper reaches of the management hierarchy, although the supervisors in question are consulted directly and indirectly in the formulation of general policy. We conclude, in the light of all these facts and the entire record, that the supervisory employees whom the Petitioner seeks to represent constitute a homogeneous group, appropriate for collective bargaining.

The Employer, however, contends that the district route foremen are on a higher level of supervision than the other supervisors considered herein, and should, therefore, be excluded from the unit. A majority of the Board¹⁰ is of the opinion, on the basis of its reasoning in the *Midland Steel* case and others,¹¹ that the district route foremen constitute a higher level of supervision and should, therefore, be given an opportunity by separate voting, to determine whether or not they wish to be included in the same unit as those on the lower level.

Accordingly, we shall make no final unit determination at this time, but will be guided in part by the desires of the employees involved

¹⁰ Chairman Herzog and Member Reilly

¹¹ *Matter of The White Motor Company*, 67 N. L. R. B. 828; *Matter of Kelsey-Hayes Wheel Company*, 66 N. L. R. B. 570; *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997.

as expressed in the elections ordered hereinafter. In the event that the employees in the voting groups described below, voting separately, select the Union they shall together constitute a single appropriate unit.

We shall direct that separate elections be held among the Employer's employees in the voting groups described below who were employed during the pay-roll period immediately preceding the date of the Direction of Elections,¹² subject to the limitations and additions set forth in the Direction :

1. Instructors, car house dispatchers, route foremen and traffic dispatchers, excluding executives, general superintendent, superintendents, supervisors, chief traffic dispatcher, and district superintendents;
2. District route foremen.

As stated above, there will be no final determination of the appropriate unit pending the results of the election.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with W. D. George and Thomas Fitzgerald, trustees for Pittsburgh Railways Company, 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 National Labor Relations Board Rules and Regulations—Series 3, as amended, among the voting groups 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 or not they desire to be represented by Division 1327, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. L., for the purposes of collective bargaining.

MR. GERARD D. REILLY, concurring separately :

My position in this case is similar to that expressed in my concurring opinion in *Matter of Midland Steel Products Company*.¹³ As in that

¹² The Union requested an eligibility date of June 1, 1946, inasmuch as the Employer contemplates an increase of 20 percent in the unit contended for. We see no valid reason for varying our usual eligibility date.

¹³ 65 N. L. R. B. 997.

case, I would direct no election in the present matter for the reasons stated in my dissenting opinion in *Matter of Packard Motor Car Company*,¹⁴ and further, in this case, for the reasons set forth in my dissenting opinion in *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*.¹⁵ Since the majority of the Board entertain a contrary view, however, I wish to concur in the conclusion that the district route foremen should be balloted separately so as to ascertain whether or not they desire to be in the same bargaining unit which includes the other supervisors of the Employer. There is sufficient evidence in the record to indicate that the duties and responsibilities of the first group are distinguishable from those of the second.

MR. JOHN M. HOUSTON, concurring, separately:

For the reasons stated in my concurring opinion in the *Midland Steel* case,¹⁶ which I find equally applicable here, I would provide for only one voting group of the supervisors of the Employer.

¹⁴ 64 N. L. R. B. 1212, and 61 N. L. R. B. 4.

¹⁵ 66 N. L. R. B. 386.

¹⁶ 65 N. L. R. B. 997.