

In the Matter of WICHITA TRANSPORTATION CORPORATION, EMPLOYER
and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE
No. 70, PETITIONER

Case No. 17-R-1713.—Decided May 14, 1947

*Messrs. Robert C. Foulston and George Siefkin, of Wichita, Kans.,
for the Employer.*

*Mr. Cody Quinn, of Kansas City, Mo., and Mr. Howard Ray, of
Wichita, Kans., for the Petitioner.*

Mr. C. H. Morris, of Wichita, Kans., for the Intervenor.

Mr. David C. Buchalter, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Wichita, Kansas, on January 23, 1947, before Robert S. Fousek, hearing officer. At the hearing, the Employer moved to dismiss the petition. The hearing officer reserved ruling on the motion for the Board. For reasons stated in Section I, *infra*, the motion is denied. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Oral argument, in which all parties participated, was held before the Board at Washington, D. C., on April 1, 1947.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Wichita Transportation Corporation, a Kansas corporation, is engaged in the business of transportation. Under a charter issued by the city of Wichita, Kansas, it operates a system of busses throughout the business and residential districts of the city of Wichita. In this operation, it has a route schedule of 80 route miles, utilizes approximately 104 vehicles in the servicing of these routes, and employs approximately 250 employees. During the calendar year 1946, the Em-

ployer carried 21,843,572 revenue passengers and over 3,000,000 transfer passengers. Among the facilities served by the Employer's routes are numerous industries which are admittedly engaged in interstate commerce,¹ the Union Station, which is the only railway terminal in the city and serves interstate railroad lines, and the airport, a well-established air terminal. The Employer also transports on these routes United States postal carriers while on duty, under a contract with the United States Post Office Department, for which the latter pays the Employer a flat fee.

In addition to its city operations, the Employer operates over a 30 mile route, 10 miles of which are outside the city of Wichita, 4 busses leased from Emergency Transportation, Inc., its wholly owned subsidiary. The latter holds a charter covering the routes involved which serves the Boeing, Beech and Cessna airplane plants in the suburbs of Wichita. Under the existing lease the Employer operates these busses with its own personnel. During the calendar year 1946, a total of 178,915 passengers were carried on these busses.

With respect to materials and equipment utilized during 1946, the record shows that the Employer leased from a local dealer at an approximate rental of \$40,000, tires manufactured by the Goodyear Tire and Rubber Company of Akron, Ohio; purchased parts valued at approximately \$90,000 from points outside the State; and acquired, at an approximate cost of \$180,000, 15 new busses, all of which originated at points outside the State and some of which were driven into the State by the Employer's employees; and bought bus tokens, of a value not disclosed by the record, from a concern in Chicago, Illinois.

The only other public transportation facilities in Wichita and environs are taxicabs and a small bus operating company. The latter operates between Wichita and Plainview, a Government housing project located 3½ miles outside Wichita, and serves along its route the Boeing and Beech airplane plants which are close to Plainview. However, this company is not in competition with the Employer within the city limits of Wichita as its franchise prohibits the making of pick-ups in Wichita.

The Employer urges dismissal of the petition on the ground that the stoppage of its services would not have a substantial effect upon the free flow of goods in interstate commerce. In this connection, it contended at the hearing on oral argument that, although many of the in-

¹ At the hearing upon oral argument, counsel for the Employer made such an admission. Moreover, we take judicial notice of the fact that we have heretofore asserted jurisdiction over many of the enterprises served by the Employer's busses. See *Matter of Cudahy Packing Company*, 67 N. L. R. B. 150; *Matter of Kansas Milling Company*, 15 N. L. R. B. 71; *Matter of Santa Fe Trail Transportation Company*, 2 N. L. R. B. 767 and 52 N. L. R. B. 895; *Matter of Wichita Union Stockyards Company*, 40 N. L. R. B. 369; *Matter of Wichita Eagle*, 69 N. L. R. B. 1270; and *Matter of Boeing Airplane Company*, 46 N. L. R. B. 267.

dustrial plants served by its bus routes were engaged in interstate commerce, the number of individuals employed at these plants who utilize the transportation facilities of the Employer is insufficient to warrant bringing its operations within the purview of the Act. We do not agree. While the record does not contain figures showing the extent to which such facilities are used by those employed at these plants, we are persuaded, on the basis of the entire record, and infer that an interruption of bus services by the Employer would have a considerable impact upon the operations of these enterprises. Similarly, do we infer that an interruption of bus services to the airport and to the railroad station would unduly burden the free flow of commerce to and from the city of Wichita.

Accordingly, under all these circumstances including the facts that the Employer (1) handles the major burden of public transportation of the city of Wichita, (2) furnishes transportation services to and from plants engaged in interstate commerce, (3) forms a link to interstate railroad lines and airlines serving Wichita, by carrying passengers to and from such facilities, (4) extends its services, under contract with the United States Post Office Department, to mail carriers transporting United States mail, and (5) purchases a substantial amount of equipment and supplies which originate outside the State of Kansas, we find that a stoppage of the Employer's operations by threatened industrial strife would result in substantial interruption to, and interference with, the free flow of commerce. And we find further, contrary to the contentions of the Employer, that its operations affect interstate commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATIONS INVOLVED

The Petitioner is an unaffiliated labor organization claiming to represent employees of the Employer.

² *Matter of Baltimore Transit Company, et al*, 47 N L R B 109, enforced as modified 140 F (2d) 51 (C C A 4), cert denied 321 U S 795, *Matter of Charleston Transit Company*, 57 N L R B 1164; *Matter of Manderson Bus Lines*, 58 N L R B 820, *Matter of Spokane United Railways*, 60 N L R B 14, *Matter of Pittsburgh Railways Company*, 70 N L R B 670, *Matter of Tampa Transit Lines, Inc*, 71 N L R B 742, and *Matter of Public Service Corporation of New Jersey, et al*, 72 N L R B 224

Although the Employer relies, in support of its position, on *Matter of Chicago Motor Coach Company*, 62 N L R B 890, wherein the Board declined to take jurisdiction over a local bus company, that case is clearly distinguishable on its facts from the instant case. In that case, for example, the bus company operated only one of several transit lines in Chicago, carried only 6.61 percent of the passengers using local transit lines, and its routes were primarily along park boulevards and parkways or paralleled routes of the other major transportation systems and few, if any, areas in Chicago were entirely dependent on its operations

The Bus Operators and Employees Association, Inc., herein called the Intervenor, is an unaffiliated labor organization claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer has refused to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.³

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.⁴

IV. THE APPROPRIATE UNIT

We find, in agreement with the parties, that all garage employees of the Employer engaged in the overhauling, repairing and servicing of bus, truck and auto equipment, maintenance employees employed in its bus garages and bus operators, excluding office and 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 purpose of collective bargaining within the meaning of Section 9 (b) of the Act.⁵

DIRECTION OF ELECTION⁶

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Wichita Transportation Corporation, Wichita, Kansas, 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 Seventeenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sec-

³ The Intervenor has been a party to contracts covering the employees involved herein since 1942 and entered into its most recent contract with the Employer on January 13, 1947, to run for a year from that date. The latter contract is, however, not urged as a bar. In any event it cannot prevent a current determination of representatives; inasmuch as it was executed subsequent to the filing on December 9, 1946, of the instant petition. See *Matter of Westinghouse Electric Corporation*, 71 N. L. R. B. 983; *Matter of General Steel Products Corporation*, 71 N. L. R. B. 986.

⁴ The Petitioner waived any right to urge any of the acts alleged by it as unfair labor practices in Case No 17-C-1501 as a basis for objecting to any election which may be directed in the instant case.

⁵ This agreed unit is identical with the unit covered by the above-mentioned contracts between the Employer and the Intervenor.

⁶ Any participant in the election herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

tions 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, 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 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 before the date of the election, to determine whether they desire to be represented by the International Association of Machinists, District Lodge No. 70, or by the Bus Operators and Employees Association, Inc., 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.