

under Board practice an election must be set aside whenever there is coercion affecting an election, and that the election in the instant case should be set aside because the Employer's misconduct, although directed against both Unions, might have unequally affected the Intervenor's adherents among the employees.

We find, for the reasons relied upon by the Regional Director, that the Intervenor's objections and exceptions do not raise material and substantial issues with respect to the election. We shall therefore overrule them, and, as the Petitioner has secured a majority of the valid ballots cast in the election, we shall adopt the Regional Director's recommendation and certify the Petitioner as the bargaining representative of the employees in the appropriate unit.

[The Board certified the Congress of Industrial Organizations as the designated collective-bargaining representative of the employees of the Showell Poultry Company in the unit hereinabove found appropriate.]

CAPITAL TRANSIT COMPANY *and* DIVISION 689, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AFL.
Case No. 5-CA-667. June 16, 1953

DECISION AND ORDER

Upon a charge duly filed November 25, 1952, by Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Acting Regional Director for the Fifth Region, issued a complaint dated December 23, 1952, against Capital Transit Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, herein called the Act. Receipt of copies of the complaint, the charge, and notice of hearing was stipulated by all parties.

With respect to the unfair labor practices the complaint alleges, in substance, that on or about November 17, 1952, the Respondent refused, and now refuses, to bargain with the Union as the exclusive representative of certain employees appropriately a part of the unit the Union currently represents. The Respondent filed an answer admitting that the Union had requested the Respondent to bargain as alleged and that the Respondent has refused to bargain collectively with the Union as requested, but denying that it had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act.

Thereafter all parties entered into a stipulation which set forth an agreed statement of facts. The stipulation provides that the parties thereby waive their rights to a hearing and to the taking of testimony and the submission of further evidence before a Trial Examiner, the Board, or any Member thereof, to the preparation and filing of an Intermediate Report and Recommended Order, to the making and issuance of proposed findings of fact and conclusions of law by the Board, and to the filing of exceptions to any intermediate or proposed report or recommended or proposed order. The stipulation further provides that, upon such stipulation and the record as therein provided, the Board may make findings of fact, conclusions of law, and enter an order pursuant to the provisions of the Act.

The aforesaid stipulation is hereby approved and accepted and made a part of the record in this case. In accordance with Section 102.45 of National Labor Relations Board Rules and Regulations--Series 6, as amended, this proceeding was transferred to and continued before the Board.

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

Upon the basis of the aforesaid stipulation and the entire record in this case, the Board, having duly considered the briefs filed by the Respondent and the Union, makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, Capital Transit Company, is a corporation existing by virtue of the laws of the District of Columbia. It maintains its principal office and place of business in the city of Washington, District of Columbia, and is engaged in the operation of a public passenger transportation system by the use of streetcars and buses in the District of Columbia and the State of Maryland. The Respondent in the normal course and conduct of its business uses materials valued in excess of \$1,000,000 annually, of which it causes and has continuously caused more than 95 percent annually to be purchased, transported, and delivered in interstate commerce from and through States of the United States to and through the District of Columbia, and receives fares for the transportation of passengers in the District of Columbia and the State of Maryland amounting to in excess of \$20,000,000 annually.

We find that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction over its operations.

II. THE ORGANIZATION INVOLVED

The Respondent here renews its contention made in an earlier representation proceeding (Case No. 5-RC-856) that the Union is not a labor organization within the meaning of Section 2 (5) of the Act. We reaffirm our ruling in the representation proceeding rejecting this contention. For the reasons stated in our Decision and Direction of Election of February 18, 1952 (98 NLRB 141), we find that the Union, Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The appropriate unit and representation by the Union of a majority therein

The Respondent admits that at all times material herein the Union has been the exclusive representative for the purposes of collective bargaining of its operating and maintenance employees. This bargaining unit for which the Respondent recognizes the Union is described in an agreement dated August 30, 1951, between the Respondent and the Union as:

All operators, construction and maintenance employees of the [Respondent], excluding supervisors, professional employees and guards as defined in the Labor Management Relations Act, 1947.

In Case No. 5-RC-856 the Union sought by representation petition to add to the operating and maintenance unit the following group of employees:

All depot clerks, acting depot clerks, assistant depot clerks, senior division receivers, assistant or auxiliary division receivers, inspectors, stock clerks, assistant stock clerks, junior stock clerks, garage clerks, shop clerks, terminal guards, senior fare box pullers, fare box pullers, assistant supervisor of fare box maintenance, fare box inspector, dispatchers, auxiliary assistant dispatchers, and assistant collectors of revenue; excluding supervisor of fare box maintenance, senior division supervisors, division supervisors, instructors, collector of revenue, senior stock clerks, chief dispatcher, assistant chief dispatcher and all other supervisors, guards and professional employees as defined in the Act.

The Board in that proceeding found, over objections of the Respondent renewed herein, that the group of employees petitioned for had a sufficient community of interest with operating and maintenance employees to be added, if they

desired, to the existing unit. It therefore directed an election in the group, stating that if a majority of the employees voting in the election cast their ballots for the Union they would have indicated their desire to be included in the existing unit and that the Union might then bargain for them as a part of that unit, and the Regional Director conducting the election should issue a certification of results of election to that effect.

In the election conducted on March 13, 1952, pursuant to the Board's direction, a majority of the employees voting did not cast ballots for the Union. The Union filed objections to the election, and in a supplemental decision (100 NLRB 1173) the Board set aside the election on the ground that the Respondent had created an atmosphere incompatible with freedom of choice by its employees. We reaffirm our findings in that supplemental decision contested by the Respondent in this proceeding. A second election was conducted on October 16 and 17, 1952. The Union received a majority of the valid votes cast in this election; and on October 27, 1952, the Regional Director certified that the Union had been designated by a majority of the employees voting in the election and was their exclusive representative within the meaning of Section 9 (a) of the Act.

Since the representation proceeding the Respondent has supplemented the duties of certain employees who were involved in the election, and their unit placement is raised in this proceeding. The employees in question were included in the voting group as assistant collectors of revenue. They are now known as "revenue guards" and the Respondent contends that they should be excluded from the bargaining unit as guards within the meaning of Section 9 (b) (3) of the Act. The Union contends that they should continue in the bargaining unit but should be designated by their new job title. The General Counsel considers the contentions of the Respondent and the Union to be in the nature of a motion to clarify the appropriate unit.

At the time of the representation hearing assistant collectors of revenue performed the following duties: As the "money wagon crew" they drove a special truck to each division, entered the division farebox room with two auditors as observers, unlocked the fareboxes which had been removed from the various vehicles and stored in the farebox room, dumped the money from the fareboxes into bags and tied them with string denoting the route line involved, placed the bags in leather pouches, and took the pouches to the depot office. If they observed evidence that fareboxes had been tampered with, they separated these fareboxes. The pouches taken to the depot office by the money wagon crew were thereafter picked up by Brinks, Incorporated, and transported to the Respondent's main office where the money was sorted and counted and then transferred by Brinks to banks and the United States Treasury. Effective January 15,

1953, the Respondent terminated its arrangement with Brinks, acquired an armored truck, and on January 16, 1953, began performing through the money wagon crew the functions previously performed by Brinks. Since that time the members of the money wagon crew have been armed, uniformed, given the title of revenue guards, and appointed special policemen by the municipal authorities of the District of Columbia. The present duties of revenue guards are described by stipulation as follows:

Their day's work is begun at the General Offices of the Company where they board the armored truck which has been loaded by other employees with (1) cash which has been counted and separated into appropriate denominations for deposit at a bank or delivery to the U.S. Treasury, and (2) amounts of coin and tokens to be delivered to at least two division offices for distribution to operators for use in making change. These employees proceed in the armored truck first to the bank and deliver the currency marked for deposit, then to the U.S. Treasury, and deliver the coin, and then proceed to each of the ten division offices. At each division office, they pick up the cash receipts at the Depot Office and place same in the armored truck. Also at some divisions, usually about two divisions per day, they leave cash for distribution to operators for making change. At each division point they perform the same functions previously performed by the money wagon crew as described in the Record (#5-RC-856) with the exception that instead of placing the bags which contain the contents of the fare boxes in leather pouches and taking same into the Depot Clerk's office, such bags are now placed directly in the armored truck. The same procedure is followed at each of the ten divisions and the bags of money thus collected are brought to the Respondent's General Offices and placed in a vault. At the time of collection or delivery to and from the armored truck, one of the revenue guards remains behind in the truck to guard the funds in the truck and to "cover" the other revenue guards from such position.

Each employee in the money wagon crew formerly spent about $6\frac{1}{2}$ hours per day, 5 days per week, performing his duties; each of the revenue guards now spends 8 hours per day, 5 days per week, performing his duties.

It appears from the stipulated facts that the main duty of the revenue guards continues to be collecting the money from the fareboxes. Their new duties are incidental to their main job of collecting. We conclude that the new aspect of their employment does not convert them into guards for whom Section 9 (b) (3) of the Act requires separate representation.¹

¹See Philadelphia Company and Associated Companies, 84 NLRB 115.

Even if our determination were different and we were to find these employees to be guards within the meaning of the Act, such a finding would merely require exclusion from the bargaining group of one classification of employees and would not affect the appropriateness of the unit involved and the Union's majority therein, or the Respondent's duty to bargain for other employees in the bargaining group.

Upon this record we find that since October 27, 1952, the Union has been and is the exclusive representative of an appropriate bargaining unit of all the operators, construction and maintenance employees of the Respondent, including all depot clerks, acting depot clerks, assistant depot clerks, senior division receivers, assistant or auxiliary division receivers, inspectors, stock clerks, assistant stock clerks, junior stock clerks, garage clerks, shop clerks, terminal guards, senior farebox pullers, farebox pullers, assistant supervisor of farebox maintenance, farebox inspector, dispatchers, auxiliary assistant dispatchers, and revenue guards, excluding supervisor of farebox maintenance, senior division supervisors, division supervisors, instructors, collector of revenue, senior stock clerks, chief dispatcher, assistant chief dispatcher, and all other supervisors, guards, and professional employees as defined in the Act.

B. The refusal to bargain

On November 7, 1952, the Union wrote the Respondent:

Division 689 has been certified by the National Labor Board as the collective bargaining representative of certain salaried employees, as a result of which these employees are now included in the collective bargaining unit currently represented by this Union.

It is our desire to meet with representatives of the Company at the earliest possible date to negotiate terms and conditions of employment for these employees. We would appreciate your designating a time and place where such a meeting can be held. At such time we shall submit a copy of our bargaining demands.

By letter dated November 17, 1952, the Respondent replied:

This will acknowledge receipt of your letter of November 7, 1952, concerning proposed negotiations by Division 689 on behalf of certain salaried employees covered by a certification of the National Labor Relations Board.

As you know, the Company desires to obtain court review of the determination of the National Labor Relations Board. We have been advised that, in order to obtain such court review, it is necessary that the Company refuse, and the Company therefore hereby refuses, to enter negotiations with Division 689 on behalf of such employees.

Inasmuch as the Respondent has refused to bargain with the Union for employees who the Board has found are appropriately a part of the bargaining unit and whom the Board has certified the Union represents, we find that the Respondent has violated Section 8 (a) (5) and 8 (a) (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent has refused to bargain collectively with the Union for certain employees who are part of the bargaining unit, we shall order the Respondent, upon request, to bargain with the Union for these employees.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All operators, construction and maintenance employees of the Respondent, including all depot clerks, acting depot clerks, assistant depot clerks, senior division receivers, assistant or auxiliary division receivers, inspectors, stock clerks, assistant stock clerks, junior stock clerks, garage clerks, shop clerks, terminal guards, senior farebox pullers, farebox pullers, assistant supervisor of farebox maintenance, farebox inspector, dispatchers, auxiliary assistant dispatchers, and revenue guards, but excluding supervisor of farebox maintenance, senior division supervisors, division supervisors, instructors, collector of revenue, senior stock clerks, chief dispatcher, assistant chief dispatcher, and all other supervisors, guards, and professional employees as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. On and after October 27, 1952, the Union has been and is the exclusive representative of the employees in the afore-

said unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on November 17, 1952, and all times thereafter, to bargain collectively with the Union as the exclusive representative of certain employees appropriately a part of the bargaining unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and 8 (a) (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Capital Transit Company, Washington, D. C., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL, as the exclusive representative of the following employees as part of the appropriate bargaining unit:

All depot clerks, acting depot clerks, assistant depot clerks, senior division receivers, assistant or auxiliary division receivers, inspectors, stock clerks, assistant stock clerks, junior stock clerks, garage clerks, shop clerks, terminal guards, senior farebox pullers, farebox pullers, assistant supervisor of farebox maintenance, farebox inspector, dispatcher, auxiliary assistant dispatchers, and revenue guards.

(b) In any manner interfering with the efforts of Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL, to negotiate for or represent the employees specified in paragraph (a) as part of the appropriate bargaining unit.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL, as the exclusive representative of the employees specified in 1 (a) above as part of the appropriate bargaining unit and embody any understanding reached in a signed agreement.

(b) Post at its Washington, D. C., main office, copies of the notice attached hereto and marked "Appendix A."² Copies of such notice, to be furnished by the Regional Director for

²In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

the Fifth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifth Region, in writing, within ten (10) days from the date of this Decision and Order what steps the Respondent has taken to comply herewith.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL bargain collectively upon request with Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL, as the exclusive representative for the following employees as part of the appropriate bargaining unit, with respect to wages, rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement:

All depot clerks, acting depot clerks, assistant depot clerks, senior division receivers, assistant or auxiliary division receivers, inspectors, stock clerks, assistant stock clerks, junior stock clerks, garage clerks, shop clerks, terminal guards, senior farebox pullers, farebox pullers, assistant supervisor of farebox maintenance, farebox inspector, dispatchers, auxiliary assistant dispatchers, and revenue guards.

WE WILL NOT in any manner interfere with the efforts of Division 689, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL, to negotiate for or represent such employees as part of the appropriate bargaining unit.

CAPITAL TRANSIT COMPANY,
Employer.

Dated By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.