

absolute ownership of the equipment is in the owner-operator).¹⁵ Thus, it would appear that the exercise of dominion over the leased equipment by the employer in *Eldon Miller* exceeds that of the Employer in the instant case. Furthermore, the lease agreement here does not require the personal services of the lessor, whereas, in *Eldon Miller*, except as previously noted, most lease agreements require that the owner leasing under conditional sales agreements drive and operate the tractor at all times, thus precluding him from obtaining employment elsewhere. Also, in the instant case, drivers are privileged not to drive on occasion, whereas, in *Eldon Miller*, the lease agreement obligates the driver to accept all work assignments. Thus, the existence of the various factors noted above tending to support an independent contractor relationship in the instant case appear to be even stronger than those upon which the Board made its independent contractor finding regarding the "conditional sales drivers" in *Eldon Miller*.

In view of the above considerations, we are of the opinion that the owner-operators and nonowner-operators, respectively, are independent contractors and employees of independent contractors. Accordingly, we would exclude them from the unit.

¹⁵ *Eldon Miller, Inc.*, 103 NLRB 1627 at 1629-1630.

ELLIMAN STEEL COMPANY and HERBERT H. SULZBACH, ATTORNEY ON BEHALF OF EMPLOYEES DESIRING DECERTIFICATION, PETITIONER and LOCAL 985, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO.
Case No. 7-RD-171. July 26, 1954

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 Myron K. Scott, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioner, an attorney representing employees of the Employer, asserts that the Union is no longer the bargaining representative, as defined in Section 9 (a) of the amended Act, of the employees designated in the petition.¹

¹ We hereby deny the Union's motion to dismiss the petition on the ground that the Petitioner is acting on behalf of another labor organization, Teamsters, Local 299, AFL. Assuming this to be true, the Union's contention is immaterial, as the Act permits a labor

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.²

4. The following employees at the Employer's Detroit, Michigan, plant, constitute an appropriate unit for purposes of collective bargaining, within the meaning of Section 9 (b) of the Act:

All warehouse employees, including plant clerical employees, but excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

5. The Union contends that no election should be held at this time because there is only one eligible worker presently employed. The record shows, however, that at least three employees, who have been temporarily laid off, are also eligible to vote as they have a reasonable expectation of reemployment, in the next few weeks, by the Employer.³ Under these circumstances, we find no merit in the Union's contention and shall direct that an immediate election be held.

[Text of Direction of Election omitted from publication.]

organization to file a decertification petition, provided that it is in compliance with Section 9 (f), (g), and (h) and the Teamsters has effected such compliance. See *Philadelphia Chewing Gum Corporation*, 107 NLRB 997.

² On April 29, 1953, a collective-bargaining contract was executed between the Employer and the Union. The contract provides that after March 31, 1954, either party may terminate the contract by giving 30 days' notice to the other party. As the petition herein was filed on March 1, 1954, within a reasonable time prior to the end of the original fixed term of the agreement, we find no merit in the Union's contention that the contract constitutes a bar to this proceeding. See *The Pure Oil Company*, 98 NLRB 139.

³ See *Trenton Foods, Inc.*, 101 NLRB 1769 at 1772.

HOSTER SUPPLY COMPANY¹ and GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 886, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL, PETITIONER. *Case No. 16-RC-1439. July 26, 1954*

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 C. Crawford, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.

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

¹ The name of the Employer appears as corrected at the hearing.
109 NLRB No. 74.