4. We find that all hourly paid employees at the Employer's retail glass and allied products sales branch warehouse at Houston, Texas, including truckdrivers, warehousemen, warehousemen helpers, box makers, order fillers, order clerks, packers and leadermen, the shipping clerk, the metals man, and the office porter, but excluding office clerical employees, professional employees, guards, watchmen, and supervisors 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.

In view of the fact that we find appropriate a unit comprising all of the hourly paid employees at the Employer's Houston branch, including the truckdrivers, and are directing an election among the employees in that unit, we shall also order that the Decision and Direction of Election issued by the Board on December 8, 1954, directing an election in the unit limited to the truckdrivers, be rescinded.

Order

IT IS HEREBY ORDERED that the certification issued on July 18, 1950, of Inside Glass Workers, Local Union No. 642, Brotherhood of Painters, Decorators and Paperhangers of America, AFL, as the exclusive bargaining representative of all hourly paid employees at the Employer's branch warehouse at Houston, Texas, including auto glaziers and leadermen, but excluding glaziers, truckdrivers, truckdriver helpers, truckdriver and glazier helpers, office and clerical employees, and supervisors as defined in the Act, be, and the same hereby is, revoked.

IT IS FURTHER ORDERED that the Decision and Direction of Election issued by the Board on December 8, 1954, in the above entitled case, directing an election in a unit of all truckdrivers at the Employer's retail glass branch warehouse at Houston, Texas, be, and the same hereby is, rescinded.

[Text of Second Direction of Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Supplemental Decision, Order, and Second Direction of Election.

CHARLESTON TRANSIT COMPANY *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AFL. *Case No. 9-CA-623. March 30, 1955*

Decision and Order

On November 20, 1953, Trial Examiner Sidney S. Asher, Jr., issued his Intermediate Report, a copy of which is attached hereto, finding that the Respondent is not engaged in commerce or in activities affect-

ing commerce within the meaning of the Act, and recommending that the complaint in this matter be dismissed. Thereafter, the General Counsel, the Respondent, and the Charging Party filed exceptions to the Intermediate Report and supporting briefs.[1]

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act the Board has delegated its powers in connection with this case to a three-member panel [Chairman Farmer and Members Murdock and Rodgers].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case and hereby adopts the findings and conclusions contained in the Intermediate Report, with the following additions:

The Respondent, a West Virginia corporation, is engaged in the operation of passenger buses in and around the city of Charleston, West Virginia. The Respondent operates its lines entirely within the State of West Virginia. It connects with 1 interstate carrier and with 1 subsidiary of an interstate railroad, but it does not sell tickets for passage on any other bus line nor does it permit other bus companies to sell its tickets. It does not share facilities with other lines nor is there interchange of passes or tickets between it and any other bus or rail transportation company. In 1952, it received gross annual revenue amounting to $1,779,885.

On the basis of the foregoing facts, we find that the Respondent operates a local public transit system. In the *Greenwich Gas* case[2] the Board stated that in future cases the Board will assert jurisdiction over local public utility and transit systems affecting commerce whose gross value of business is $3,000,000 or more per annum. As the Respondent's operations do not achieve this standard we find that it will not effectuate the policies of the Act to assert jurisdiction herein. We shall therefore dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

MEMBER MURDOCK, dissenting:

In our dissenting opinion in *Greenwich Gas Company and Fuels, Incorporated*, 110 NLRB 564, Member Peterson and I made clear the absence of any valid basis for the majority's newly adopted $3,000,000 yearly receipts test for the assertion of jurisdiction over public utilities and set forth the compelling reasons for a broad assertion of jurisdiction in that field subject only to the rule of *de minimis*.[3] The

[1] The Charging Party's request for oral argument is hereby denied, as the record and briefs, in our opinion, adequately present the issues and the positions of the parties.

[2] *The Greenwich Gas Company and Fuels, Incorporated*, 110 NLRB 564.

[3] See also our separate opinions in *Breeding Transfer Company*, 110 NLRB 493.

discussion in that case, however, was primarily confined to utilities other than public transit systems such as operated herein by the Respondent. The special place and importance of such transit systems in the industrial and economic scene and the effect of the majority's new standard thereon is deserving of separate comment.

The majority, of course, clearly errs in accepting without comment the finding of the Trial Examiner that the Respondent is not engaged in commerce within the meaning of the Act. As the Trial Examiner himself admits, the Board and the courts have consistently found the reverse to be true and this Respondent's purchases from outside the state as well as its service to industrial firms clearly affect commerce as defined in the Act. The finding no doubt intended to be made is that, while the Respondent is engaged in commerce, my colleagues do not consider that the "policies of the Act" would be effectuated by the assertion of jurisdiction. To this conclusion I must take vigorous exception.

Public transit firms, like other enterprises in the group known as "public utilities," have a particularly vital role in the economy in which they operate. In the instant case, for example, the Respondent provides an essential service to an area which has a population of about 125,000 persons, a large number of industrial and commercial firms, and a ranking as the second or third largest chemical producing region in the United States. These industrial firms, in many instances, are intimately connected with the national defense effort. While the survey cited by the Trial Examiner would indicate, although there are serious questions as to its accuracy, that the majority of the employees at these industrial plants use other means of transportation to and from their work, the same survey shows that, in some instances, as high as 26 percent of the employees rely upon Respondent's service. But such a survey is hardly alone determinative of the effect a cessation of Respondent's service would have upon commerce. Transit operations within a metropolitan area affect more than factory attendance. When those operations are halted, as may occur during a labor dispute, it follows, I believe, that the entire commercial, financial, and industrial life of the community is affected with direct and indirect consequences to commerce as defined in the Act.

But the essential role of public transit lines needs little additional exposition here. It has been repeatedly explored and proved in both text and actual experience. It has invariably led to public regulation of such services as constituting public utilities of vital importance. I therefore think it particularly dangerous and ill advised to deprive the great majority of these transit operations and the employees engaged therein of the protection and to remove them from the restraints of the Act. For, as has been made clear elsewhere, there is serious question as to the authority of any State and local regulatory body to as-

sume jurisdiction over these enterprises.[4] The Supreme Court, in fact, has specifically invalidated a State statute under which a State agency was seeking to exercise such control over a public transit line and did so on the ground that Congress preempted the field of labor relations among such utilities.[5]

Because, then, the $3,000,000 standard adopted by the majority cannot be justified in fact or law and because the result of such a standard will be inevitably to expose the free flow of commerce to obstructions occurring as a result of labor disputes, I must dissent both from the establishment of that standard and from the dismissal of the complaint herein because the gross revenues of the Employer are only $1,779,885.

[4] See my dissenting opinions in *Breeding Transfer Company* and *Greenwich Gas Company, supra.* It should also be noted that recent opinions by several State courts have indicated the absence of such State authority in specific cases. See *New York State Labor Relations Board* v. *Wags Transportation System, Inc.*, 35 LRRM 2058.

[5] *Amalgamated Association of Street Electric Railway & Motor Coach Employees of America, Division 998, et al.* v. *Wisconsin Employment Relations Board,* 340 U. S. 383.

Intermediate Report

This proceeding involves allegations that Charleston Transit Company, Charleston, West Virginia, herein called the Respondent, interfered with, restrained, and coerced its employees in certain specified respects since about July 15, 1952, in violation of Section 8 (a) (1) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act. After the issuance of a complaint by the General Counsel,[1] the Respondent filed an answer denying the Board's jurisdiction and denying the commission of any unfair labor practices. The Respondent also filed a motion to dismiss the complaint on the ground that its operations are wholly intrastate, and a motion for a more particular statement. Trial Examiner Eugene E. Dixon denied the motion to dismiss and granted the motion for a more particular statement in part. Thereafter, Trial Examiner Henry Sahm denied the Respondent's second motion for a more particular statement. A hearing was held before the duly designated Trial Examiner from September 14 to 17, 1953, inclusive, at Charleston, West Virginia. All parties were represented and participated fully in the hearing.[2] The Respondent and the General Counsel filed briefs, which have been duly considered. After the close of the hearing, an order was issued correcting the transcript in certain respects.[3]

Upon the entire record in this case, including a stipulation of the parties regarding the Respondent's operations, and from my observation of the witnesses, I make the following:

Findings of Fact

1. The Respondent is a West Virginia corporation, with its principal office in Charleston, West Virginia. It is engaged in the operation of passenger buses in and around the city of Charleston, West Virginia, as a common carrier, by virtue of a number of certificates of convenience and necessity issued by the Public Service Commission of West Virginia, and a franchise from the city of Charleston. It is entitled to pick up and discharge passengers anywhere along its routes without restriction.

2. The city of Charleston had a population of 73,501 in 1950. In the same year, the population of Kanawha County, in which Charleston is located, was 239,629.[4]

[1] The designation General Counsel is intended to include the General Counsel of the National Labor Relations Board and his representatives at the hearing.

[2] The Charging Party is Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL.

[3] During the hearing, several exhibits offered by the Respondent were rejected, including Respondent's Exhibits Nos. 4–B, 17, and 19. However, the reporter inadvertently stamped these three exhibits "Received." In conformity with the rulings made at the hearing, the stampings on these three exhibits are corrected to read "Rejected."

[4] 1950 Census of Population, Vol. 1, Number of Inhabitants, pages 48–7, 48–10, and 48–12.

The Respondent serves by its bus lines a total population of about 125,000 people. Charleston and the area around it constitute the second or third largest chemical producing region in the United States. The chemical plants in the Charleston area are all directly or indirectly engaged in defense work.

3. The Respondent's franchise from the city of Charleston is not exclusive. There are six other bus lines privileged to use the streets of Charleston, including 1 interstate carrier and 1 subsidiary of an interstate railroad. In addition, there are three other small bus lines which do not come into Charleston, but cover the same general territory as the Respondent outside Charleston. Under existing regulations, these 9 bus lines—with 1 exception—may not both pick up and discharge the same passenger along routes covered by the Respondent. The exception is in favor of the Atlantic Greyhound Corporation between the towns of Dunbar and Nitro. This exception aside, the Respondent is free of competition from any other bus line. The Respondent does not sell tickets for passage on any other bus line, nor permit other bus companies to sell its tickets, nor share its facilities with any other line. There is no system of interchange of passes or tickets between the Respondent's lines and those of any other bus company. Other than buses of the Respondent, there were 259 buses licensed in Kanawha County on June 1, 1953.

4. The Respondent's operations for the years 1951 and 1952 and the first 5 months of 1953, including the maximum and minimum number of buses, are shown on the following table:

	1951	1952	First 5 months of 1953
Buses owned	From 94 to 102	From 102 to 109	From 99 to 102.
Buses licensed	From 93 to 95	From 90 to 94	From 90 to 91.
Passenger revenues	$1,693,454	$1,779,885	$697,873
Miles operated	4,230,287	4,104,476	1,604,998.
Passengers carried	17,516,912	16,013,792	6,367,631.

The Respondent operates 16 routes, the 1-way mileage of which vary from slightly under 2 miles to almost 32 miles. All routes begin and end within the State of West Virginia, and the Respondent has never sent any vehicle beyond the State. During 1952, the Respondent received $5,091 from advertisements carried in its buses, which was forwarded from its out-of-State agency. Of this amount, $1,055 represented payments received by the agency from national advertisers, the remainder being derived from local advertisers. During the first 7 months of 1953, the Respondent's receipts from advertising totaled $2,023. As of September 1, 1953, the Respondent employed 189 employees, of whom 117 were busdrivers and 23 were mechanics.

The Respondent's purchases during 1951, 1952, and parts of 1953 are shown on the following table: [5]

	1951	1952	1953 (partial)
Buses purchased from out-of-State	$198, 770	$140, 535	
Parts purchased from out-of-State	48, 590	23, 873	$11, 555
Tire service, out-of-State		35, 535	17, 042
Other out-of-State purchases (insurance, etc.)		121, 833	
Totals, out-of-State purchases	247, 360	321, 776	
Gasoline purchased in State	14, 067	7, 928	2, 948
Fuel purchased in State	84, 410	87, 348	36, 471
Lubricants purchased in State	5, 783	4, 310	1, 713
Totals	351, 620	421, 362	

[5] A stipulation of the parties offered in evidence contains figures with respect to the Respondent's purchases of gasoline, fuel, and lubricants within the State. The Respondent objected to the admission of this part of the stipulation on the ground that the figures were immaterial. Ruling on the objection was reserved. The objection is now overruled and the disputed paragraphs received in evidence.

5. The Respondent operates regular scheduled service during certain hours to bus stops located within 6 blocks of 28 industrial plants, operated by 25 different firms, and employing a total of approximately 20,000 workers. Eighteen of these companies each annually ship products valued at $100,000 or more outside the State. After the issuance of the complaint herein, the Respondent conducted a survey designed to ascertain the transportation habits of the employees in these plants. This survey was conducted in the summer during dry weather and resulted in a sampling of slightly over 70 percent—considered a more than ample sampling for surveys of this type.[6] Its results indicated that 91.4 percent of the employees surveyed had come to work that day by means other than bus, and that the remaining 8.6 percent of the employees had come to work that day on either the Respondent's buses or the buses of some other transit line. Without necessarily adopting these percentage figures, I conclude from this survey that a vast majority of the employees of these 28 plants customarily come to work by methods of transportation other than bus.

In addition, the Respondent's buses regularly pass near a Naval ordnance plant which is a maintenance installation, and the Second Army Headquarters for the West Virginia Military District. They also run within 2 miles of a total of 13 coal mines outside Charleston, operated by 5 coal mining firms. These companies in 1952 employed a total of 2,640 men and produced a total of 4,368,064 tons of coal. It appears, however, that the Respondent's buses customarily carry very few miners to and from work. The Respondent's lines do not operate near any oil or gas wells.

6. The Respondent has a bus stop not far from the Greyhound bus terminal, and two bus stops near the entrance to the Chesapeake and Ohio Railway depot. This railway runs 4 westbound an 5 eastbound trains through Charleston daily, but of these 1 eastbound train runs entirely within the State, and 1 eastbound and 1 westbound train arrive in Charleston during the early morning hours when the Respondent's buses are not regularly scheduled to operate. A check made by the Respondent after the issuance of the complaint herein indicates that few passengers boarding or getting off Chesapeake and Ohio trains use the Respondent's buses. The Respondent's lines do not run within a reasonable distance of the Charleston airport, nor do they serve any river barges or transportation agencies. The Respondent does not haul newspapers, mail, or other freight.

Upon the basis of the foregoing findings of fact, and upon the entire record in this case, I make the following:

CONCLUSION OF LAW

The Board exercised jurisdiction over the Respondent's operations in 1944, at a time when these operations were not as extensive as they now are.[7] During the next 6 years, the Board continued to take jurisdiction over numerous local transit systems, some of which were more extensive and some of which were less extensive than that of the Respondent here.[8] In two instances, the Board's exercise of jurisdiction over such local transit systems was approved by a court of appeals.[9] Then, in 1950, the Board issued a series of decisions setting forth the criteria which would guide it in taking jurisdiction in the future. Among these was the *Local Transit* case, in which jurisdiction was taken over a bus line hauling passengers between Knoxville,

[6] The Respondent surveyed 27 plants with a total employment of 19,562. In addition, the 1 plant not surveyed had at least 409 employees, thus making a total of at least 19,971 in all 28 plants. Answers were obtained from 14,042 employees by the Respondent. The 28th plant conducted its own survey of 409 employees, but the size of this sampling and the conditions under which the survey was made were not shown. I therefore do not consider that an adequate survey was made in the 28th plant.

[7] *Charleston Transit Company*, 57 NLRB 1164.

[8] *Menderson Bus Lines*, 58 NLRB 820; *Chicago Surface Lines*, 58 NLRB 1140; *Spokane United Railways*, 60 NLRB 14; *The Louisville Railway Company*, 69 NLRB 691; *Pittsburgh Railways Company*, 70 NLRB 670; *Tampa Transit Lines, Inc*, 71 NLRB 742; *Wichita Transportation Corporation*, 73 NLRB 1070; *Safety Motor Transit Corporation*, 78 NLRB 831; *Amarillo Bus Company*, 78 NLRB 1103; *Philadelphia Suburban Transportation Company (Red Arrow Lines)*, 79 NLRB 448; *Lynchburg Transit Company*, 79 NLRB 546; *El Paso-Ysleta Bus Company, Inc*, 79 NLRB 1068; *City Transportation Company* 80 NLRB 270; *Gate City Transit Lines, Inc.*, 81 NLRB 79; *Harrisburg Railways Company*, 84 NLRB 678; and *The Louisville Railway Company*, 90 NLRB 678. *Contra*: *Chicago Motor Coach Company*, 62 NLRB 890.

[9] *N L R. B.* v. *The Baltimore Transit Company, et al*, 140 F 2d 51 (C. A. 4), cert. denied 321 U. S. 795; and *N. L. R. B.* v. *El Paso-Ysleta Bus Line, Inc.*, 190 F. 2d 261 (C A. 5).

Tennessee, and other points within that State. The employer there had 22 employees, used 15 buses, and had a gross annual revenue exceeding $100,000. His direct interstate imports totalled $37,500 in 1 year. In asserting jurisdiction, the Board said:

> Our experience has shown that public utilities, including public transit systems of the type here involved, have such an important impact on commerce as to warrant our taking jurisdiction over all cases involving such enterprises, where they are engaged in commerce or in operations affecting commerce, subject only to the rule of *de minimis*.[10]

The principle enunciated in the *Local Transit* case was followed in several later cases involving local transit systems.[11] This was the posture of the law at the time of the hearing in the instant matter. Under this test, the present action might be entertained. However, since the close of the hearing in the instant case, the Board refused to take jurisdiction over a public bus transportation system in *San Jose City Lines, Inc.*, 106 NLRB 1167. The Board's decision in that case discloses no underlying facts pertaining to the jurisdictional question. The Board there stated:

> The Employer operates a public bus transportation system in San Jose, California, and the immediate surrounding area. However, the record fails to establish to our satisfaction that these operations, as such, affect commerce within the meaning of the Act. Furthermore, although there is some evidence that the Employer is a subsidiary of an enterprise incorporated and operating in another State, we do not believe that the record establishes that the Employer is part of a multistate transit system. Upon the entire record herein, we find that the Employer is not engaged in commerce, or in activities affecting commerce, within the meaning of the Act.

The *San Jose* case, being the most recent pronouncement of the Board on the subject, is controlling here. Accordingly, I find that the Respondent herein is not engaged in commerce, or in activities affecting commerce, within the meaning of the Act.

One other point remains to be disposed of. The General Counsel urges that the Respondent's purchases from out of State "approaches the $500,000 figure required for the assertion of jurisdiction on this basis alone." But, as the tables set forth above clearly indicate, in no year has the total of out-of-State *and in-State* purchases reached the $500,000 minimum set up by the Board for *direct* out-of-State purchases.[12] Thus, jurisdiction cannot be bottomed upon the Respondent's purchases.[13]

[Recommendations omitted from publication.]

[10] *Local Transit Lines*, 91 NLRB 623, 624.

[11] *Gastonia Transit Company*, 91 NLRB 894; *Louisville Transit Co.*, 94 NLRB 20; *Columbus-Celina Coach Lines, et al.*, 97 NLRB 777; and *Texas Electric Bus Lines*, 100 NLRB 67.

[12] I deem it unnecessary to decide whether, as the General Counsel contends, the in-State purchase of gasoline, fuel, and lubricants should be considered as *indirect* out-of-State purchases

[13] *Federal Dairy Co., Inc.*, 91 NLRB 638; and *Florida Mattress Factory, Inc., of Tampa*, 91 NLRB 772.

HAWAII TEAMSTERS AND ALLIED WORKERS UNION, LOCAL 996 *and* OAKLEY A. DAHLBERG AND RUTH N. DAHLBERG, CO-PARTNERS D/B/A WAIALUA DAIRY. *Case No. 37–CC–3. March 30, 1955*

Decision and Order

On December 22, 1954, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached