

All our employees are free to become, remain, or refrain from becoming members of the above-named Union or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act

PITTSBURGH PLATE GLASS 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

The Cincinnati Transit Company, Petitioner and Amalgamated Association of Street and Electric Railway Employees of America, Division 627, AFL-CIO. Case No 9-RM-161 September 4, 1958

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

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Jenkins]

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

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 Act¹

4 The Union seeks to add, to its existing unit of operating and maintenance employees in the Employer's public passenger transportation system in metropolitan Cincinnati, Ohio, a group of 32 hitherto

¹The Union's bylaws forbid participation in meetings and bargaining negotiations to certain employees. The Employer contends that the Union is not a labor organization as defined in Section 2 (5) of the Act because the division clerks herein are covered by such provisions. We find the contention without merit. Employees do participate in the Union. Further, the degree of participation of some employees is immaterial as to its status as a labor organization, because the authority of a bargaining agent to represent employees must be sought in the consent of the employees and not in the bylaws. *Capital Transit Company*, 98 NLRB 141

unrepresented division clerks. The Employer, opposing their inclusion, contends that the division clerks are not employees but supervisors within the meaning of the Act.

The transportation department of the Employer's system, headed by a superintendent and his assistant, comprises three geographical divisions.² For supervisory purposes, this department is functionally divided into equipment operations and equipment control. Thus, equipment operation is under the direction of 2 chief supervisors and 23 street supervisors who alone supervise the daily operating activities of the approximately 900 regular and extra motor coach and trolley bus operators.³ Equipment control, on the other hand, is under the five division superintendents, who supervise the division clerks here in issue.

The division clerks work exclusively at the three operating divisions, performing the clerical work relating to equipment control. In accord with established company procedures, the clerks distribute to operators "stock," i. e., change, tokens, and transfers, and collect, record, and report operators' receipts, overages, and shortages on company forms. They check operators' delay and accident reports and on prescribed forms report lost articles found by operators. Division clerks handle telephone calls, including public and business calls, calls from operators as to their schedule assignments, and trouble calls from the dispatchers which are recorded and relayed to the garage foremen. Division clerks instruct operators only in the performance of routine clerical functions such as filling out report forms and correctly reading schedules.

A division clerk at each operating division daily performs "board" work, which entails the preparation of assignment schedules for extra work to the extra operators. However, the number and choice of extra operators are predetermined and require the exercise of no independent judgment by the division clerks. Division clerks have no authority to hire, and if they deem that more operators are needed to meet schedule requirements, they merely report such need to the division superintendents. Nor do the division clerks have authority to discharge operators, although in case of flagrant violations of company regulations, such as intoxication, a division clerk on the "board" may suspend an operator for his run. He must then report him, however, to the division superintendent for further action. Division clerks have no authority to settle grievances, although they may adjust routine errors arising from the assignment of operators to individual runs. Except for emergency situations, division clerks do not grant leave for more than a day or two, and when other leave is requested, they merely advise the operators whether leave is available under

² Brighton, Winton, and Walnut Hills.

³ There are 650 regular and 250 extra operators operating out of the 3 divisions.

"board" schedules, and if so, the operators must secure permission from the division superintendents. Although division clerks may substitute for division superintendents at night, at such times they continue to perform their routine clerical work, and in the event of unusual occurrences, they contact the division superintendents. They do not attend supervisors' meetings.⁴

Under these circumstances, we find that the work of the division clerks, essentially involving the control of the Employer's equipment rather than its operators, is routine in nature, and does not require the use of independent judgment within the meaning of Section 2 (11) of the Act.⁵ Nor does the record establish that the division clerks have the authority to hire, discharge, or discipline employees or effectively to recommend such action.

On April 21, 1958, 2 days before the instant hearing, the Employer sent to the 32 division clerks identical letters advising that their supervisory status had recently been placed in question and that the purpose of the letters was to clarify those supervisory powers. The letters described the alleged supervisory authority, including the assignment, direction, discipline, and instruction of vehicle operators; the making of recommendations "as to the action to be taken" as to operators, which recommendations "will usually be followed"; and the responsibility for the transportation division in the absence of division superintendents. We have found hereinabove that no supervisory authority had existed. Nor do we find the letters to have altered either the division clerks' carefully circumscribed routine clerical functions or the scope or character of the routine clerical contacts between them and the operators they are alleged to supervise.⁶ Under these circumstances, we conclude, contrary to the Employer, that the letters merely restate the limited scope of the division clerks' authority, restricted to matters of routine clerical con-

⁴ In contrast to the division clerks, whose contacts with the operators are brief and of a routine clerical nature, the 25 chief and street supervisors are the sole immediate supervisors of the operators during their 8-hour operating day, instructing and directing them in vehicle operation, assuring the maintenance of their schedules, and taking charge in case of accidents. We find without merit the Employer's contention that to hold division clerks not supervisors would result in an excessive ratio of 1 supervisor to 186 employees in the transportation department, in view of the Employer's omission of the chief and street supervisors from its calculation. Based on our findings herein that the division clerks are not supervisors, we calculate the correct ratio at 1 supervisor to approximately 35 employees, not an unreasonable ratio for the transportation industry *New York City Omnibus Corporation*, 104 NLRB 579, at page 584, and cases cited in footnote 11 therein.

⁵ *Carey Transportation, Inc.*, 119 NLRB 332; *Capital Transit Company*, 98 NLRB 141, at page 143 (depot clerks); *The Baltimore Transit Company*, 92 NLRB 688; *New England Transportation Company*, 90 NLRB 539. Cf. *New York City Omnibus Corporation*, *supra*, relied on by the Employer, where in contrast to the division clerks herein the bus supervisors, in addition to performing clerical duties, responsibly directed bus operators.

⁶ In its brief, the Employer concedes that the "testimony revealed that the duties of Division Clerks have since 1923 been substantially the same as that set forth in Company Exhibit 1," the aforementioned letter, "and that those duties and authorities are substantially unchanged in the last 30 years."

cern alone.⁷ Accordingly, we find that the division clerks are not supervisors as defined in the Act.

Upon the entire record in this case, we are of the opinion that the division clerks have a sufficient community of interests with the other employees in the operating and maintenance unit currently represented by the Union to warrant their inclusion therein. However, as they have not been represented in the past in the broader bargaining unit, they are now entitled to a self-determination election for the purpose of deciding, as a separate group, whether they wish to be represented by the Union and added to the existing bargaining unit.⁸ Accordingly, we shall direct an election in the following group of employees employed in the Employer's Cincinnati, Ohio, public transportation system:

All division clerks,⁹ excluding all other employees and supervisors as defined in the Act.

If a majority of the employees in this voting group cast their ballots for the Union, they will be taken to have indicated their desire to be represented by the Union in the existing unit, and the Union may bargain for such employees as part of that unit. If, however, a majority of the employees in this voting group vote against the Union, they will be taken to have indicated their desire to remain outside the existing unit, and the Regional Director is instructed to issue a certification of results of election to that effect.

[Text of Direction of Election omitted from publication.]

⁷ *The Baltimore Transit Company, supra; Santee Print Works*, 111 NLRB 1362, at page 1365.

⁸ *The Zia Company*, 108 NLRB 1134, as amended, 109 NLRB 312, 862.

⁹ The parties agree that subclerks who perform some division clerk work, but who spend a majority of their time driving and who are presently represented by the Union in the operating and maintenance unit, are not included herein.

The Connecticut Light and Power Company and International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case No. 1-RC-5208. September 4, 1958

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 William I. Shooer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Jenkins].