

All our employees are free to become, remain, or refrain from becoming or remaining, members of any union, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the National Labor Relations Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

RELIANCE FUEL OIL CORP.,
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.

Denver-Colorado Springs-Pueblo Motor Way and Brotherhood of Railroad Trainmen Local No. 852, AFL-CIO, Petitioner.
Case No. 27-RC-1841 (formerly 30-RC-1841). January 5, 1961

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before John S. Healey, 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 the case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organization involved claims to represent the employees of the Employer.
3. No 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, for the following reasons:

The Petitioner seeks to represent a unit of hostesses employed on the Employer's busses. The Employer moved to dismiss the petition on the ground that the unit is inappropriate because it is composed of only one employee.

The Employer is engaged in the business of transporting passengers by bus. It operates from a number of terminals in the State of Colorado. Since 1957, the Employer has provided hostess service for its passengers, on some of its bus routes, the so-called "Five Star" service. At the time of the hearing such service was maintained only on one route between the cities of Pueblo and Denver, Colorado. The service consists of serving light snacks and refreshments, and furnishing newspapers, magazines, and other courtesies to the passengers. There is one full-time regular hostess who works 5 days a week on the route. In addition one Ruth Robinson works 2 days a week as a relief hostess. She is primarily a clerical employee, and works regularly 3 days a week at the Pueblo terminal. There, she is covered by a collective-bargaining contract which the Employer maintains with a labor organization other than the Petitioner. In the exercise of her dual

functions in the Employer's operations she works a full 5-day week, with the major portion of her working time devoted to her duties as a clerical employee.

The Board used to hold that an employee who performs dual functions for an Employer is entitled to be represented by a collective-bargaining representative for that portion of his duties to which he is regularly assigned and in which he spends "a sufficient period" of time so as to have "a substantial interest" in the terms and conditions of employment within the unit covering employees performing similar functions.¹ Employees who spent less than 50 percent of their working time in performing duties of the type covered by the requested unit were thus included in the unit. They were, however, not permitted to vote in the election selecting the collective-bargaining representative for such unit.

In 1951, in *Ocala Star Banner*,² the Board eliminated this limitation on the voting rights of employees performing dual functions and permitted them, like part-time employees performing functions for two or more employers, to exercise voting rights in any unit in which they were included.

Following the Board's decision in *American Potash*³ in 1954, which provided *inter alia* that only craftsmen *primarily* engaged in the performance of tasks requiring the exercise of their craft skills may, for severance purposes, be included in craft units, the Board has applied this stricter standard in a number of cases not involving craft severance.⁴ In this line of cases, the Board has included employees in proposed units only if they spent a "major portion of their time" in tasks alike or similar to the ones of the other employees in the unit. In effect the Board has required that an employee spend more than 50 percent of his working time in such tasks or duties.

We believe that this development in the law of unit inclusion is proper. It seems reasonable to conclude that the preponderant interests of an employee lie with those of his fellow workers who perform similar tasks as the ones in which he spends the majority of his time. The bargaining representative selected to represent the unit of such employees is therefore the one to represent an employee performing dual functions.

Accordingly, we shall henceforth apply for purposes of unit placement and voting eligibility only one test, namely whether an employee sought to be included in a proposed unit is primarily engaged in, and

¹ See *Tower Cleaners*, 97 NLRB 376, 379; *Coca-Cola Bottling Company*, 94 NLRB 208, 210; *Florida Broadcasting Company*, 93 NLRB 1568; *Dispatch Printing Company, Inc.*, 93 NLRB 1282; *WCAU, Inc.*, 93 NLRB 1003.

² 97 NLRB 384.

³ *American Potash & Chemical Corporation*, 107 NLRB 1418, 1423.

⁴ *Apex Linen Service*, 119 NLRB 500; *Douglas H. McDonald*, 126 NLRB 680; *Cornhusker Television Corporation*, 117 NLRB 1065 at 1067.

spends the major portion of his time, i.e., more than 50 percent of his time, performing tasks or duties alike or similar to the ones performed by the other employees in the requested unit. *Ocala Star Banner* and the other cited cases permitting unit inclusion of employees spending less than a major portion of their time in performing such tasks, are hereby overruled.

As the record is clear that employee Ruth Robinson does not spend a major portion of her time in working as a hostess, we find that she is not qualified to be included in the proposed unit of hostesses. Therefore, it appears that only one employee may properly be part of the unit requested by the Petitioner. The Board does not direct elections in units composed of one employee only, as it is settled policy not to certify a representative for bargaining purposes for such unit.⁵ Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

MEMBER FANNING, dissenting:

I do not believe that it will effectuate the policies of the Act for the Board to overrule the policy set forth in *The Ocala Star Banner*, 97 NLRB 384.

In this connection I am particularly concerned with the mandate of Section 9(b) that the Board shall decide the unit appropriate for collective bargaining “. . . in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act. . . .”

Prior to *Ocala Star Banner* the Board included in the unit employees who regularly worked part time in the voting unit and part time elsewhere for the same employer. As stated, for example, in *Coca-Cola Bottling Company of St. Louis*, 94 NLRB 208, at 210, the Board was “reluctant to deprive them of representation for that portion of their duties.” However, these employees were not permitted to have a voice in the selection or rejection of a bargaining representative, unless they spent 50 percent or more of their time doing work which qualified them to be in the unit. Otherwise, they were included in the unit but were not eligible to vote.

Nevertheless, the Board allowed part-time employees to vote in the unit even though they spent less than 50 percent of the working time at work for the employer provided that they worked for another employer or were idle for the rest of the time, on the ground that they had a substantial interest in the wages, hours, and working conditions of the employees in the appropriate unit.

In setting forth its policy in *Ocala Star Banner* the Board modified its eligibility rule and permitted employees to vote who work part time in the voting unit and part time elsewhere for the same employer. Thus, the Board in that decision, pursuant to the policies of the Act,

⁵ *Cutter Laboratories*, 116 NLRB 260; *Sharon Wire Company, Inc.*, 115 NLRB 372.

continued to accord to such employees the benefits of collective representation for a substantial part of their work, but it also permitted them to participate in the selection or rejection of such bargaining representative, and made its eligibility requirements consistent as between employees performing more than one function for the same employer and those working also for another employer or merely part time for one employer.

Thus, the policies of the Act were served, and at the same time the Board removed what was clearly an arbitrary and inconsistent application of its eligibility rules.

Nor do I believe that the Board's redefinition of its policy in severance cases, as set forth in *American Potash & Chemical Corp.*, 107 NLRB 1418, requires that the Board abandon the salutary, policy effectuating, and reasonable approach of *Ocala Star Banner*. In *American Potash* the Board stated that it would permit the severance of craft groups (or departments under certain conditions) in the face of established bargaining history for those employees under restricted conditions. One of these was that the group be a true craft (in the case of crafts) and that such craftsmen be primarily engaged in the performance of tasks requiring the exercise of craft skills. No indication was given in the decision in *American Potash* that the policy of *Ocala Star Banner* was being abrogated. *American Potash* in this respect dealt only with the severance of craft groups from an existing bargaining relationship.⁶

I would find, in accord with precedent (*Transcontinental Bus System, Inc.*, 119 NLRB 1840, 1845) that a unit of hostesses is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. As the relief hostess spends 40 percent of her time regularly as a hostess, she has a substantial interest in the wages, hours, and working conditions of the hostess included in the unit. Accordingly, pursuant to Section 9(b) of the Act and *Ocala Star Banner*, I would include her in the unit and direct an election.

MEMBER KIMBALL took no part in the consideration of the above Decision and Order.

⁶ The majority states that the Board since *American Potash* has required that an employee spend more than 50 percent of his working time in the unit before it will include him. The reliance of the majority on *Cornhusker Television Corporation*, 117 NLRB 1065 at 1067, and *Douglas H McDonald*, 126 NLRB 680, to support this statement seems to be misplaced.

In *Cornhusker* a panel of the Board (Chairman Leedom and Members Murdock and Rodgers), although noting that one employee spent apparently less than 50 percent of his time in the administrative division, included him in the unit of programming department employees in which he spent 40 percent plus of his time. In the same case the Board excluded other employees from the unit as they did "not spend a substantial part of their time in programming." The Board used the "substantial part of their time" as the standard: it did not use the "majority of time" standard now proposed by the majority.

In like manner in *Douglas H McDonald* a panel of the Board (Chairman Leedom and Members Rodgers and Jenkins) excluded certain employees because "it is clear that these employees do not spend a substantial part of their time" in work within the unit