

excluding all other production and maintenance employees, office clericals, guards, watchmen, professional employees, and supervisors as defined in the Act.<sup>11</sup>

[Text of Direction of Election omitted from publication.]

CHAIRMAN McCULLOCH took no part in the consideration of the above Decision and Direction of Election.

<sup>11</sup> Charles F. Grooms is a working leadman with respect to the grinders in the machine shop. He does not have authority to recommend hiring or discharging. His sole function as leadman is to transmit his foreman's instructions as to job assignments to the grinders. We find that he is not a supervisor and we will include him in the unit of machinists.

**Archie's Motor Freight, Inc.<sup>1</sup> and Truck Drivers and Helpers Local Union No. 592, affiliated with the International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America,<sup>2</sup> Petitioner. Case No. 5-RC-3277. March 29, 1961**

#### 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 Thomas J. Walsh, 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, Leedom, and Fanning].

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 organizations involved claim to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.
4. The appropriate unit:

The Petitioner seeks a unit of all road drivers employed at the Employer's Richmond, Virginia, terminal, excluding local drivers and all other employees. The Employer contends that the appropriate unit should consist of all employees of the Employer, including its employees who operate out of McKeesport, Pennsylvania, and Franklin, Virginia. Of those employees at Richmond, the Employer would include in the unit the bookkeeper and the service mechanics.<sup>3</sup>

<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner's name appears as amended at the hearing.

<sup>3</sup> The record indicates that the Employer employs no "local drivers" at any of its terminals. We have therefore deleted any reference to them from the unit description.

The Employer is engaged in the business of hauling commodities by motor transport. Richmond, Virginia, is its home office, serving as the bookkeeping and management headquarters for all the terminals. The Employer has two "sub-offices," located at the places of business of Union Bag Company in Franklin, Virginia, and at G. C. Murphy Department Store in McKeesport, Pennsylvania. The Employer hauls for these companies. There are seven employees at McKeesport, which is approximately 330 miles northwest of Richmond. The dispatcher there has the responsibility of directing and assigning the work of those employees. At Franklin, which is approximately 80 miles southeast of Richmond, there is only one employee. He spends about 60 percent of his time moving trailers around the lot of Union Bag Company, and getting them ready to be picked up by the Employer's drivers. He spends the remainder of his time driving trailers from Franklin to Richmond and back. The Employer has no other terminals or suboffices, and there is no bargaining history for any of the Employer's employees. Although there appear in the record some factors which might support a finding that a systemwide unit is appropriate, these factors are not so compelling as to require a finding that such a unit is the only appropriate unit.<sup>4</sup> Although Richmond serves as the bookkeeping and management headquarters for all the Employer's operations, the employees at the McKeesport operation haul only for G. C. Murphy, their trucks are repaired in McKeesport, they come in contact with the Richmond drivers only on rare occasions, and they are hired at, and receive their orders from, McKeesport. In view of these facts, and particularly as the McKeesport operation is a substantial distance from Richmond,<sup>5</sup> we shall not include the drivers at McKeesport in a unit with the Richmond drivers. We find that the Franklin operation is, in effect, merely an adjunct of the Richmond terminal; the single employee at Franklin spends 40 percent of his time in driving between Franklin and Richmond, receives his orders directly from Richmond, and would otherwise not be accorded an opportunity to choose a bargaining representative. We shall, therefore, include the one driver at Franklin.

One salaried bookkeeper is employed at the Richmond terminal. He works a regular 40-hour week doing bookkeeping and various other jobs around the terminal. On alternate weekends he acts as dispatcher, and sporadically he drives short runs, usually to Franklin, Virginia. Upon the record, we find that the bookkeeper spends 80 percent of his time doing office work, and we shall therefore exclude him as an office clerical.<sup>6</sup>

<sup>4</sup> See *Standard Trucking Company*, 122 NLRB 761; *Frederickson Motor Express Corporation*, 121 NLRB 32.

<sup>5</sup> See *Southeastern Concrete Products Company*, *Southeastern Concrete Sales, Inc.*, *Southeastern Sand Co.*, 127 NLRB 1024.

<sup>6</sup> Cf. *Evansville Television, Inc.*, 126 NLRB 680.

The service mechanics perform the usual duties incidental to the maintenance and repair of trucking equipment. All their work is done in the repair shop at Richmond and they do not interchange with the drivers. We find that their interests are different from those of the drivers and, in accord with established Board practice, we shall exclude them.<sup>7</sup>

There are four lease drivers who operate out of the Employer's Richmond terminal. The Employer contends that these men are "employees" within the meaning of the Act, and should therefore be included in the unit. The Petitioner contends that they are "independent contractors" and should therefore be excluded or, at best, should be allowed to vote subject to challenge. The record shows that these drivers own their own tractors, that the tractors carry the name and "colors" of the Employer, and that the owner-drivers and the Employer have written agreements for the exclusive use by the Employer of these tractors. The owner-drivers are subject to all the Employer's rules and regulations. They cannot haul for anyone else; they garage their tractors at the Employer's terminal; and they receive the same rate of pay and same benefits as the other drivers. It is clear that the four lease drivers have no control over the manner and means of accomplishing their work, but are subject in all material respects to the Employer's control. In view of these facts, we conclude that the lease drivers are employees of the Employer within the meaning of the Act, and we shall include them in the unit.<sup>8</sup>

Accordingly, we find that the following employees at the Employer's terminals at Richmond and Franklin, Virginia, constitute an appropriate unit for the purposes of collective bargaining within Section 9(b) of the Act:

All over-the-road drivers, including the lease drivers, but excluding service mechanics, the bookkeeper, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>7</sup> See *Standard Trucking Company, supra*; *Frederickson Motor Express Corporation, supra*.

<sup>8</sup> See *Golden Age Dayton Corporation, 124 NLRB 916*.

**Baltimore Binding and Waistband Corp. and Textile Workers Union of America, AFL-CIO, CLC.** Case No. 5-CA-1733. March 31, 1961

#### DECISION AND ORDER

On October 11, 1960, Trial Examiner Louis Plost issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in and was not engaging in the unfair labor

130 NLRB No. 168.