

but excluding guards, professional employees, and supervisors as defined in the Act.<sup>9</sup>

[Text of Direction of Election omitted from publication.]

<sup>9</sup> As the unit found appropriate is broader than that requested by Petitioner, and Petitioner's showing of interest is inadequate with respect to such appropriate unit, the Regional Director is instructed to conduct the election herein only in the event Petitioner establishes a proper showing of interest.

**Yellow Cab, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 775, Petitioner.** *Case No. 27-RC-1948. April 24, 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 F. T. Frisbey, 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 [Chairman McCulloch and Members 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 organization involved claims to represent certain employees of the Employer.

3. The Petitioner seeks a unit of dispatchers and relief dispatchers at the Employer's Denver, Colorado, taxicab operation, or, alternatively, would add these employees to the unit of drivers it currently represents. The Employer moved to dismiss on the ground that the petition is barred by its contract with the Petitioner. This motion is denied for the reasons set forth below.

The Employer had a contract with the Petitioner covering the drivers,<sup>1</sup> which expired by its terms on July 1, 1960. An addendum extending the date of this contract was set forth in a letter from the Employer to the Petitioner, but this addendum was never signed by the Petitioner. Moreover, the contract was concerned with the relationship between the Employer and its drivers; there was some reference in the contract to "extra dispatchers," but it appears that there are only two individuals in this category and they fill in only occasionally for an absent dispatcher. Therefore, as the contract raised as

<sup>1</sup> In addition to the 500 regular and 225 extra drivers whom the Petitioner represents, it represents a unit of 30 garage employees jointly with the International Association of Machinists, AFL-CIO.

a bar did not cover the categories sought by the Petitioner,<sup>2</sup> and as the addendum was not executed by both parties, we find that there is no contract bar.<sup>3</sup> Accordingly, we find that 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.

4. The Employer moved to dismiss on the ground that the proposed unit is comprised of individuals with supervisory or managerial status. This motion is denied for the reasons set forth below. The Employer maintains overall control and direction of its fleet of 725 taxicabs from its central offices. The dispatchers and the telephone operators, who occupy adjacent offices, are under the supervision of the communications superintendent and public relations manager, who in turn is responsible to the general manager. On the same level with the general manager is the comptroller, and above them the president. Other supervisory personnel include the personnel director, also referred to as the superintendent of personnel, who hires the drivers, and the office manager, maintenance superintendent, and safety director.

There are eight full-time dispatchers, two relief dispatchers, and one trainee dispatcher. The principal duties of the dispatchers consist of transmitting to the drivers, by radio, orders received by telephone. When an order is received, the telephone operator makes a written note and passes it through a chute in the glass partition to the dispatcher. After the dispatcher selects from a log sheet the cab to receive the order, according to proximity of the cab to the customer's location, he calls the driver by radio and directs him where to go. He then time-stamps the order and files it. If too many orders are received from a certain area for the dispatchers to handle efficiently, they may instruct the telephone operators to close down the board for that area, whereupon the telephone operators inform customers calling from that area that no more cabs are available. The dispatchers communicate such instructions to the telephone operators in writing through the chute. In the same manner, they may instruct the operators to slow down in taking orders. The supervisor of the telephone operators in the performance of their duties is the head operator. Dispatchers may complain to operators or to management about inefficiency, but such complaints are independently investigated by management. On the basis of the foregoing, we find no merit in the Employer's contention that the dispatchers supervise the telephone operators within the meaning of the Act.

The Employer also contends that the dispatchers responsibly direct the drivers and may discipline them. By issuing what is referred to as an R-11, a dispatcher may call a driver in from his work for such infractions of the rules as use of profane language on the radio,

<sup>2</sup> As we find that the contract does not cover the employees sought herein, we reject the Petitioner's suggestion that this may be a proper case for unit clarification.

<sup>3</sup> *Appalachian Shale Products Co.*, 121 NLRB 1160.

arguing with the dispatcher, unusual delay and a callback by the customer, or logging violations. When an R-11 is issued, the driver involved brings his cab into the garage and reports, not to the dispatcher, but to the superintendent of personnel or the cashier. The dispatcher fills out a complaint form which sets forth the facts of the alleged violation but contains no recommendation. The matter is independently investigated by the superintendent, who decides whether to send the driver back to work or discipline him. If no basis is found to exist for the R-11, the driver is credited for his time lost thereby. It appears that management has never instructed the dispatchers that they have any responsibility for disciplinary action. Moreover, just as dispatchers report misconduct by drivers, the drivers report to management derelictions on the part of dispatchers which, if supported by investigation, may subject the dispatcher involved to reprimand or discharge. The dispatchers do not assign drivers to cabs, but the drivers determine this matter themselves at their work shifts on a "bidding" system based on seniority. Drivers frequently, when they do not like a particular area and are forced to load into that area, "deadhead" out of it even though they lose revenue thereby. Moreover, drivers sometimes refuse for as long as a week to turn on their radio because of dissatisfaction with the dispatcher, with no disciplinary measures. Dispatchers formerly handled calls from drivers regarding emergency repairs to vehicles by directing them to have the repairs done on the spot, but such calls are now referred to the cashier.

In the performance of their duties, the dispatchers are governed by a detailed set of operating rules and procedures promulgated by the Employer in the form of bulletins. They must also conform to rules and regulations laid down by governmental authority relating to the use of radio and the safe operation of vehicles. Instructions given by dispatchers to other drivers and other employees relate primarily to the deployment of vehicles and use of equipment, and do not cover the manner in which those employees carry out their functions. Indeed, since the dispatchers are isolated in the radio room, there is no opportunity for them to observe the work performance of drivers. This function is handled by a road supervisor who patrols the city in order to observe the manner in which drivers adhere to rules. Accordingly, on the basis of the foregoing and the entire record, we find that the dispatchers do not responsibly direct employees, do not have authority to discipline them or effectively to recommend discipline, and do not exercise any of the other statutory indicia of supervisory authority. We find, therefore, that they are not supervisors within the meaning of the Act.<sup>4</sup>

<sup>4</sup> See *The Baltimore Transit Company, et al.*, 92 NLRB 1260; see also *Carey Transportation, Inc.*, 119 NLRB 332.

We likewise find no merit in the Employer's contention that the dispatchers are management personnel. Although the dispatchers attend monthly meetings where they are briefed as to company policy covering their duties, any suggestions made by them as to company operations must be weighed and approved by management before being adopted. Furthermore, other employees may make suggestions which are accorded the same treatment. We therefore find that the dispatchers do not participate in the formulation of company policy nor exercise any other managerial function.<sup>5</sup> The Employer's motion to dismiss on the ground that the proposed unit is comprised of supervisors or managerial personnel is therefore hereby denied.

We turn now to the question of whether dispatchers should be included in the same unit with the drivers currently represented by the Petitioner, or should constitute a separate appropriate unit. Upon the basis of the entire record and, particularly, in view of the common employment interests and the degree of working relationship between the drivers and the dispatchers, we find that they may, if they so desire, be represented in the same unit with the Employer's drivers. However, as the dispatchers have not previously been included in the unit of drivers, we shall make no unit determination with respect to them pending the outcome of the election herein directed among them. If they select the Petitioner as their bargaining representative, they will be taken to have indicated their desire to be included in the existing unit of drivers currently represented by the Petitioner, and the Regional Director conducting the election is instructed to issue a certification of results to that effect.<sup>6</sup>

Accordingly, we shall direct an election in the following voting group: All dispatchers and relief dispatchers at the Employer's Denver, Colorado, taxicab operation, excluding extra dispatchers, all other employees, drivers, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>5</sup> See *The Connecticut Light and Power Company*, 121 NLRB 768.

<sup>6</sup> Cf. *New England Transportation Company*, 90 NLRB 539.

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**Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Van Transport Lines, Inc. and Frank Piazza and George Piazza d/b/a Staats Express.** *Cases Nos. 2-CC-551 and 2-CE-1. April 26, 1961*

#### DECISION AND ORDER

On July 20, 1960, Trial Examiner A. Norman Somers issued his Intermediate Report in the above-entitled proceeding, finding that  
131 NLRB No. 42.