

arisen by presentation of a claim by Local No. 4-227, thereby contributing support to ERF, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

4. By such support, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

**Morgan Transfer & Storage Co., Inc. and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, AFL-CIO, Petitioner.** *Case No. 27-RC-1951. June 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 Allison E. Nutt, 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 Brown].

Upon the entire record in the 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.<sup>1</sup>

3. The Petitioner filed a petition on October 26, 1960, seeking to represent all regular full-time platform workers of the Employer at its Denver Union Pacific dock operation.<sup>2</sup> The Employer and the Intervenor contend that the full-time employees in question are properly included under an existing contract between the Intervenor and Colorado Transfer and Warehousemen's Association, Inc. (hereinafter called the Association), of which the Employer is a member. More specifically they are contending that the petition should be dismissed on the ground that the unit sought is an accretion to the multi-employer unit and on the further ground that the existing contract between the Association and the Intervenor constitutes a bar to the proceeding.<sup>3</sup>

<sup>1</sup> International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No 17, was permitted to intervene on the basis of a contractual interest

<sup>2</sup> As an alternative it sought also all regular part-time platform workers at this location

<sup>3</sup> The contract in question, by its terms, became effective on May 1, 1958, and will expire on January 19, 1962. We find for reasons hereinafter set forth that the contract does not cover the employees sought by the Petitioner. Moreover, the contract does not bar a

Prior to October 3, 1960, the employees involved herein were covered by a contract between the Petitioner and Acme Fast Freight, Inc., hereinafter called Acme. This contractual relationship has existed for some 8 or 9 years. On October 3, 1960, Acme contracted with the Employer for the performance of its platform work. Around September 30 or October 1, 1960, in anticipation of the change in operations, Acme terminated its full-time and regular part-time platform employees. At approximately the same time, these employees made application for employment with the Employer. All were hired. These employees have continued to perform the same duties at the same location and under the same immediate supervision as before the transfer of the work to the Employer and have continued to report for work at the Denver Union Pacific dock leased by Acme, whereas all other employees of the Employer, who are in different job categories, report to work at its principal place of business some four to five blocks away. There has been no interchange of former Acme platform workers with other employees of the Employer. This operation is separate and apart from the trucking and warehousing operations of the Employer located elsewhere. It is clear, and we find, that the employees sought are not covered by the multiemployer contract, as such contract does not include facilities acquired afterward, and all the provisions thereof have not been applied to these employees. On the basis of all the foregoing facts, we find that the platform operations of Acme, newly acquired by the Employer, is a completely new operation and not a mere accretion.<sup>4</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 and the Intervenor contend that the Employer's operation at the former Acme dock does not constitute a separate appropriate unit. As noted above, however, the employees at the Acme dock are newly hired by the Employer, are separately supervised, and the Acme operation of the Employer is largely autonomous. Furthermore, in such circumstances, the Board normally permits employees of a new operation to indicate their desires as to representation. Accordingly, we are of the opinion that, for the purposes of collective bargaining, the employees at Acme may constitute a separate appropriate unit, or, in view of the bargaining history on a multiemployer basis, may appropriately be included in the multiemployer unit currently represented by the Intervenor. We shall, therefore, make no unit determination with respect to the employees at the Acme opera-

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petition because, at the time the petition herein was filed, more than 2 years of the contract had elapsed *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990

<sup>4</sup> Accord *Houck Transport Company*, 130 NLRB 270.

tion of the Employer at this time, but shall first ascertain the desires of these employees as expressed in the election directed herein.

We shall direct an election among the following employees: All full-time and regular part-time<sup>5</sup> platform workers of the Employer at its Denver Union Pacific dock operation, excluding all other employees and supervisors as defined in the Act.

If the majority of the employees in the above-described voting group cast their ballots for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit and the Regional Director is instructed to issue a certification of representatives to the Petitioner for such unit, which the Board, under the circumstances, finds to be appropriate for purposes of collective bargaining. If the majority of the employees in the voting group cast their ballots for the Intervenor, they will be taken to have indicated their desire to be included in the existing unit currently represented by the Intervenor and the Regional Director will issue a certification of results of election to that effect. If the majority of the employees in the voting group cast their ballots for neither labor organization, they will be taken to have indicated their desire to be unrepresented by any labor organization appearing on the ballot and the Regional Director will issue a certification of results of election to that effect.

[Text of Direction of Election omitted from publication.]

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<sup>5</sup> In the absence of agreement by the parties on a formula for determining regular part-time employment, we shall, contrary to the Petitioner's request for a usual formula, permit any question of casual versus regular part-time employment to be determined by challenged ballot.

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**Montgomery Ward & Co., Incorporated and Retail Clerks International Association, AFL-CIO, Locals 886, 170, 428, 1439, and 588.** *Cases Nos. 5-RC-2513, 20-RC-2834, 20-RC-2885, 19-RC-2069, and 20-RC-3627. June 30, 1961*

#### ORDER CONSOLIDATING CASES AND DECISION AMENDING CERTIFICATIONS

The Employer filed five separate motions for amendment and clarification of certification of representatives specifically to exclude "management trainees" from units comprised of "all employees" of various stores. The motions with supporting affidavits and briefs are identical, except that different locations, local unions, and dates of certification are involved.

The Employer asserts that all of these certifications were issued pursuant to stipulated elections in units which, at the time of the elections, contained no "management trainees." Neither the unit descriptions nor the contracts currently covering employees in such units con-