to recognize or bargain with the Union under the circumstances herein related did not engage in unfair labor practices within the meaning of Section 8(a)(5) of the Act. It is further found that the strike was not caused by any unfair labor practices of the Respondent; and that during the strike the Respondent replaced Dudik, Kowalik, Rakowski, and Szymanski with permanent employees. Therefore, by failing and refusing to reinstate said employees the Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

[Recommendations omitted from publication.]

Archie's Motor Freight, Inc. ***and*** **Truck Drivers and Helpers Local Union No. 592, affiliated with the International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America, Petitioner.** *Case No. 5–RC–3277. January 16, 1962*

SUPPLEMENTAL DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Pursuant to a Decision and Direction of Election issued by the Board on March 29, 1961,[1] an election by secret ballot was conducted by the Regional Director on April 22, 1961, among the employees in the unit found appropriate. After the election the parties were furnished with a tally of ballots which showed that of approximately 26 eligible voters, 10 voted for, and 11 voted against, the Petitioner and 1 ballot was challenged. The Petitioner filed timely objections to conduct allegedly affecting the results of the election.

After investigation the Regional Director, on May 31, 1961, issued and served upon the parties his report on objections, in which he recommended that the objections be sustained and the election set aside, and that the Board remand the case to the Region for the purpose of determining the unit placement of six "city drivers," a matter not considered in the original decision for reasons stated below.

The Board, after having duly considered the matters raised in the Regional Director's report concerning the "city drivers" and the exceptions thereto, was of the opinion that the record should be reopened for the purpose of receiving additional evidence, and accordingly, on August 3, 1961, it issued an order remanding the proceeding to the Regional Director for further hearing. This second hearing was held on August 30, 1961, and the matter came on to the Board for determination.

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].

The Petitioner originally petitioned for "all road drivers at the Employer's Richmond, Virginia, terminal, excluding 'local pick-up

[1] 130 NLRB 1627.

drivers and helpers' and all other employees." At the first hearing, the Employer stated that it had (1) no "local" drivers, (2) no hourly paid drivers, and (3) no drivers who "never go outside the city of Richmond." In light of this testimony, the Board concluded that the Employer had neither "local" nor "city" drivers, and therefore noted that it was deleting all reference to them from the unit description. At the second hearing, the Employer stated that it had thought of "local" drivers as those who go outside the city on short, local runs, never staying overnight, and that it "has no local drivers, as such." It then stated that it does, however, have "city" drivers, but these are not hourly paid, and do go outside the city of Richmond at least once a week on "local" runs.

The city drivers spend the majority of their time making pickups and deliveries within the city of Richmond, and loading and unloading their own trucks when necessary. They work a set schedule of hours, are paid a guaranteed weekly salary, do not wear uniforms, and are granted paid holidays and vacations. On an average, each of the city drivers takes the short "turn-around" run per week, and one long "turn-around" run per month. When making over-the-road trips during their regular working day, the city drivers still receive a guaranteed weekly salary, but receive the same fee as the over-the-road drivers when making such a run during "off" hours. City drivers have no duties other than driving and loading.

Over-the-road drivers spend the majority of their time driving over the road to points outside of Richmond. They do not work a set schedule of hours, but are called to take trips as they come up on the basis of seniority. They are paid by the mile for long runs, and a flat fee for short runs. They wear uniforms and are granted paid vacations, but are not given paid holidays. Over-the-road drivers, sometimes, although very rarely, do make city deliveries.

The over-the-road drivers are subject to ICC regulations, whereas the city drivers are not. Drivers do not move from one classification to the other; however, all drivers are subject to the same supervision, and have the same fringe benefits, except as regards holidays. In making city deliveries, the trailers used are usually smaller than those used over the road, but the tractors are all interchangeable and are not assigned to any particular driver.

In view of these facts, and especially in view of the fact that the operation here involved is a trucking terminal operation, that there is an overlapping of driving duties, that over-the-road and city drivers are under common supervision, and that no labor organization seeks to represent the city drivers separately, we find that the only appropriate unit is one which includes both over-the-road and city drivers.[2]

[2] See, e g., *Overnight Transportation Company,* 128 NLRB 723; *Mead-Atlanta Paper Company,* 123 NLRB 306, 309; *Sidney Blumenthal & Co. (Caromount and Wilson Divisions),* 113 NLRB 791.

Since the Board, if it had had all these facts before it when it made its original decision, would have included the city drivers with the over-the-road drivers, a new election must be ordered on the basis of these newly discovered and previously undisclosed facts.[3]

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

[The Board set aside the election conducted on April 22, 1961, among the employees at the Richmond and Franklin, Virginia, terminals of Archie's Motor Freight, Inc.]

[Text of Direction of Second Election omitted from publication.]

[3] The decision herein amounts to a finding that the second of Petitioner's two objections to conduct surrounding the election is valid. In view of this finding we find it unnecessary to pass upon the validity of Petitioner's first objection.

Employer contends that the Petitioner should not be allowed to seize upon the inadvertent misstatements of the Employer as to its city drivers as a means to obtaining a new election, since Petitioner's petition excluded "local pick-up drivers," and it is therefore not prejudiced by the misstatements. It is not clear to what extent Employer's statements misled Petitioner into thinking it had no local or city drivers, and we make no finding in this regard. Petitioner did object, immediately prior to the election, to the exclusion of the names of the city drivers from the eligibility list. However, it is immaterial whether Petitioner originally sought city drivers or not, since, as stated above, the Board would have found that only a unit including over-the-road and city drivers was appropriate, had it had all the facts before it at the time of its decision. Petitioner at this time expresses a willingness to represent the overall unit herein found appropriate, and, since its showing of interest is sufficient to go to an election in this larger group, we shall set aside the first election and direct that a second election be held in the unit herein found appropriate.

Bricklayers, Masons and Plasterers' International Union of America, Local No. 2, AFL–CIO [Wilputte Coke Oven Division, Allied Chemical Corporation] *and* Leon Keene. *Case No. 6–CB–829. January 18, 1962*

DECISION AND ORDER

On October 30, 1961, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions