

Cab Operating Corp., et al., etc.,¹ Petitioners, and Taxi Drivers Organizing Committee, AFL-CIO and Taxi Drivers and Bus Drivers Local Union 826, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases Nos. 29-RM-10-16, 29-RM-18, 29-RM-22-24, and 29-RM-26-50.² June 29, 1965

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Irwin N. Alberts in the above cases. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, the National Labor Relations Board finds:

1. The Employer-Petitioners are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved, Taxi Drivers Organizing Committee, AFL-CIO, herein called TDOC, and Taxi Drivers and Bus Drivers Local Union 826, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 826, claim to represent certain employees of the Employer-Petitioners.

3. Questions affecting commerce exist concerning the representation of certain employees of the Employer-Petitioners within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The Employer-Petitioners, all engaged in the taxicab business in the city of New York, seek elections in single-employer units of taxicab drivers.³ TDOC contends that only a multiemployer unit of drivers and maintenance personnel of all 36 Employer-Petitioners is appropriate. Local 826 prefers single-employer units of drivers, but would also participate in an election in a multiemployer unit of drivers.

¹ Thirty-six Employers filed separate petitions with the Board. In view of the common issues presented, they were consolidated for hearing and decision. The 36 Employer-Petitioners, who are listed in Appendix A, include affiliated corporations operating taxicabs from the Employer-Petitioners' garages.

² Cases Nos. 29-RM-26 through 38 were formerly Cases Nos. 2-RM-1379 through 91; Case No. 29-RM-39 was formerly Case No. 2-RM-1394; and Cases Nos. 29-RM-40 through 50 were formerly Cases Nos. 2-RM-1396 through 1407.

³ Testimony was taken from representatives of 10 of the Employer-Petitioners and from 5 dispatchers as to various aspects of the operations of the Employer-Petitioners. Local 826 and the Employer-Petitioners agreed that this testimony was representative of the operations of all 36 Employer-Petitioners. TDOC contended that testimony should have been taken concerning the operations of each of the 36 Employer-Petitioners. The Hearing Officer found, and we agree, that the testimony taken furnished an adequate and representative picture of the activities of the 36 Employer-Petitioners.

Each of the Employer-Petitioners operates from 40 to 300 taxicabs and employs from 150 to 1,100 drivers at any one time. Together they own approximately 3,248 cabs and employ about 11,000 drivers. Exclusive of driver-owned cabs, there are approximately 7,000 cabs owned by more than 90 taxicab companies in New York City. Approximately 38,000 individuals, excluding those who operate driver-owned cabs, are licensed to drive taxicabs.

The taxicab industry in the city of New York has been, and is now, largely unorganized. In the past, none of the Employer-Petitioners had ever been part of an employer association authorized to engage in collective bargaining on behalf of its members. The Board's records show that in a few instances a union has been certified as the representative of single-employer units of drivers at certain New York City taxicab companies.⁴

Most of the Employer-Petitioners currently belong to the Metropolitan Taxicab Board of Trade, Inc., a trade association dealing with issues affecting the taxicab industry, such as fare increases and the change to small taxicabs. These issues are discussed among the members of the board of trade, and a single position on a particular issue is decided upon. The board of trade then presents this position to the public official or body concerned. At no time, however, have the Employer-Petitioners authorized the board of trade to represent them for collective-bargaining purposes. Terminal System, Inc., the largest of the Employer-Petitioners, is not a member of the board of trade.

In asserting that a multiemployer unit is appropriate, the TDOC relies on the uniform regulation of the taxicab industry through the New York City Hack Bureau, the appearance of one attorney on behalf of a number of the Employer-Petitioners in the present Board proceeding, the uniformity of position taken by all the Employer-Petitioners on the legal aspects of the instant cases, the identical literature concerning union organization distributed by some of the Employer-Petitioners, and the fact that some drivers may work for more than one Employer-Petitioner during the course of a year. The TDOC also contends that evidence it offered concerning alleged harassment, threats, and coercion by the Employer-Petitioners, but which was refused admission by the Hearing Officer, would show that the Employer-Petitioners were pursuing a common labor relations policy.

It is well settled that a single-employer unit is presumptively appropriate, and that to establish a claim for a broader unit a controlling history of collective bargaining on a broader basis or agreement of the

⁴ For instance, on April 18, 1961, Local 826 was certified as bargaining representative for drivers in *Clinton Taxi Corp.*, Case No. 2-RC-9956, and Metropolitan Taxi Workers Union, Independent, was certified for a similar unit in *West Fifty-Seventh Street Garage Management*, Case No. 2-RC-10290.

parties is necessary.⁵ Neither of these is present here.⁶ Indeed, it is clear that none of the Employers here has delegated authority to the board of trade to act as its agent for bargaining purposes. Under these circumstances, we are not persuaded that any reason exists for the Board to depart from its established policies in regard to such units.⁷

The parties are in dispute as to the inclusion in the driver units of employees servicing and maintaining the taxicabs. The Employer-Petitioners and Local 826 would restrict the units to drivers. TDOC would also include mechanics, bodymen, greasers, gasboys, carwashers, and any other employees involved in the maintenance of the taxicabs.

The record shows that the Employer-Petitioners operate 24 hours a day, 7 days a week. Drivers generally work on either a.m. shift, beginning in the early morning and lasting into the afternoon, or a p.m. shift beginning in the late afternoon and lasting until the late evening or early morning hours. Thus, a driver ordinarily works from 8 to 12 hours a day. The length of time he works on a particular day appears to depend largely upon his own needs and desires, as does the amount of time he takes for lunch or dinner. He is away from the garage almost the whole of his shift and has contact with garage employees only when he picks up his taxicab at the beginning of his shift, returns it at the end of a shift, or has a mechanical failure on the road which requires the attention of the garage mechanics.

The service and maintenance employees, who comprise less than 10 percent of the entire employee complement of each Employer-Petitioner, generally work on staggered 8-hour shifts day and night, with a scheduled lunch hour. Most of the mechanics and a large number of other service employees work in the daylight hours. The Employer-Petitioners maintain a reduced maintenance force at night, although some Employer-Petitioners have their taxicabs washed by two or three carwashers at night.

⁵ *Chicago Metropolitan Home Builders Association*, 119 NLRB 1184.

⁶ *Houston Automobile Dealers Association*, 132 NLRB 947. However, where there is common control of separate companies so that they constitute a single employer within the meaning of the Act, a multicompany unit may be found appropriate without the above criteria. For example, in *Checker Cab Company*, 141 NLRB 583, the Board found that drivers of all members of the Checker Cab Company constituted a single appropriate unit on the basis that the Checker Company and its members were joint employers in a common enterprise inasmuch as the Checker Company exercised a substantial degree of control over the drivers of each of its members and the operation of the Checker Cab was represented to the public as a single integrated enterprise. There is no contention in the present case that there is common control of the operations of the Employer-Petitioners or that the companies operate as an integrated enterprise.

⁷ A panel of Herman E. Cooper, Thomas J. Miley, and Theodore W. Kheel was appointed by Mayor Robert F. Wagner on March 26, 1965, "to inquire into the question of representation that had arisen in the taxicab industry of New York City." On April 30, 1965, a majority of the panel submitted a report recommending that an election be held in a citywide unit of drivers. The panel majority relied, however, on such factors as the presence of associationwide bargaining in other industries in New York and the unstabilizing effect bargaining on a single-employer basis might have on the taxicab industry. These factors alone, in our view, are insufficient to support a finding of a multi-employer unit.

The drivers earn a 44-percent commission on all fares, computed on a daily basis, in addition to gratuities. The service and maintenance employees are paid a fixed weekly salary. Although both drivers and service personnel usually receive certain benefits such as vacation pay, Christmas bonus, and life insurance, the eligibility for these benefits differs as between the two groups, as does the amount of the benefits. At some cab companies, drivers alone are eligible for certain benefits and programs, such as attendance bonuses and safety contests, whereas only service and maintenance employees receive other benefits such as sick pay, and turkeys and liquor at Thanksgiving and Christmas.

The service and maintenance personnel generally work in a part of the garage separate from the areas where drivers are dispatched and where drivers turn in their receipts at the end of the day. A foreman supervises the maintenance personnel; a dispatcher supervises the drivers. Unlike drivers, all maintenance personnel wear uniforms, usually supplied by the Employer-Petitioners. No interchange occurs between drivers and maintenance personnel.

The TDOC has requested what may be viewed as an optimum unit of both drivers and maintenance personnel, the equivalent of an operating and maintenance unit in the bus transportation industry.⁸ As such, this unit is presumptively appropriate. In view of the above-related facts, however, we believe that a separate unit of drivers, requested by Local 826 and the Employer-Petitioners,⁹ and a separate unit of maintenance personnel, may also be appropriate.¹⁰ Under these circumstances we shall make no final unit determination at this time, but shall be guided in part by the desires of the employees as expressed in the elections hereinafter directed. Accordingly, we shall direct that separate elections be held among the following voting groups of each Employer-Petitioner's employees, excluding from each group office clerical employees, guards, and supervisors as defined in the Act.

Group 1. All regular full-time and regular part-time taxicab drivers.

Group 2. All full-time and regular part-time employees engaged in the maintenance and service of the taxicabs.¹¹

If a majority of the employees in each voting group select the same labor organization, they will be deemed to have indicated their desire to constitute a single unit, and the Regional Director conducting the elections is instructed to issue a certification of representative to the labor organization selected by the employees in the two groups, which

⁸ See *Tennessee Coach Company*, 88 NLRB 253

⁹ See *Checker Cab Company*, 141 NLRB 583; *Jat Transportation Corp., et al.*, 128 NLRB 780; *Terminal System, Inc., et al.*, 127 NLRB 979.

¹⁰ *Tennessee Coach Company, supra.*

¹¹ As TDOC has expressed a desire to represent service and maintenance personnel, its name will appear on the ballot for voting group 2. Local 826 may also appear on the ballot, if it indicates its interest in representing these employees.

the Board in that event finds to be a single unit appropriate for the purposes of collective bargaining. If the same labor organization is not selected by both groups, the Regional Director conducting the elections is instructed to issue the appropriate certificate depending on the outcome of the elections in each of the voting groups which the Board in such circumstances finds to be separate appropriate units.

5. The parties are in disagreement as to the eligibility of some of the part-time drivers to vote in the elections. (There is no dispute as to eligibility in the voting group of maintenance employees.) The Employer-Petitioners contend that all full-time and regular part-time drivers, excluding casual drivers, should be eligible to vote. Local 826 argues that only drivers who work at least 4 days a week should be permitted to vote. TDOC would limit eligibility to drivers working 3 or more days a week.

The Employer-Petitioners generally classify drivers working 4 or more days a week as full-time drivers, and others as part-time drivers. Working conditions and benefits for these two groups are in some respects alike, and in others different. Thus, many full-time drivers drive the same cab day after day; part-time drivers do not. Most of the Employer-Petitioners offer an attendance bonus of 1 percent of gross bookings to full-time, but not to part-time, drivers. Vacation pay and Christmas bonuses are generally given on the same basis as the attendance bonuses, although some Employer-Petitioners do make such benefits available to part-time drivers on a reduced basis. In December 1964 the Employer-Petitioners adopted a medical insurance plan which pays hospitalization and medical expenses to those of the drivers working at least 52 days in a quarter, which works out to an average of 4 days a week. The Employer-Petitioners generally offer paid-up \$1,000 life insurance policies to full-time drivers, and to some of the part-time drivers; 1-day-a-week drivers are, however, uniformly denied this benefit.

On the other hand, many working conditions are the same for the two classes of drivers. The New York City rules and regulations for taxicab drivers are applied on the same basis to full-time and to part-time drivers. All drivers are paid the same commission and have deductions made from their earnings for taxes and social security. Full-time and part-time drivers work the same shifts, use the same cabs, share the same locker facilities in the garages, and are under the same supervision.

There is some difference in the employment backgrounds of the full-time and part-time drivers. The former usually derive their entire income from their employment as taxi drivers. Most of the part-time drivers have other jobs and supplement their income from these jobs by driving taxicabs. Some are social security annuitants or students who have no other jobs. The lines between the two groups are not

necessarily inflexible. Sometimes full-time drivers become part-time while they try other employment, and then return to full-time status when they become dissatisfied with their new employment. Other drivers may start as part-time drivers and then become full-time drivers.

Part-time drivers appear to be an essential part of the driver work force, particularly on weekends, when full-time drivers have their days off. Because of a shortage of taxicab drivers, the city of New York at present places no restriction on granting driver licenses to part-time drivers, although under the New York City code, the head of the hack bureau is empowered to deny licenses to applicants for drivers' licenses who derive the major part of their income from sources outside the taxi industry.

In order to determine the stability of employment of the different classes of drivers, the 1964 employment records of 9 of the 36 Employer-Petitioners were introduced into evidence. From such data, we have ascertained that of the total number of full and part-time drivers, 42 percent worked an average of 5 days or more a week, 9 percent worked 4 days, 5 percent worked 3 days, 14 percent worked 2 days, and 30 percent worked 1 day or less. Of the 5-day-or-more-a-week drivers, 77 percent were still employed at the end of 1964; of the 4-day-a-week drivers, 55 percent were still so employed; of the 3-day-a-week drivers, 44 percent were still working for their companies; of the 2-day-a-week drivers, 49 percent were still employed; but of the 1-day-or-less drivers, only 23 percent were still employed at the end of 1964.¹² The figures thus show that while the turnover among drivers working on the average 1 day or less per week is very high, that among drivers working 2, 3, and 4 days is considerably less so and falls within a narrow range among these three groups. In fact, turnover among drivers averaging 2 days a week appears to be less than that for drivers working 3 days a week, and is only 6 percent more than that for drivers working 4 days a week.

As the evidence indicates, employment conditions for part-time drivers are in some respects like, and in others unlike, those for full-time drivers. The differences appear to relate principally to fringe benefits, and not to the basic working conditions, such as commissions, etc. Moreover, part-time drivers are part of the regular work forces of the taxicab companies, and the stability of employment among those of them who work 2 or more days a week is considerable. We conclude, upon the basis of the foregoing, that part-time drivers who work at least 2 days a week have sufficiently substantial interests in general working conditions of all drivers to justify permitting them to vote in the election. However, because of high turnover among them, part-

¹² Of the 77 percent of the 1-day-or-less drivers not on the payroll at the end of 1964, 62 percent worked less than one quarter.

time drivers working 1 day a week or less appear to be essentially casual employees. In accordance with our practice, we find them ineligible to vote.¹³

In order to translate the above formula for determining eligibility into practicable form, we shall direct that all drivers working at least 26 days during the quarter immediately preceding the issuance of this Decision and Direction of Elections, that is, March, April, and May, 1965, shall be eligible to vote.

[Text of Direction of Elections omitted from publication.]

¹³ Although in *Jat Transportation Corp.*, 128 NLRB 780, the Board found 1-day-a-week drivers were eligible to vote in a unit of taxi drivers, the evidence in that case did not show as clearly as in this the high turnover among 1-day-a-week drivers. Accordingly, we reject the Employer-Petitioners' contention that the *Jat* formula should be used in determining eligibility.

APPENDIX A

	<i>Case No.</i>
Cab Operating Corp., <i>et al</i> -----	29-RM-10
Jackson Maintenance Corp., <i>et al</i> -----	29-RM-11
Zone Operating Corp., <i>et al</i> -----	29-RM-12
Metro Systems Corp., <i>et al</i> -----	29-RM-13
Cab Management Corp., <i>et al</i> -----	29-RM-14
Circle Maintenance Corp., <i>et al</i> -----	29-RM-15
Fare Operating Corp., <i>et al</i> -----	29-RM-16
Butler Maintenance Corp., <i>et al</i> -----	29-RM-18
Marby Operating Corp., <i>et al</i> -----	29-RM-22
Forest Maintenance Corp., <i>et al</i> -----	29-RM-23
Ike Service, Inc., <i>et al</i> -----	29-RM-24
Hobart Maintenance Corp., <i>et al</i> -----	29-RM-26
	(Formerly 2-RM-1379)
Cornell Maintenance Corp., <i>et al</i> -----	29-RM-27
	(Formerly 2-RM-1380)
Super Operating Corp., <i>et al</i> -----	29-RM-28
	(Formerly 2-RM-1381)
Ann Service Corp., <i>et al</i> -----	29-RM-29
	(Formerly 2-RM-1382)
Andrea Service Corp., <i>et al</i> -----	29-RM-30
	(Formerly 2-RM-1383)
Columbia Operating Co., Inc., <i>et al</i> -----	29-RM-31
	(Formerly 2-RM-1384)
En Operating Corp., <i>et al</i> -----	29-RM-32
	(Formerly 2-RM-1385)
Lenox Maintenance Corp., <i>et al</i> -----	29-RM-33
	(Formerly 2-RM-1386)
Transportation Maintenance, Inc., <i>et al</i> -----	29-RM-34
	(Formerly 2-RM-1387)

APPENDIX A—Continued

	<i>Case No.</i>
Rego Maintenance Corp., <i>et al.</i> -----	29-RM-35
	(Formerly 2-RM-1388)
Star Maintenance Corp., <i>et al.</i> -----	29-RM-36
	(Formerly 2-RM-1389)
Cross Country Taxi Service, Inc., <i>et al.</i> -----	29-RM-37
	(Formerly 2-RM-1390)
Essex Maintenance Corp., <i>et al.</i> -----	29-RM-38
	(Formerly 2-RM-1391)
Eden Maintenance Corp., <i>et al.</i> -----	29-RM-39
	(Formerly 2-RM-1394)
Rodney Maintenance Corp., <i>et al.</i> -----	29-RM-40
	(Formerly 2-RM-1396)
Dynamic Operating Corp., <i>et al.</i> -----	29-RM-41
	(Formerly 2-RM-1397)
Level Maintenance Corp., <i>et al.</i> -----	29-RM-42
	(Formerly 2-RM-1398)
Willow Maintenance Corp., <i>et al.</i> -----	29-RM-43
	(Formerly 2-RM-1399)
Terminal System, Inc., <i>et al.</i> -----	29-RM-44
	(Formerly 2-RM-1400)
Haso Maintenance Corp., <i>et al.</i> -----	29-RM-45
	(Formerly 2-RM-1401)
Ilex Operating Corp., <i>et al.</i> -----	29-RM-46
	(Formerly 2-RM-1402)
Helen Maintenance Corp., <i>et al.</i> -----	29-RM-47
	(Formerly 2-RM-1403)
Margol Operating Corp., <i>et al.</i> -----	29-RM-48
	(Formerly 2-RM-1404)
Checker Garage Service Corp., <i>et al.</i> -----	29-RM-49
	(Formerly 2-RM-1406)
Tedmar Service Corp., <i>et al.</i> -----	29-RM-50
	(Formerly 2-RM-1407)

Transway, Inc. and General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., Petitioner. *Case No. 15-RC-3024.*
June 29, 1965

DECISION ON REVIEW

On February 25, 1965, the Regional Director for Region 15 issued a Decision and Direction of Election in the above-entitled proceeding, 153 NLRB No. 79.