

**American Buslines, Inc. and Automotive Chauffeurs, Parts & Garage Employees, Local Union No. 926 Aff./with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 6-CA-3279.**

May 25, 1967

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On March 15, 1966, Trial Examiner Abraham H. Maller issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief and the Respondent filed an answering brief.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.<sup>2</sup>

The Trial Examiner's recommended dismissal of the 8(a)(5) and (1) allegations herein is grounded upon his finding that the Charging Union waived its right to continue its representation of the subject employees and also acquiesced in their promotions or reclassification as utility-baggage men by the Respondent. In this connection, we have given due consideration to the statements made by the Union's business agent during the processing of a grievance wherein he said: "Why don't you just take them all [bus terminal porters] and make utility-baggage men out of them?" When queried by Respondent's officials, the Union's agent replied: "You won't have any trouble from us." The Trial Examiner relied on this casual proposal as the basis for his waiver theory in disposing of the issues herein. We disagree with this aspect of the Examiner's rationale.

In our view, other contemporaneous and relevant events occurring between the parties served to nullify any waiver or disclaimer which the Respondent may have felt was inherent in these statements by the Union's representative. For example, a few weeks later when the Union requested bargaining negotiations for the purpose of renewing the existing labor agreement, Respondent replied affirmatively and did not mention the matter of promoting its porters. Approximately 2 months after the described colloquy, Respondent, in a letter dated February 8, 1965, first advised the Union that, "effective February 16, 1965, we are promoting all of our porters to the position of utility-baggage men."<sup>3</sup> The Union responded in a letter which, *inter alia*, expressed the Union's disagreement with this projected action, which it described as contrary to the Union's certification and the existing labor agreement<sup>4</sup> between the parties wherein the Union's right to represent Respondent's porters was legally recognized. These circumstances compel us to conclude that the Union cannot be found, solely by virtue of the isolated and casual suggestions by the business agent, to have effected a clear and unmistakable waiver of its statutory rights,<sup>5</sup> to have waived its right to continue bargaining for Respondent's porters or to have consented to the dissolution of its bargaining unit.

Nevertheless, we find that the record compels dismissal of the complaint. When the Union was first apprised of Respondent's plan to promote all of the porters to utility-baggage men with the concomitant disappearance of the Union's bargaining unit, it became incumbent upon the Union to enforce its bargaining rights diligently by attempting to persuade the Respondent to alter its decision if it found the decision unacceptable. In this context, we note that the Respondent in its notifying letter invited the Union to communicate with Respondent "if there is any phase of this situation which you desire to discuss." However, the Union's immediate reaction was merely to protest the proposal in a letter by characterizing it as an invasion of its statutory rights. Its next and final course of action was to file an unfair labor practice charge. In *N.L.R.B. v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 297, the Supreme Court, in discussing the duty of labor organizations to initiate collective bargaining, held "that the statute does not compel him [the Employer] to seek out his employees or request their participation in negotiations for purposes of collective bargaining . . . . To put the employer in default here the employees must at least

<sup>1</sup> As the record, including the briefs of the parties, adequately presents the issues and positions of the parties, Respondent's request for oral argument before the Board is hereby denied.

<sup>2</sup> Member Brown concurs in dismissing the complaint.

<sup>3</sup> There was no reference in this letter to the earlier statements made by the business agent.

<sup>4</sup> The Union's agreement with Respondent contains no

provisions clearly infringing upon the Respondent's right to transfer employees out of the unit. In fact, as noted by the Trial Examiner (fn 6), the agreement provided that consideration be given the porters for any utility-baggage man vacancies before a new employee was hired therefor.

<sup>5</sup> *The Timken Roller Bearing Co. v. N.L.R.B.*, 325 F.2d 746 (C.A. 6), cert. denied 376 U.S. 971.

have signified to respondent their desire to negotiate." Although this statement was made in a different context, we think it applicable to the facts in this case. Here, Respondent gave the Union 1 week's advance notice of its plan to promote the porters and invited discussion of "any phase of this situation." Nevertheless, the Union failed to prosecute its right to engage in such discussion but contented itself by protesting the contemplated promotions in its letter dated February 10 and by subsequently filing a refusal-to-bargain charge.

Accordingly, because of the Union's lack of diligence in enforcing its representational rights and the absence of any persuasive evidence that Respondent's conduct was discriminatorily motivated; and, because the contract clearly contemplates transfer and promotion of porters to the utility-baggage classification without consultation with the Union, we find that the Respondent has not engaged in conduct violative of Section 8(a)(5), and, therefore, we shall dismiss the complaint.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the complaint herein be, and it hereby is, dismissed.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

ABRAHAM H. MALLER, Trial Examiner: On February 26, 1965. Automotive Chauffeurs, Parts & Garage Employees, Local Union No. 926 aff./with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Union, filed a charge against American Buslines, Inc., herein called the Respondent. On July 2, 1965, the Union filed an amended charge. Upon such charges, the Regional Director for Region 6 of the National Labor Relations Board, herein called the Board, on July 6, 1965, issued on behalf of the General Counsel a complaint against the Respondent, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, *et seq.*), herein called the Act.

In substance, the complaint alleged that the Respondent had failed and refused to bargain collectively with the Union as the duly certified exclusive collective-bargaining representative of the porters and janitors at Respondent's Pittsburgh terminal by (1) withdrawing recognition from the Union and (2) unilaterally changing the wages and seniority of the employees in the unit. In its duly filed

answer, Respondent denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me at Pittsburgh, Pennsylvania, on August 3, 1965. The General Counsel, the Respondent, and the Charging Party were represented and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs with me. Briefs were filed by the General Counsel and the Respondent.

Upon consideration of the entire record,<sup>1</sup> including the briefs of the parties, and upon my observation of each of the witnesses, I make the following:

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### I. THE BUSINESS OF THE RESPONDENT

Respondent, a Delaware corporation with its principal office at Omaha, Nebraska, is engaged in interstate transportation.<sup>2</sup> During the year preceding the filing of the complaint, Respondent derived gross revenue in excess of \$50,000 from such operations. Accordingly, I find and conclude that Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act for the Board to assert jurisdiction here.

#### II. THE LABOR ORGANIZATION INVOLVED

Automotive Chauffeurs, Parts & Garage Employees, Local Union No. 926 aff./with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is and has been at all times material herein a labor organization within the meaning of Section 2(5).

#### III. THE ISSUE

Whether Respondent, by promoting all of its porters to utility-baggage and thereby increasing their wage rates, acted unilaterally and violated Section 8(a)(5) and (1) of the Act.

#### IV. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *Sequence of Events*

##### 1. Background

On February 21, 1963, the Union was certified as the exclusive bargaining agent for a unit of porters and janitors, excluding, *inter alia*, utility-baggage,<sup>3</sup> at Respondent's Pittsburgh terminal. Since that time, the parties have had two collective-bargaining agreements, the most recent of which ran from April 1, 1964, to March 31, 1965. During this history of bargaining, utility-baggage have been represented by Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, referred to as Amalgamated. Porters are specifically excluded from the unit of utility-baggage. Utility-baggage receive a higher rate of pay (plus a cost-of-living allowance) than porters.

The principal job functions of the porters have been loading and unloading buses<sup>4</sup> and cleaning the terminal.

<sup>1</sup> The General Counsel and the Respondent have filed a joint motion to correct the transcript of the record in certain particulars therein specified. Upon consideration of the motion, it is hereby ordered that said motion be and it is granted.

<sup>2</sup> Respondent is a member of the Trailways System and is sometimes referred to in the record as "Trailways."

<sup>3</sup> The parties have at times variously referred to this class of employees as "utility-baggage" and "baggage-utilitymen." The terms are synonymous.

<sup>4</sup> The term "loading and unloading buses" has reference only to baggage and express and freight parcels.

The main functions of the utility-baggagemen are preparing baggage and freight manifests, preparing express bills, and tracing and forwarding lost baggage. In emergencies, the utility-baggagemen have also cleaned the terminal. There has been a continuing controversy between the Respondent and the Union concerning the use of the utility-baggagemen for loading and unloading buses. Utility-baggagemen have at times performed this function, giving rise to grievances filed by the porters under the terms of the collective-bargaining agreement.

## 2. Respondent promotes all porters to utility-baggagemen

At one of the grievance meetings held in December 1964, Business Agent Macalaso suggested a solution to the continuing problem of the utility-baggagemen handling the loading and unloading of buses. He said: "Why don't you just take them all and make them baggage-utilitymen?" Realizing that such action would take the men out of the porters' unit and put them into a unit represented by Amalgamated, Respondent's Regional Manager Wilbur Y. Mann asked: "Are you asking me to take your members?" Macalaso replied: "You will have no trouble from us."<sup>5</sup>

Respondent, however, took no immediate action to implement Macalaso's suggestion. On January 11, 1965, the Union wrote a letter to the Respondent, pointing out that its collective-bargaining agreement expired on March 31, 1965, indicated its desire to negotiate a new contract, and suggested that Respondent call to arrange a meeting. On January 25, Respondent wrote to the Union, indicating its readiness to meet for the purpose of negotiating a new contract.

However, by February 8, Respondent had decided to adopt Business Agent Macalaso's suggestion to promote all the porters to utility-baggagemen, thereby giving them an hourly wage increase from 12 to 27 cents per hour, plus a cost-of-living allowance amounting to an additional \$8 to \$9 every 2 weeks. Reasons for Respondent's action were as follows: It provided a better service to the public in that there were no arguments between the porters and the utility-baggagemen as to who was going to unload an incoming bus. Also, the Respondent had been under considerable pressure from various organizations to upgrade the porters who were Negroes.<sup>6</sup>

On February 8, Respondent wrote the Union as follows:

This is to advise you that effective February 16, 1965, we are promoting all of our Porters to the position of Utility-Baggageman. This move means an hourly wage increase of from twelve to twenty-seven cents per hour for the men, plus a cost of living allowance.

It is not our intention to replace the Porters when they are promoted. Consequently, we will have no employees in the bargaining unit for which your organization is certified.

<sup>5</sup> The foregoing is based on the credited testimony of Mann, corroborated by Director of Sales Jack B. Williams and Alphonse Cancilla, manager of the Pittsburgh terminal. Business Agent Macalaso did not testify. It was represented to me that he was in the hospital at the time of the hearing and therefore not available. Henry J. Adams, assistant business agent of the Union, denied that the foregoing conversation took place. Respondent's representatives all testified in a straightforward manner and I have no reason to doubt their testimony. Accordingly, it is credited.

<sup>6</sup> That the porters would thereby be upgraded is of course evident from the difference in the wage scales between the

In the event that there is any phase of this situation which you desire to discuss, please communicate with the writer.

On February 10, Union Secretary-Treasurer DeGregory wrote to the Respondent as follows:

We do not agree with the contents of your letter dated February 8, 1965. This Local Union was certified as a collective-bargaining agent of all employees of Continental Trailways doing porter work. In addition, it is our contractual understanding that porter work shall only be done by employees covered by our Labor Agreement.

We are happy that you are promoting all of your present porters to the position of Utility Baggagemen, thus giving them an hourly wage increase from twelve (12) cents to twenty-seven (27) cents. However, it is our understanding that porter work will still have to be done at your terminal and offices. This work is under our exclusive jurisdiction in accordance with our Labor Agreement.

If it is your intent to use Utility Baggagemen to do this porter work, I wish to advise that we believe that this is contrary to our contract and contrary to the certification of the National Labor Relations Board.

## 3. Results of Respondent's actions

The men who were formerly porters are now utility-baggagemen and are represented by Amalgamated. The agreement between Amalgamated and the Respondent contains a provision for checkoff of dues. On March 1, 1965, the Union sent Respondent a checkoff list which Respondent rejected with the notation: "These employees are no longer porters as of Febr. 15, 1965." Despite the fact that Respondent no longer checks off dues for the Union, four of the seven men who were formerly porters have continued voluntarily to pay dues to the Union.

The incorporation of these men into the utility-baggagemen unit has affected their seniority, putting them below the old utility-baggagemen. Seniority can affect layoffs. In addition, the men bid for shifts and choice of vacation periods on the basis of seniority.

Insofar as the men's duties are concerned, Respondent has combined the functions of the porters' unit with those of the utility-baggagemen. However, not all men perform all of the functions, their duties depending upon the shift that they work. All men load and unload buses, check and deliver baggage, deliver express, service Five Star,<sup>7</sup> and (except for men employed on shift B-1) maintain the cleanliness of the terminal. Additional duties depend upon the particular shift on which the men are employed. Thus, men on shift B-1 are responsible for express sales and registration, notification of consignees, tracing and answering tracers, and lost and found. Men on shift B-2 are responsible for express sales and registration,

porters and the utility-baggagemen. In this connection, it should be noted that the collective-bargaining agreement between the Union and the Respondent contained the following provision.

In the event a vacancy in the position of utility-baggageman occurs at the Pittsburgh Terminal of the Company, the Company will give consideration in the filling thereof to employees covered by this Agreement before hiring a new employee for such vacancy.

<sup>7</sup> Five Star is the designation of a type of bus service offered by Respondent. Servicing Five Star means replenishing the coffee and hot water jugs and providing the bus with new supplies when it stops at Pittsburgh.

inventorying of baggage, tracing and answering tracers. Shift B-3 handles express sales and registration, locker readings, reporting check numbers of baggage that has been on hand for at least 5 days, and notification of shippers of express unclaimed after 4 days. Shifts B-4 through B-9 have specific cleaning assignments. However, whenever any of these shifts relieves any of the first three shifts (each shift works 5 days a week), the men have the same duties as the shift which they relieve. The senior man on duty at any particular time is responsible for preparing manifests.

Prior to their promotion to utility-baggagemen, the porters wore red caps, while the utility-baggagemen did not. Since their promotion, the former porters have continued to wear red caps. However, the red caps were not furnished by the Respondent, and the porters have not been nor are they now required to wear them. Presumably they do so because it is common knowledge that the red cap advertises their availability to carry baggage for a passenger and thus earn tips.

### B. Concluding Findings

There is no evidence of any animus on the part of the Respondent against the Union. Respondent has had a collective-bargaining agreement with the Union since its certification in 1963, and the relationship appears to have been a normal one. It cannot therefore be argued that the Respondent promoted the porters to utility-baggagemen and destroyed the unit in order to avoid doing business with the Union. To the contrary, it is clear that the promotion was suggested by the Union, itself.

Although the instant case is one of first impression, the application of established Board principles leads to the conclusion that the Respondent did not violate the Act and the complaint should be dismissed. It is well settled that a union may disclaim any further interest in representing certain employees,<sup>8</sup> may waive statutory rights by collective bargaining,<sup>9</sup> and cannot charge an employer with refusal to bargain where the union has failed to seek bargaining.<sup>10</sup> It is true that the Board has held that a disclaimer of interest must be clearly shown,<sup>11</sup> and that a waiver of statutory rights must be by "a clear and unmistakable showing."<sup>12</sup> However, it is difficult to conceive how the Union could have made clearer its disinterest in representing the porters in the future than was made by Macalaso's suggestion, particularly when Mann asked: "Are you asking me to take your members?" and Macalaso replied: "You will have no trouble from us."

In an even less compelling situation, the Board has held that a union had acquiesced in a proposed change of operations by an employer, which would eliminate the employees represented by the union. In *Howard Hall Company, Inc.*, 123 NLRB 1458, the union sought to bargain with the employer who informed the business agent that it was losing its principal hauling account out of Savannah and proposed to have a cartage company take over its city pickup and delivery service—whereupon, it would not be necessary to maintain a terminal in Savannah. However, the employer desired to delay abandonment of the terminal for a short period of time.

The business agent acquiesced generally with the employer's proposal and suggested that a cartage arrangement be made with a certain cartage company with whom the union already had a collective-bargaining agreement. The employer approved the suggestion because it had had satisfactory relations with that particular company prior to the establishment of its terminal. In the meantime, the employer agreed to pay the union's suggested wage rate for the employees still employed at the terminal. After closing its terminal, the employer operated through the cartage company suggested by the union, but later found it more economical to operate through a different cartage company which was not under contract with the union. The union thereupon filed a charge alleging that the employer had refused to bargain collectively in the first instance. The Board dismissed the complaint, approving the finding of the Trial Examiner that "the Union was fully advised of Respondent's intention to close out its terminal in Savannah and acquiesced in it to the extent of suggesting and recommending the particular cartage company to be employed by Respondent" (*Id.* at 1462).

In the instant case, the suggestion to change the operations came not from the Respondent, but from the Union, itself, and was accompanied by the assurance that if the Respondent acted upon the Union's suggestion, it would have no trouble from the Union. Not only did the Union suggest the change of operations but, despite the fact that it now contends that the Respondent unilaterally changed the wage rates of the porters, it wrote the Respondent on February 10 that it was "happy" that Respondent was promoting its porters and giving them an increased wage rate. Its position at that time was not that the Respondent's action had violated the Act, but that Respondent would be in violation if the utility-baggagemen performed porter work and if the Respondent did not hire additional porters.

It is also settled that members of one bargaining unit may be merged with members of another bargaining unit with the resultant disappearance of the former unit. Thus in *Humble Oil & Refining Company*, 153 NLRB 1361, Humble purchased the assets of Weber & Quinn, whose truckdrivers and mechanics were represented by Local 553 under a collective-bargaining agreement. Pursuant to its policy of integrating into its existing structure newly acquired smaller businesses, Humble closed Weber & Quinn's office, repainted all its trucks, and employed some of its mechanics and truckdrivers, who were then relocated at Humble's Brooklyn and Queens offices where they work with Humble's other drivers and mechanics. Humble then filed a petition for clarification, seeking to include the employees previously employed by Weber & Quinn in the existing contractual unit which is represented by another union. Local 553 moved to dismiss the petition on the ground, *inter alia*, that Humble as successor to Weber & Quinn is bound by the terms of the latter's contract with Local 553. The Board denied the motion and held that the former Weber & Quinn employees had been effectively merged into the unit currently represented by the other union.

<sup>8</sup> *Duralite Co., Inc.*, 32 NLRB 425, 428-429, *Miratti's, Inc.*, 132 NLRB 699, 700-701, *The Mengel Company*, 80 NLRB 705

<sup>9</sup> *International News Service Division of The Hearst Corporation*, 113 NLRB 1067, 1070, *Beacon Piece Dyeing and Finishing Co., Inc.*, 121 NLRB 953, 956 *Ador Corporation*, 150 NLRB 1658, *Druwhit Metal Products Company*, 153 NLRB 346.

<sup>10</sup> See, e.g., *N.L.R.B. v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300, *Longview Furniture Company*, 100 NLRB 301, 303, *General Electric Company*, 127 NLRB 346, 348

<sup>11</sup> *The Mengel Company*, *supra*

<sup>12</sup> *Beacon Piece Dyeing and Finishing*, *supra*

A similar situation was presented in *Sargent & Company*, 78 NLRB 918. In that case, the employer had purchased the equipment, inventory, and right to manufacture the products of William Schollhorn Company. Prior to the purchase, the employees of Schollhorn were represented by Playthings, Jewelry & Novelty Workers International Union which filed a petition seeking continued representation of these employees. Sargent's production and maintenance employees were then represented by another union. The Board dismissed the petition, holding that a separate unit of employees in the Schollhorn manufacturing division was not appropriate. The Board pointed out that although the integration of Schollhorn into Sargent's operations was not yet complete, it was in the process of taking place and there were no significant differences between the Schollhorn division and the remainder of Sargent's manufacturing divisions.

Nor is the foregoing principle limited to acquisition of new businesses. *Westinghouse Electric Corporation*, 79 NLRB 744, presented the following situation: The Cleveland Association had for years represented a unit which included all clerical salaried employees. United Electrical, Radio and Machine Workers of America represented a unit of all production and maintenance employees, excluding salaried clerical employees. Westinghouse's operations were divided into factory operations and foundry operations. Within the Westinghouse factory was a factory quality control section whose employees were salaried and who were represented by the Cleveland Association. Its foundry inspection work, less complicated in nature, was performed by employees called casting-checkers. These employees were in the production and maintenance unit represented by United Electrical. As a result of losses incurred in the foundry and in the interest of greater efficiency and economy, Westinghouse set up a new section in the foundry called foundry quality control section. To this new section, Westinghouse transferred some employees from the old casting checking section and from manufacturing jobs. The remainder were new employees hired specifically for the new section. All of the employees of the new section were salaried. Job descriptions in the new section were similar to those in the factory quality control section. The Board held that "[f]or" purposes of unit determination, the inspectors in the new foundry control section are in the same position as newly hired employees in an expanding unit. Just as the latter would automatically be included in the existing unit without a new election, so the inspectors in the new foundry control section are automatically included in the clerical unit already represented by the Petitioner [Cleveland Association] (*Id.* at 745-746).

In none of the foregoing cases is there any suggestion by the Board that the employers were under a duty to replace the promoted or transferred employees in order to restore the status of the bargaining units from which the promotions or transfers had been made.

The General Counsel's primary position is based on the premise that the Union did not suggest and acquiesce in

Respondent's action. However, the evidence is overwhelmingly to the contrary. In the alternative, the General Counsel argues that the Union withdrew its suggestion when it offered to bargain for a new contract on January 11. I do not construe the Union's letter of January 11, as indicating to the Respondent that the Union had changed its mind about its earlier suggestion. When Macalaso made his suggestion, he could not have anticipated an immediate acceptance or rejection by the Respondent. The promotion of the porters to utility-baggagemen meant a substantial increase in Respondent's payroll. This was a step which would obviously require mature consideration. When, therefore, the existing collective-bargaining contract was due to expire, the Union, having failed to divest itself of its obligation to represent the men who were in the porter unit, invited the Respondent to bargain for a future contract. Nothing in the Union's action in this regard implies a withdrawal of Macalaso's earlier suggestion that the Respondent and the Union could avoid future grievances by promoting all the porters to utility-baggagemen. Moreover, the General Counsel's argument is undermined by the Union's letter of February 10, in which, as previously noted, it stated that it was "happy" that Respondent had promoted the porters and had given them an increased wage rate.

The General Counsel also argues that the porters were not, in fact, promoted to utility-baggagemen, but are still doing porter work and are still wearing red caps which the old utility-baggagemen do not wear. The argument would have merit only if the Respondent had acted unilaterally, as demonstrating that the merger of the units was a sham to cover a unilateral wage increase. It has no merit here, where the employer acted upon the suggestion, and with the acquiescence, of the Union. Moreover, the facts do not support the argument. As I have previously found, the wearing of the red caps is entirely voluntary and is not required by the Respondent. Insofar as the work is concerned, the specific duties depend upon the shifts for which the men bid, and if a man prefers a shift requiring less clerical work, that is his prerogative. For example, Eddie Sanders, a former porter, was once on a shift that required considerable manifesting, but bid for a different shift which did not involve manifesting as a primary responsibility. Also, Allen Forte, another former porter, has never bid for shift B-1. However, when Forte's shift relieves shift B-3, he, as the senior man, has the duty of preparing manifests. In any event, it is no prerequisite of an appropriate unit that all its members perform the identical work.

In view of all the foregoing, I find and conclude that Respondent did not act unilaterally when it promoted the porters and increased their pay.

#### RECOMMENDED ORDER

For the reasons above expressed and on the entire record, it is hereby recommended that the complaint be dismissed in its entirety.