Tri-State Aero, Inc. *and* Chauffeurs, Teamsters and Helpers, Local Union 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 25-RC-4025

December 12, 1969

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS JENKINS AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Frederick G. Winkler, Hearing Officer. The Employer alone has filed a brief.

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

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer, Tri-State Aero, Inc., is an Indiana corporation with its principal place of business in Evansville, Indiana. The Employer is engaged in maintaining, fueling and storing aircraft, and in operating an air taxi and chartering service. It repairs and overhauls aircraft, sells fuel to scheduled airlines and privately owned aircraft, and maintains hangar facilities for those who avail themselves of this service. It holds an Air Carrier Operating Certificate issued by the Federal Aviation Agency. The Employer also possesses repair service and flight instruction school permits issued under Federal auspices.

The Employer does in excess of $500,000 business annually, about 90 percent of which represents revenue from the sale of goods and services other than air-taxi service. The Employer admits, and the facts in the record indicate, that it is engaged in interstate commerce within the meaning of the Act. Nevertheless, it moves for dismissal of the petition herein on the grounds that it is a "common carrier by air engaged in interstate commerce" within the meaning of the Railway Labor Act,[1] that its operations and employees are covered by the provisions of that Act, and that matters, such as are here involved, would be more suitably handled by the National Mediation Board, the agency primarily vested with jurisdiction over air carriers under the Railway Labor Act.

Because of the nature of the question presented here, we have, as in other cases in the past,[2] requested the National Mediation Board to study the record in this case and determine the applicability of the Railway Labor Act to the Employer. In the present case, we are administratively advised by the National Mediation Board that:

> Based on the entire record it is the opinion of the National Mediation Board, that Tri-State Aero, Inc., does not meet the definition of a common carrier by air as set forth in Section 201, Title II of the Railway Labor Act; consequently, there is no basis for this Board to exercise jurisdiction over the employer or its employees.

On the basis of the facts set forth above, we find the Employer's contentions to be without merit. Rather, we find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Accordingly, we shall deny its motion to dismiss and we shall assert jurisdiction herein.

2. The Petitioner requests a unit of all line service employees, excluding professional employees, office clerical employees, guards, and supervisors as defined in the Act. The Employer contends that only a unit including line service men, mechanics, the mechanic helper, and pilots would be appropriate.

The unit sought consists of those individuals who are engaged in fueling, washing, and rolling aircraft from place to place in the area between hangars and taxiing ramps. They work in distinctive orange overalls under separate supervision, are hourly paid, and are employed in three separate shifts. They require no special skills in the performance of their work and are neither examined nor certified as to work qualifications by regulatory agencies.

The mechanics, on the other hand, are responsible for the airworthiness of the airplanes upon which they work, are certified, use tools appropriate to their craft, work in one regular 8-hour shift, wear blue and white uniforms, are paid a substantially higher hourly wage rate than the line service employees, and work almost exclusively in the hangars. Pilots, by the same token, are salaried, certified, and work primarily in the air, flying passengers for hire, or, as flight instructors, training others in the skills of aerial navigation, maneuver, aerodynamics, weather, and related subjects.

From the foregoing, it is apparent that line service employees, as distinguished from mechanics, mechanic helpers,[3] and pilots, do not use any

[1] Title II of the Railway Labor Act extends the coverage of that Act to " . . . every common carrier by air engaged in interstate or foreign commerce . . and every air pilot or other person who performs any work as an employee . . of such carrier. . ."

[2] See, e.g., *Lynch Flying Service, Inc*, 166 NLRB No. 118

[3] The one individual employed as a mechanic helper is paid substantially more than the line service employees. His hourly rate more closely approximates the starting rate paid to mechanics, whom he assists As a helper, this individual receives on-the-job training leading to certification as an aircraft mechanic upon passing the requisite Federal Aviation Administration examinations. In these circumstances, we shall exclude the mechanic helper from the unit herein found appropriate

particular skill or academic discipline in the performance of their work, nor can they, by reason of their work experience, qualify for employment in the other classifications which the Employer would include in the bargaining unit. The separate community of interest thus manifest among the Employer's line service employees warrants our finding that they constitute a unit appropriate for the purposes of collective bargaining.

We find that the following employees at the Employer's Evansville, Indiana, installation constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All line service employees, but excluding all mechanics, mechanic helpers, pilots, professional employees, office clerical employees, guards, and supervisors as defined in the Act.

[Direction of Election[4] omitted from publication.]

[4]In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them *Excelsior Underwear Inc*., 156 NLRB 1236; *N L R B* v *Wyman-Gordon Company*, 394 U.S 759 Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all eligible voters, must be filed by the Employer with the Regional Director for Region 25 within 7 days of the date of this Decision and Direction of Election The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.