

Western Pennsylvania Motor Carriers Association, Inc., and Fraternal Association of Special Haulers, Petitioner.

McGaughey Bros. and Fraternal Association of Special Haulers, Petitioner. Cases 6-RC-5244, et al.,¹ and 6-RC-5208

December 21, 1970

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Thomas A. Ricci, Hearing Officer. Following the opening of the hearing, these cases were transferred to the National Labor Relations Board in Washington, D.C., pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, Series 8, as amended. Thereafter, the Petitioner and the Intervenor² filed briefs.³

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.

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,⁴ including the briefs, the Board finds that no question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act, for the following reasons:

The Petitioner seeks to sever from units represented

by Teamsters and its Locals percentage drivers engaged in the hauling of steel and special commodities. The Petitioner's order of preference as to unit scope is (1) an associationwide unit (i.e., all such employees of employers who are members of the Western Pennsylvania Motor Carriers Association); (2) separate single-employer units; or (3) all such employees whose employers are members of Trucking Employers Incorporated, a unit which would be geographically coextensive with the multiemployer coverage of the Teamsters National Master Freight Agreement (TNMFA). The Intervenor contends, *inter alia*, that percentage drivers cannot appropriately be severed from the established units which also include company drivers, general freight drivers, and local drivers.

The Petitioner is a recently organized group of truckdrivers, primarily owner-operators, originally concentrated in the Pittsburgh area. It filed 188 separate representation petitions which were consolidated for a single hearing. Of this number, 22 petitions named various geographical associations of motor carriers throughout the country as employer, 156 named individual trucking companies as employer, and the remaining petition is directed to Trucking Employers Incorporated (TEI), a national bargaining association of trucking companies. With regard to some of the carriers, there are multiple petitions seeking separate units of percentage drivers either in single terminals or in groups of several terminals as opposed to a single unit of all percentage drivers in the carrier's entire operation.

The Hearing Officer closed the hearing after receiving evidence relevant to 42 petitions involving

¹ Forty separate petitions were filed regarding each of the following members of the Western Pennsylvania Motor Carriers Association: Associated Transport, Inc., 6-RC-5462, 5463; B. & P Motor Express, 6-RC-5234, Brady Motor Freight, 6-RC-5199, Bremans 6-RC-5200; Chadderton, 6-RC-5205; Halls Motor Transport, 6-RC-5215, 5216, 5217; Hennis Freight Lines, 6-RC-5225, 5226, 5266, and 5284; McLean Trucking, 6-RC-5214; J. Miller Express, 6-RC-5238, Mooney Bros., 6-RC-5320, Motor Freight Express, 6-RC-5202, 5203, 5221, 5291, 5327, 5328, 5329, 5382, and 5383; Quinn Freight Lines, 6-RC-5333, Ryder Truck, Inc., 6-RC-5213; Standard Motor Freight, 6-RC-5470; Trans America, 6-RC-5242; Transcom, 6-RC-5385; Werner Continental, 6-RC-5230, Yellow Freight System, 6-RC-5330; Yourga Trucking, 6-RC-5220, Jones Motor, 6-RC-5239; Leeway Motor Freight, 6-RC-5350, 5351, Daniels Transfer Co., 6-RC-5469, Wilson Freight, 6-RC-5271, Associated Truck Lines, 6-RC-5204, 5206 See fn. 5, *infra*, and the accompanying text regarding certain additional petitions which were consolidated with the above for hearing, and thereafter transferred to the Board, but are not named in the caption.

² International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Trucking Employers Incorporated were permitted to intervene in the proceeding.

³ The National Steel Carriers Association, Inc., and CTI Steel Haulers, Inc., were permitted to file briefs.

⁴ *Definitions* Certain terms used in the trucking industry are, for the purposes of this Decision, defined as follows: (a) *Owner-operator*— an individual who drives his own single tractor or combination tractor-trailer unit which he leases to a carrier. (b) *Fleet owner*— an individual who owns more than one unit and leases his equipment to one or more carriers. *Fleet*

owners are ineligible for membership in the Petitioner (c) *Company Driver*— an individual who drives company-owned equipment. *Company drivers* are generally paid on a mileage (over-the-road) or hourly (local cartage) basis, although some are paid by percentage. (d) *Percentage drivers*— also referred to herein as steelhaulers—technically this term seems to apply to all truckdrivers paid on a percentage-of-tariff basis, but it is used herein as it is defined in the Petitioner's brief, including only those drivers who operate their own rigs (owner-operators) and those who operate rigs owned by fleet owners that are leased to carriers. It does not include fleet owners, or company drivers. (e) *Special commodities*— Various witnesses at the hearing had different definitions of this term. As used herein the term relates to steel and related products that are usually transported in full truckload lots and for this reason move at a reduced tariff, compared to other commodities, because they are transported in bulk directly from the consignor to the consignee without intermediate handling. Accordingly, the carrier charges less for his service in transporting these special commodities and finds it more economical to use owner-operators or fleet owners to transport them on a percentage-of-tariff basis, rather than company drivers in company-owned equipment. (f) *General freight*— also called mixed freight and dry freight. *General freight* describes commodities which are normally transported in less-than-a-truckload lots and normally move from the shipper to the carrier's warehouse or terminal, where they are commingled with general freight shipments received from other shippers. Because of the nature of this freight, it is normally transported between the carrier's terminals from city to city in company-owned trailers. As there is no way to relate the tariff to the services of either the local drivers or the over-the-road drivers, all drivers of general freight must be paid on an hourly or a mileage basis.

the Western Pennsylvania Motor Carriers Association (WPMCA) and its member carriers.⁵ In one of these petitions, the Petitioner seeks a unit of all percentage steelhaulers of all trucking company members of the WPMCA. In 40 others, the Petitioner requests the percentage steelhaulers of the individual members of the WPMCA in separate bargaining units.

The Petitioner contends, *inter alia*, that the percentage drivers it seeks possess such skills and separate identity, and perform such a distinct function that they may appropriately be severed from a well-established unit now represented by the Intervenor. The record reveals the following as to these factors:

A. *Comparative Skills of Drivers in the Trucking Industry*

The general working conditions of all over-the-road drivers are similar, and the driving skills required of all truckdrivers who haul heavy loads are generally the same. For the most part the record indicates that drivers hauling general freight and drivers hauling steel and special commodities are away from home about the same amount of time.⁶ In addition, the same highway safety laws and load requirements apply regardless of the commodity being hauled. Such differences in skill or experience as may be required of steelhaulers involve knowledge of securing loads and protecting the commodity from the weather. Drivers are usually not required to load the truck themselves, but are required to instruct personnel when they pick up their loads with regard to the proper method of placement of the load on the trailer. The testimony of most of the employer representatives at the hearing was that there is very little difference in the degree of skill required of steel drivers and that required of general freight drivers. Most of the witnesses stated that it would take no more than a day or two for a general over-the-road driver to learn how to load steel and haul it properly, and some testified that the skills required could be learned in as little as 30 minutes. The Petitioner offered little evidence to the contrary.

B. *Separate Identity*

The record indicates that owner-operators do have some interests which diverge from those of company and other drivers who are not sought by the Petitioner. Most of these differences arise from the fact that the owner-operator is driving his own equipment. Thus, the owner-operator must pay for

⁵ All but one of the carriers named in these 42 petitions are members of the WPMCA and have appointed the WPMCA as their exclusive bargaining agent. McGaughey Brothers, named in Case 6-RC-5208, is not a member of the WPMCA or any other association, but has signed the Western Pennsylvania Steel Addendum and thereby agreed to be bound by the TNMFA and the Joint Council No. 40 Over-The-Road Supplement, as

fuel, maintenance and repairs, most highway tolls, and license plates. As the Petitioner points out, the owner-operator has invested as much as \$30,000 in his equipment and must continually meet monthly payments averaging around \$500. Therefore, he may be differently affected by a strike or a possibility of strike than is a company driver. Yet the aforesaid differences also exist between the owner-operators and employees who drive for fleet owners who are sought by the Petitioner. A difference between percentage drivers and those paid by the hour or by mileage arises in situations where the driver must wait to receive a load. The percentage driver receives nothing for the first 4 hours of such "detention time," whereas an hourly paid driver is paid for the entire time he is kept waiting. Where special commodity drivers work out of separate divisions, they work off separate seniority lists. Moreover, the only "terminals" maintained by special commodities divisions are dispatcher offices.

On the other hand, all of the drivers employed by all of the carriers involved are covered by the NMFA and its supplements for western Pennsylvania. The Western Pennsylvania Steel Haul Addendum provides that the compensation received by owner-operators paid on a percentage basis must at least equal that which the driver would have received if paid on an hourly or mileage basis over a 30-day period. All drivers have been subject to virtually the same grievance procedures, safety requirements, and virtually all of the carriers involved maintain centralized bookkeeping systems which treat all their drivers as a single group. Under the contract all of the drivers have received the same health, welfare, and pension benefits as well as the same vacations and holidays.

C. *Interchange and Transfer: Integration of Operations*

Representatives of most of the carriers represented at the hearing stated that there was interchange and permanent transfer between drivers of their Company's steel and general freight divisions. Many companies had had situations where owner-operators sold their trucks and began driving company-owned equipment. Consequently, drivers ceased being steelhaulers paid on a percentage basis and began hauling general freight as hourly or mileage employees. Conversely, drivers who had been hauling general freight have frequently decided to buy trucks and move to their carrier's special commodity division.

well as the Steel Addendum itself. The body of this Decision concerns only those Employers who are named in the 42 petitions as to which the hearing was closed. These Employers and the 42 petitions are named in the caption and in 1 of this Decision. The balance of the 146 petitions which were consolidated for the hearing are dealt with in the attached Order

⁶ This does not apply, of course, to local drivers

Further, the record indicates that most of the Companies that operate both special commodities and general freight divisions utilize special commodity drivers to haul general freight periodically.⁷ In some cases when this is done, the drivers who are normally paid by percentage are paid either by the hour or by the mile.

D. Representation Accorded Owner-Operators and Drivers for Fleet Owners under the Teamsters Contracts

The Petitioner asserts that Teamsters has not provided the drivers it seeks with adequate representation. In support of this contention, the Petitioner cites complaints of steelhaulers about "city charges" that require deduction from the drivers' share of money to be paid for city drivers in Chicago, and also the uncompensated time that percentage drivers must spend waiting to be loaded. The Petitioner, however, presented virtually no evidence of failure to enforce any contract provisions or failure of Teamsters to process grievances filed by owner-operators.

Teamsters countered these arguments by pointing out that the drivers' percentage of the gross trip revenue has been increased from 23 percent to 26 percent over the 3-year duration of the recently expired contract, and in addition, with the increase in shipping tariffs, the drivers' revenue has increased proportionally under the percentage system. Moreover, Teamsters has negotiated a separate supplement to cover the employees involved in the 42 petitions now before the Board (Western Pennsylvania Steel Haul Addendum), and Teamsters accorded all steelhaulers separate voting privileges when the national agreements were ratified by the membership.

E. Collective-Bargaining History

Areawide contracts in the trucking industry began in 1936, with contracts executed in the Northwest covering over-the-road drivers in Washington, Oregon, Montana, and Idaho. By 1940, multistate agreements were in effect throughout the industry; there were 13 area Freight Agreements in existence covering the Eastern States.

In early 1963 representatives of various employer associations and Teamsters representatives met informally. On June 12, 1963, TEI was formed to negotiate on behalf of 27 employer associations. The Teamsters Union Negotiating Committee, meeting with the TEI negotiating committee, negotiated the NMFA including all of its economic items listed below. Area

supplements to the NMFA were negotiated by special subcommittees appointed by the Teamsters conference director, and employer representatives appointed by TEI, and covered matters described below. All of these supplements were subject to the final approval of the Teamsters National Negotiating Committee. Proposals for all of the agreements were solicited from local unions, and the 1964 and 1967 National Agreements and their supplements were subsequently ratified by the membership in secret ballot elections supervised by the U.S. Department of Labor.

The area supplement covering the employees requested in the petitions now before the Board is the Teamsters Joint Council No. 40 Over-The-Road Supplement. It was stipulated at the hearing that the NMFA and the Joint Council No. 40 Over-The-Road Supplement when read together constitute a complete bargaining agreement which was in effect until January 1970. The parties to the NMFA are stated therein to be as follows:

The Employers consists of Associations, members of Associations who have given their authorization to the Associations to execute this Agreement and Supplemental Agreements, members of Associations, who have not given such powers of attorney, and individual Employers who become signatory to this Agreement and Supplemental Agreements on behalf of their members under and as limited by their authorizations.

The Union consists of any Local Union which may become a party to this Agreement and any Supplemental Agreement as hereinafter set forth. Such Local Unions are hereinafter designated as "Local Union." In addition to such Local Unions, the National Over-The-Road and City Cartage Policy and Negotiating Committee, is also a party to this Agreement and the agreements supplemental hereto.

The NMFA further provides that the employees covered under the contract and its supplements constitute one bargaining unit.

The NMFA itself includes the above "recognitional" clause, checkoff provisions, seniority provisions, including employee rights with regard to the closing of individual terminals, cost-of-living increase provisions, and the provision for the National Grievance Procedure. The Joint Council No. 40 Over-The-Road Supplement provides for union shop, local grievance machinery, pension plan, and wages. It was stated at the hearing that all the area supplements are basically similar.⁸

⁷ Representatives of the various motor carriers testifying at the hearing stated that this occurs "at times," "often on back hauls," "on occasions," "daily," "two or three loads a week"

⁸ Due to the nature of the hearing, testimony with respect to steel addendums in other parts of the country negotiated with Teamsters by other bargaining associations was limited. What evidence there is indicates

(Continued)

In addition to these agreements there are several other supplements provided for each of the special types of work performed by the various classifications of employees covered by the Master Agreement. The one such agreement directly concerning the petitions in this case is the Western Pennsylvania Steel Haul Addendum. This Addendum⁹ provides the percentage to be paid to the owner of the truck and to its driver in transporting steel and special commodities. The Addendum specifies that of the total tariff paid by the shipper to the carrier, 46 percent is paid to the owner of the leased equipment (the owner-operator or fleet owner), 26 percent¹⁰ to the driver for his services, and an additional 3 percent to the driver for vacation and holiday pay. This total of 75 percent is referred to as the owner-operator's share.

Most of the carriers involved operate separate divisions for steel and general freight.¹¹ The testimony in the record reflects that this is done primarily because the Union prefers separate operations for bookkeeping purposes.

All carriers in the WPMCA are not automatically bound by the Western Pennsylvania Steel Addendum. A carrier is permitted to transport steel on an hourly or mileage basis, and under these circumstances its steel and special commodities operation remain covered by the over-the-road agreement rather than the Steel Addendum. The purpose of the Steel Addendum is to permit a carrier to haul steel and special commodities on a percentage basis of pay rather than on an hourly or mileage basis as established by the master freight agreement and the over-the-road agreement.

On the basis of the foregoing, it is clear that the requested employees of the Employers named in these 42 petitions do not constitute a functionally distinct department or departments for which a tradition of separate representation exists.¹² All over-the-road truckdrivers perform basically the same work, and, in view of the overwhelming weight of the testimony to the effect that any separate skills required by

that the differences among the various addendums lie in the procedures relating to the initial steps of the grievance procedure and method of making payments to health and welfare funds

⁹ Under the terms of the Steel Addendum the parties thereto agree to be bound by the terms and provisions of the NMFA and the Joint Council No. 40 Over-The-Road Supplement

¹⁰ This figure reflects the driver's share effective April 1, 1969; prior to that time the driver received 24 percent effective April 1, 1967, and 25 percent effective April 1, 1968

¹¹ The business representative of Joint Council No. 40 testified without

percentage drivers can be acquired within a very short period, it cannot be said that the requested drivers constitute a "distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft." The unit requested in Case 6-RC-5244, to be comprised of the percentage drivers of all members of WPMCA, would not include truckdrivers other than percentage steelhaulers who have heretofore been covered by existing contracts. In addition, there are many drivers working for the carriers involved in these cases who are paid on a percentage basis but whom the Petitioner is unwilling to represent, e.g., haulers of furniture, refrigerated goods, bottles, and meat, and company drivers who haul steel and special commodities. There are also owner-operators who are not eligible for inclusion because they haul general freight. Finally, it appears from the record that virtually all steelhaulers have transported general freight at one time or another, and many drivers who normally haul general freight have carried steel and special commodities. In all the circumstances, we find that the requested employees as a group do not have interests in common with each other which are substantially different from those of other employees of the Employers. Accordingly, we find that the unit or units sought by the Petitioner in these petitions are inappropriate, and we shall order that the petitions as to which the hearing has been closed be dismissed.¹³

ORDER

It is hereby ordered that the 42 petitions specifically referred to in the caption and footnote 1 herein be, and they hereby are, dismissed.

IT IS FURTHER ORDERED that the 146 other petitions which were consolidated for hearing with the 42 petitions dismissed herein be, and they hereby are, remanded to the Regional Director for Region 6 for further action in accord with this Decision.

contradiction that the Steel Addendum stipulates that the carrier must operate a separate division for steel and special commodities. However, such a provision does not appear to be in the contract

¹² *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387, Member Fanning dissenting, but not as to the necessity of establishing the existence of a true craft or of a functionally distinct department or departments to qualify for severance.

¹³ In view of our decision on this issue, we find it unnecessary to consider the other issues raised by the parties.