

Yosemite Park and Curry Co. and Charles E. Parker, Petitioner. Case 20-RD-523

August 27, 1968

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

Upon a petition duly filed on January 22, 1968, under Section 9(c) of the National Labor Relations Act, as amended, a hearing in this case was held on February 15, 1968, before Albert Schneider, Hearing Officer. Pursuant to Section 102.67 of National Labor Relations Board Rules and Regulations, the above-entitled matter was duly transferred by the Regional Director for Region 20 to the Board for consideration. The Petitioner and Employer filed briefs.¹

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

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

1. The Employer is engaged in commerce within the meaning of the Act.²

2. The Brotherhood of Railroad Trainmen, Lodge 472, Intervenor herein, claims to represent certain employees of the Employer. Petitioner, an employee of the Employer in the unit involved herein, asserts that the Union no longer is the bargaining representative, as defined in Section 9(a) of the Act, of the employees petitioned for.

3. The Employer and the Intervenor entered into a collective-bargaining agreement on April 1, 1967.³ None of the parties herein asserts that the contract is a bar to this petition.

The Employer asserts that the terms of its con-

tract with the National Park Service (U.S. Department of Interior) so rigidly regulate the Employer as a concessioner that collective bargaining as encompassed by the Act would be impossible between it and its employees.⁴ Further, the Employer contends that it is only a nominal employer and that the Federal Government through its control of the Yosemite National Park is the real employer. We find these contentions to be without merit.

The Employer, although having entered in to a collective-bargaining agreement with the Brotherhood of Railroad Trainmen, refuses to concede that the employees included in such agreement are its employees but insists they are employees of the Government. The record shows that these employees are not hired by the Park Service but are hired directly by the Employer, that the Employer is responsible for the direction of their work, and that the Employer, among other things, determines their rates of pay and working conditions, controls their tenure of employment, and pays them from its own funds. In addition, the Employer pays for workmen's compensation and unemployment insurance premiums.

It is true that the evidence indicates that the Government exercises some regulatory control over the operations of the concessioner.⁵ For example, under its contract with the concessioner, the Government requires uniforms and badges for some of the concessioner's employees, reserves the right to prohibit the concessioner from retaining or employing any person declared by the Secretary of the Interior to be unfit for employment or otherwise objectionable, requires the filing of collective-bargaining agreements between the concessioner and its employees on July 1 of each year,⁶ and retains the right to review all of the Employer's charges. Nevertheless, there clearly remains with the Employer an extensive area of effective control over the labor policies affecting its employees and over the basic subjects of collective bargaining with these employees.

¹ The Employer has requested oral argument. This request is hereby denied because the record and the briefs adequately present the issues and positions of the parties.

² During the recent calendar year the Employer's revenues were in excess of \$500,000. For the same period, the Employer's purchases exceeded \$50,000 from sources outside the State of California. The Employer's operations being essentially retail in character, the Board's jurisdictional standards have been satisfied herein. *Carolina Supplies and Cement Co.*, 122 NLRB 88, *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261.

³ The unit as covered by the collective-bargaining agreement and agreed to by the Employer and Intervenor as an appropriate unit would include "all bus, truck, and shuttle drivers, excluding supervisors, as defined in the Act and all other employees of the Employer."

⁴ The Company, as concessioner, is engaged almost exclusively in the operation of accommodations, facilities, and services to the general public in Yosemite National Park, California. The park is under exclusive jurisdiction of the United States Government. The Company operates its conces-

sions under a concessioner's contract dated May 9, 1963, covering the period of October 1963 through September 30, 1993, with the National Park Service of the U.S. Department of Interior. These concessions include the operations of a general store, hotels, restaurants, cabins, camps, a transportation company, and stables, all located within the 1,189 square miles of Yosemite National Park. All of the expenses of operations are borne by the concessioner. As consideration for the concessions, the Employer pays the Government a yearly franchise fee of \$5,000 plus the additional sum of three-fourths of 1 percent of the Employer's adjusted gross receipts.

⁵ See 36 CFR Ch. 1, Pt. 8, Regulations of National Park Service, providing for the observance of fair labor standards by concessioners in National Parks towards their employees.

⁶ The required filing and review of the concessioner's labor agreements may be attributed to the Park Service interest in ascertaining that the fair labor standards requirements required to be observed by concessioners are being met.

We find nothing in the concessioner's contract and the National Park Service Regulations pertinent thereto that would support the Employer's contention that the Federal Government is in fact the employer of the employees of the concessioner. The Employer's status here is that of a Government contractor and not that of an agent of the Government so as to entitle it to the immunity of the Government under the Act.⁷

We are satisfied that, whatever its powers, the National Park Service of the U.S. Department of Interior has elected to exercise only nominal control over the employees of the concessioner, as evidenced by the Service's regulations and the contract provisions, without limiting the rights of the employees as guaranteed by the Act, and that the real control over wages, terms, and conditions of employment, and the activities of its employees have remained with the Employer-Concessioner.⁸ Consequently, we are of the opinion that there is sufficient evidence of the existence of an employer-employee relationship within the meaning of the Act.⁹

We find that a question affecting commerce exists concerning the representation of the employees of the Employer, within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act. Further, we

find that the Employer's operations have a close, intimate, and substantial relation to trade, traffic, and commerce among the States and that the Employer is engaged in commerce within the meaning of the Act. As the Employer's operations satisfy the Board's jurisdictional standards for retail industries, we further find that it will effectuate the policies of the Act to assert jurisdiction herein.

For the purposes of this election we find that the unit sought herein is an appropriate unit. It is the unit recognized by the Employer and the Union in their contract of April 1, 1967.¹⁰

In accordance with the collective-bargaining agreement between the parties, we find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of the Act: All bus, truck, and shuttle drivers, employed by the Yosemite Transportation System of the Yosemite Park and Curry Company, in Yosemite National Park, California, excluding supervisors as defined in the Act, and all other employees of the Employer in Yosemite National Park, California.

[Direction of Election^{11 12} omitted from publication.]

⁷ *National Food Corp.*, 88 NLRB 1500, *Carbide and Carbon Chemicals Corp.*, 73 NLRB 134, *Roane-Anderson*, 71 NLRB 266, *Reynolds Corp.*, 61 NLRB 1446, *Air Terminal Services, Inc.*, 67 NLRB 702

⁸ The aforementioned collective-bargaining agreement between the Employer and the Brotherhood of Trainmen contains, *inter alia*, provisions for wage rates, seniority, maintenance of membership, medical examinations, leaves of absence, pensions, sick leave, layoffs, vacations, hours of work, discharge, discipline, grievances, and hearings before employer-union committees. The agreement is subject to the regulations of the National Park Service insofar as they are applicable thereto.

⁹ *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, *NLRB v. Atkins and Co.*, 331 U.S. 398

¹⁰ An appropriate unit in a decertification petition must conform to either the recognized unit or a certified unit. As the recognized unit herein represents a contract unit which does not include dispatchers therein we shall not include them, and we direct an election in the recognized unit, which conforms to the contract unit with the exception of the deletion of taxi drivers, substituting therefor shuttle drivers due to the Em-

ployer's change of operations, the latter substitution having previously been agreed to by the Employer and the Union.

¹¹ The Employer employs in the recognized unit approximately 12 employees on a year-round basis and approximately an additional 33 employees during the peak summer season (April through October), the peak of employment being reached about June 15. Accordingly, we shall direct the Regional Director to hold the election at such time as he, in his discretion, deems appropriate.

¹² An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 20 within 7 days after 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. *Excelsior Underwear Inc.*, 156 NLRB 1236