

In the Matter of MOTOR TRANSPORT COMPANY and GENERAL CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION No. 200

Case No. R-113

Motor Truck Transportation Industry—Election Ordered: prior to decision; controversy concerning representation of employees—rival organizations; refusal by employer to recognize union as exclusive representative—question affecting commerce: confusion and unrest among employees—*Unit Appropriate for Collective Bargaining:* community of interest; established labor organizations in industry; history of collective bargaining relations in industry; geographical differences; occupational differences—*Certification of Representatives.*

Mr. Robert R. Rissman for the Board.

Shaw, Muskat and Paulsen, by *Mr. F. H. Prosser*, of Milwaukee, Wis., for the Company.

Mr. Joseph A. Padway, by *Mr. I. E. Goldberg*, of Milwaukee, Wis., for the Union.

Mr. James P. Taugher and *Mr. J. B. Zinzow*, of Milwaukee, Wis., for Union of Public Utility Employees.

Mr. I. S. Dorfman, of counsel to the Board.

DIRECTION OF ELECTION

December 22, 1936

The National Labor Relations Board, having found that a question affecting commerce has arisen concerning the representation of the drivers, drivers' helpers, dockmen and dockmen's helpers, in Milwaukee County, Wisconsin, employed by Motor Transport Company, Milwaukee, Wisconsin, and that said employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, and acting pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of said Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations,—Series 1, as amended, hereby

DIRECTS that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Motor Transport Company, an election by secret ballot shall be conducted within a period of twenty (20) days after the date of this Direction of Election, under the direction and supervision of

the Regional Director for the Twelfth Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the drivers, drivers' helpers, dockmen and dockmen's helpers in Milwaukee County, Wisconsin, employed by Motor Transport Company, on the payroll as of November 16, 1936, the date of the filing of the petition herein, to determine whether they desire to be represented by General Chauffeurs, Teamsters and Helpers, Local Union No. 200, or by Union of Public Utility Employees.

[SAME TITLE]

DECISION
AND
CERTIFICATION OF REPRESENTATIVES

January 22, 1937

STATEMENT OF CASE

On November 16, 1936, General Chauffeurs, Teamsters & Helpers, Local Union No. 200, hereinafter called Local 200, filed with the Regional Director for the Twelfth Region a petition alleging that a question affecting commerce had arisen concerning the representation of drivers, drivers' helpers, dockmen and dockmen's helpers, employed by Motor Transport Company, Milwaukee, Wisconsin, hereinafter called the Company, in Milwaukee County, Wisconsin, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. On November 19, 1936, the National Labor Relations Board, hereinafter called the Board, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing upon due notice. Pursuant to notice duly served upon the parties and upon Union of Public Utility Employees, a corporation, hereinafter called the U. P. U. E., a hearing was held in Milwaukee, Wisconsin, on November 24 and 25, 1936, before George O. Pratt, Trial Examiner duly designated by the Board. All who were served with notice were represented at and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to those who participated in the hearing. Without waiving its right thereafter to defend on the ground that the Act or the Board's action under it was unconstitutional, the Company, at the hearing, entered into a written stipulation with the Board covering the pertinent facts relating to the nature of its business.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of drivers, drivers' helpers, dockmen and dockmen's helpers in Milwaukee County, Wisconsin, employed by the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a Direction of Election on December 22, 1936, in which it was found that said employees constitute a unit appropriate for the purposes of collective bargaining, and in which the Board designated the Regional Director for the Twelfth Region as its agent to conduct the election. For the purpose of expediting the election, the Board issued the Direction of Election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

The election was conducted on January 6, 1937. Pursuant to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, an Intermediate Report upon the election was subsequently prepared by Nathaniel S. Clark, who conducted the election as agent of the Board, and duly served upon the parties. The Intermediate Report found that 76 employees were eligible to vote, of whom 52 voted for representation by Local 200, and 24 voted for representation by the U. P. U. E. No objections to the ballot or to the Intermediate Report were filed by the parties.

Upon the entire record in the case, the stenographic report of the hearing, the stipulation and other evidence offered and received, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

The Company is a corporation organized and existing under the laws of the State of Wisconsin. Its principal office and place of business is in Milwaukee, Wisconsin, where it operates as a local cartage carrier, and as a contract and common carrier of freight in interstate commerce. In the latter phase of its business it is subject to and is registered under the Federal Motor Carriers Act, 49 Stat. 543. In the conduct of its business the Company owns and operates 67 single unit trucks, 41 tractors and 65 trailers. These are operated by 147 drivers and helpers employed by the Company. Seventeen dockmen and helpers participate in the unloading of trucks and the preparation of freight for loading at terminals owned and operated by the Company in Milwaukee, Racine, Kenosha, Waukesha, Burlington, Watertown, and Sheboygan, in the State of Wisconsin. At Milwaukee, Wisconsin, the Company also em-

employs nine mechanics and mechanics' helpers and a clerical force of 10 persons. Besides the terminals, the Company has warehouse facilities and stations in approximately 50 other cities and towns in the State of Wisconsin, and in North Chicago, Waukegan, Winthrop Harbor, Beech, Zion, and South Beloit, in the State of Illinois.

The Company transports freight and general cartage daily except Sundays and holidays, on regular, continuous and well established schedules in the City of Milwaukee, Wisconsin, between various points within the State of Wisconsin outside of the city, and from points in the State of Wisconsin to the cities and towns named in Illinois. The Company also engages in interstate transportation of freight as joint carrier with other common carriers. Freight shipments originating in Wisconsin are transferred by means of trucks and other equipment of the Company to connecting interstate carriers for delivery to destinations in States other than Wisconsin, and likewise, shipments originating in States other than Wisconsin are transported in interstate commerce by the connecting carriers and transferred to the Company's equipment for delivery in the State of Wisconsin, all such transfers being accomplished at the Company's several terminals, depots, and stations in the States of Wisconsin and Illinois. In all, approximately 22.7 per cent of the freight tonnage transported by the Company is carried in interstate commerce. From January 1 to October 31, 1936, a representative period, the Company transported in intrastate and interstate commerce a total of 185,000,000 pounds of freight.

We find, therefore, that the Company is engaged in traffic, commerce and transportation among the several States, and that the drivers, drivers' helpers, dockmen and dockmen's helpers employed by the Company are engaged in such traffic, commerce and transportation.

II. QUESTION CONCERNING REPRESENTATION AND ITS EFFECT ON COMMERCE

Local 200 is a local of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor. On November 10, 1936, a committee designated by Local 200 waited upon George H. Tiernan, vice-president of the Company, asserted that a majority of the drivers, dockmen and their respective helpers employed by the Company in Milwaukee County, Wisconsin, had designated Local 200 as their representative for purposes of collective bargaining, and presented a proposed written contract to be entered into by the Company and Local 200 covering wages, hours and working conditions of all the drivers, dockmen and their respective helpers employed by the Company in Milwaukee County, Wisconsin. Tiernan replied that

the Regional Labor Board, Tenth District, of the old National Labor Relations Board,¹ had certified the U. P. U. E. as the collective bargaining agency of the employees engaged by the Company, and that the Company will continue to bargain with the U. P. U. E., and not with Local 200, until such time as the Board certifies another agency.² Thereupon Local 200 filed the petition before us. Whether the U. P. U. E. or Local 200 shall represent them is extremely vital to the employees. Failure to resolve this issue is likely to bring unrest among the employees and consequent impairment of efficiency, safety and operation of instrumentalities of commerce. All parties who participated in the hearing agreed that an election by secret ballot is the only feasible solution to the problem.

We find, therefore, that a question concerning the representation of employees of the Company has arisen, and that this question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

III. THE APPROPRIATE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING, AND EMPLOYEES ELIGIBLE TO PARTICIPATE IN THE ELECTION

Local 200 suggested that the unit should consist of drivers, drivers' helpers, dockmen and dockmen's helpers in Milwaukee County, Wisconsin, employed by the Company. The U. P. U. E. differed from Local 200 in that it would also include in the unit mechanics, mechanics' helpers and office personnel, and moreover would embrace employees of the Company outside of Milwaukee County, Wisconsin, wherever situated.

The status and function of the office force is completely different from that of other employees of the Company engaged in or about the transportation of freight, with the result that there is not that community of interest regarding wages, hours and working conditions which makes for an appropriate collective bargaining unit. We therefore find that the employees engaged in the office of the Company shall not be included in the appropriate unit.

The mechanics and mechanics' helpers are of course more closely related to the actual transportation process, and barring other considerations their inclusion in the unit in question would not necessarily be regarded as inappropriate. However, traditionally mechanics have organized into labor organizations apart from other

¹ Appointed pursuant to Public Resolution No. 44, 73rd Congress (48 Stat 1183).

² The certification referred to by Tiernan was the result of an election conducted at the behest of the U. P. U. E. and with the consent of the Company. The appropriate unit was not contested, and the U. P. U. E. was the only candidate on the ballot. Thereafter, on February 11, 1935, an agreement was entered into between the Company and the U. P. U. E., which at the expiration of one year was renewed with some modifications for another year.

employees in the freight transportation industry, and have set up their own standards of working conditions. This condition exists in Milwaukee County, Wisconsin, as well as in other parts of the United States. Furthermore, the mechanics employed by the Company have themselves expressed no desire to be included in the unit under consideration. For these reasons we hold that the mechanics employed by the Company shall not be included in the appropriate unit.

The remaining problem is whether all the drivers, drivers' helpers, dockmen and dockmen's helpers employed by the Company, or only those engaged in Milwaukee County, Wisconsin, constitute an appropriate unit. Here again, were this presented as an original matter, the question would not be free of doubt. The issue is posed, however, years after drivers and dockmen in the industry generally and in Milwaukee County, Wisconsin, had adopted the procedure of bargaining in individual units covering employees in local communities only. Thus Local 200 has jurisdiction over employees in Milwaukee County, Wisconsin, only.³ This practice has arisen from the collective experience of drivers and dockmen the country over influenced by variations in the cost of living, wage scales, working conditions, and standards of living from community to community, and by the desirability of obtaining maximum participation in the affairs of the labor organization by members wherever situated. The form of organization thus voluntarily chosen and retained for many years by employees in the industry generally is necessarily entitled to great weight in determining the unit in question. Moreover, it appears that 59 of the 80 drivers, drivers' helpers, dockmen and dockmen's helpers employed by the Company in Milwaukee Wisconsin, exclusive of supervisory employees, desire that the appropriate unit be defined in keeping with the practice in the industry.⁴ Although 53 other employees of the Company signed a petition requesting that the unit should embrace all employees of the Company it is significant that not one of the signers was employed in Milwaukee County, Wisconsin. The Board is loath to combine in one unit employees of the Company engaged in and outside of Milwaukee County, Wisconsin, knowing that a majority of the former prefer to bargain as a separate unit.

It was contended by the Union that friction and antagonisms may result between those employed in Milwaukee County, Wisconsin, and those engaged by the Company elsewhere, in the event that the former were declared to constitute an appropriate unit. This argu-

³ Other locals of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers admit to membership employees situated outside of Milwaukee County, Wisconsin.

⁴ This preference was expressed in the form of a petition addressed to the Board.

ment is not convincing for two reasons: (1) It is based on the assumption that an appropriate unit consisting of the Milwaukee County, Wisconsin, employees must necessarily result in a choice of rival labor organizations to represent the employees in and outside of Milwaukee County, Wisconsin, which is a *non sequitur*; and (2) employees of the Company belonging to the U. P. U. E. and to Local 200 are working together harmoniously at the present time despite the rivalry between the two labor organizations.

We therefore find that the drivers, drivers' helpers, dockmen and dockmen's helpers, in Milwaukee County, Wisconsin, employed by the Company, constitute a unit appropriate for the purposes of collective bargaining.

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The drivers, drivers' helpers, dockmen and dockmen's helpers in Milwaukee County, Wisconsin, employed by Motor Transport Company, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

A petition for certification of representatives having been duly filed, and an investigation and hearing having been duly authorized and conducted, and an election by secret ballot having been conducted on January 6, 1937, among the drivers, drivers' helpers, dockmen and dockmen's helpers, employed in Milwaukee County, Wisconsin, by Motor Transport Company, Milwaukee, Wisconsin, pursuant to the National Labor Relations Board's Direction of Election dated December 22, 1936, and an Intermediate Report upon the secret ballot having been prepared by Nathaniel S. Clark, the agent of the Board designated to conduct the election, and duly served upon the parties, and no objections to the ballot and to the Intermediate Report having been filed with the Board by the parties pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

THEREFORE, by virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that General Drivers, Teamsters and Helpers, Local Union No. 200, has been selected by a majority of the drivers, drivers' helpers, dockmen and dockmen's helpers employed in Milwaukee County, Wisconsin, by the Motor Transport Company, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of said Act, General Drivers, Teamsters and Helpers, Local Union No. 200, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.