

IN THE MATTER OF NEW ENGLAND TRANSPORTATION COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS

*Case No. R-10*

DIRECTION OF ELECTION

*January 14, 1936*

The Board having found that a question affecting commerce has arisen concerning the representation of the employees in the mechanical department of the New England Transportation Company, New Haven, Connecticut, within the meaning of Section 9, subdivision (c), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, and that an election by secret ballot should be conducted, it is hereby

DIRECTED that, as part of the investigation authorized by the National Labor Relations Board in this case to ascertain representatives for collective bargaining between the mechanical department employees of the New England Transportation Company and the Company, an election by secret ballot shall be conducted within a period of ten days from the date of this direction of election under the direction and supervision of Edmund J. Blake, Examiner of the National Labor Relations Board, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of its Rules and Regulations—Series 1, among the employees in the mechanical department of the New England Transportation Company on the payroll of the Company on the date of this direction, except the supervisory employees who have authority to hire or discharge, to determine whether they desire to be represented by the International Association of Machinists or the Mechanical Department Association.

MR. CARMODY took no part in the consideration of the above Direction of Election.

[SAME TITLE]

*Decision, January 21, 1936*

*Motor Bus Industry—Motor Truck Transportation Industry—Unit Appropriate for Collective Bargaining:* eligibility for membership in both rival organizations; organization of business—*Employee Representation Plan:* effect of participation in election under—*Representatives:* employees free to change—

*Election Ordered:* question affecting commerce: confusion and unrest among employees—controversy concerning representation of employees: request by substantial number in appropriate unit; rival organizations: substantial doubt as to a majority status—*Notice and Hearing:* eligibility to participate in election—*Certification of Representatives.*

*Mr. Ralph H. Cahouet* and *Mr. Edmund J. Blake* for the Board.

*Mr. Eugene J. McElroy* and *Mr. C. E. Smith*, of Providence, R. I., for the Company.

*Mr. George J. Bowen* and *Mr. David Clydesdale*, of Washington, D. C., and *Mr. C. B. Campfield*, of Boston, Mass., for International Association of Machinists.

*Mr. Thomas Sullivan*, of Boston, Mass., for Mechanical Department Association.

*Mr. Stanley S. Surrey*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On November 2, 1935, the International Association of Machinists, hereinafter sometimes called the Union, petitioned the National Labor Relations Board for an investigation and certification of representatives pursuant to Section 9, subdivision (c) of the National Labor Relations Act. The petition stated that the Union represented 98 mechanical employees and helpers out of a bargaining unit of 165 employees of that character employed by the New England Transportation Company, hereinafter sometimes called the respondent, that an organization known as the Mechanical Department Association also claimed to represent the employees in such unit, that the respondent had refused to deal with the Union as the exclusive representative of the employees in such unit and that such failure and the conflicting claims of the two organizations gave rise to a question affecting commerce concerning the representation of such employees. On November 4, 1935, the National Labor Relations Board, pursuant to Section 9, subdivision (c) of the Act and Article II, Section 3 of the National Labor Relations Board Rules and Regulations—Series 1, ordered the Regional Director for the First Region to conduct an investigation and to provide for an appropriate hearing upon due notice. Pursuant to such order notice of hearing was issued by the Regional Director on November 14, 1935 and duly served upon the parties.

On November 26, 1935 a hearing was held at Providence, Rhode Island by Richard C. Evarts, the Trial Examiner designated by the Board, and testimony was taken. Full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence

bearing upon the issues was afforded to the parties. The respondent objected to the hearing on several constitutional grounds and on the further ground that the Act did not apply to the employees involved in this case. The objections were overruled by the Trial Examiner and the respondent, reserving its rights, then participated in the hearing.

### FINDINGS OF FACT

#### I. NEW ENGLAND TRANSPORTATION COMPANY

The New England Transportation Company owns, maintains and operates a system for the transportation by motor vehicles of passengers, baggage, freight, mail, express and other commodities in the states of New York, Rhode Island, Connecticut and Massachusetts. The Company is incorporated in both Rhode Island and Massachusetts, but operates under its Massachusetts charter. It is wholly owned by the New York, New Haven and Hartford Railroad.

The company operates regular interstate routes for the transportation of passengers by motor buses. The principal routes are New York to New Haven, Providence, and Boston; New York to Springfield and Northampton and New York to Pittsfield. There are other shorter interstate and intrastate routes in the New England area. The company also operates in conjunction with the New York, New Haven and Hartford Railroad combined rail and motor routes for which single tickets are issued. In addition, at many places the bus schedules are operated in harmony with the schedules of that railroad and of certain steamship companies for the convenience of passengers desiring to continue their travel by rail or steamer. In all, the respondent operates about fifty passenger routes. The respondent conducts this passenger service as an integrated system, many of its routes converging upon terminals located in larger cities so that passengers on one bus may transfer there to another bus of this or another system and thus continue their journey. Besides this passenger service, the respondent also operates about seventy regular trucking routes in the New England area and New York for the transportation of freight. Practically all of these truck routes connect with railroad lines. In addition to the regular passenger and truck service, the respondent provides special charter services which involve both interstate and intrastate trips. The company's equipment consists of about 220 buses with an average capacity of thirty passengers, 150 trucks and several passenger sedans. The respondent employs about a thousand persons, all of whom are paid directly by it. The respondent makes the advertising claim that it is "New England's Largest and Most Dependable Bus System" (Board Exhibit 5).

The mechanical department of the respondent consists of thirteen garages and the employees engaged in mechanical and maintenance work. These garages are located at Providence (two), Boston, New York City, Worcester, Brockton, Springfield, Fall River, New Bedford, Danbury, New London, Winsted and Putnam. In addition, while no garages are maintained by the respondent in New Haven and Hartford, it employs three gasoline attendants and cleaners in the former city and one inspector in the latter. The number of mechanical department employees and foremen in each place, as of November 1, 1935, is as follows:

Garage	Mechanical department employees	Foremen	Garage	Mechanical department employees	Foremen
Providence—Kinsley Avenue	77	4	Winsted	3	1
Providence—Oregon Street	15	2	New London	3	1
Boston	24	2	New Bedford	1	1
New York City	19	2	Putnam	1	1
Springfield	9	1	New Haven	3	0
Fall River	6	2	Hartford	1	0
Worcester	5	1			
Brockton	4	1	Total	174	20
Danbury	3	1			

In addition to its own garages, the respondent uses the facilities of the Connecticut Company at Bridgeport, Hartford and Waterbury and of the County Transportation Company at Port Chester. Both of these companies are wholly owned by the New York, New Haven and Hartford Railroad. At Middletown, the respondent uses the garage of the Middletown Company. The mechanical department employees are divided into first and second class mechanics, body men, greasers, cleaners and mechanic helpers.

The headquarters of the maintenance or mechanical department is in Providence, whereas that of the operations department is in Boston. The major repair work is performed at Providence, the Kinsley Avenue garage being used for buses and the Oregon Street garage for trucks. This work consists of major or heavy repairs, scheduled inspection and reconditioning, painting, body work, overhaul of motors, etc. on the buses and trucks operating in the eastern end of the system, which includes Providence, New York and Boston. Those on the western end, Hartford, Middletown, Danbury, Waterbury and New Haven, are repaired at Hartford. Parts in need of repair are shipped to Providence from the other garages and there repaired. Buses which are undergoing such major repairs may remain out of service for a short period up to thirty days depending on the extent of the work. In addition to the heavy repair work, "running repairs" are also made at the Providence garages. These consist of brief inspections, greasings, cleanings, adjustment of

brakes and minor repairs. The work is performed between scheduled runs while the vehicle is in a garage and does not generally require the withdrawing of the vehicle from the daily run. Most of the work at the other garages is of this nature. Besides the work at the garages, mechanics are often sent out to repair buses or trucks which have broken down on the road and to tow them to a garage if such action is required. Mechanics from Providence have been sent to Connecticut and Massachusetts. The employees work interchangeably on vehicles used on interstate and intrastate routes.

## II. THE RIVAL LABOR ORGANIZATIONS

### A. *International Association of Machinists*

The International Association of Machinists is a labor organization affiliated with the American Federation of Labor. In the fall of 1933 a local of the organization was formed among the employees in the mechanical department of the respondent engaged in work at its garages in Rhode Island, mainly in Providence, known as Local 1017. At the time of the hearing this Local had about 68 members on its books and 18 to 20 applications for membership. There are locals in some of the other cities where the respondent has garages, which number employees of the respondent among their members. For the system of the respondent as a whole, the International Association of Machinists claims about 99 authorizations for the purpose of representing respondent's employees in collective bargaining with the company. Membership in the Union is open to employees in the mechanical department, exclusive of foremen or supervisors who have the authority to hire or discharge employees. The International Association and not the various locals represents the members in bargaining with the respondent.

### B. *The Mechanical Department Association*

The Mechanical Department Association was organized in the middle of October, 1934. Its membership is confined to employees of the mechanical department of the New England Transportation Company, exclusive of foremen or supervisors who have the authority to hire or discharge employees. It exists in part for the purpose of dealing with the respondent concerning wages, hours and similar matters and is thus a labor organization within the meaning of Section 2, subdivision (5) of the Act. There is evidence indicating that the management played a leading role in the formation and organization of this Association and that it still participates to some extent in its affairs. However, there is no charge involving Section 8, subdivision (2) of the Act, so that we do not find it necessary

at this time to consider such evidence. The Association claims to have about 90 members. In the recent election of officers held in November, 1935 ballots were sent to about 85 or 90 employees considered as enrolled members by the Secretary of the Association and were voted by 72 employees.

*C. The rivalry between the two labor organizations*

Both of the two organizations claim to represent the employees in the mechanical department of the respondent. An election held by the Boston Regional Board of the former National Labor Relations Board in December, 1934, which the Union apparently won by a very close vote, failed to settle the rival claims. Both organizations claim to represent a majority and have attempted to deal with the respondent on such a basis. The respondent refuses to recognize either as the exclusive representative of the mechanical employees. There is evidence that the rivalry is engendering fear and unrest among the employees. It is obvious from the above that a question concerning the representation of the employees in the mechanical department of the respondent has arisen.

III. APPLICABILITY OF THE ACT

*A. The question concerning representation as "affecting commerce"*

In view of the nature of the respondent's business the question concerning the representation of the employees in its mechanical department is one affecting commerce within the meaning of the Act. The respondent is engaged in the operation of an extensive interstate bus and truck transportation system. The operations conducted at its various garages are an integral part of the system for the work performed on the buses and trucks is essential to the safe and regular functioning of the system. In *In the Matter of Pennsylvania Greyhound Lines, Inc.*, decided December 7, 1935, we had occasion to consider a situation practically identical with that in this case in respect to the interstate commerce aspect. As here, that case concerned the maintenance employees of an interstate bus transportation system and we held that the acts of the respondents in question "occurred in the course and conduct of the operations of instrumentalities of interstate transportation and affected employees engaged in operations in the course and conduct of interstate transportation and on instrumentalities of interstate transportation, and hence occurred 'in commerce' within the meaning of Section 2, subdivision (8)." Similarly, the question concerning representation in this case affects commerce and is within the jurisdiction of the Board as defined in Section 9, subdivision (c).

*B. Suitability of an election to resolve controversy-appropriate unit*

An election by secret ballot is a suitable method of resolving the controversy between the two rivals. Under the facts of this case the mechanical department is a unit appropriate for collective bargaining. The company in its operations conducts that department as a distinct and separate division. Both organizations limit their membership to the mechanical employees. While the interests of the mechanical employees are not so dissimilar from those of the bus and truck operators as to prevent their being considered as one unit under appropriate circumstances, they are sufficiently diverse to permit the mechanical employees of the respondent properly to consider themselves a separate unit for collective bargaining. Neither of the organizations claims that the bargaining unit should be more inclusive. The election will therefore be restricted to the employees in the mechanical department. The employees who were on the payroll of the mechanical department of the respondent as of the date of the direction of election shall be eligible to vote in such election, excepting supervisory employees.

*C. Respondent's existing "contracts" with its employees*

At the hearing the respondent contended that even if an election were ordered it should be postponed because of the existence of certain "contracts" between the respondent and some of its employees. The first group of these "contracts" was signed in October, 1934. The respondent at that time had decided to grant its mechanical employees a five per cent increase in wages. A mimeographed form, entitled an "Agreement", was prepared for signature by individual employees. The "Agreement" was between the employee and the respondent and provided that, effective October 20, 1934, the rate of pay of the employee would be increased 5%, the increase to continue until November 1, 1935 if the employee were still in service and thereafter until changed following thirty days' notice by either party (Respondent's Exhibit A). The forms were apparently circulated among the men and only those who signed—a total of 153—obtained the increase. Some employees did not sign the agreement. While it is not necessary to this decision to examine further the circumstances surrounding these agreements, it may be noted that this method of granting an increase had not been used before, that the Mechanical Department Association was being formed at this time and that the Union was formulating plans to negotiate a wage increase with the respondent.

The second group was entered into in April, 1935. The Mechanical Department Association officers at that time discussed certain employment matters with officials of the respondent. A series of rules

regarding working conditions, hours, overtime pay and similar matters were reduced to writing and entitled, "Agreement between New England Transportation Company and Employees of its Mechanical Department." The "Agreement" was accepted on behalf of the Company by its Vice-President and was circulated among the mechanical employees for signature by them. Ninety-six employees signed under the statement, "Agreed to by Mechanical Department Employees", there being about 153 to 156 mechanical employees on the payroll at that time. The agreement took effect April 6, 1935 and is to remain in force until one year from said date and thereafter until either party notifies the other in writing thirty days in advance of desired change (Article 26). Article 15 and 16 of the agreement, Respondent's Exhibit B, provides as follows:

"ARTICLE 15. Should an employee, subject to this Agreement believe he has been unjustly dealt with, or any provision of this Agreement violated, the case shall be taken to the foreman or shop superintendent, in their respective order, by the duly authorized local committee or their representative. Should the result be unsatisfactory, the duly authorized Committee or their representative shall have the right to appeal, preferably in writing, to a higher official, designated to handle such matters, in their respective order, and conference will be granted within ten (10) days after application.

"All conferences between local officers and local committee to be held during regular working hours, without loss of time to committee. The committee not to exceed three (3) members.

"When agreed to from time to time the Company shall pay the time and expenses of employees chosen as representatives of other employees in matters relating to this Agreement.

"In event of appeal to Mechanical Superintendent, or any higher official, the date and time shall be designated by him.

"Article 16. Should the duly authorized representative of the Company and the duly authorized representative of the employees fail to agree, the case shall then be submitted to the next higher company official."

The Association claims it has been operating under these agreements and that it has appointed grievance committees at each garage. Matters concerning the mechanical employees have been taken up with the respondent by these committees.

The respondent contends that these agreements, which it states establish a formula for the handling of controversies and provide for wages, hours and working conditions, constitute legal obligations now in force and effect and binding upon the employees who signed them. These legal obligations, it asserts, are such as to prevent the

Board from now ordering an election to be participated in by these employees. This contention is without merit. Clearly the first group of "agreements", even if they be considered as legal contracts and not mere statements of a fact, does not in any manner affect the question of representation or collective bargaining. The fact that a definite wage has at one time been agreed upon in writing does not prevent later collective bargaining in respect to wages or any other matter.

Nor is the second group of "agreements" in any manner inconsistent with the holding of an election and the certification of the labor organization obtaining a majority of the employees as the exclusive representative of the unit involved. It may be pointed out that while the Association claims to have negotiated the agreement with the respondent, the Association is not a party to the agreement. On the contrary the respondent was apparently careful to have at best a series of individual agreements rather than a contract with a representative organization. The Articles quoted above have little meaning when incorporated into such a series of individual agreements, each terminable at the will of the individual after a certain date, for the agreements relate to matters which are of concern to the entire group of employees and in the aspects under consideration have significant content only in relation to such a group. While there is thus ground for holding that the agreements are really nothing more than a statement of regulations enforced by the respondent, as stated below we do not find it necessary in the decision of this case to consider at length the legal nature of the agreements or the effect of the passage of the National Labor Relations Act upon them.

Even if we assume that the agreements are binding upon the employees who signed them, such employees constituting a majority of those now employed by the respondent,<sup>1</sup> and that they establish a formula for the handling of controversial matters by employees and management, the agreements in nowise prohibit the employees from changing their representatives for bargaining in accordance with the method prescribed. If the employees at the time of signing the agreements preferred that the Association represent them under the agreements but now desire to be represented by the Union, the employer cannot object to such a change of representatives. A logical corollary of the opposite view, urged upon us by the respondent, would permit the employees to object under Article 15 of the agreement to any change of the foreman or shop superintendent by the respondent during the life of the agreements. The whole process of collective bargaining and unrestricted choice of representatives assumes the freedom of the employees to change their representa-

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<sup>1</sup> We assume that those who signed are still employed by the respondent, although it introduced no specific evidence on this point.

tives, while at the same time continuing the existing agreements under which the representatives must function. The National Mediation Board has clearly stated this principle in the following words:

“(e) *Change of representatives under existing agreements.*— Where there is an agreement in effect between a carrier and its employees signed by one set of representatives and the employees choose new representatives who are certified by the Board, the Board has taken the position that a change in representation does not alter or cancel any existing agreement made in behalf of the employees by these previous representatives. The only effect of a certification by the Board is that the employees have chosen other agents to represent them in dealing with the management under the existing agreement. If a change in the agreement is desired, the new representatives are required to give due notice of such desired change as provided by the agreement or by the Railway Labor Act. Conferences must then be held to agree in the changes exactly as if the original representatives had been continued.”<sup>2</sup>

The existing arrangements between the respondent and some of its mechanical employees are thus no bar to an election and consequent bargaining by the certified representatives of the employees. These representatives are of course free to bargain concerning changes in the existing arrangements, since parties may bargain with respect to the termination of existing contracts.

#### CONCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to the above findings of fact, upon the record in the case, the stenographic transcript of the hearing, and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the following concluding findings of fact are made:

1. The respondent, New England Transportation Company, incorporated in Massachusetts and Rhode Island, owns and operates an integrated system for the interstate transportation for hire by bus and truck of persons and property in the states of New York, Connecticut, Rhode Island and Massachusetts. This system is operated at many places in conjunction with the New York, New Haven and Hartford Railroad, which owns the respondent, and other bus transportation companies.

2. The New England Transportation Company operates a number of garages located in cities in the area served by it, the main garages being in Providence, Rhode Island; Boston, Massachusetts; New

<sup>2</sup> First Annual Report of the National Mediation Board (1935) at pages 23-24.

York City, New York; and Springfield, Massachusetts. The buses and trucks used on respondent's transportation system are serviced at these garages and they are operated as an integral part of that system. The servicing, repairs and mechanical maintenance work performed at these garages on these buses and trucks are necessary to continuous, safe and effective operation of the respondent's transportation system.

3. As described in paragraph 2 above, the operations at the garages occur in the course and current of transportation among the states and are an integral part of the operations of instrumentalities of such transportation. The employees of the mechanical department, which is the department of the respondent engaged in the maintenance operations, at the garages, are directly engaged in the course and conduct of transportation among the states and because of their services in connection with and upon instrumentalities of such transportation are an integral part of the operations of instrumentalities of such transportation.

4. The employees in the mechanical department of the respondent under the facts of this case constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9, subdivision (b) of the National Labor Relations Act.

5. The International Association of Machinists is a national labor organization affiliated with the American Federation of Labor. The employees in the mechanical department, exclusive of supervisory employees who have the authority to hire or discharge, are eligible for membership in said organization. At least a substantial number of such employees have authorized the International Association of Machinists to represent them in collective bargaining with the respondent.

6. The Mechanical Department Association is a labor organization whose membership is limited to the employees in the mechanical department of the respondent, exclusive of supervisory officials who have the authority to hire or discharge. At least a substantial number of such employees are members of this organization and have authorized it to represent them in collective bargaining with the respondent.

7. Both the Mechanical Department Association and the International Association of Machinists claim to represent a majority of the employees in the mechanical department and on the basis of such claims both have attempted to bargain with the respondent as the exclusive representative of such employees.

8. The rivalry described in paragraph 7 between the two organizations is conducive to discord and bitterness and tends to create a condition of unrest and fear on the part of the employees in the mechanical department which tends to impair their efficiency and

consequently, because of the nature of their work, the safety and efficiency of instrumentalities of transportation among the states.

Upon the basis of the foregoing the Board finds and concludes as a matter of law that a question affecting commerce has arisen concerning the representation of the employees in the mechanical department of the respondent within the meaning of Section 9, subdivision (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

[SAME TITLE]

### AMENDED DIRECTION OF ELECTION

*January 21, 1936*

The Board having found that a question affecting commerce has arisen concerning the representation of the employees in the mechanical department of the New England Transportation Company, New Haven, Connecticut, within the meaning of Section 9, subdivision (c), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, and that an election by secret ballot should be conducted, it is hereby

DIRECTED that, as part of the investigation authorized by the National Labor Relations Board in this case to ascertain representatives for collective bargaining between the mechanical department employees of the New England Transportation Company and the Company, an election by secret ballot shall be conducted within a period of thirteen days from the date of this amended direction of election under the direction and supervision of A. Howard Myers, Acting Regional Director for the First Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of its Rules and Regulations—Series 1, among the employees in the mechanical department of the New England Transportation Company on the payroll of the Company on the date of this amended direction, except the supervisory employees who have authority to hire or discharge, to determine whether they desire to be represented by the International Association of Machinists or the Mechanical Department Association.

[SAME TITLE]

### AMENDED DIRECTION OF ELECTION

*February 1, 1936*

The Board having directed on January 21, 1936 that an election be conducted within a period of thirteen days from said date among the employees in the mechanical department of the New England

Transportation Company on the payroll of the Company on January 21, 1936, except the supervisory employees who have authority to hire or discharge, to determine whether they desire to be represented by the International Association of Machinists or the Mechanical Department Association;

And it now appearing that an application has been made to the United States District Court for the District of Massachusetts for an order directing an official of said Company to produce certain payroll records pursuant to a subpoena issued by the Board, it is hereby

DIRECTED that the holding of the aforesaid election shall be postponed until further direction of the Board.

MR. CARMODY took no part in the consideration of the above Amended Direction of Election.

[SAME TITLE]

### AMENDED DIRECTION OF ELECTION

*May 26, 1936*

The Board having found on January 21, 1936 that a question affecting commerce had arisen concerning the representation of the employees in the mechanical department of the New England Transportation Company, New Haven, Connecticut, within the meaning of Section 9 (c), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, and that an election by secret ballot should be conducted,

And on February 1, 1936 the holding of the aforesaid election having been postponed until further direction of the Board, it is hereby

DIRECTED that, as part of the investigation authorized by the National Labor Relations Board in this case to ascertain representatives for collective bargaining between the mechanical department employees of the New England Transportation Company and the Company, an election by secret ballot shall be conducted within a period of twenty days from the date of this amended direction of election under the direction and supervision of A. Howard Myers, Acting Regional Director for the First Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of its Rules and Regulations—Series I, as amended, among the employees in the mechanical department of the New England Transportation Company on the payroll of the Company for the week ending January 24, 1936, except the supervisory employees who have authority to hire or discharge, to determine whether they desire

to be represented by the International Association of Machinists or the Mechanical Department Association.

[SAME TITLE]

## DECISION AND CERTIFICATION OF REPRESENTATIVES

*July 24, 1936*

On November 2, 1935, the International Association of Machinists, hereinafter called the Union, petitioned the National Labor Relations Board for an investigation and certification of representatives of the employees of the mechanical department of the New England Transportation Company, New Haven, Connecticut, hereinafter called the Company, pursuant to Section 9, subdivision (c) of the National Labor Relations Act, approved July 5, 1935. After a hearing before a Trial Examiner, and a consideration of the record, the Board, having found that a question affecting commerce had arisen concerning the representatives of the employees in the mechanical department of the New England Transportation Company, within the meaning of Section 9, subdivision (c) and Section 2, subdivisions (6) and (7) of the Act, on January 14, 1936 directed that an election by secret ballot should be conducted. The decision containing the findings of the Board was issued on January 21, 1936, together with an amended direction of election. On February 1, 1936, the Board ordered that the holding of the election be postponed until further direction of the Board.

On May 26, 1936, the Board issued an amended direction of election directing that an election by secret ballot be conducted within twenty days from that date under the direction and supervision of the Acting Regional Director for the First Region, among the employees in the mechanical department of the Company on the payroll of the Company for the week ending January 24, 1936, except the supervisory employees who have authority to hire or discharge, to determine whether they desire to be represented by the Union, or by the Mechanical Department Association, hereinafter called the Association.

Pursuant to the amended direction of election an election was held on June 10, 1936 at New York City, New York; New Haven, Danbury, Winsted, New London, Hartford, and Putnam, Connecticut; Providence, Rhode Island; and Boston, Springfield, Worcester, Fall River, and Brockton, Massachusetts. Notices of the election had been sent by registered mail on June 5, 1936 to each of the Company's garages where balloting was held, to the Company's principal officers, to the Union, and to the Association.

The notice of election, pursuant to the amended direction of election, contained the following statement:

“**ELIGIBILITY.**—Those eligible to vote are the mechanical employees of the New England Transportation Company who were actually employed and on the active payroll of said company on the 24th day of January, 1936, except that the following employees are not eligible to vote:

- (1) Those who are now regularly employed elsewhere.
- (2) Executive and those in supervisory capacities.
- (3) Office employees.”

By a stipulation between the Union and the Association, 184 employees were declared eligible to vote, subject to the proviso that the ballots of 12 certain employees included among the 184 should be sealed in a manner prescribed by the notice of election and not opened or counted until the eligibility of these voters should be determined by the Board. The names of these voters, referred to as “challenged” voters, were indicated on the list of 184 voters which was printed on the notice of election. All of the challenged voters cast ballots at the election in the manner prescribed.

After the election, the observers and tellers appointed by the Union and the Association certified in writing that the election was fairly held. The ballots were counted by and in the presence of observers and tellers representing the Union and the Association, and of the Acting Regional Director for the First Region and the Regional Attorney for the First Region, all of whom certified that the vote was as follows:

For the Association.....	91
For the Union.....	75
Challenged Ballots (Sealed).....	12

The result of the election was duly reported to the Board, and upon consideration thereof, the Board found that neither party had received a clear majority of those listed as eligible to vote. The Board therefore ordered a hearing before a duly designated Trial Examiner to take evidence concerning the eligibility of the 12 challenged voters.

After due notice to the Union, the Association, and the Company, the hearing was conducted on June 29, 1936, at Boston, Massachusetts. The Union, the Association, and the Company, were represented and took part in the hearing. Full opportunity was granted to all interested parties to be heard, to present evidence, to call, examine, and cross-examine witnesses and to argue orally before the Trial Examiner.

Upon the record made at the hearing, including the various exhibits introduced, the Board makes the following:

## FINDINGS OF FACT

1. At the hearing, all parties agreed that one Arthur H. Bussiere, whose name appeared on the list of eligible voters, was not eligible on the day of the election, so that the number of eligible voters, inclusive of the 12 challenged voters, was 183.<sup>1</sup>

2. Arnold H. Reichelt is known as a Master body builder and is the direct supervisory head of 17 workmen. Raymond G. Cook is a Master painter and has six to eight men under his supervision. Rupert A. Dickey is a Master engine builder, and is the responsible head of the engine building division with supervisory control of five workmen.

Each of those three men has the power to recommend the hiring or discharge of men in his department, and his recommendations in that respect are usually adopted, and would only be rejected when clearly wrong. Dickey was not in a supervisory position on January 24, 1936, but was in that capacity at the date of the election. We hold that under the terms of the amended order of election, in conjunction with the statement of eligibility on the notice of election, Dickey's eligibility must be determined by the character of his position on the day of the election. His case therefore is the same as those of Reichelt and Cook.

3. Eugene B. Hayes, Alfred L. Morton, Arthur A. Robinson, and Lawrence A. White are working foremen in charge of the Winsted, Worcester, Danbury, and New London garages, respectively. John E. Bailey is night supervisor at the Fall River garage. These five men have the right to hire and fire men at the garages under their supervision.

4. All eight of these men were challenged by the Union, and we find that they were, on the date of the election, supervisory employees having authority to hire or discharge, within the meaning of the amended direction of election dated May 26, 1936, and therefore not eligible to vote at the election. Their ballots are not to be counted.

5. It follows that the number of those eligible to vote at the election was 175, and the Association having received 91 votes, has a clear majority of those eligible to vote.

It therefore becomes unnecessary to consider the eligibility of the remaining four challenged voters, as their votes, even if counted, could not change the result, and the only effect of counting their votes, even should we find them eligible, would be practically to

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<sup>1</sup> Since Bussiere was not one of the challenged voters, the record does not show whether he cast a vote, and if so, whether it was for the Union or the Association. However, in view of our further findings of fact, his action could not affect the final conclusion and consequently need not be investigated further.

disclose the way they, or some of them, voted, thus destroying the secrecy of their ballots.

6. Since the issuance of the order for the hearing before the Trial Examiner, the Circuit Court of Appeals for the Fourth Circuit in *Virginia Railway Co. v. System Federation No. 40*, decided June 18, 1936, and the Circuit Court of Appeals for the Seventh Circuit in *Association of Clerical Employees v. Brotherhood of Railway etc. Clerks*, decided July 8, 1936, have held that where a majority of the eligibles voted, a majority of those voting, though less than a majority of those eligible, determined the representative. We followed this rule in our certification in *In the Matter of The Associated Press and American Newspaper Guild*, dated July 3, 1936.

Under this rule, the result of the election, regardless of any of the challenged votes, would determine the Association to be the representative.

#### CERTIFICATION OF REPRESENTATIVES

NOW 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, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that the Mechanical Department Association of the New England Transportation Company, New Haven, Connecticut, has been selected by a majority of the employees in the mechanical department of the New England Transportation Company, excepting those in a supervisory capacity having authority to hire and discharge, and excepting office employees, as their representative for the purpose of collective bargaining with the New England Transportation Company, and that, pursuant to Section 9 (a) of the National Labor Relations Act, the Mechanical Department Association is the exclusive representative of all such mechanical employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

MR. CARMODY took no part in the consideration of the above Decision and Certification of Representatives.