

In the Matter of PACIFIC GREYHOUND LINES and BROTHERHOOD OF  
LOCOMOTIVE FIREMEN AND ENGINEMEN

Case No. R-195.—Decided December 16, 1937

*Motor Bus Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; substantial doubt as to majority status; question concerning representation not eliminated by agreement granting recognition to one organization, where at time of agreement such organization not the free choice of a majority in the unit alleged to be appropriate; interference, restraint, and coercion by employer in choice of representatives for collective bargaining; controversy between rival organizations as to appropriate unit—*Unit Appropriate for Collective Bargaining:* wage differentials, skill; history of collective bargaining relations with employer; history of collective bargaining relations in industry; where other considerations determinative of appropriate unit are evenly balanced decisive factor is the desire of employees involved; determination of dependent upon results of election—*Election Ordered*

*Mr. Bertram Edises*, for the Board.

*Mr. Gardiner Johnson* and *Mr. C. P. Randall* of San Francisco, Cal., *Mr. Frederick L. Pearce* and *Mr. John H. Pratt*, of Washington, D. C., and *Mr. C. V. McLaughlin*, of Cleveland, O., for the Brotherhood.

*Mr. O. H. Rowan* of Oakland, Cal., and *Mr. Charlton Ogburn* of New York City, for the Amalgamated.

*Mr. Allan R. Rosenberg*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On May 25, 1937, Pioneer Greyhound Lodge No. 693, Brotherhood of Locomotive Firemen and Enginemen, herein called the Brotherhood, filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of bus drivers employed by Pacific Greyhound Lines, San Francisco, California, herein called the Company, and requesting an investigation and certification of representatives, pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 5, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3,

of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On June 18, the Regional Director issued a notice of hearing; on June 29, a notice of change of place of hearing; and on July 2, 1937, a notice of postponement of hearing, copies of all of which were duly served upon the Company, its counsel, the Brotherhood, and the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the foregoing notices, a hearing was held in San Francisco, California, on July 12, and 13, 1937, before Clifford D. O'Brien, the Trial Examiner duly designated by the Board.

The Board and the Brotherhood were represented by counsel and the Amalgamated by its International vice-president. The Company failed to appear and was not represented. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the outset of the hearing, the Amalgamated moved and was granted leave to intervene for the purpose of opposing the holding of an election, and of being heard with respect to the appropriate unit, in the event that the Board should direct an election. The Amalgamated further moved that the proceeding be dismissed for the reason that on or about April 21, 1937, it had entered into a contract with the Company covering wages, working conditions and terms of employment of its members, which contract by its terms does not expire until May 31, 1938, or thereafter. This motion the Trial Examiner denied.

During the hearing, the Brotherhood moved that Lodge No. 97, the Los Angeles organization of the Brotherhood, be joined with Pioneer Greyhound Lodge No. 693 as petitioner. This motion the Trial Examiner granted.

After the hearing, pursuant to notice duly served, a hearing was held on July 29, 1937, before the Board in Washington for the purpose of oral argument. Thereafter, counsel for the Amalgamated filed a motion with the Board to reopen the case for the purpose of introducing into evidence an addendum to the contract of April 21, 1937, described as the Master Agreement, made on September 7, 1937, between Local Division No. 1114 of the Amalgamated and the Company. The Master Agreement itself was submitted as an offer of proof in support of the motion. Pursuant to notice duly served, a hearing on the motion and the answer thereto filed by the Brotherhood was held on September 28, 1937, before the Board in Washington for the purpose of oral argument. As explained below, the motion will be denied.

During the course of the hearing, the Trial Examiner made numerous rulings on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Pacific Greyhound Lines is a corporation organized and existing under the laws of the State of California,<sup>1</sup> having its principal place of business in San Francisco, California.<sup>2</sup> It is engaged in the business of transporting for hire passengers, baggage, mail, express, and newspapers, under regularly published tariffs, through the States of Oregon, California, Nevada, Arizona, Utah, New Mexico, and Texas. For the year ending December 31, 1936, its predecessor, Pacific Greyhound Corporation, through its subsidiary, Pacific Greyhound Lines, Inc., carried 6,476,537 passengers a total of 30,550,742 passenger miles, with a total transportation revenue of \$8,249,125.05. On December 31, 1936, upon completion of the merger referred to above, Pacific Greyhound Lines owned 392 and operated 371 passenger cars, and employed 1,394 employees, of whom 116 were office employees, 529 were passenger car operators, 229 were station employees, and 329 were shop employees. On that date its total consolidated assets were \$13,857,710.27. During the year 1936 its predecessor paid to The Greyhound Corporation of Delaware, which holds the majority of its outstanding stock, a general management fee of \$7,200.

As corporations whose voting capital stock is owned by The Greyhound Corporation of Delaware and the Southern Pacific Company,<sup>3</sup>

<sup>1</sup> Through stock ownership, Pacific Greyhound Lines controls California Parlor Car Tours Co., and Pacific Southland Stages, Incorporated. (Board Exhibit No. 8)

<sup>2</sup> The Annual Report of The Greyhound Corporation to the Securities and Exchange Commission for the fiscal year ended December 31, 1936, and the Report of the Interstate Commerce Commission, Greyhound Mergers, 1936, decided December 19, 1936, although not introduced in evidence, are public documents and we take judicial notice of the following facts stated therein: During 1936, in accordance with the policy of The Greyhound Corporation of simplifying its corporate structure, and pursuant to orders of the Interstate Commerce Commission authorizing mergers, seven non-operating subsidiaries of Pacific Greyhound Corporation of Delaware and one operating subsidiary, Pacific Greyhound Lines, Inc., which had been the subject of a previous order of this Board (Case No C-134, decided December 18, 1936, 2 N. L. R. B. 431), were liquidated and their assets transferred to and liabilities assumed by Pacific Greyhound Corporation. On December 31, 1936, the California Transit Co., formerly an inactive subsidiary of Pacific Greyhound Corporation, changed its name to Pacific Greyhound Lines, and Pacific Greyhound Corporation was merged into it. The articles of incorporation of Pacific Greyhound Lines were amended and the issued and outstanding capital stock of Pacific Greyhound Corporation continued as the issued and outstanding capital stock of Pacific Greyhound Lines. At the same time Pacific Greyhound Lines acquired the stage and truck equipment and operative rights of Pacific Greyhound Corporation and Pacific Greyhound Lines, Inc.

<sup>3</sup> The Greyhound Corporation of Delaware owns 61 per cent, and The Southern Pacific Company and its wholly owned subsidiary, Southern Pacific Land Company, own 39 per cent of the common stock of Pacific Greyhound Lines.

Pacific Greyhound Lines and its subsidiaries are closely affiliated with other Greyhound Systems in the Greyhound Lines, and with interstate railroads. By means of optional ticket arrangements with the Southern Pacific Company and the Northwestern Pacific Railway, interchange arrangements with independent bus lines, and joint operating, traffic and facility arrangements with other Greyhound Systems, Pacific Greyhound Lines and its subsidiaries operate as a closely coordinated part of an integrated system of national transportation.

We find that Pacific Greyhound Lines is engaged in traffic, commerce, and transportation among the several States and that the employees of the Company are directly engaged in such traffic, commerce, and transportation.

## II. THE ORGANIZATIONS INVOLVED

The Brotherhood of Locomotive Firemen and Enginemen, organized on December 1, 1873, is one of the "Big Four" Railroad Brotherhoods, unaffiliated with any other labor organization. It has approximately 900 locals in the United States and Canada, and a reported membership of approximately 60,886.<sup>4</sup> By the terms of its constitution, all white locomotive enginemen and hostlers in the train and yard service, except Mexicans and Indians, are eligible for membership.<sup>5</sup> Since 1933, it has also admitted motor bus drivers to membership.

On April 26, 1937, the Brotherhood issued a charter to the petitioner herein, Pioneer Greyhound Lodge No. 693 at San Francisco, California. At that time, 241 of the 245 members of Lodge No. 693 were bus drivers employed by the Company.

Lodge No. 97, at Los Angeles, California, is a joint lodge of the Brotherhood, which admits both motor bus drivers and railroad employees to membership. The motor bus drivers who are members of Lodge No. 97 maintain a separate grievance committee, which by formal action authorized Lodge No. 693 to represent them at the hearing.

The Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, organized on September 15, 1892, is a labor organization affiliated with the American Federation of Labor, having approximately 286 locals in the United States and Canada, and a reported membership of approximately 100,000.<sup>6</sup> By the terms of its constitution, all employees of street and electric rail-

<sup>4</sup> These figures are obtained from the Handbook of American Trade-Unions, 1936 Edition, Bulletin No. 618, an official publication of the United States Department of Labor, Bureau of Labor Statistics.

<sup>5</sup> Petitioner's Exhibit No. 18, Article 12, Section 22 (a) and (b).

<sup>6</sup> See footnote 5

ways are eligible for membership.<sup>7</sup> In recent years, it has also admitted to membership all employees of motor bus companies, including bus drivers, station, shop, and office employees. On March 28, 1937, the Amalgamated issued a charter to the intervenor herein, Local Division 1114, which claims to represent all employees of the Company who are not already represented by an affiliate of the American Federation of Labor.

### III. THE QUESTION CONCERNING REPRESENTATION

On the morning of April 20, 1937, C. P. Randall, chairman of Pioneer Lodge No. 693, delivered to L. D. Jones, general manager of the Company a letter stating that the majority of its bus drivers had affiliated with the Brotherhood and requesting that a date not later than April 25, 1937, be set for collective bargaining between the Company and a committee elected by the drivers.<sup>8</sup> On April 21, 1937, Jones replied that he had been instructed by W. E. Travis, president of the Company, to advise Randall for the Brotherhood that "as a result of satisfactory representations by and negotiations had heretofore with Division No. 1114 of the Amalgamated . . . , a working agreement regarding wages and working conditions affecting drivers has already been executed by that organization and this Company." Jones also stated that Travis would be away for two weeks but would meet with Randall upon his return.<sup>9</sup> On May 3 and 4, at a conference between officials of the Company and a committee representing the Brotherhood, Randall offered to show Travis the records of the Brotherhood for the purpose of proving the Brotherhood's majority. Travis, however, stated that he had signed a contract with the Amalgamated and was not interested in seeing the records of the Brotherhood.

The committee then unsuccessfully attempted to reach some settlement of the entire situation. On May 4, in a final effort to get the Company's position on record, Randall wrote to Travis formally presenting the question of whether the Company would recognize the Brotherhood as the bargaining agency of all its drivers.<sup>10</sup> On the night of May 5, Pioneer Lodge No. 693 met and passed a resolution requesting the International President of the Brotherhood to assign

<sup>7</sup> Intervenor's Exhibit No. 1, Section 1.

<sup>8</sup> Petitioner's Exhibit No. 10. The letter is addressed to L. D. Jones as general manager of Pacific Greyhound Lines, Inc., and states that a majority of the drivers of Pacific Greyhound Lines, Inc., have affiliated with the Brotherhood. As set forth in Section I, *supra*, Pacific Greyhound Lines, Inc., was merged into Pacific Greyhound Lines on December 31, 1936. L. D. Jones, former general manager of Pacific Greyhound Lines, Inc., is general manager of Pacific Greyhound Lines. (Board Exhibit No. 8.) It is clear from the record that the Brotherhood in this letter was requesting recognition by Pacific Greyhound Lines.

<sup>9</sup> Petitioner's Exhibit No. 11.

<sup>10</sup> Petitioner's Exhibit No. 12.

a Grand Lodge representative to the Lodge for the purpose of taking a strike vote.<sup>11</sup> On May 5, 1937, Travis answered Randall's question by stating that recognition of the Brotherhood would mean the repudiation of the contract entered into in good faith with the Amalgamated and suggesting that the entire controversy be settled by a secret election to be conducted by this Board.<sup>12</sup> Thereafter on May 25, the Brotherhood filed the petition which gives rise to this proceeding.

The agreement entered into between the Company and Division No. 1114 on April 21, 1937, provides that "the Company recognizes the (Amalgamated) Association, and agrees to bargain collectively with it and as representative of the Company's employees employed as drivers, station forces, mechanics, and other employees who are not already represented by an affiliate of the American Federation of Labor."<sup>13</sup> The agreement also provides that upon request the Company will grant leave of absence to officers of Division No. 1114 for union business; that on or before June 30, 1937, Division No. 1114 and the Company will enter into negotiations for the purpose of drawing up a complete and revised working agreement, for wages and working conditions of all employees covered by the agreement; and that the agreement, and the working agreement to be completed thereunder, shall be binding on the parties until May 31, 1938, and thereafter from year to year unless changed by the parties.<sup>14</sup>

The Brotherhood contends that this agreement was made in violation of the order of the Board in *Matter of Pacific Greyhound Lines, Inc.*,<sup>15</sup> and of the rights of its employees as guaranteed in Section 7 of the Act, and that the Amalgamated was not the free choice of the majority of the employees. Specifically, the Brotherhood contends that (1) before and after the agreement was made, the Company actively helped the Amalgamated and hindered the Brotherhood in obtaining members; and (2) the Company recognized the Amalgamated at a time when it did not represent a majority of any class of employees and denied recognition to the Brotherhood although the Brotherhood represented a majority of the bus drivers.

The Amalgamated, in its motion to dismiss, and at the hearing, contended that the agreement is a valid contract which effectively settles the question of representation. At the oral argument on

<sup>11</sup> Petitioner's Exhibit No. 17.

<sup>12</sup> Petitioner's Exhibit No. 13.

<sup>13</sup> The Amalgamated has a working agreement with the Auto Mechanics Union, affiliated with the American Federation of Labor, to the effect that the Auto Mechanics Union may represent shop employees of the Company where it has already succeeded in obtaining their membership. Witnesses for the Amalgamated stated at the hearing that shop employees of the Company in Los Angeles and San Francisco are subject to this working agreement.

<sup>14</sup> Intervenor's Exhibit No. 4.

<sup>15</sup> See pp 527, 528, *infra*.

September 28, 1937, counsel for the Amalgamated argued that a presumption had arisen that the Amalgamated represented a majority of the bus drivers and other employees of the Company when the agreement was made, which the Brotherhood must overcome by a preponderance of the evidence, before this Board could direct an election for the purpose of ascertaining the representative selected by the majority of such employees.

To understand the issues raised by these contentions, it is necessary to review the recent history of the Company's activities with regard to the attempts of its employees to join a union of their own choosing.

Shortly after July 5, 1935, the Brotherhood, which since 1933 had attempted with varying success to organize the bus drivers employed by Pacific Greyhound Lines, Inc., conducted a new and more successful organizing campaign. During 1935 and 1936, W. E. Travis, president of Pacific Greyhound Lines, Inc., and other officials of that company took drastic and illegal steps to combat these efforts. In *Matter of Pacific Greyhound Lines, Inc.*,<sup>16</sup> we found that the respondent therein had engaged in unfair labor practices within the meaning of Section 8, subdivisions (1), (2), and (3) of the Act, by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, by discriminating in regard to hire and tenure of employment of its employees, thereby discouraging membership in the Brotherhood, and by dominating and interfering with the formation and administration of Drivers' Association, Pacific Greyhound Lines, and by contributing financial and other support thereto. We therefore ordered the respondent to cease and desist from such unfair labor practices, to reinstate with back pay two employees who had been discharged because of their activities in behalf of the Brotherhood, and to withdraw all recognition from and completely disestablish Drivers' Association, Pacific Greyhound Lines.

On September 2, 1936, shortly after the Trial Examiner filed his intermediate report finding that the respondent had engaged in the foregoing unfair labor practices and recommending that the respondent cease and desist therefrom and take the aforesaid affirmative action, Travis issued the following letter:

All Drivers:

. . . That you may not be misled as to the effect of the examiner's report and recommendations, please be advised that

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<sup>16</sup> Case No C-134, decided December 18, 1936 2 N L R B 431 Cf *National Labor Relations Board, Petitioner v Pacific Greyhound Lines, Inc., a Corporation, Respondent*, (C C A 9th) No. 8453, decided July 16, 1937, 91 F (2d) 458. The Court ordered the enforcement of the Board's order, with the exception of paragraphs relating to the withdrawal of recognition from and the disestablishment of Drivers' Association, Pacific Greyhound Lines.

this report, or any order of the National Labor Relations Board in conformity therewith, is legally of no force and effect, until it has been approved by a *decision of the United States Court . . .* until the Supreme Court of the United States passes upon the constitutionality of the Act, the authority of the National Labor Relations Board and its Agents will remain in question . . .

We trust, therefore, that all employees of Pacific Greyhound Lines will continue their past loyal cooperation with the company for the development of highway transportation business and oppose the efforts of competitors who may desire to curtail such development.

When a legal order of the National Labor Relations Board has been *finally approved* by the courts, so as to be effective, you will be advised. Until such time, please understand, we consider the report of the Examiner in the Brotherhood of Locomotive Firemen and Enginemen's case, and any similar order of the National Labor Relations Board, entirely outside the jurisdiction of the Board and of no effect.

W. E. TRAVIS, *President*.<sup>17</sup>

On December 31, 1936, shortly after the Board issued its decision, Travis issued another letter to all drivers, repeating in full the letter of September 2, 1936, and especially reiterating that "until the Supreme Court of the United States passes upon the constitutionality of the Act, the authority of the National Labor Relations Board and its agents will remain in question".<sup>18</sup>

On December 31, 1936, Pacific Greyhound Lines, Inc., was merged into Pacific Greyhound Lines, Travis and the officers of the old company remaining as officers of the new. On January 14, 1937, Travis and F. W. Ackerman, vice-president of the Company, met with seven of the eight division representatives of the Drivers' Association in a conference concerning various conditions of work of the bus drivers. The minutes of that meeting, transcribed from the notes of D. Grant, secretary to Travis, reveal a complete disregard for the order of the Board, and a determination to continue to violate the rights guaranteed by Section 7 of the Act. According to these minutes, introduced in evidence at the hearing, and verified by C. P. Randall, a witness for the Brotherhood who attended the conference as a representative of Division 6 of the Drivers' Association, the following discussion occurred:

Mr. TRAVIS. The law gives you the right to organize for collective bargaining in any way you see fit. I will work along with you in any way I can, but I would hate like the dickens to

<sup>17</sup> Petitioner's Exhibit No. 17.

<sup>18</sup> Petitioner's Exhibit No. 16.

see you close your eyes and "stick your heads into the lions mouth" with any Brotherhood . . . If I were not connected with it (the Company) and you came to me for advice, and that is what I am giving you now, all I could say is that I would hate like the dickens to see you take any steps that would tend to retard the growth of this business by putting it into any railroad brotherhood . . . I think it would be an awful mistake, it would be a catastrophe to let the railroad Brotherhood represent the employees of the bus industry, who are in competition with the rails . . .<sup>19</sup>

I don't think you need a damn thing. I took it up east with some of the Greyhound Companies at the time of the election, and at the time of the election made the suggestion that there be an effort made to form some organization that would go clear across the country, for bus drivers, that would give you protection and would not be mixing up in strikes such as General Motors have . . . If you folks are not satisfied with your organization (Drivers' Association), if it doesn't function, if it doesn't get results, then I say it is time to do something else, which might mean giving consideration to the Amalgamated, the C. I. O. or the railroad Brotherhood. Since it is functioning properly, and you are being treated right, and there is a feeling of cooperation, and you believe in the integrity of the management, and we believe in the integrity of you boys, I would not disturb it . . .

Coming back to your going into some outside union. It is your privilege to do it, if you want to. I think the worst selection you could make would be the Brotherhood by reason of their representing our competitors, but don't think for a minute that they are interested solely in you. Their prime consideration is their own benefit. Whether it is the Brotherhood or the Amalgamated, they want your money.

If I were advising the boys I would tell you to get in touch with the organizations of the other Greyhound Companies and form some organization of your own . . .

. . . It is so manifestly the right thing for the employees of different Greyhound Companies to have an organization that

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<sup>19</sup> In *Matter of Pacific Greyhound Lines, Inc.*, (*supra*) we said of similar contentions of the respondent therein:

It may be that the Brotherhood, in its dual capacity of representative for the enginemen and firemen employed in the railroad industry and for the motor coach operators employed in the motor carrier transportation industry, at times finds itself representing two groups of employees with conflicting interests. This cannot, however, justify the respondent's conduct toward its operators. In any event, the respondent went farther than merely conveying to its operators the idea that the Brotherhood represented conflicting interests. In addition the respondent urged, persuaded and warned its operators not to join the Brotherhood and threatened them with discharge if they joined or remained members. By its conduct the respondent has clearly interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

deals with their own industry that I think in answer to your question, the chances are ten to one in favor of forming the organization . . . My suggestion would be, after you discuss it with the men and know what you want to do is that some committee from your organization be appointed and that you have a conference with similar committees from the other companies . . . I would be very glad to give you the names of the representatives in other companies, as soon as I can secure them, and you fellows can write your own letters and make the suggestion and have a conference. I gave you fellows the free service of our attorney and I would offer it again, but I think because of the criticisms that were made of that action it would be better to have some one on the outside that was not employed by the company . . .

Mr. WALLACH. We may ask you for help, but whichever way we decide on, your advice will be very good.

Mr. TRAVIS. Contact the other representatives and go there and see if you cannot make a national organization, where you would not be subject to the ills and vissitudes (sic) that might fall on your shoulders if you became affiliated with an organization that represents employees of an industry that is competitive with ours. . . .<sup>20</sup>

Several weeks after this conference, Travis and six elected division representatives of the Drivers' Association who had attended the conference—Holly Schofield, Clarence Calhoun, Frank Gowie, J. R. Wallach, George Wilcox, and William Leshe<sup>21</sup>—proceeded to initiate that type of "independent" national organization for bus drivers which Travis had recommended. In the early part of February, Travis forwarded to Holly Schofield, president of the Drivers' Association, the names of the officers of employees' associations of other Greyhound units, and Schofield and Calhoun, secretary of the Drivers' Association, wrote letters to representatives of these other associations. Just what steps were taken thereafter does not clearly appear from the record. On April 4, however, printed copies of the constitution and by-laws of a new organization, National Brotherhood of Motor Carriers, were distributed among the bus drivers employed by the Company. The six division representatives of the Drivers' Association became the Regional Board of the new organization with the addition of George Carter and J. Wallis (sic), representing the divisions within the Company formerly represented by Randall and Peterson, and from April 4 to about April 14, conducted a wide-spread campaign to enroll the bus drivers as members. The constitution and by-laws of National Brotherhood of Motor Carriers indicate that it

<sup>20</sup> Petitioner's Exhibit No 5.

<sup>21</sup> C. P. Randall and one Peterson, the remaining two division representatives, joined the Brotherhood.

was to be an organization for bus drivers, nation-wide in scope, of the type suggested by Travis at the conference of January 14, 1937.<sup>22</sup>

At a meeting in San Francisco on April 14, 1937, two days after the decisions of the Supreme Court upholding the constitutionality of the Act, the Regional Board members abruptly dissolved the new organization. Thereafter, Schofield, Wilcox,<sup>23</sup> Calhoun, Wallach, and Wallis transferred their affiliation to the Amalgamated, and with the addition of Pat James, a Reno driver, became the Executive Board of Division No. 1114.

An intensive organizing campaign in behalf of the Amalgamated was immediately begun with the aid of Travis and various local superintendents of the Company. Warren Macy, a witness for the Brotherhood, testified that on or about April 15, 1937, one Hodges, superintendent of drivers in the Los Angeles division of the Company, advised him to join the Teamsters or the Amalgamated and stated that "I have always advised the boys against going into any railroad organization, I'll continue to advise them the same way." Macy also testified that on April 17 or 18, Thomas Gustafson, supervisor of drivers for the Company in Los Angeles, ordered him to stop soliciting members for the Brotherhood on Company property because "You are just biting the hand that is feeding you and we won't stand for it", while at the same time he permitted Schofield to solicit members for the Amalgamated on Company property. During the period from April to June, nine members of the Amalgamated were granted leave of absence by the Company and were allowed to solicit membership for the Amalgamated on Company property, while several members of the Brotherhood were denied leave of absence for similar purposes.<sup>24</sup>

On April 16, 1937, the following notice was posted on the Company bulletin board at Modesto, California:

Attention All Drivers

There will be a meeting held at:

*Union Hall 16th and Capp Streets  
7:30 P. M., Saturday, April 17, 1937*

A condition exists that makes it very important that all drivers attend. It is to your interest to be there. Division 1114. Amalgamated Ass'n A. F. of L.

J. R. WALLACH.

Mimeo. by Members of Office Employees #13188 A. F. of L.

<sup>22</sup> Petitioner's Exhibit No. 4.

<sup>23</sup> Wilcox was also a charter member of Division No. 1114, according to the testimony of a witness for the Amalgamated.

<sup>24</sup> See also Petitioner's Exhibit No. 21 (1).

On this notice appears the following paragraph addressed by A. W. Bobo, superintendent for the Company of Division 6, South to J. T. Lamberty and E. F. Curtis, Station Agents at Stockton and Modesto:

Herewith notice that is to be posted conspicuously on your drivers' bulletin board. Any men that wish sufficient time off to attend the meeting mentioned in the enclosure are authorized to take the necessary time off providing you can spare them.<sup>25</sup>

On April 20, Travis met driver Hillary H. Head at the Company's terminal in San Francisco and after discussing the failure of the "independent organization", asked Head whether he belonged to the Brotherhood or the Amalgamated. Travis then informed Head that in his recent visit to Detroit he had made an arrangement with the international officers of the Amalgamated whereby "You boys will have your own organization", and would not be answerable for their actions to the Grand Lodge or main offices of the Amalgamated.

On April 21, the day after the Brotherhood had requested a conference for the purpose of collective bargaining as the representative of the majority of the bus drivers employed by the Company, Travis signed the above-described agreement, recognizing the Amalgamated as the representative of all of its employees not already represented by an affiliate of the American Federation of Labor. On the following day, Travis wrote to Holly Schofield that recent court decisions had cast such grave doubts on the legality of the Company's contract with the Drivers' Association that it might not be binding, that the Amalgamated had represented to him that it had "sufficient membership to justify the request that it be recognized as the collective bargaining agency for the employees of the Company", and that the Company had entered into an agreement with the Amalgamated. The letter concluded as follows:

The American Federation of Labor is therefore in a position to render needful help, both to industry itself and its employees, in offsetting the efforts of our competitors in legislative and other matters throughout the United States.

*This probably is the first step in securing for the industry itself and its employees a national labor organization that has long been desired.*<sup>26</sup>

Thereafter, the record indicates that on at least two occasions, the Company continued to lend support and assistance to the Amalgamated. On April 27, Holly Schofield and F. A. Hoover, of the Amalgamated, forwarded a notice of a meeting of Division No. 1114 for April 30, by means of the Company mail, under the Company's

<sup>25</sup> Petitioner's Exhibit No. 22.

<sup>26</sup> Board Exhibit No. 14. Italics supplied.

“valuable package label”, to the Company’s agents at Fresno.<sup>27</sup> The Company has insisted to its employees who are members of the Brotherhood that there is a serious United States Postal fine connected with using the company mail for personal correspondence and that “valuable package labels” are to be used for company matters or company station business only.<sup>28</sup> On June 8, 1937, Holly Schofield issued the following notice, which was posted on the Company’s bulletin board at its depot in Los Angeles:

*All members of Division 1114:*

Initiation fees and dues for month of June are now payable to Holly Schofield or leave with despatcher.<sup>29</sup>

Under these circumstances of open discrimination by the Company in favor of the Amalgamated, we could not hold the agreement of April 21 to be a valid agreement, even if the Amalgamated had been chosen by a majority of the Company’s employees in an appropriate unit, because of the doubt which the Company’s conduct would have cast upon the question of whether the employees had freely expressed their choice.<sup>30</sup>

It appears from the record, however, that on April 21, 1937, when its agreement with the Company was signed, the Amalgamated neither claimed to represent nor actually did represent a majority of the employees of the Company. Clifford W. Van Avery, a special organizer for the Amalgamated, testified that the Amalgamated has been trying to organize the employees of the Company since 1935, and that between 1935 and March, 1937, when Division No. 1114 received its charter, a total of approximately 20 employees had applied for membership. Avery further testified, however, that between April 15 and April 21, 1937, a large number of employees had filed applications for membership in Division No. 1114. Before the Amalgamated approached Travis for the purpose of signing the agreement, Avery, who had arrived in San Francisco on April 15, was informed by various field organizers for the Amalgamated or knew from personal observation that there had already signed with the Amalgamated, 95 per cent of all the 90 employees of the Company at Albuquerque, Phoenix, and El Paso, 80 of the 100 or 120 employees of the Company at Los Angeles, 115 employees in San Francisco, and between 45 and 60 of the employees north of San Francisco—a total of approximately 340 employees. There were the claims made on April 21, by the Amalgamated to Travis, on the basis of which the agreement was

<sup>27</sup> Petitioner’s Exhibit Nos. 19 (1) and 19 (2).

<sup>28</sup> Petitioner’s Exhibits Nos. 20 (1), 21 (1).

<sup>29</sup> Petitioner’s Exhibit No. 25.

<sup>30</sup> *Matter of National Electric Products Corporation*, Base Nos C-219 and R-241, decided August 30, 1937, 3 N L R B 475; *Matter of Consolidated Edison Company of New York, Inc, and Its Affiliated Companies*. Case No. C-245, decided November 10, 1937, 4 N L R B 71.

signed. Avery admitted that Travis had never asked for proof of membership, and that no claim had been advanced to Travis that the Amalgamated represented a majority of the employees. Although no Company pay roll or other roster of the names of employees was introduced in evidence, it appears from estimates submitted by the Amalgamated itself that in September 1937 the Company employed 986 employees, exclusive of shop employees, eligible for membership in the Amalgamated.<sup>31</sup> From the records submitted by the Company in its Annual Report to the Railroad Commission of California,<sup>32</sup> it further appears that the Company employed a total of 1,390 employees on December 31, 1936, including 1,061 employees in the same group eligible to membership in the Amalgamated. It is, therefore, plain that at the time the agreement was signed the Amalgamated did not represent a majority of all the employees.<sup>33</sup>

From the record it thus clearly appears that the Company and its officials in utter disregard of the order of this Board in *Matter of Pacific Greyhound Lines, Inc.* and of the rights of its employees as guaranteed in Section 7 of the Act actively encouraged membership in the Amalgamated and discouraged membership in the Brotherhood both before and after the agreement of April 21, 1937 was signed. Aware that the Brotherhood had already claimed to represent a majority of the bus drivers, the Company nevertheless granted recognition to the Amalgamated as the exclusive representative, for the purposes of collective bargaining, of all of its employees not already represented by an affiliate of the American Federation of Labor, at a time when the Company knew that the Amalgamated neither claimed to represent nor actually did represent a majority of its employees. Under these circumstances, the Amalgamated cannot be considered the free choice of a majority of the employees of the Company, entitled to protection in its right to such recognition under the agreement of April 21, 1937. Indeed, far from settling the question concerning representation, that agreement, made under the circumstances described, has given rise to serious unrest and the possibility of a strike among the bus drivers.

Even if we should adopt the contention of the Amalgamated, which we do not, that the agreement of April 21 raises a presumption that the Amalgamated represented a majority of the Company's employees at that time and thus eliminated the question concerning representation, the presumption has been conclusively rebutted by the evidence directly to the contrary, indicating that the designation of the Amal-

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<sup>31</sup> Motion to Reopen Case for Purpose of Receiving Certain Testimony, filed September 13, 1937

<sup>32</sup> Board Exhibit No. 8

<sup>33</sup> C P Randall for the Brotherhood testified that Travis had told him that although the Amalgamated did not claim to represent a majority of the employees, he was entitled to recognize a minority group provided the majority group had not claimed recognition

gamated as representative was not the result of a free choice by a majority.

The only petition for investigation and certification of representatives filed in this case concerns the representation of the bus drivers. No evidence has been presented which would warrant our finding that a question has arisen concerning the representation of the station, shop, and office employees. We find, therefore, that a question has arisen concerning the representation of the bus drivers only. We further find that this question concerning representation, occurring in connection with the operations of the Company, described in Section I above, tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### IV. THE APPROPRIATE UNIT

Employees of the Company for present purposes are divided into two main classifications: bus drivers, and all other employees, including station, shop, and office employees.

The Brotherhood contends that the bus drivers constitute a unit appropriate for the purposes of collective bargaining. In support of this contention, witnesses for the Brotherhood testified to a number of considerations which differentiate bus drivers from other employees: bus drivers are paid by the mile rather than by the week or the month; they are required to purchase and wear a special uniform; they are subject to demerit and seniority systems which do not apply to other employees; their work calls for the exercise of extraordinary skill and judgment; they must meet the standards set by the Interstate Commerce Commission as to age and qualifications; they are required under different State Acts and under the Motor Carrier Act of 1935 to undergo annual and semi-annual physical examinations not required of other employees. In addition, the bus drivers regard themselves as a separate craft and associate with one another at terminals and elsewhere rather than with other employees; and, in many instances they are segregated by the Company as a separate unit, particularly in the issuance of rules, regulations and bulletins,<sup>34</sup> applicable to drivers alone, and in the organization of the business of the Company, whereby drivers are classified as a separate department and are responsible to different supervisory officials from those of other employees. As set forth above, the history of labor relations between the Company and its employees indicates that from 1933 to April 1937, the Company has recognized drivers as a separate unit, and even sponsored organizations which limit their membership to bus drivers alone.<sup>35</sup> In addition, the Brotherhood introduced in evidence and its witnesses testified to a number of

<sup>34</sup> Petitioner's Exhibit Nos 2, 27.

<sup>35</sup> Petitioner's Exhibit Nos. 1, 4, 5.

contracts in the motor bus industry at large executed between various bus companies and unions representing bus drivers as a separate unit.<sup>36</sup>

The Brotherhood also cited the Decision of this Board certifying the Brotherhood of Railroad Trainmen as the exclusive representative of the bus drivers of the Santa Fe Trail Transportation Company.<sup>37</sup>

On the other hand, the Amalgamated contends that all of the employees of the Company, including bus drivers, mechanics, station and office employees, except employees in supervisory positions or positions of a confidential nature, constitute a unit appropriate for the purposes of collective bargaining. While not denying the specific differences in wages, working conditions, and qualifications which the Brotherhood contends separate bus drivers from other employees as a separate craft, the Amalgamated rests its claim upon the contention that the industrial form of organization affords all employees greater economic strength and better protection than separate craft organization.

The Amalgamated contends that employees drawing lower pay constitute a continual menace to the higher standards of the drivers, that this can be corrected by raising the standards of the other employees, and that general agreements covering all employees and providing for arbitration will avoid the stoppages incident to strikes by dissatisfied minority groups among the employees. Other evidence in the record indicates that there exists such a large degree of interdependence and functional coherence between the various classes of employees that it would be reasonable to group all employees together as the appropriate unit.<sup>38</sup> As tending to show by the history of collective bargaining in the motor transportation industry as a whole that all the employees of the Company, taken together, constitute an appropriate unit, the Amalgamated introduced in evidence and its witnesses testified to a number of contracts which it had negotiated with various bus companies, covering all the employees of each company.<sup>39</sup>

In view of the facts described above and the conflicting contentions of the two organizations it appears that the bus drivers can be con-

<sup>36</sup> Agreement between The Cardinal Stage Lines Company and The Brotherhood of Railroad Trainmen, covering Rates, Rules, and Regulations for Motor Coach Operators, Petitioner's Exhibit No 7; Agreement between Santa Fe Trail Stages, Inc of Arizona and The Brotherhood of Railroad Trainmen, covering Rates, Rules, and Regulations for Motor Coach Operators, Petitioner's Exhibit No 8

<sup>37</sup> *Matter of Santa Fe Trail Transportation Company*, Case No R-126, decided March 18, 1937, 2 N L R B 767

<sup>38</sup> Cf. Petitioner's Exhibit No 24 *passim*

<sup>39</sup> Memorandum of Agreement between the North Coast Transportation Company and the Amalgamated Intervenor's Exhibit No 2, Agreement between Interstate Transit Lines, Interstate Transit Lines, Inc. and Union Pacific Stages of California and the Amalgamated Intervenor's Exhibit No 3

sidered either as a separate unit as claimed by the Brotherhood or as part of a large unit composed of bus drivers, mechanics, station and office employees, as claimed by the Amalgamated. The differentiation in skill and duty of bus drivers from other employees and the history of collective bargaining by the Company, as well as the history of collective bargaining in the industry at large, as cited by the Brotherhood, are proof of the feasibility of the former approach. The interdependence of the bus drivers with the other employees, the greater economic strength claimed for the industrial form of organization, and the history of collective bargaining in the industry, as cited by the Amalgamated, are proof of the feasibility of the latter approach. Our decision in *Matter of Santa Fe Trails Transportation Company* (supra) that bus drivers are the appropriate unit clearly cannot control the determination of this question since, there, the decision was based on an express stipulation by the Santa Fe Company that bus drivers should constitute such a unit. In *Matter of Pennsylvania Greyhound Lines et al.* where we considered in detail the question of the appropriate unit in reference to the employees of twelve other Greyhound Systems, we held that "where the considerations which determine this question are so evenly balanced, the decisive factor is the desire of the men themselves."<sup>40</sup> On this point the record before us affords no help. The Brotherhood claims to represent a majority of the bus drivers employed by the Company; the Amalgamated claims to represent a majority of all the employees. The documentary evidence is so incomplete that neither claim can be conclusively proved from the record.

As stated in Section V below, we shall direct an election to be held among the bus drivers employed by the Company to determine whether they wish to be represented by the Brotherhood, the Amalgamated, or neither. Upon the results of this election will depend in part the determination of the unit appropriate for the purposes of collective bargaining. If the bus drivers choose the Brotherhood, bus drivers alone will constitute an appropriate unit; if they choose the Amalgamated, they will have expressed their preference for a single larger unit consisting of all the employees. In the absence, however, of any evidence which would warrant our finding that a question concerning representation has arisen among the employees other than bus drivers, and in the absence of a petition requesting a certification of representatives of all the employees in the larger unit, it will not be necessary at this time to determine the appropriateness of such unit or whether the Amalgamated has been designated by a majority of the employees in that unit.

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<sup>40</sup> Case No R-151 decided September 14, 1937, 3 N L R B 622; *Matter of Globe Machine and Stamping Company*, Cases Nos R-178, R-179, R-180, decided August 11, 1937. 3 N L R B 294

## V. THE DETERMINATION OF REPRESENTATIVES

At the hearing, the Brotherhood introduced as evidence of its membership a photostatic copy of its charter, containing the names of 245 bus drivers admitted to membership in Lodge No. 693 before the close of its charter list on April 10, 1937;<sup>41</sup> a typewritten list of 69 bus drivers admitted to membership in Lodge No. 693 after April 10, 1937;<sup>42</sup> and a notarized list, signed by the financial secretary of Lodge No. 97, certifying that from a check of his records the 59 Pacific Greyhound drivers named therein were members of Lodge No. 97 as of June 7, 1937.<sup>43</sup> The financial secretary of Lodge 693, the chairman of the general grievance committee of the Brotherhood, and the chairman of the local grievance committee of Lodge No. 97 testified that from their personal knowledge and their knowledge of the original records, all of the drivers named in these lists were members of the Brotherhood and employees of the Company, except four members of Lodge No. 693 who were employees of other bus companies. The chairman of the general grievance committee of the Brotherhood testified that on April 20, 1937, when it sought to bargain collectively with the Company, the above-listed 369 bus drivers said to be employed by the Company were members of either Lodge No. 693 or Lodge No. 97. The Brotherhood claims that on that day the Company employed a total of 640 bus drivers, and that therefore the Brotherhood then represented a majority of the Company's bus drivers. It further claims that as of July 12, the day of the hearing, the Company employed 680 bus drivers, of which its membership still constituted a majority, despite the fact that three bus drivers, members of Lodge No. 97, had recently been discharged.<sup>44</sup>

Such proof, if unquestioned, would normally be sufficient for us to certify the Brotherhood without an election as the exclusive representative of all the bus drivers for the purposes of collective bargaining. Here, however, the lack of a Company pay roll or roster of employees against which to check the Brotherhood's membership lists, or to ascertain exactly the total number of bus drivers employed by the Company, the fact that an undetermined number of the Brotherhood's members are also members of the Amalga-

<sup>41</sup> Petitioner's Exhibit No. 14.

<sup>42</sup> Petitioner's Exhibit No. 16.

<sup>43</sup> Petitioner's Exhibit No. 15.

<sup>44</sup> These estimates of the total number of bus drivers employed on April 21 and July 12, 1937, are admittedly approximations, based on the seniority list of bus drivers employed by Pacific Greyhound Lines, Inc., in June, 1936, and an estimate of the number of drivers hired after April 21, 1937. Since the Company failed to appear at the hearing and neither this seniority list nor any more recent roster of names of its bus drivers was introduced in evidence, it is not possible from the record to ascertain the exact number of the bus drivers employed by the Company either on April 20 or the date of the filing of the petition.

mated,<sup>45</sup> and the conflicting contentions with regard to the appropriate unit make impossible such a certification of the Brotherhood.

The Amalgamated, on the other hand, claimed to represent at the time of the hearing approximately 605 employees of the Company, of whom 302 were bus drivers. These figures represent only the estimate of one of its international officers; the Amalgamated submitted no list of names or records of membership.

On September 13, however, after the hearing, the Amalgamated filed a motion to reopen the case for the purpose of introducing into evidence a Master Agreement, completed on September 8 under the agreement of April 21, 1937. In its motion, the Amalgamated stated that 481 out of 705 drivers, 112 out of 155 employees on Station forces, and 112 out of 126 office employees—a total of 705 out of 986 eligible employees—have signed their assent to the Master Agreement. At the oral argument before the Board on September 28, 1937, counsel for the Amalgamated submitted, as an offer of proof in support of his motion, a copy of the Master Agreement containing a 15 page typewritten list of names and a notarized certification by the secretary of Division No. 1114 that the typewritten list was a true and a correct list of the employees of the Company who have approved the Master Agreement and that the original signatures are on file in his office.

We hereby deny this motion of the Amalgamated. Since the Master Agreement itself merely provides that the Company will recognize the Amalgamated as the representative of its members, the Amalgamated must show either that a majority of the Company's employees in the unit alleged to be appropriate are members of the Amalgamated or that a majority of such employees have in some other way designated the Amalgamated to represent them for the purpose of collective bargaining. The offer of proof on the basis of which it seeks to reopen the case shows neither.

The petition to which the signatures are affixed reads as follows:

We, the undersigned employees of Pacific Greyhound Lines, having read the proposed agreement between . . . Division No. 1114 and Pacific Greyhound Lines, pertaining to rules and regulations covering rates of pay and working conditions, find the said agreement in form and substance to be satisfactory and meeting with our approval.

This is but acquiescence in a *fait accompli*. It cannot be regarded as indicating that the employees whose names are attached thereto are, or intend to become, members of the Amalgamated, or have otherwise chosen the Amalgamated to represent them for the purposes of collective bargaining. Further, the Master Agreement, which is

<sup>45</sup> The Amalgamated claimed that more than 15 members of the Brotherhood had signed applications for membership in the Amalgamated. The Brotherhood admitted that between four and 12 of its members had become members of the Amalgamated.

an addendum to the agreement of April 21, is subject to the same vices as that agreement. In the light of the Company's continued activities in encouraging membership in the Amalgamated and discouraging membership in the Brotherhood, we cannot in any event consider that those employees who signed the Master Agreement thereby expressed their free and untrammelled choice or ratification of representatives.

There is, therefore, no conclusive proof before us that either the Amalgamated or the Brotherhood represents a majority of the bus drivers employed by the Company, or that the Amalgamated represents a majority of any other class of employees. In order to insure to the employees the full benefit of their rights to self-organization and collective bargaining and otherwise to effectuate the policies of the Act, we conclude that the question concerning the representation of the employees of the Company which has arisen can best be resolved by an election by secret ballot, to be held on the terms set out in Section IV above.

Both Lodge No. 693 and Lodge No. 97 of the Brotherhood agreed at the hearing that in the event that an election should be directed by this Board they should be designated on the ballot by the name of the Brotherhood only, without specifying either Lodge.

We will direct the elections to be held under the direction and supervision of the Regional Director for the Twentieth Region, who shall determine in her discretion the exact times, places, and procedure for giving notice of the elections and for balloting. We expressly authorize the use of the United States mail for such purposes and the use of agents, if feasible, to journey through the Company's various territorial divisions to conduct elections at appropriate places, collecting the votes in sealed envelopes for delivery to the Regional Director.

In accordance with our usual practice, eligibility to vote will be determined by employment during the pay roll period immediately preceding May 25, the date of the filing of the petition.

On the basis of the above findings of fact, the Board makes the following:

#### CONCLUSION OF LAW

A question affecting commerce has arisen concerning the representation of the bus drivers employed by Pacific Greyhound Lines, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Rela-

tions 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

DIRECTED that, as part of the investigations authorized by the Board to ascertain representatives for the purpose of collective bargaining with Pacific Greyhound Lines, San Francisco, California, elections by secret ballot shall be conducted within thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among bus drivers employed by and on the regular seniority list of said Company during the pay roll period immediately preceding May 25, 1937, to determine whether they desire to be represented by Brotherhood of Locomotive Firemen and Enginemen or Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America for the purpose of collective bargaining, or by neither.

MR. EDWIN S. SMITH, dissenting:

The only labor organization free of the influence of the Company is the Brotherhood. If the Amalgamated were not, in this instance, the recipient of the Company's illegal favors, I should examine seriously its contention that the bus drivers should be merged in a larger bargaining unit. As it is, the bus drivers have carried on the organizational fight against heavy company odds for their own group. There are good arguments for separate bargaining by this class of workers. Under all the circumstances of this case, I think the bus drivers should be declared to be the appropriate bargaining unit.

[SAME TITLE]

#### AMENDMENT TO DIRECTION OF ELECTION

*December 23, 1937*

On December 16, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above entitled proceeding, the election to be held within thirty (30) days from the date of the Direction, under the direction and supervision of the Regional Director for the Twentieth Region (San Francisco, California). The Board, having been advised by the Regional Director for the Twentieth Region, that a longer period within which to hold the election is necessary, hereby amends the Direction of Election issued on December 16, 1937, by striking therefrom the words "within thirty (30) days from the date of this Direction" and substituting therefor the words "within fifty (50) days from the date of this Direction."

[SAME TITLE]

## AMENDMENT TO DECISION

AND

## SECOND AMENDMENT TO DIRECTION OF ELECTION

*January 22, 1938*

On December 16, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and a Direction of Election, and on December 23, an Amendment to the Direction of Election in the above-entitled proceeding. The Decision and Direction of Election, as amended, provide that elections by secret ballot be held within fifty (50) days among bus drivers employed by and on the regular seniority list of Pacific Greyhound Lines during the pay roll period immediately preceding May 25, 1937, to determine whether they desire to be represented by Brotherhood of Locomotive Firemen and Enginemen or Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America for the purpose of collective bargaining, or by neither.

On January 15, the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America filed a motion for a rehearing and a petition to modify the Decision and Direction of Election. In its petition the Amalgamated prays that the Board amend its Decision and Direction of Election (1) by changing the date by which the eligibility of voters is to be determined from May 25, 1937, to December 15, 1937, and (2) by striking therefrom, wherever they occur, the words "or by neither".

On January 21, the Brotherhood of Locomotive Firemen and Enginemen filed with the Board a letter stating that in order to prevent further delay it would not oppose the change in the date of eligibility for voters from May 25, 1937, to December 15, 1937. Since this change is satisfactory to both unions, the Board hereby amends its Decision, Direction of Election, and Amendment to Direction of Election by striking therefrom, wherever they occur, the words "during the pay roll period immediately preceding May 25, 1937," and substituting therefor the words "during the pay roll period immediately preceding December 15, 1937."

In *Matter of Interlake Iron Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local No. 1657*,<sup>46</sup> we discussed in detail the problems arising in connection with the use of the words "or by neither." For the reasons therein stated, the petition in the instant case to amend the Decision and Direction of Election by striking therefrom the words "or by neither" is hereby denied.

Upon consideration, the Board hereby also denies the motion of the Amalgamated for a rehearing and affirms its decision.

<sup>46</sup> 4 N. L. R. B. 55.