

Hackney Corporation and National Union of Long Haul Truckers of America, Petitioner Case 10-RC-10493

May 27, 1976

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS JENKINS
AND PENELLO

On December 10, 1975, the Acting Regional Director for Region 10 issued a Decision and Direction of Election in the above-entitled proceeding in which he found the Petitioner's requested unit of the Employer's long haul truckdrivers may appropriately be severed from an established unit of production and maintenance employees currently represented by the Intervenor, United Steelworkers of America, AFL-CIO. Thereafter, in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer and the Intervenor filed timely requests for review of the Acting Regional Director's decision.

By telegraphic order dated January 13, 1976, the National Labor Relations Board granted the requests for review and postponed the election pending decision on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Acting Regional Director, applying criteria set forth in *Kalamazoo Paper Box Corporation*, 136 NLRB 134 (1962), as indicated, found the Employer's long haul truckdrivers could appropriately be severed by the Petitioner from an established broader production and maintenance unit.¹ The Employer and the Intervenor, in their requests for review, contend, *inter alia*, that he erred in limiting his consideration to the severance standards delineated in *Kalamazoo*, and they urged that in the light of all relevant factors, under *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387 (1966), severance is inappropriate herein. We agree.

The Employer is engaged in the manufacture and

sale of chain wire and fittings at its Columbiana and Birmingham, Alabama, facilities. Its long haul trucking department, which operates from warehouse facilities in Birmingham, employs approximately 12 long haul truckdrivers to drive vehicles leased from Wilco Truck Lines. The drivers receive their load assignments from a dispatcher at the warehouse and pick up their loads either there or at a staging area at Wilco's location. Upon completion of a haul, they leave their documents and the vehicles at the warehouse. When picking up their loaded vehicles at the warehouse, the drivers check to see that the load is properly secured, but do no loading or unloading. They are under a separate supervisor who reports to the distribution manager. Except for one instance when a driver whose license was suspended was reassigned to plant work, there is no interchange between drivers and other employees. The drivers are paid on a mileage basis with provision for layover and waiting time pay; they have the same fringe benefits as other employees.

Since 1969, the Employer's truckdrivers have been represented by the Intervenor as part of a certified unit described as "all production and maintenance employees and truckdrivers of the Employer" including leadmen and shipping and receiving employees.² Earlier, in 1965, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters, had been certified as representative of a separate unit of truckdrivers³ but was unsuccessful in negotiating an agreement with the Employer. In 1966, the Teamsters lost an election among the drivers, and was decertified.⁴

The Employer and the Intervenor have negotiated two 3-year contracts covering the certified broad unit, the second of which expired on September 30, 1975, prior to completion of negotiations for a new agreement. Past contracts have included provisions relating to the special interests of the truckdrivers in the long haul trucking department, and individual truckdrivers have represented those interests on the Intervenor's negotiating committees. Under those contracts, as indicated, drivers were paid on a mileage basis and received payments for layover and/or waiting time; they were provided the same fringe benefits as other unit employees. Also, those contracts provided for departmental seniority. However, in view of the absence of any black employees in the long haul trucking department and the predominance of black employees in other departments, the Intervenor in its negotiations for a new contract took

¹ The Acting Regional Director took note of the contention made by the Employer and the Intervenor that the Petitioner should be disqualified because of possible racial motives in its reason for being formed and its present employee composition, stating that such matters could not be raised at that stage of the proceeding. He added that he would not presuppose that the Petitioner, if certified, would engage in prohibited racial discrimination.

² Case 10-RC-7458

³ Case 10-RC-6401

⁴ Case 10-RM-451

the position that a plantwide seniority system should be provided so that qualified blacks with the greatest plantwide seniority could bid for truckdriver jobs as they became available, and the Employer has agreed to such a provision. The Employer asserts that this agreement was in response to recent court cases finding that parties to collective-bargaining agreements had perpetuated past discrimination against minority employees not hired in truckdriver jobs through the operation of departmental seniority systems.⁵

Despite the agreement on seniority, disagreements remained on other issues, and, upon expiration of the prior contract, the Intervenor initiated a strike in support of the demands. On October 9, 1975, the Petitioner was formed. There was testimony that the truckdrivers had met in May 1975 and decided to "go independent" but later decided to give the Intervenor "a try again", also, that when the Petitioner was formed the truckdrivers were aware of the agreement to implement plantwide seniority.

Upon our review of the entire record, we are not persuaded that the Employer's long haul truckdrivers have overriding separate special interests to warrant their severance from the established broader unit, in the circumstances and facts of this case.

It is true, and we note, that the drivers here involved devote most of their time to over-the-road driving duties, are under separate immediate supervision, and do not interchange with employees working in the warehouse and plant. However, in *Mallinck-*

rodt, the Board set forth a number of other factors which must be considered in determining whether or not the history of bargaining precludes severance. We think it is significant that in 1966, after a brief period of representation by the Teamsters, the Employer's truckdrivers voted to decertify that union, thereby rejecting the separate representation that had theretofore existed. Also, until the current negotiations, there is no suggestion in the record that the truckdrivers have not heretofore been adequately represented by the Intervenor as part of a production and maintenance unit or that the bargaining history has not been otherwise a satisfactory and stable one. As to the indication of current discontent among the truckdrivers which apparently led to the Petitioner's formation and its filing of the instant petition, it is not entirely clear whether the discontent was brought about by the agreement to implement plantwide seniority, a change which may affect some of them adversely in the future, or by other bargaining positions taken by the Intervenor. Whatever the case, we do not deem this evidence of current dissatisfaction with the Intervenor's representation of the truckdrivers to be sufficient to support the Petitioner's severance request at this time.

Accordingly, we shall dismiss the petition herein.⁶

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

⁵ Citing *Rodriguez v. East Texas Motor Freight*, 505 F.2d 40 (C.A. 5 1974), *Herrera v. Yellow Freight Systems, Inc.*, 505 F.2d 66 (C.A. 5 1974), *Resendis v. Lee Way Motor Freight, Inc.*, 505 F.2d 69 (C.A. 5 1974), *Haurston v. McLean Trucking Company*, 520 F.2d 226 (C.A. 6 1975), *U.S. v. Navajo Freight Lines, Inc.*, 525 F.2d 1318 (C.A. 9, 1975).

⁶ In reaching our conclusion to deny severance herein we need not and do not pass on the contention of the Employer that the actions of the truckdrivers leading to the Petitioner's formation and the filing of the instant petition were racially motivated.