STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of:	:	
LOS ANGELES METROPOLITAN TRANSIT AUTHORITY,	:	
Employer,	:	
and	:	
BROTHERHOOD OF RAILROAD TRAINMEN; BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, AFL-CIO;	:	SCS-1-R-LAMTA SCS-2-R-LAMTA
INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 94, AFL-CIO;	:	SCS-3-R-LAMTA
AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, AFL-CIO	:	SCS-4-R-LAMTA
Petitioners-Intervenors.	:	

DECISION AND ORDER OF DIRECTOR OF DEPARTMENT OF INDUSTRIAL RELATIONS

Pursuant to the authority vested in me by Section 3.6(d) of the Los Angeles Metropolitan Transit Authority Act (Chap. 547, Stats. 1957) and by Section 15660 of the Regulations adopted pursuant to such Act, I, John F. Henning, Director of the State Department of Industrial Relations, after having reviewed the

record, the original briefs of the parties, the hearing officer's proposed decision and order, and the exceptions and supporting briefs of the parties, herewith determine as follows in the matter of Los Angeles Metropolitan Transit Authority Cases SCS-1-R-LAMTA et al:

As of February 23, 1959, Archibald J. Cox, Hearing Officer designated by the Director of the Department of Industrial Relations, submitted his proposed Decision and Order on the basis of hearings held in November and December of 1958.

At these hearings all parties to the proceedings were present and submitted their views on the question concerning representation among the operating, maintenance and clerical employees, and Red Cap Porters of the Los Angeles Metropolitan Transit Authority.

The Hearing Officer made findings of fact relative to

(I) Background and parties;

(II) The question of representation;

(III) The appropriate bargaining unit.

With respect to findings of fact pertaining to the appropriate bargaining unit, the Hearing Officer gave consideration to the following aspects:

(A) Industrial versus occupational units

1. Skill and related functional indicia of cohesiveness

2. Technological and managerial organization

3. History of collective bargaining

4. Collective bargaining in the transit industry

5. Analysis and federal precedents

(B) Composition of the voting groups

1. The applicable principles

2. Special groups

By reason of his findings of fact and analysis of the relevant federal law and administrative practice, the Hearing Officer issued a proposed order, the essentials of which called for five voting groups and a method of tabulation.

The groups as defined by the Hearing Officer follow:

Group I - This group includes Operators and allied classifications. The choices on the ballot for Group I would be Amalgamated, Trainmen, and "no union."

Group II - This group includes Maintenance Employees and allied classifications. The choices on the ballot for Group II would be Amalgamated, Machinists, and "no union."

Group III - This group includes Shop Clerks and allied classifications. The choices on the ballot would be Amalgamated, Clerks, and "no union."

Group IV - This group includes Red Cap Porters. The ballot choices would be Amalgamated, United Transportation Service Employees and "no union."

Group V - This group includes Office Clerks and allied classifications. The ballot choices would be Clerks and "no union."

The Hearing Officer has provided for a unique system of vote tabulation. He specifies that if the total votes for Amalgamated are a majority of all votes cast in Groups I, II, III and IV, Amalgamated would be certified as the exclusive bargaining representative in these categories. However, if the total votes cast for Trainmen, Machinists, Clerks and United Transportation Service Employees are a majority, a separate determination of the collective bargaining representative of each group would be made.

The Hearing Officer proposes certain variations in his method of tabulation in the event of a Trainmen - Machinists - Clerk - United Transportation Service Employee majority in the total vote.

First, if the Clerks receive a majority of votes cast in Group III and also a majority in Group V, the Clerks would be certified as the bargaining representative for both groups as a combined unit. If, on the other hand, the Amalgamated receives a majority of votes in both Group II and Group III, it would be certified as the bargaining representative for both groups as a combined unit. If neither event occurs, no determination of a

bargaining representative for Group III would be made pending receipt of a new petition. However, it should be noted that if Amalgamated receives a majority in the four categories, it would represent employees in all groups.

The Hearing Officer is to be commended for the competent and workmanlike character of his findings as they relate to occupational groupings. I accept the Hearing Officer's groupings and included classifications. It should be noted that clerical employees in the Accounting and Finance department were not included in Group V as proposed by the Hearing Officer. The record shows that these employees were included within the clerical unit by stipulation of the parties. Through inadvertence they were omitted from the Hearing Officer's report. I have therefore included these employees within Group V.

However, the Hearing Officer's recommendation as to vote tabulation fails to recognize the legislative intent that the State Conciliation Service "shall be guided by relevant federal law and administrative practice, including but not limited to the self-determination rights accorded crafts or classes in the Labor-Management Relations Act, 1947, and the Railway Labor Act." (Sec. 3.6 (d). Cal. Stat. 1957, c. 547, p. 1609)

The Hearing Officer resolves the critical choice

between industrial and occupational bargaining in favor of the industrial system, and further gives to the industrial union the right of occupational representation. Thus, under the Hearing Officer's finding, Amalgamated would enjoy the advantage of both industrial and occupational voting.

As indicated above, if Amalgamated wins the majority of votes in Groups I, II, III and IV, it will enjoy representation rights for workers in all four categories. If it loses in the total vote computation, it still would be permitted to represent workers in any one of the four groups in which it has won a majority.

However, if the Trainmen, Machinists, Clerks, and United Transportation Service Employees lose in the total vote tabulation, they could not represent any group even though one of these unions may have achieved a majority in a particular grouping.

In terms of justice, this phase of the Hearing Officer's report cannot be accepted, since it gives to the Amalgamated a double opportunity to win bargaining representation, whereas, the destiny of the Trainmen, Machinists, Clerks, and United Transportation Service Employees is completely related to a total vote victory.

With respect to the variances referred to above which concern the Amalgamated and Clerk positions in Group III, the Hearing Officer's finding is also rejected.

These variances, which would apply only in occupational voting, could result in no final determination of representation arising in Group III and, hence, the purpose of the Act would be frustrated.

The Hearing Officer concedes that in view of the history of bargaining in the transit system and also in view of federal precedents, four "rational methods" of determining the unit question in the elections would be acceptable.

One of the solutions which the Hearing Officer concedes is "rational" is the National Labor Relations Board's Globe doctrine. The Hearing Officer provides the following explanation of the Globe formula:

> "Under the Globe doctrine the NLRB divides the employees into separate groups for voting purposes without deciding the appropriate unit whenever the arguments pointing to one comprehensive unit are evenly balanced by the arguments in favor of separate groups. If a majority of any group votes for a union seeking to represent only the craft or department, the craft or departmental unit is found appropriate. If a majority of the group vote for the industrial union, the NLRB holds that they should be part of the comprehensive unit for the purposes of collective bargaining. Thus the desires of the employees are said to prevail. See Globe Machine & Stamping Co., 3 NLRB 294 (1937)." (Hearing Officer's Proposed Decision and Order, p. 20)

As the Hearing Officer allows, there is no uniform pattern of either industrial or occupational bargaining in Los Angeles transit history. Indeed, he notes that there are 23 years of occupational bargaining to consider in one of the merged lines.

The Hearing Officer declares, "The fact remains that 1,558 of the Authority's 3,658 unionized employees have been bargaining for 23 years in occupational groups identical in two instances and roughly similar in the third case to the units requested by the Brotherhoods." (Hearing Officer's Proposed Decision and Order, p. 27)

In the Los Angeles area transit situation there are found two equal bargaining histories operating side by side over a long period of time.

By the Hearing Officer's definition of the Globe formula above cited, there is full justification for its employment since "the arguments pointing to one comprehensive unit are evenly balanced by the arguments in favor of separate groups."

The Globe formula provides for either industrial or occupational bargaining, depending upon the wishes of the employees. It visits no hardships on either the industrial or occupational concepts of representation. Moreover, the Globe doctrine meets the legislative intent which calls for respect for "relevant federal law and administrative practice, including but not limited to the self-determination rights accorded crafts or classes in the Labor-Management Relations Act, 1947, and Railway Labor Act."

I, therefore, conclude that the principles of the Globe formula as defined by the Hearing Officer (Hearing Officer's

Proposed Decision and Order, p. 20) shall apply in determining the question of representation in Groups I, II, III and IV.

The Hearing Officer has issued a specific recommendation relative to building maintenance employees. He proposes that any balloting between building service and maintenance employees be deferred until the other bargaining unit or units are established. He proposes that the State Conciliation Service should then receive and rule upon any petition to conducting an election among the building service and maintenance employees for the purpose of determining whether they wish to be added to an established bargaining unit.

The Hearing Officer's recommendation regarding building and maintenance employees is accepted.

In accord with my analysis of the record, the original briefs of the parties, the Hearing Officer's proposed decision and order, and the exceptions and supporting briefs of the parties, I herewith issue the following order:

O R D E R

I

The State Conciliation Service is hereby directed to determine the question of representation among the employees of the Los Angeles Metropolitan Transit Authority by conducting an election not less than 15 nor more than 30 days after the issuance of this order at such times and places convenient for said employees as the Service may determine.

The employees shall be eligible to vote, the ballots shall be counted and the results shall be determined in the following manner:

1. (a) In Group I there shall be eligible to vote all operators, one-man car operators, motor coach operators, trolley coach operators, conductors, motormen, ground loaders, traffiemen (including traffic loaders), fare collectors, switchmen, flagmen and schedule checkers but excluding guards and supervisors (among whom are dispatchers and division clerks, terminal foreman and assistant terminal foremen).

(b) Upon the ballot for Group I the choices shall be Amalgamated, Trainmen and "no union".

2. (a) In Group II there shall be eligible to vote -

(i) all employees in the Equipment Maintenance Department, except supervisors, watchmen, shop clerks and janitors at 6th and Main Street;

(ii) all employees in the Electrical Department (including Laborer A) except steno-clerk and supervisors (including power supervisors);

(iii) all employees (including janitors) in the Department of Ways and Structures except supervisors; and

(iv) the utilityman in Zones and Stops.

(b) Upon the ballot for Group II the choices shall be Amalgamated, Machinists and "no union".

3. (a) In Group III there shall be eligible to vote -

(i) janitors at 6th and Main Street, Pomona and San Bernardino, in the transportation offices and in the station at 6th and Main Street, and division janitors;

(ii) messengers and mailmen;

(iii) service directors, assistant service directors, passenger directors and assistant passenger directors, except the Head Service Director;

(iv) shop clerks in the Equipment Maintenance Department; and

(v) employees in the Purchasing and Stores Department excluding supervisors, material control clerks, order typists, invoice clerks, printer, vari-typist and the office clerks under the Assistant Director of Purchasing and Stores.

(b) Upon the ballot for Group III the choices shall be Amalgamated, Clerks and "no union".

4. (a) In Group IV the Red Cap Porters shall be eligible to vote.

(b) Upon the ballot for Group IV the choices shall be Amalgamated, United Transportation Service Employees and "no union".

5. (a) In Group V the following employees shall be eligible to vote -

(i) the ticket office clerk, lost article clerk, ticket stock clerk, and general clerk, and also the agents, ticket clerks, baggage clerks, chief clerk, supervising ticket clerk, and report clerk and calculator operator at Whittier, San Bernardino, Pomona and Sixth and Main Street stations;

(ii) PAX and information operators and employees in the Transportation Department - Schedule and Statistics except janitors, schedule checkers and supervisors (among whom is the Assistant Chief Operator);

(iii) the steno-typist in Stops and Zones;

(iv) division stenographers, transcript stenographers, stenographers and steno-typists, cash receivers, typist-timekeepers, cash receiver-timekeepers and information clerks at division points excluding division clerks;

(v) clerks under the Vehicle Registrar but not such registrar;

(vi) steno-clerk in the Electrical Department;

(vii) material control clerks, order typists invoice clerks, printer, vari-typist and clerks in the Purchasing and Stores Department; and

(viii) the assistant chief clerk, medical accounts clerk, medical clerk and receptionist, pension and insurance clerk, assistant insurance clerk, typist clerks, field representative, steno clerk and interviewer in the Personnel Department, clerical employees in the Accounting and Finance Department.

(b) Upon the ballot for Group V the choices shall be Clerks and "no union".

6. (a) In each of the above groupings if a union receives the majority of the votes cast, the Conciliation Service shall then issue a certification of that union as the exclusive collective bargaining agent in that grouping.

(b) If the election in any grouping is not conclusive, a run off election shall be held promptly in accordance with the rules and regulations adopted by the Department effective September 23, 1958.

II

The petitions for representation are dismissed insofar as they apply to service and maintenance personnel in the Authority's main office building without prejudice to new petitions upon resolution of the questions of representation among the other employees.

John F. Henning

John F. Henning, Director
Department of Industrial Relations

April 20, 1959

STATE OF CALIFORNIA

BEFORE THE

STATE CONCILIATION SERVICE

In the Matter of:	
LOS ANGELES METROPOLITAN TRANSIT AUTHORITY, Employer, and	
BROTHERHOOD OF RAILROAD TRAINMEN; BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, AFL-CIO;	SCS-1-R-LAMTA SCS-1-R-LAMTA
INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 94, AFL-CIO;	SCS-3-R-LAMTA
AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, AFL-CIO, Petitioners-Intervenors.	SCS-4-R-LAMTA

Appearances:

George E. Bodle, Esq. for Brotherhood of Railroad Trainmen, Brotherhood of Railway and Steamship Clerks and International Association of Machinists, District Lodge No. 94.

Bernard Cushman, Esq. for Amalgamated Association of Street, Electric Railway and Motor Coach Employees.

David P. Evans, Esq. and Roderick M. Hills, Esq. for Los Angeles Metropolitan Transit Authority.

FINDINGS, OPINION AND RECOMMENDATIONS OF THE HEARING OFFICER

This is a representation proceeding involving the operating, maintenance and clerical employees of the Los Angeles Metropolitan

Transit Authority. The case arises under Section 3.6 of the Los Angeles Metropolitan Transit Authority Act of 1957,* subsection (d) of which directs the State Conciliation Service to resolve any question of representation by determining the appropriate bargaining unit or units and conducting an election.**

The proceeding was instituted on May 29, 1958, when the Brotherhood of Railroad Trainmen, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and District Lodge No. 94 of the International Association of Machinists filed separate petitions with the State Conciliation Service each seeking certification as the collective bargaining representative of a separate group of the Authority's employees.*** On June 3, 1958, Division 1277 of the Amalgamated Association of Street, Electrical Railway and Motor Coach Employees of America filed a similar petition seeking certification as the bargaining representative of a single comprehensive group of operating and maintenance employees which would include virtually all the employees whom the Trainmen and Machinists sought to represent and also many of the employees in the unit claimed by the Clerks.

On October 7, 1958, Edward F. Park, Director of the Department of Industrial Relations, of which the State Conciliation Service is a part, issued proposed Regulations Governing Procedure under Section 3.6(d) of the Los Angeles Metropolitan Transit Authority Act of 1957. The proposed regulations became effective immediately because of the finding of an emergency. They were confirmed

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* Cal Stat. 1957, c. 547, p. 1609.

** The text of Section 3(d) follows: "If there is a question whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, such matters shall be submitted to the State Conciliation Service for disposition. The State Conciliation Service shall promptly hold a public hearing after due notice to all interested parties and shall thereupon determine the unit or units appropriate for the purposes of collective bargaining. In making such determination and in establishing rules and regulations governing petitions, the conduct of hearings and elections, the State Conciliation Service shall be guided by relevant federal law and administrative practice, including but not limited to the self-determination rights accorded crafts or classes in the Labor Management Relations Act, 1947, and the Railway Labor Act.

The State Conciliation Service shall provide for an election to determine the question of representation and certify the results to the parties. * * *"

*** For convenience these groups have been collectively denominated the Brotherhoods throughout this proceeding.

after a hearing on November 17, 1958. Amended petitions conforming to the regulations were filed on October 9 and 22, 1958. The undersigned was appointed Hearing Officer on November 3, 1958.

Pursuant to appropriate notice a hearing was held on November 10-14 and 17-19 and on December 15-17, 1958. At the start of the hearing an order was entered consolidating the cases and recognizing each petitioner as an intervenor in the cases instituted by the others. The Trainmen, Clerks and Machinists moved to exclude the Authority from participation as a party. The Hearing Officer denied the motion in view of all the circumstances and also on the ground that it was contrary to the Rules of Procedure. See Rules of Procedure, section 156.30. The Director of the Department of Industrial Relations refused to modify the Rules of Procedure.

During the hearing evidence was introduced which suggested that the United Transport Service Employees might claim to represent three of the Authority's employees. The United Transport Service Employees was thereafter notified of the hearing and given an adequate opportunity to participate therein. No appearance was entered but the organization did file a letter which is hereby made a part of the record as a statement of its position.

At the conclusion of the hearing all parties were granted an opportunity to file briefs. Because of illness the time was extended to mailing on January 12, 1959. Oral argument was waived.

Upon consideration of the pleadings, testimony and entire record I make the following --

F I N D I N G S O F F A C T

1. BACKGROUND AND PARTIES

Los Angeles Metropolitan Transit Authority was created by the California legislature to acquire and operate a mass rapid transit system in Los Angeles County. It presently operates street cars, trolley coaches and buses throughout the metropolitan area.

The southernmost and westernmost point on the system is Redlands, which is approximately 70 miles from down town Los Angeles. The system extends to Castellammare, Canoga Park and Granada Hills on the north, to San Pedro on the west and to Balboa on the south.

One component of the present system was derived from the Pacific Electric Railway. Some years ago PE furnished passenger and freight service by rail between Long Beach and Los Angeles and Los Angeles and Redlands as well as between other points in southern California. In due course PE transferred its passenger operations in and around Los Angeles to the Metropolitan Coach Lines. MCL acquired a subsidiary, Asbury Transit Lines. These corporations transferred their physical assets to the Authority on March 3, 1958.

With the passage of time progressively greater parts of the operations were transferred from rail to motor coach and bus lines.

The other component is the former properties of Los Angeles Transit Lines, which were also acquired on March 3, 1958. LATL service was confined to a considerably smaller area in central Los Angeles, and its operations have never had the aspects of railroad service which originally characterized the PE system.

Since March 3, 1958, the Authority has operated these components as a single transit system. Its officers testified that they intend to bring about further unification.

In July 1958 the Authority employed approximately 4,240 employees of whom roughly 3,658 were covered by collective bargaining agreements. The bulk of the employees are employed in the operating division which is itself divided into seven departments the operations of which are carefully synchronized with close administrative and functional liason.

The Transportation Department is concerned with the movement of passengers. Of its 2,973 employees in July 1958 2,547 were operators. All the operators and a good many of the other employees in the Transportation Department are assigned to 14 divisions, seven of which came from LATL and seven from MCL. Divisional organization varies according to its historical origin. The personnel of a typical LATL division would be made up of the superintendent, the assistant superintendent, division clerks, a stenographer, operators and a janitor. The MCL divisions use slightly different titles and employ somewhat different classifications such as cash receivers, typist-timekeepers and cash receiver-timekeepers, but this table of organization is being gradually remodeled to conform to the arrangements prevailing on the former LATL properties.

The Equipment Maintenance Department employs 806 employees covering a wide variety of classifications including clerks, mailmen, mechanics, car cleaners, laborers, janitors and specialized tradesmen such as welders, sheet metal workers and electricians. The Equipment Maintenance Department, as its name implies, is concerned with the maintenance of street cars, trolley coaches and busses. Part of the work is performed at the 14 divisions. Other types of maintenance, including unit repair work, are performed at the Macy Street and South Park shops.

The Purchase and Stores Department acquires the supplies needed in the Authority's operations and then stores, inventories and distributes them. The main stores are located at the South Park and Macy Street shops but there are storekeepers and clerks at a number of the divisions.

The Way and Structures Department maintains the truck and roadway for street cars and trolley coaches.

The Electrical Department provides the power needed for trolley operations and maintains the overhead lines. The Authority does not generate its own power.

In addition there are such smaller divisions as the Department of Traffic and Planning, the Personnel Department and the Special Agents.

Brotherhood of Railroad Trainmen is a labor organization which presently represents the operators on the portions of the system which came from MCL. Since the question was bruited, it should be said that the record shows that Trainmen admits employees to membership without discrimination because of race, creed, color or national origin.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees is a labor organization which presently represents another group of employees on the portions of the system coming from MCL.

International Association of Machinists, District Lodge No. 94 is a labor organization which presently represents maintenance employees of the Authority on portions of the system formerly belonging to MCL.

Amalgamated Association of Street, Electrical Railway and Motor Coach Employees of America is a labor organization which currently represents operating and maintenance employees of the Authority on portions of the system coming from LATL.

II. THE QUESTION OF REPRESENTATION

Amalgamated, Trainmen, Clerks and Machinists have filed separate petitions for investigation and certification as representatives of the Authority's employees in proposed bargaining units, thereby alleging that this is an appropriate time for determining the question or questions of representation. The State Conciliation Service (hereinafter called "the Service") has administratively determined that each of these four organizations represents a substantial number of employees in the unit which it claims to represent.

United Transport Service Employees apparently takes the position that to include the red cap porters, whom it currently claims to represent, in a more comprehensive unit or to permit another labor organization affiliated with the American Federation of Labor and Congress of Industrial Organization to become their representative would violate the no-raiding agreement in the federation's constitution. Amalgamated's claim, however, arises out of the merger of MCL and LATL properties, and there is nothing to suggest that the no-raiding agreement covers the situation when a corporate or industrial merger requires new bargaining units. The duty of interpreting the

no-raiding agreement is vested in the umpire appointed thereunder. If United Transport Service Employees believes that Amalgamated or Clerks is guilty of a violation, the case should be taken to the umpire. In the absence of a determination by the umpire or a prima facie case which is being actively prosecuted before the umpire, the Service should not be delayed by the bare allegation of a violation which appears to be highly dubious.

Although the parties are agreed that there is a present question of representation, the State Conciliation Service has an independent obligation to consider the issue to the extent necessary to safeguard the public interest. The Authority assumed the collective agreements executed by MCL and LATL as required by section 3(e) of the Act. The Machinists' contract will not terminate by its terms until November 30, 1959. The Trainmen's contract provides for termination no earlier than November 30, 1959. The Clerks' contract would run until December 31, 1959. The Amalgamated contract can be terminated May 31, 1959.

Under a familiar NLRB rule these contracts, being for two years in duration, would be a bar to an election upon the constituent MCL and LATL properties. Possibly the merger removes the bar although it is doubtful whether the integration of the two systems has reached the point where it can be called a new operation within the recognized exception to the rule. Cf. Greyhound Garage of Jacksonville, Inc., 95 NLRB 902 (1951), Michigan -- California Lumber Co., 96 NLRB 1379 (1951). It is also arguable that the contract bar rule does not apply under the Los Angeles Metropolitan Transit Authority Act. Section 3(d) makes an existing contract a bar to a new representation proceeding for as much as two years if the contracting union has been certified. The failure to make preëxisting contracts a bar may well have resulted from the realization that the existing pattern of representation could not wisely be continued if the MCL and LATL properties were to be operated as a unified system.

The decisive circumstance in my judgment, however, is the urgent need for a prompt designation of the labor union or labor unions which will act as bargaining representatives in negotiating the terms and conditions of employment to take effect after the existing contracts expire. Any new bargaining unit or units will extend horizontally to employees on all parts of the system regardless of the vertical boundaries that may be drawn in terms of craft, class or classification (see p. 7 below). There are marked differences between the MCL and LATL contracts. Working out these differences so that the wages, hours and conditions of employment for several classifications are uniform on all parts of the system regardless of their prior ownership will be a task which requires skill, patience, forbearance, a sense of responsibility to the public and also careful preparation. Even if it be assumed for the purposes of argument that the existing contracts will survive a certification, it is important

to resolve the question of representation promptly so that there will be ample opportunity to work on a new contract before the existing agreements expire.

I therefore find that there is a present question of representation among the employees upon the Los Angeles Metropolitan Transit System.

III. THE APPROPRIATE BARGAINING UNIT

The contested issues relate to the composition of the bargaining unit or units in which an election should be held by the Service. All parties agree that the existing demarcation between former LATL and MCL employees should be abolished and that the unit or units established should obliterate lines based upon geography, divisional organization or former ownership. This principle is essential to effective unification in accordance with the Los Angeles Metropolitan Transit Authority Act. It apparently conforms to the policy of the National Labor Relations Board. See Safeway Trails, Inc., 120 NLRB No. 13 (1958).

The major question is whether there should be (a) one comprehensive unit encompassing substantially all the Authority's employees, except supervisors, guards, watchmen and office clericals, and a second unit of office clericals or (b) three units conforming to the occupational lines established on the PE and MCL properties -- a unit of operators, a unit of maintenance employees, and a heterogeneous unit of clerks, agents, storekeepers, express and mail handlers, janitors etc.

There are also numerous subordinate controversies concerning the exact composition of the three occupational units (if they are established) and the status of alleged supervisors. Since these questions do not take manageable form until the major issue is decided, I shall consider the major issue first and then take up the minor issues.

A. Industrial vs. Occupational Units

Upon the major issues the parties take the following positions:

Amalgamated's amended petition alleges that the appropriate bargaining unit is composed of all operating and maintenance and other non-operating employees, excluding general office and supervisory employees. The proposed unit comprehends substantially all the employees of the Authority except office clericals, supervisors and guards within the meaning of the National Labor Relations Act.

Trainmen's amended petition avers that the appropriate unit is made up of all conductors, motormen, one-man car operators, motor coach operators, trolley coach operators, ground loaders, trafficmen, including traffic loaders, fare collectors and switchmen but excluding supervisors and guards. After the hearing Trainmen also claimed that flagmen who protect rail crossings should be included within the unit.

Machinists seeks a unit made up of all maintenance employees, excluding clerical and office employees, storekeepers and stores employees, division and road janitors, bus operators and other operating employees, chainmen, dispatch and instrumentmen, supervisors, guards and watchmen. After the hearing Machinists modified its position by claiming road and terminal janitors, utility men in the stops and zone department and radio technicians. It also offered to include such other classifications as the Hearing Officer might determine to be within a maintenance unit.

Clerks seeks to establish a unit made up of all clerical, office, station and storehouse employees including agents and assistant agents, baggage, express and mail handlers, parcel room employees, janitors, storekeepers and store employees, service and passenger directors, cash receivers, division clerks, radio dispatchers, traffic checkers, switchboard operators, information clerks, and analogous positions but excluding supervisors, guards and watchmen. After the hearing Clerks conceded that road and terminal janitors should be included in the maintenance unit.

United has not clearly stated a position with respect to the bargaining unit. Its interests would seem to dictate a claim that station porters be granted a separate unit.

The Authority's position is essentially similar to that of Amalgamated. It seeks an over-all unit encompassing both operating and maintenance personnel, including some but not all of the employees claimed by Clerks.

In resolving this issue the Service must be guided by relevant federal law and administrative practice. Section 3(d) of the Los Angeles Metropolitan Transit Authority Act provides --

> In making such determinations and in establishing rules and regulations governing petitions, the conduct of hearings and elections, the State Conciliation Service shall be guided by relevant federal law and administrative practice, including but not limited to the self-determination rights accorded crafts and classes in the Labor Management Relations Act, 1947, and the Railway Labor Act. * * *

The relevant federal law is made up of the Labor Management Relations Act, 1947, 61 Stat. 136 (1947), 29 U.S.C. 150 et seq. (1952),

which is administered by the National Labor Relations Board, the Railway Labor Act, 45 U.S.C. 1 et. seq. (1952), which is administered in all material aspects by the National Mediation Board, and the rules and decisions which have been issued under these statutes.

The LMRA and the practices and decisions of the NLRB are frequently inconsistent with RLA and the practices and decisions of the NMB. For example, the RLA has been consistently interpreted by the NMB to require granting each craft or class separate representation as a bargaining unit. E.g. Chicago, North Shore and Milwaukee R. Co., NMB Determinations of Craft or Class 1934-1948 215 (1942). Section 9(b)(2) of the NLRA, however, allows the NLRB discretion, viz --

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof: Provided, that the Board shall not . . . (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation.

Current NLRB policy is favorable to self-determination elections but the policy of permitting severance under Section 9(b)(2) is limited to true crafts and traditional departmental units. American Potash & Chemical Co, 107 NLRB 1418 (1954). The doctrine is also subject to numerous exceptions one of which applies to public utilities and may therefore extend to the local transit industry. See p. 23 infra.

The rules regarding supervisors furnish a second illustration of the divergence between RLA and NLRA. Under the RLA supervisory employees such as station masters and train dispatchers may be grouped in units for the purposes of collective bargaining while the NLRA excludes supervisors from its coverage (section 2(3) and (11) and also provides that no employer subject to the Act shall be compelled by any law, national or local, to treat supervisors as employees for the purposes of collective bargaining (section 14 (a).

Where there is divergence the Service cannot follow both the NLRA and the RLA. The words "relevant" and "guided" suggest

that the Service should follow the principles which it deems most applicable in case of conflict, making such adaptations as the local situation requires. Section 3(d) imposes no obligation to follow the NMB practice of allowing each class or classification a separate unit.

If there were ambiguity on this point, it would be removed by consideration of the changes made in the bill during the course of enactment -- evidence which the California decisions allow to be considered in aid of the construction of a statute but not to change the plain meaning of its words. Ex Parte Haines, 195 Cal. 605, 234 Pac, 883 (1925). Assembly Bill No. 1104 would have empowered the Authority to contract with labor organizations "representing a majority of employees" but no method was provided for defining the bargaining unit or determining which among rival unions was the majority's choice (Amalg. Exh. 4-A). After amendment in the Assembly March 11, 1957 the bill provided (Amalg. Exh. 4-B) --

> If there is a question whether a labor organization represents a majority of the employees or whether the proposed unit is or is not appropriate, such matters shall be submitted to the State Conciliation Service for disposition. The State Conciliation Service . . . may, by decision, establish the boundaries of any collective bargaining unit. . .

The bill appears to have gone to the Senate in this form. The Senate adopted an amendment which changed the provisions quoted above by substituting "shall" for "may" in the second sentence and then added a third sentence as follows (Amalg. Exh. 4-D) --

> No craft, class, or classification of employees for which a labor organization has previously bargained with the system or any part of it prior to or after its acquisition by the authority shall be deemed inappropriate unless a majority of the employees in the proposed craft, class or classification shall vote against separate representation.

In conference a compromise was adopted which now appears in section 3(d). Obviously the Senate bill would have been enacted if the legislature intended to command adherence to the RLA. The evident purpose of the compromise language was to give the Service an area of discretion -- a power of choice -- so that it may follow the course best suited to resolving questions of representation on the Los Angeles Metropolitan System in accordance with the provisions and policies of the Los Angeles Metropolitan Transit Authority Act. This interpretation is a matter of necessity where the teachings of the federal laws are contradictory or divergent. It is consistent with the recognized principle that the establishment of bargaining

units is largely a discretionary matter involving specialized knowledge and experience. Marshall Field & Co. v. NLRB, 135 F. 2d 391 (7th Cir. 1943). It is implicit in the instruction that the State Conciliation Service --

shall be guided by relevant federal law

for the word "guided" means something less rigid than "bound by" or even "controlled."

This is not to say that the State Conciliation Service or its Hearing Officer is free to roam about at will. No determination should be made which is at variance with the mandate of both federal statutes or the long settled policy of both agencies unless justified by clearly defined and compelling necessity, but Section 3(d) does not require the State Conciliation Service to reason deductively from NMB and NLRB precedents in an effort to make the exact ruling that one of the agencies would have made if the case had been before it, nor is the Service bound by stare decisis. In all instances the decisions and policies of the federal agencies must be given great weight. The importance of the rule, the length of time for which it has been established, its general acceptance or controversiality, and similar considerations determine its exact significance. Where the federal rules are divergent, one or the other should be followed unless the evidence produces a conviction that an intermediate position or some other modification is better suited to the local situation. The Service has the responsibility for making its own decision guided by federal law and administrative practice.

The NLRA and NLRB decisions furnish better guidance for the disposition of the unit question than the RLA and the decisions of the NMB , although the latter may not be disregarded.* Metropolitan transit systems are subject to the RLA in only one or two exceptional situations. Many of them are actually or potentially subject to the NLRA. The RLA was drafted and is administered with attention concentrated on the peculiar customs, conditions and needs of the railroad industry. The link between the Los Angeles Metropolitan Transit System and the railway world is chiefly historical. The portions of the system which come from Metropolitan Coach Lines were originally operated by Pacific Electric Railway

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*There is no merit to the Brotherhood's argument that the RLA is more applicable to the Authority's employees than the NLRA because the RLA applies to public corporations while the NLRA does not. The problem here is to find the standards which are most helpful in determining the bargaining unit. The public or private character of the corporate ownership is irrelevant although the dependence of the public upon the Authority for mass transportation is a material fact.

which was a subsidiary of Southern Pacific Company. The distances covered dictated an interurban railroad type of operation under the technology of the years prior to the development of efficient motor buses and highway systems. The company and employees were subject to the RLA. The ownership, the type of operation, the applicable law and the association with freight service and other railroad operations made it natural that the Pacific Electric employees should organize along the lines laid down by the RLA and the standard railway labor organizations. The links have now been broken. The transfer of ownership to MCL removed the employees from the RLA. Technological changes have removed all semblance of a railroad operation; one of the last trains was operated during the hearings in this proceeding.

Although the evidence does not show what future technology holds, there is every reason to believe that the Los Angeles Metropolitan Transit System will continue to move away from the railway world and closer to other metropolitan transit systems. The distances between the outermost points on the system are no less than before but the tremendous growth of the Los Angeles area is bound to have given the system more and more of the characteristics of metropolitan transit as distinguished from an intercity rail or bus line. Among the maintenance employees the Machinists have even pushed out of the picture the craft unions typical of railway shops. The unit which they seek would not be granted under the RLA. Even the Trainmen have absorbed employees which the NMB might exclude from their bargaining unit. With these changes the employees' association with railroad employees would naturally tend to diminish.

Since their sale by PE the MCL portions of the system have been under the NLRA. During this five year period the Machinists and Clerks availed themselves of NLRB remedies in efforts to change the earlier units.

The portions of the Los Angeles Metropolitan Transit System which came from Los Angeles Transit Lines have never had any association with the railway world. The NLRA was applicable until acquisition by a public authority brought the system under the exemption provided in NLRA Section 2(2) for "any State or political subdivision." LATL employed more employees than MCL. The Authority's organization and method of operation ressembles the practices of LATL more closely than those of MCL. If history were the determining factor, the history of the larger LATL unit should be controlling.

The decisive factor, however, is that given the present nature of the Authority's operations and the present character of its employees principles which the NLRB has developed for determining questions of representation of employees on public transit systems are more likely to lead to a wise and equitable decision than the criteria developed under the RLA because the nature of transit operations and the problems of transit employees more closely ressemble those of the Authority. Even the Brotherhoods concede that the

NMB decisions are "neither pertinent or helpful" with respect to the maintenance employees.

The paramount objective in establishing a bargaining unit or units is to achieve the grouping of employees in which collective bargaining will work best in the sense of promoting the interests of the employees, the business and the public. Usually collective bargaining works best where the units established by governmental authority conform to the natural grouping likely to develop over the long run in the absence of a government determination for such a unit or units has greater stability than any grouping imposed upon the employees by external power. The natural grouping also reflects the divisions or community of interest among employees. This formulation does not overlook the interests of the employer or the public. Both are benefited by collective negotiations leading, with a minimum of strikes and lockouts, to agreements commanding the maximum degree of mutual acceptance, and this mutual acceptance is most likely to result from bargaining in the most natural groupings. In dealing with a public service industry, however, it is appropriate to place somewhat greater emphasis upon achieving the structure of bargaining most conducive to efficiency and continuity of operations. The NLRB has stressed this factor. See e.g. Public Service Co. of Indiana, Inc., 111 NLRB 618, 621 (1955) It is implicit in the declared purposes of the Los Angeles Metropolitan Transit Authority Act.

What is the most effective grouping of the employees of the Los Angeles transit system is a question of fact and degree. It can be best examined under several conventional headings.

1. Skill and Related Functional Indicia of Cohesiveness

Any special skills and duties or other unique characteristics of a group of employees are significant in determining the appropriate unit or units because such characteristics may make a group cohesive and set it apart from others. They may also create special problems which may call for bargaining in a separate unit. The question is one of degree. If characteristics are sufficiently distinctive, this factor alone justifies splitting off a craft or departmental unit. If they are somewhat less distinctive, one must appraise the differences in degree and weigh that judgment with other factors.

(a) Operators. Trainmen pitch their claim for a separate unit of operators chiefly upon the ground that the operators share a community of interest which marks them off from other employees. The evidence supporting this contention may be summarized as follows:

Qualifications. -- There are 2,500 operators among the Authority's 3,558 employees covered by collective bargaining agreements. They operate its transportation equipment. An operator must be at least five feet four inches tall but not more than

six feet four inches. He must have good hearing without a hearing aid. He may not be color blind and must have 20-40 vision or better. High blood pressure is a disqualification. The Authority prefers to hire men between 25 and 40 years old. The practice in giving physical examinations is not uniform on the MCL and LATL divisions. The LATL practice was to require physical examination every two years. Thus the nature of the operator's duties imposes a few special requirements not shared by all employees but which are not uncommon.

Training and Licenses. -- An operator is required to have a class B chauffeur's license for which he is examined by the State of California. He undergoes a 30 day training course at the beginning of his employment in which he acquires knowledge concerning the operation of his equipment, his route or routes, and the handling of fares and passengers. Most of these duties are covered by a special book of rules.

Working Conditions. -- Manifestly the operation of street cars, motor coaches and buses involves work and presents problems quite unlike those of clerical, stores, maintenance or power division employees. The handling of money and forms is also distinct. The operators are uniformed and deal with the public. They travel about the city subject only to oversight by a roving supervisor or undercover agent.

Each operator is attached to one of the fourteen divisions. At a typical division the operators share a common room containing lockers and a few recreational devices, where they check in for work, receive assignments and equipment and later turn in their cash boxes and records. The Authority also maintains storage and maintenance facilities at most division points but the operators' room is set apart usually in a separate building. Under the most typical arrangement the operators' room adjoins the office of the Division Superintendent and the room or rooms occupied by the division clerks, cash receivers, and clerical employees. They are separated by bullet proof walls and windows and the door is kept locked to protect the cash.

The operators have a few special problems in collective bargaining. Since more service must be supplied at rush hours than other times of day, some men are not employed for a continuous eight hour shift and the scheduling and number of split shifts is an important bargaining issue. There is also difficulty in giving every operator two consecutive days off out of seven -- perhaps it is impracticable. Unevenness in demand for service and also vacancies due to absences require the creation of "extra boards" in each division, made up of men subject to assignment to any run on which they are needed. Some men are paid "shine time" simply to wait in the operators room subject to emergency assignments. Runs are not equally desirable.

Other employees do not face these conditions. The conditions not only give operators a sense of apartness but they are reflected in collective bargaining agreements.

These special conditions and problems are a strong argument for a separate "occupational" unit of operators but there is danger of exaggerating their consequences*. Most of the problems which operators face they share with other employees. They receive an hourly rate of pay. Problems of job security, unemployment, vacations, retirement, sickness and accidents, union status and a fair grievance procedure -- all these problems and others are common to the whole system. The choice of stewards from different departments is a characteristic of many if not all industrial units. The distinctions which the Amalgamated contract makes between monthly and hourly rated employees are scarcely attributable to differences between the problems of operators and other employees.

The daily contacts between the maintenance crews and operators are trivial. Occasionally a bus breaks down on the road and a mechanic will be sent out to make repairs. When a bus is brought to the division in bad working order, the operator usually makes a written notation on a form but once in a while it is helpful for the mechanic and operator to discuss the trouble. There are more frequent and more significant contacts between the operators and the division clerks whose duties are described below (see pp. 31-35 below). The division clerks complete the sheets showing the daily assignments. They assign the "shine men" and extra board. They are in the same department and chain of command. The Brotherhoods contend that the division clerks are not supervisors but they would also exclude them from the bargaining unit of operators on the ground that the division clerks perform different duties. Thus the proposed unit would separate employees who work in the same place, are organized in the same department and have regular working contacts.

There is very little daily or even weekly interchange of employees between operator and other classifications. The interchange is confined to occasions on which a maintenance or stores employee earns extra money by driving a bus on one or two odd trips not constituting part of a regular assignment. Over the long run, however, a considerable number of employees transfer from positions in the maintenance department to become operators and operators shift to more desirable jobs. The interchange is most

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*The units sought by the Brotherhoods in these proceedings are not craft units becausenone of them are coextensive with craft lines. They are not departmental because their boundaries are not coextensive with the departmental lines established by the Authority. See also pp. 26 below. I shall call them " occupational " for lack of better terminology.

significant in the case of division clerks. On LATL all the division clerks have served as operators; they retain their seniority as operators. There are repeated transfers between the two jobs. At the time of the hearing there were nineteen employees working part-time as extra division clerks and part time as operators. This is the normal method of achieving promotion. The situation is similar on the former MCL divisions except that the interchanges have been less frequent and there are division foremen without operating experience. Authority's officials testified that the LATL practice would be extended throughout the system.

Operators also transfer to other departments. Of the 44 stores employees, 12 had been operators, 16 had been engaged in the maintenance of equipment and 16 were employed directly. A few employees in the electrical and equipment maintenance departments had worked as operators. Although figures are not available, the evidence also shows that employees in the maintenance department have sometimes become operators.

In summary, I find that operators have distinct duties for which a few definite but common qualifications are required and which give rise to three or four special problems affecting wages, hours and working conditions. The vast majority of operators begin and end their employment with the Authority as operators, but there are occasional opportunities to transfer into and out of the classification. The transfers are most important in the case of division clerks.

(b) Maintenance. The record contains no evidence tending to show that the employees in the maintenance department for which Machinists seek a separate unit have a distinct and common set of skills or problems which would tend to make them a cohesive group set apart from other employees of the Authority. The proposed unit includes members of distinct crafts such as machinists, electricians, carpenters and sheet metal workers. It includes unskilled help such as laborers and janitors. It includes men who work outside on trolley tracks and power lines as well as men who work in the shop. It even includes men who are hardly engaged in maintenance in any sense of the term such as power substation operators.

(c) "Clerks". The Clerks also seek the establishment of a heterogeneous unit having no common skills or problems such as would give all its members a community of interest and set them apart from other employees. The proposed unit would put messengers, janitors and stores employees in the maintenance department in the same unit as the medical accounts clerk and the pension and insurance clerks in the personnel office. Their geographical location, their interests, their training, the character of their work and their experience and associations are all likely to be different.

2. Technological and managerial organization.

The Authority argues that the integrated nature of its business demonstrates the appropriateness of a single bargaining unit. Everything done is aimed towards providing public transportation. The work of the equipment maintenance and ways and structures departments is tied to the demands on the operating division. Such coordination is characteristic of modern industry. There is nothing in the technology of the transit industry which makes it imperative to have a single bargaining unit of all the employees. Occupational and departmental groups have been severed in industries whose operations were more closely integrated.

Little weight is due the argument that flexibility of operations requires the establishment of a single bargaining unit. Although Cone Bass, General Manager of the Authority, testified that "the single unit would lend itself to more flexibility," he confined his enumeration of problems to such examples as the interchange of janitors and mailmen and a possible difficulty in recruiting division clerks from the ranks of operators if they were in separate units. The seriousness of the latter problem can be judged by the Authority's claim that division clerks should be excluded from any bargaining unit. The only fair inference is that the operating problems resulting from three separate units would be neither numerous nor important nor difficult of solution.

There was also testimony that the Authority's operations may undergo major technological changes which would require retraining and reassignment of personnel on a large scale, and it is contended that the transition would be more easily accomplished if all the operating and maintenance employees were in a single unit. Technological changes will no doubt occur but their character, speed and affect upon operations and personnel are entirely speculative. Consequently no great weight can be assigned to this factor.

The occupational units sought by the Brotherhoods do not conform to the departmental lines established by the Authority for purposes of management and supervision. Labor policies are determined on a company-wide level. The operators are all in the transportation division but the division also includes numerous non-supervisory classifications which the Trainmen do not seek to represent; for example schedule makers and schedule checkers, division janitors, division clerks and cash receivers. The unit sought by the Clerks cuts across lines established by the Authority's table of organization. The unit sought by the Machinists also includes jobs in different departments. None of them are departmental units.

3. History of Collective Bargaining

The history of collective bargaining both among the employees of the respondent and in other parts of the industry is significant in a proceeding to determine the appropriate bargaining

unit. It indicates the most natural alignment of employees. It shows whether the problems of particular employees require special treatment in a separate unit or can be solved within the confines of an industrial unit. It tests the coherence and apartness of groups and helps to appraise the weight of their claims to special problems resulting from distinctive skills or working conditions. It also throws light on the significance of an employer's claim of integration in processes and management.

The history of collective bargaining on the properties now composing the Los Angeles transit system reveals that bargaining has occurred in the kind of industrial unit sought by Amalgamated and the Authority and also in the occupational units claimed by the Brotherhoods.

On the portions of the system coming from MCL and Asbury the Trainmen and Clerks have represented employees for more than twenty years in occupational groupings generally similar to the units requested today. The unit requested by Machinists was divided into several crafts or classifications each of which was represented by a craft union, but the unions were affiliated in a system federation and jointly negotiated a single contract for the entire group.

On the LATL portions of the system union organization developed along industrial lines. Since 1941 Amalgamated has represented both the production and maintenance employees in the comprehensive type of unit claimed by its petition.

In appraising the bargaining history it is significant to recall that the MCL operation was carried on by Pacific Electric when the employees initially organized. Their associations, their occupations and their problems were more closely related to the railroad industry than they are today. Although the successful representation of employees since 1953 prevents drawing a firm conclusion or putting much reliance upon the hesitant judgment, the course of events suggests that the historical association which has now been broken may have had far more influence on the development of MCL bargaining units than anything in the nature of the industry or the skills, problems and interests of the employees.

4. Collective Bargaining in the Transit Industry

Although such terms as "transit industry" and "local transit" have sometimes been given exact definitions for regulatory purposes where a rule is required, their precise boundaries have no special significance in appraising collective bargaining experience. Whether we think of rail or motor bus operations, public transportation systems cover a wide range of types, but each variation is imperceptible as one moves gradually from an obvious line haul to intercity and interurban rapid transit, then to a metropolitan transit system

with lines reaching into suburbs and finally to a local transit system confined to a single community. In examining the bargaining units in the mass transportation industry in other areas the persuasive comparisons are to the systems most like the Los Angeles transit system. Apart from size its essential characteristics are these: (i) It is confined to a single metropolitan area where the buildings are usually contiguous but it nevertheless encompasses a number of distinct communities, some of which have a measure of political autonomy. (ii) Some of the runs are long but so far as the evidence shows, none is so long that the operator and his equipment must stay away overnight. (iii) There is little or no rail equipment except trolleys. (iv) The system exists for rapid mass transportation and is virtually a monopoly. (v) There are many runs paralleling each other within a few blocks.

The evidence shows that the bargaining units are predominantly company or system-wide basis in the portions of the transportation industry which most closely ressemble the Los Angeles system. This is the existing practice on the dominant metropolitan transit systems in New York, Boston, Philadelphia, San Francisco, Oakland, Atlanta, Baltimore, Cincinnati, Cleveland, Des Moines, Indianapolis, Kansas City, Buffalo, and St. Paul-Minneapolis. The little specialist groups which have sometimes been severed are not comparable to the units sought by the Brotherhoods. The only major city in which one of the Brotherhoods claims contracts is Chicago where Machinists represent a craft unit of automobile mechanics, helpers and apprentices. In local transportation in smaller cities there are a considerable number of units made up exclusively of operating employees and also a substantial number made up of various groups of maintenance employees. In San Diego the operating and maintenance employees are divided. The evidence shows, however, that there are many more instances of comprehensive units.

Upon the evidence in this record I find that although there has been successful bargaining in occupational groups among employees working on somewhat comparable systems, an industrial unit encompassing all or virtually all the non-clerical employees is the overwhelmingly predominant unit in both the local and metropolitan transit industry.

5. Analysis and Federal Precedents

Upon the foregoing evidence only the operators have a strong claim to separate representation. If they are entitled to a separate unit, then perhaps history would support a determination allowing separate balloting among the groups claimed by Machinists and Clerks. If the claim for a separate unit of operators should be denied, the weaker claims should also be rejected.

Four rational methods of handling the unit question and ensuing elections can be devised.

(1) The operators might be severed upon the ground that their interests are so distinct from those of other employees as to require a separate unit regardless of the employees' wishes. In the present case this is only a theoretical possibility. No one contends that the operators should be forced into a separate unit.

(2) A comprehensive unit of operating and maintenance employees might be established upon the ground that an integrated unit is so plainly the only appropriate unit that the employees' wishes should not be considered. There is ample precedent for making this kind of firm determination in advance of the election. National Tube Co., 76 NLRB 1199 (1948); Philco Corp., 110 NLRB 184 (1954); Radiomarine Corp. of America, 111 NLRB 151 (1955). If this were done, the ballot should permit a choice between Amalgamated, Trainmen and Machinists jointly and "no union."

(3) The NLRB's Globe doctrine might be followed. Under the Globe doctrine the NLRB divides the employees into separate groups for voting purposes without deciding the appropriate unit whenever the arguments pointing to one comprehensive unit are evenly balanced by the arguments in favor of separate groups. If a majority of any group votes for a union seeking to represent only the craft or department, the craft or departmental unit is found appropriate. If a majority of the group vote for the industrial union, the NLRB holds that they should be part of the comprehensive unit for the purposes of collective bargaining. Thus the desires of the employees are said to prevail. See Globe Machine & Stamping Co., 3 NLRB 294 (1937).

The Brotherhoods rely most heavily upon the Globe doctrine. They would have the employees divided into three groups along the lines of the units represented by the Trainmen, Machinists and Clerks on the MCL properties. If a majority of each group voted for Amalgamated, the Service would then establish a single industrial unit upon the ground that the employees had manifested a desire for the inclusive unit by voting for an industrial union. If a majority of the operators voted for Trainmen, a separate unit of operators would be established upon the ground that the vote showed a desire for an occupational unit. The same rule would be applied to the other groups. If the Globe doctrine were followed, the groups might be constituted in the manner proposed by the Brotherhoods but other combinations are also possible. The Authority, for example, would vote the stores employees along with mechanics while the Brotherhoods argue that they should vote with the clerks.

(4) The essence of the Globe doctrine is that a special group obtains a separate unit whenever a majority of the employees in the special group desire it. It is the desire of a majority of the employees in the separate unit which prevails -- not the desire of a majority of all the employees. This method of voting is indispensable if the special group brings itself within the crafts or

or classes entitled to self-determination under the NLRA. If none of the groups is entitled to self-determination but the wishes of a majority of all the employees were thought material, they could be ascertained by conducting elections within each of the proposed groups and combining them into totals. If the lines proposed by the Brotherhoods were followed, Amalgamated would appear upon the ballot in all three groups. Trainmen would appear upon the operators' ballot, Machinists upon the maintenance ballot and Clerks upon the third. If Amalgamated secured a majority of all votes cast, a single comprehensive unit would be established upon the ground that a majority of all the employees desired to bargain in a separate unit, even though Amalgamated ran behind in one of the three groups. If the combined votes for Trainmen, Machinists and Clerks were a majority of all the valid ballots cast, the occupational units would be established and the winner in each unit would be certified upon the ground that a majority of the employees desired to bargain in occupational units.

The fourth method has no precedent probably because the group seeking severance is usually a small fraction whose votes would be swallowed up when counted with the ballots in the industrial unit. The present case is different. The group with the best claim to severance includes 2,547 operators out of 3,658 employees covered by collective bargaining agreements. The operators would have predominant influence even in an over-all vote.

The Brotherhoods' argument in favor of the third solution relies for precedent chiefly upon cases involving bus lines in which the NLRB conducted self-determination elections among the drivers. Units of operators have been approved at the request of Amalgamated where the employer sought a broader unit. Richmond Greyhound Lines, Inc., 52 NLRB 1532 (1943); Richmond Greyhound Lines, Inc., 65 NLRB 234 (1946); City Transportation Co., 80 NLRB 270 (1948); Central Swallow Coach Lines, Inc., 82 NLRB 487 (1949); Union Bus Lines, Inc., 85 NLRB 107 (1949). Maintenance employees have been allowed self-determination elections when Machinists sought their severance from a recently established company-wide unit, Auto Interurban Co., 73 NLRB 214 (1947); when Amalgamated sought to add them to a unit of bus drivers, Central Greyhound Lines, Inc., 55 NLRB 504 (1944); and when the employer objected to including the drivers and operators in a single unit, Illini Coach Co., 72 NLRB 408 (1947). When the Trainmen sought a drivers' unit and Amalgamated requested a comprehensive unit, the Board directed self-representation elections regardless of whether there had been prior bargaining in the smaller units. Maine Central Transp. Co., 80 NLRB 281 (1948); Tennessee Coach Co., 88 NLRB 253 (1950). Apart from a few early cases* the Board has denied self-representation elections

*Blue Ribbon Lines, 43 NLRB 381 (1942); Lincoln Transit Co., 47 NLRB 1325 (1943); Wentworth Bus Lines, Inc., 51 NLRB 1345 (1943).

among the drivers of intercity bus companies only when there was a long history of collective bargaining in a larger unit, Mt. Hood Stages, Inc., 91 NLRB 559 (1950); Pennsylvania Greyhound Lines, Inc., 107 NLRB 1621 (1954 or frequent interchange between drivers and mechanics, Amarillo Bus Co., 78 NLRB 1103 (1948).

By a curious coincidence Safeway Trails, Inc. 120 NLRB no. 13 (1958) raised among intercity bus line employees the very same question that the instant case presents upon a metropolitan transit system. Safeway Trails, Inc. operated buses between Washington, D.C. and New York and Atlantic City. In addition to drivers it employed maintenance and terminal employees. Quaker City Lines operated buses between Philadelphia and New York and Atlantic City which also employed drivers and maintenance and terminal employees. The employees of Safeway Trails, Inc. were organized with the BRT representing the operators, the maintenance employees were represented by the Machinists and Teamsters, and the remaining employees were unrepresented. The drivers, maintenance employees and terminal employees of Quaker City Lines were represented by Amalgamated. Later the two bus lines were merged. Amalgamated filed a petition seeking the establishment of a comprehensive unit. BRT wished a separate unit for the drivers. After ruling that the merger had resulted in sufficient integration of the separate operations to make a system-wide unit or units essential, the Board held that the drivers had sufficiently separate interests to permit them to constitute a separate unit if they so desired.

> "The Petitioner's alternative request would include all drivers, maintenance, and terminal employees of the merged operations on a system-wide basis. The Board has often found such units appropriate, and accordingly, these employees may constitute an appropriate unit herein. However, the Board has also found in the past that drivers have sufficient interests apart from maintenance and terminal employees to permit them to constitute a separate unit, and the record contains no evidence to warrant a different result in this case where BRT seeks to represent such a unit . * * *"

Two major factors distinguish these cases. One is the greater strength of the factors justifying separate units. Bus drivers are set apart from maintenance and terminal employees not only by the conditions affecting transit operators but in addition by the peculiar mileage basis of payment and the necessity for overnight travel. Also the operations of sizeable bus lines scatter the employees so widely as to detract from the coherence of a company-wide unit. Metropolitan transit systems are not affected by these conditions.

The second distinguishing factor is that bus lines do not fall in the special category of public utilities along with gas companies, telephone companies and electric light and power companies

for which the NLRB has held system-wide units to be the most appropriate. Public Service Co. of Indiana, 111 NLRB 619, 620-21 (1955); Potomac Electric Power Co. 107 NLRB 886 (1954); Southern Colorado Power Co., 104 NLRB 926 (1953); Lynn Gas & Elec. Co., 78 NLRB 3 (1948). The opinions frequently mention the integrated character of the business but it is plain that the NLRB considers this characteristic significant not merely because it gives the employees a community of interest but because the public depends upon uninterrupted operation of every department for the vital services which the company renders. The Brotherhoods' effort to distinguish these cases upon the ground that they are concerned with system-wide units only in the geographical sense does not accord with the decisions. The Board has approved system-wide occupational units and refused to sever a geographical subdivision (e.g. Southwestern Bell Tel. Co. 108 NLRB 1106 (1954) but it has also held system-wide units preferable to craft, departmental or occupational groupings. For example, in Public Service Company of Indiana, Inc., 111 NLRB 618, 621 (1955) the Board refused to extend to the utility industry the principles of craft and departmental severance laid down in American Potash & Chemical Co., 107 NLRB 1418 (1954), saying that its established policy was "to favor the larger unit over the smaller unit, and to regard the system-wide unit as the optimum appropriate unit for collective bargaining."

The principle apparently extends to metropolitan transit systems. In St. Louis Public Service Co., 77 NLRB 749, 754-55 (1948) the Board said that for a metropolitan transit system "a system-wide unit, including both operating and maintenance employees, is the most appropriate unit." The case involved an effort to sever craft groups among the maintenance employees rather than a proposal to divide operating and maintenance units, but a later case, Key System Transit Lines, 105 NLRB 526 (1953), apparently shows that the Board would also refuse to sever an over-all maintenance unit.

Again in Eastern Massachusetts Street Ry. Co., 110 NLRB 1963, 1965 (1954), enforced 235 F. 2d 700 (1st Cir. 195) the Board declared --

> As a public transportation company and public utility the bus system here involved cris-crosses the entire eastern portion of the Commonwealth of Massachusetts and is characterized by a unity of function and control. The Board has long recognized that public utility operations of this type are basically so integrated that the ultimate appropriate bargaining unit is coextensive with the Employer's entire operations.

In this Eastern Massachusetts case the issue was whether to permit severance of a geographical district, but the Board referred with evident approval to a prior decision dismissing a petition for certification of Machinists in a company-wide machinists' unit

(see 110 NLRB at 1965 n.4)* The only possible grounds distinguishing the latter ruling are that the request for severance came after a history of bargaining in an over-all company-wide unit and was not filed for an operator's unit. The Board's reasoning places little stress upon the first factor and none upon the second.

Taking the bus line and public utility cases together I am convinced that the New York Transit System Fact Finding Committee was correct in concluding that --

> "it has been repeatedly and clearly stated by the National Labor Relations Board in cases involving privately owned utilities, including transit, that, because of the integrated nature of such operations and the public dependence on them, the single unit method of representation is most preferable and will be favored."

Quite apart from precedent I am firmly convinced that the type of comprehensive unit requested by Amalgamated is the most appropriate unit for collective bargaining on the Los Angeles transit system. My judgment is based upon consideration of all the facts with the guidance furnished by the applicable federal law and practices. The dominant elements may be summarized as follows:

(1) Although the Operators perform distinctive duties under conditions somewhat different from those of other employees the criteria of separateness are not strong. Their skill is not unusual. They do not go through a long period of training such as an apprenticeship. Men move from other classifications into the class of operator and from the class of operator into other classifications although the numerical perponderance of the operators prevents this from happening very often.

(2) Comprehensive industrial units are overwhelmingly preponderant in the metropolitan transit industry. The history of collective bargaining upon the former MCL properties is unique among large cities. It resulted from earlier ownership and methods of operation linking the employees to the railway world. The links have been broken with the passage of time. Retention of the historical units would tend to perpetuate anomaly.

(3) Experience on the LATL properties and other metropolitan transit systems demonstrates that any special problems of the operators can be handled successfully and with fairness to all within the framework

*See also Spokane United Railways, 60 NLRB 14 (1945); Amarillo Bus Co., 78 NLRB 1103 (1948).

work of a comprehensive unit. Since the operators are the most numerous class of employees, there is no danger that their problems will be overlooked in a company-wide unit.

(4) Severance of the operators would leave other employees to be grouped in one or two heterogenous units made up of employees lacking the common skills or problems necessary to give them functional coherence.

(5) The interested public would be best served by a system-wide, inclusive unit. The NLRB has expressed similar judgments. The New York Transit Authority Fact Finding Committee came to the same conclusion.

This would be the end of the major unit question if there had not been a twenty-three year history of bargaining in occupational units among many of the Authority's employees. At the time of the sale to the Authority 1,558 employees on the old PE, MCL and Asbury properties out of the Authority's 3,658 unionized employees were bargaining in occupational groups successfully and, so far as the testimony reveals, without sign of dissatisfaction. These groups had existed for almost a quarter of a century.

The Authority argues that the history is unimportant because the occupational groups which bargained prior to 1953 included railroad employees of the PE who were engaged in operations not transferred to MCL and Authority. This circumstance undoubtedly explains the formation of occupational units, but the continuation of occupational bargaining for another five years without evidence of dissatisfaction indicates that the separation may not have eliminated the effect of the occupational associations upon loyalties and natural coherence. For like reasons the substitution of Machinists for the System Federation does not destroy, although reduces, the weight of the bargaining history. The over-all unit established by the System Federation remains unchanged.

Despite its importance, I am satisfied that when it is weighed in the balance with the factors discussed above, the history does not entitle the three occupational groups to self-determination elections under the guiding principles to which the Service is referred by section 3(d). The automatic segregation of crafts and classes under the RLA was rejected in enacting section 3(d). (See pp. 10-11 above.) The RLA is a less suitable guide than the NLRA in determining the bargaining unit for a metropolitan transit company. (See pp. 11-13 above.) The unit requested by the Machinists, for example, is obviously unacceptable under the RLA.

The NLRB standards also require a stronger showing than any Brotherhood has made. The units requested by the Clerks and Machinists cannot by any stretch of the imagination be called

craft or departmental units. In the American Potash case the Board limited the right to "true crafts" and said (107 NLRB at 1423) --

> In our opinion a truecraft unit consists of a distinct and homogeneous group of skilled journeymen craftsmen, working as such, together with their apprentices and or helpers. To be a "journeyman craftsman" an individual must have a kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training.

Obviously none of the three groups requested by the Brotherhoods meets this test. In the American Potash case the Board also stated that recognition should be granted to "the historically established separate interests of certain departmental groups which have by tradition and practice acquired craft-like characteristics" (107 NLRB at 1424). Obviously the groups sought by the Clerks and Machinists do not meet this test even though they bargained together on the former MCL properties. In my judgment the operators also fail to meet the test but the point is unimportant because the NLRB has held that the American Potash doctrine does not extend to public utilities. (See p. 23 above.)

Of course the Board sometimes grants self determination elections in cases outside the scope of NLRA section 9(b) (2) where the other considerations pertinent to a determination of the appropriate unit are so evenly balanced that the desires of the employees in the separate groups should be decisive. The bus line decisions are the closest illustration. I am satisfied, however, that this is not such a case. Many of the reasons are stated above. It should also be noted that under the Globe election procedure the units are severed if craft unionism receives a majority in one of the voting groups. To secure a company-wide unit the industrial union must win a majority in each of the voting groups. The Globe procedure fails to test the desires of all the employees affected. It calls for splitting the unit at the behest of the majority of a small group even though a majority of all the employees wishes a single unit. This procedure is appropriate in the conditions for which it was devised, i.e. where a small group with special problems may prefer spearate bargaining and its votes would be overwhelmed by the votes in the larger industrial unit where there is no sentiment for craft or departmental bargaining. In the present case there has been occupational bargaining in all three of the proposed groups but no craft or class has established sufficient interest in severanceto entitle it to a self-determination election. Under such circumstances a majority of the employees in the maintenance group should not be allowed to previal over the judgment of State officials and the wishes of a majority of all the employees concerning the appropriate unit. The operators have the most substantial claim to a separate unit. Far from being the small minority for whom the Globe doctrine was devised, they are much the most numerous class of employees.

If a really significant majority of the operators desires occupational bargaining, it is likely to build up a majority of the whole.

The fact remains that 1558 of the Authority's 3658 unionized employees have been bargaining for 23 years in occupational groups identical in two instances and roughly similar in the third case to the units requested by the Brotherhoods. On the former LATL properties there has been company-wide bargaining. The Authority's employees as a whole, therefore, have a substantial basis in experience for judging the respective merits of bargaining in a company-wide unit and bargaining in occupational groups. It is possible that a majority of each of the occupational groups desires to bargain in smaller units. Also a majority of all the employees might prefer occupational units even though they were not a majority of each of the groups.

The critical question therefore is whether State officials should impose their opinion that an industrial unit is best upon the Authority's employees without regard to wishes which the employees may have formed after a long period of observation and experience. If the Authority's employees believe that occupational bargaining is preferable from their standpoint, that fact is itself a strong reason for saying that it is also preferable from the standpoint of the Authority and the public. To establish a single unit would give Amalgamated such a tremendous advantage in the election that it might prevail even though a majority of all the employees preferred occupational bargaining through one of the Brotherhoods. Furthermore, the idea of industrial bargaining starts with a five to four advantage because the former LATL employees are the more numerous. If the proponents of occupational bargaining could win a majority under these circumstances, the result would be evidence of strong preference for the occupational units. For State officials to override strong employee sentiment upon the ground that the government knows best would be inconsistent with the basic ideals of self-organization. I am therefore satisfied that a final decision as to the appropriate unit or units should be postponed until an election has been held in which the desires of the employees can be reflected according to the fourth method outlined above (see pp. 20-21 above.)

Accordingly I shall recommend that the Service arrange for the employees to vote in occupational groups. The Service should then total the votes cast for Amalgamated in each of the voting groups and also combine into one total the votes for Trainmen, Machinists and Clerks. If Amalgamated has a majority of all the votes, it should be certified as the representative of the employees in a company-wide operating and maintenance unit. If the Brotherhoods and Machinists have a majority, the Service should certify the winner in each group as the exclusive representative of that group. Thus industrial or occupational bargaining will prevail as a majority of the employees shall determine.

The absence of exact precedent for this procedure is irrelevant. The situation is unprecedented. Under these unique circumstances the recommended procedure gives effect to the basic principles of the applicable federal labor law.

B. The Composition of the Voting Groups

Once the principle of counting the ballots in separate groups is established, there arise numerous issues concerning the exact composition of each group. The Authority also claims that several classes of employees should be excluded as supervisors, while the unions wish to include them in bargaining units. I shall first discuss the general principles which ought to determine the composition of the voting groups and then take up each disputed classification.

1. The Applicable Principles

All parties agree that there should be at least three major groups. One would be made up essentially of operators. The second would be predominantly maintenance employees. The third would be built around the clerks. The disputes concern where the line should be drawn between them.

The Brotherhoods ask the Service to preserve the historical boundaries existing on former MCL properties by drawing the same occupational lines throughout the system.

The historical lines cut across the lines of departmental organization established by the Authority. For example the division janitors are in the Transportation Department and, like the operators, they are responsible to the Division Superintendent. Nevertheless the Brotherhoods would exclude them from the operators' unit and have them bargain with employees in the Equipment Maintenance Department. The shop clerks who work along with the mechanics in the Equipment Maintenance Department would be excluded from voting with the maintenance group. In some cases the historical lines also ignore the normal lines of promotion and the natural groupings for developing seniority rosters. Division clerks on LATL for example, are usually chosen from the ranks of operators and the Authority plans to extend this practice throughout the system. The Authority argues, therefore, that if its request for a comprehensive unit is denied, which I shall recommend, then the voting groups should be reconstituted so as to conform more closely to departmental organization, the lines of promotion and the employees' normal associations. Speaking generally it is fair to say that this would enlarge the operator's group by the inclusion of employees whose functions are closely related; that it would establish a group of office clericals; and that most of the other employees should be voted as a maintenance unit.

The Amalgamated does not wish to represent the office clericals. It urges that they should be excluded from the operating and maintenance unit. In other respects its position is roughly similar to that of the Authority although there are a number of detailed differences.

The real thrust of the arguments put forward by the Authority for rearrangement of fringe groups is towards a single bargaining unit, and in this respect the employees may well accept them. For the Service to redefine the occupational groups, however, ignoring the associations among 40 percent of the employees for 23 years would be contrary to the principle of employee self-organization. If a pattern is to be imposed upon the employees by the State, the Service should take the full step of establishing a single bargaining unit. The arguments which persuade me not to recommend this step are equally convincing against reconstitution of the voting units. Heterogenous as the proposed clerical and maintenance units may look to an outsider they are supported by 23 years of bargaining history. During that time the former MCL employees in the occupational units may have developed a community of interest despite the differences in their work. They should have the opportunity to determine whether the bond is sufficiently strong for them to want to continue the same form of bargaining. The former LATL employees can judge by observation and discussion whether they wish to follow the pattern. The general principle determining the composition of the voting groups should therefore be the preservation of the historical alignments on the properties formerly belonging to MCL. Exceptions should not be made unless there is strong necessity.

A partial exception must be made with respect to the clerical group. Following a practice which is well established on the railroads, Clerks seeks to bargain for such dissimilar classifications as personnel clerk, storekeeper and janitor. In industries subject to the NLRA it is the well-nigh universal practice to separate office clericals from other bargaining groups. This division would conform to employees' normal associations and interests on the Los Angeles transit system. The storeroom employees at South Park, Macy Street and several division points furnish a good example. The work is receiving and distributing parts required to maintain the Authority's equipment. It is partly clerical and partly light manual labor. The storekeepers have constant contacts with the mechanical employees who use the parts. Many of them work in locations close to the mechanical department. Of the 41 storeroom employees, 16 transferred from equipment maintenance. It would seem plain that the storeroom employees could bargain with the mechanics and equipment - maintenance men more effectively and with greater natural coherence than with secretaries and file clerks in the executive offices. Similar considerations are applicable to janitors, shop clerks and like classifications. The NLRB decisions reach the same conclusion. E.g. Valley Tractor & Equipment Co., 92 NLRB 240 (1950).

The divergence in interests and associations between office clericals and operating and maintenance employees is sufficient to exclude the office clericals from the balloting to determine whether there shall be one comprehensive unit as under LATL or occupational units as under MCL. Neither Amalgamated nor the Authority wishes office clericals included in the comprehensive unit. In the face of such opposition the NLRB would exclude them. I find the NLRB practice relevant here. The desires of the office clericals are irrelevant to deciding whether there should be a unit from which they would be excluded.

The classifications currently represented by the Clerks on the former MCL properties must therefore be divided for the purposes of the impending election. One group will be the office clericals. The other will be the storekeepers, shop clerks, janitors and miscellaneous classifications currently represented by Clerks on properties formerly belonging to MCL.

The office clericals should vote on whether they desire to be represented by the Clerks or wish no union. No other union seeks to represent them. Their votes will not count on the establishment of a comprehensive unit of production and maintenance employees.

The second group of "clerical" employees should be permitted to choose between Clerks, Amalgamated and no union. A vote for Clerks will count ad a vote for occupational units. A vote for Amalgamated will be a vote for a single comprehensive unit.

If a majority of all the operating and maintenance employees indicate a desire to continue occupational bargaining, the historical unit represented by Clerks should be preserved provided that a majority of the office clerical and miscellaneous group voting separately both indicate a desire to be represented by Clerks. On the other hand, even though the historical lines are extended through the system as a result of the balloting, neither the office clerical nor the miscellaneous group should be required to bargain with the other if either is unwilling. If a majority of all the employees exclusive of supervisors and office clericals desire to bargain in a comprehensive unit, then Clerks may become the representative of the office clericals if a majority so vote. If a majority of all the employees exclusive of supervisors desire to continue occupational bargaining and a majority of the office clericals and also of the storekeepers, janitors and miscellaneous group voting separately all desire to be represented by Clerks, Clerks should be certified for the combined unit. If occupational bargaining is continued and Amalgamated is designated by both the maintenance group and the storekeepers, janitors and miscellaneous group, they may be combined for purposes of certification.

Other possibilities may eventuate with respect to the miscellaneous group depending upon numerous contingencies. I deem it unwise to try to provide for them while they are still hypothetical. The major issue in this case is whether Authority's operating and maintenance employees wish to bargain in one unit with Amalgamated as the representative or to carry the occupational

units across the system and bargain through Trainmen, Clerks or Machinists or Amalgamated in three separate groups. Nothing should be done to distract attention from this question. Accordingly I shall recommend that if occupational units are established but none of the foregoing alternatives eventuate, then the election shall be regarded as inconclusive with respect to the miscellaneous group and the State Conciliation Service shall consider, upon any new petition, whether to add it as an accretion to one of the other units or conduct a new election. The results of the impending votes in the other groups will make the alternatives plain. Since the unit determinations may be made upon the present record, there will be no waste of time or expense.

2. Special Groups

Division Clerks. The position of a division clerk in the staffing pattern established on the former LATL properties and projected for the MCL lines is best described by reference to the divisional organization at 16th street and San Pedro Avenue.

A Division Superintendent and Assistant Division Superintendent are in charge of the division. They are responsible to the General Superintendent of Transportation. All employees in the operating department at that division respond to them. The Division Superintendent and Assistant Division Superintendent must keep in touch with the maintenance men for the purpose of coordinating the work but they have no authority over them.

Six division clerks work in shifts covering all or most of the twenty-four hours in a day. They are normally stationed in the cash room which is kept locked and is separated from the operator's room by bullet-proof walls and tellers' windows made out of bullet-proof glass. The principal duties of the division clerks fall under four heads.

(a) They receive cash brought in by the operators, count and record it, and check the totals against the operators' records of passengers carried. One or more of the division clerks may be charged with depositing money in the bank.

(b) The division clerks are responsible for arranging the assignments of operators so that all runs are taken out according to schedule. The Division Superintendent or Assistant Division Superintendent prepares the mark-up sheets showing most of the assignments shortly before three o'clock each afternoon. Many of the regular runs are served by operators who have bid for runs in order of seniority but there are always gaps to be filled because of illnesses, excused absences, single trips and other causes. These places are filled from the extra board in the first instance but it may be necessary to recruit volunteers either from operators who have completed their regular assignments or qualified employees in other departments. The division clerk handles the mark-up sheet between three and four o'clock in the afternoon and makes

whatever changes are necessary. For example, a man who had been out sick for several days might telephone at 3:30 p.m. and say that he would be back to take his regular run. The extra man to whom the run was assigned would be moved out of that place and other consequential changes might follow. The mark-up sheet is typed at four o'clock in the afternoon but during the next day further changes become unavoidable. One man may fail to show up. Another may be sick. Still another may request time off, which may be denied but which is normally granted if some other method of covering his assignments can be found so that the runs will go out as scheduled. Some extra board men are paid to be available at the Division Headquarters in order to meet contingencies -- the pay is called "shine time" -- but the division clerk may call upon other employees to volunteer for extra work, unless this would incur unnecessary overtime, or he may enlist qualified employees from other departments to take a trip or two. Sometimes the clerk works out exchanges between operators. Fitting all these pieces together undoubtedly requires knowledge of the division and considerable tact in dealing with operators, but there was no evidence that the clerk either exercises or possesses disiplinary power in carrying out the task except that he may report to the Division Superintendent a man who refuses to perform his assignment or who, when on shine time, refuses to take a run assigned to him. If an operator reports late for his assignment, the division clerk may restore him to his run, give him another assignment, give him the day off, or suspend him.

(c) The division clerks spend considerable time making out the time sheets reporting the operators' actual hours beyond extra time and overtime. They also perform other clerical work and incidental tasks assigned by the Division Superintendent some of which may be arguably confidential in nature. For example, an under-cover man may report misconduct on the part of an operator of a bus which passed a stated intersection at a certain hour. The division clerk is sometimes assigned the task of discovering the identity of the operator. He may do this simply by looking up in his records the driver of the bus scheduled to pass the intersection at the time given. Sometimes it is easier to identify the operator by reading the under-cover man's report. There was no direct testimony upon the amount of time given to these assignments, but from the general descriptions of the division clerk's work and the demeanor of the witnesses I infer that such assignments, while not uncommon, are a very small part of the total duties.

(d) When the Superintendent and Assistant Superintendent are absent, the division clerks are in charge of the division. Normally this means that a division clerk is the ranking representative at division headquarters from 5:00 p.m. to 8:00 a.m. and also on weekends. Most of the responsibility is assigning runs in the manner just described. The division clerk may also have to eject trespassers or deal with dirorder among the operators.

If an operator is unfit to take a run out, the division clerk may suspend him from the service and direct him to report to the Superintendent. The division clerk would give the Superintendent an account of the incident but he would neither impose discipline, beyond the bare suspension, nor make recommendations for disciplinary action. Although there was little direct testimony I infer that the division clerks are also expected to deal with any other problems which may arise when both the Superintendent and Assistant Superintendent are absent. Incidents requiring the exercise of authority occur infrequently. There are prescribed procedures for dealing with forseeable events, and in any extraordinary crisis the division clerk would telephone the Division Superintendent at home or call some higher authority for instructions.

Under the Railway Labor Act supervisors are eligible for collective bargaining and many railroad employees in supervisory positions are represented by labor unions. Clerks bargained for the division clerks on MCL. The national labor policy is different under the NLRA. For reasons pointed out above the NLRA principles are better guides in the Los Angeles transportation system. Division clerks were not in the LATL bargaining unit.

NLRA section 2(11) defines the supervisors who are required to be excluded from bargaining units in the following fashion:

> The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The division clerks have authority to "suspend" and "assign" the operators; they also "responsibly direct" them. The critical question is whether the exercise of this authority is so controlled by collective bargaining agreements and other standing procedures as to leave no room for "the use of independent judgment."

This is a close question. A division clerk obviously has some discretion. Whether a man is improperly dressed or has been drinking may require only observation but incidents in the operators' room may be overlooked in one case and the operators called to account in another. The latter decision is not routine. Also, when an employee reports late so that he misses his regular assignment, the division clerk has to exercise some discretion in choosing between sending him home and allowing him to pick up his regular assignment. Yet the Authority lists only fourteen incidents in

five years in which an operator was suspended by a division clerk.

In my opinion the element of judgment involved in these decisions coupled with the fact that a division clerk is the only company official at the division point 15 or 16 hours a day, warrants classifying the division clerks as supervisors. The NLRB decisions furnish the only external standard available but they are little help because each case must stand upon its own facts. New York City Omnibus Corp., 104 NLRB 579 (1953), is the Authority's chief reliance but the opinion does not reveal the exact ground of decision. The Board appears to have been greatly influenced by the fact that it was dealing with men who directed the operators on various parts in the system in order to keep the busses running on schedule. The comparable positions in Los Angeles would seem to by the 64 supervisors listed on page 7 of the Authority's Exhibit No. 3. None of the parties claims that these men should be included in a bargaining unit. The New York Omnibus case also involved so-called bus supervisors who were stationed at the depots and performed work somewhat similar to that of the division clerks. It seems to have been conceded, however, that if the street supervisors were not employees for the purposes of the NLRB, then the entire petition should be dismissed. For this reason the case is hardly persuasive upon the status of division clerks.

Cincinnati Transit Co., 121 NLRB No. 95 (1958), held division clerks whose duties appear to have been very similar to the duties of the Authority's division clerks to be non-supervisory. The cases are obviously similar in many respects. There is no reason to suppose that it takes more judgment to know whether an operator is properly dressed or intoxicated in Los Angeles than in Cincinnati. It is also unlikely that the Cincinnati Transit Company required fewer changes in assignment sheets; in any event the problem is not how any changes were made but how much judgment was involved in making them. Yet there is strong reason to believe that the two jobs are quite dissimilar. Apparently the Cincinnati clerks substitute for division superintendents only occasionally. Los Angeles division clerks are the only responsible representatives of the Authority on the premises more than half the time.

Responsibility for the premises is not important since it is not supervisory in relation to other employees, but being in charge of the headquarters of numerous operators with authority to grant leave, to make and change assignments, and to suspend them for misconduct is strong evidence of the discretion which was found lacking in the Cincinnati Transit case.

I regard this circumstance as decisive. It is essential to the smooth functioning of operations that the only man on the premises with authority to make and alter assignments and preserve discipline when necessary, should be vested with supervisory power. The fact that the division clerks perform these duties with no one else present is evidence of authority. Cf. Ohio Power Co. v. NLRB, 176 F. 2d 385 (6th Cir. 1949). It is confirmed by the Trainmen's assertions that the interests of the operators and the division

clerks are strongly opposed. They are opposed only because the one is the supervisor of the other.

The Authority introduced evidence that an NLRB representation case covering the division clerks had been dismissed by stipulation after it was suggested that they were supervisors. No reliance can be placed upon this evidence because the NLRB made no ruling and the Amalgamated's consent may have been given for any number of irrelevant reasons.

For the other reasons stated, however, I find that the division clerks should be classified as supervisors and excluded from any bargaining unit.

Dispatchers. The Authority claims that its dispatchers are exempt as supervisors. Amalgamated does not dispute the contention. Clerks, which represented the dispatchers on MCL, claims that dispatchers belong in a clerical unit.

The Authority's nine dispatchers are stationed at short wave radios. They provide a link between the street supervisors and the street supervisors and the operators. They also connect the office with the moving motor coaches, street cars and busses. An operator must call in by telephone but the dispatchers can reach supervisors by radio. The dispatcher's job is to give instructions to operators in emergencies and in case of trouble to keep the busses moving as near to schedule as possible. When a breakdown occurs, for example, the operator may call the dispatcher who then checks the alternatives available and issues the instructions necessary to keep the line moving. The dispatcher also gives instructions to the operator involved.

The dispatchers on LATL are chosen from street supervisors with five years experience. Their pay is the same. This policy is being carried over to the properties which came from MCL. The street supervisors are admittedly exempt. The dispatchers obviously belong in the same category.

Accordingly the dispatchers should not be placed in any bargaining unit.

Maintenance Foreman. The Authority has its main offices in a building which it owns and operates at 1060 South Broadway. The rest of the building is leased to tenants. The janitorial work is done at night by a force of twelve men under a maintenance foreman. The Authority contends but Clerks denies that the maintenance foreman is exempt as a supervisor. Amalgamated agrees with the Authority.

I shall recommend that the Authority's position be upheld. The maintenance foreman ordinarily does no janitorial work. Although he is under the building manager he is the highest authority on duty in the building at night. He assigns the employees and inspects their work. There is uncontradicted testimony that he has power to

recommend discipline effectively.

Assistant Chief PAX Operator. The Authority's telephone services are staffed by 35 operators under the direction of a Chief Operator during the daytime and an Assistant Chief Operator from 4:00 p.m. until midnight. The Assistant Chief Operator may have as many as sixteen operators under her. She gives them directions. She trains new operators. She has power to decide whether a new girl with some training can qualify as an operator. Although the occasion to exercise it has not arisen, she has the power effectively to recommend discharge. Under the NLRA it is possession of the power and not its exercise which is decisive. I find that the Assistant Chief Operator is a supervisor who should be excluded from any bargaining unit.

Assistant Chief Clerk. In the Personnel Department the Authority employs eight clerical workers engaged in maintaining clerical records and making decisions pertinent to the administration of pension and health insurance plans. All eight work under the supervision of a Chief Clerk. The Assistant Chief Clerk makes decisions upon hospital and insurance claims, using discretion and transmitting the decision to other clerks who consult her. In the absence of the Chief Clerk she is in charge of the unit. The Chief Clerk is paid $485 a month. The Assistant Chief Clerk receives $360 a month. The other clerks receive between $300 and $365.

The Assistant Chief Clerk does not meet the NLRA definition of a supervisor when performing her regular duties. The judgment and discretion which she exercises do not pertain to the direction of other employees but to the allowance or disallowance of claims. The salary scale makes it plain that she stands on the same level as the other clerks in any hierarchy of supervision. That she may act as a supervisor when the Chief Clerk is sick or on vacation does not exempt her.

The Assistant Chief Clerk is not a confidential or managerial employee for the reasons stated below in discussing the Medical Accounts Clerk.

Accordingly the Assistant Chief Clerk should be eligible to vote along with other office clericals.

Division Stenographers. The Authority seeks to exclude division stenographers from any bargaining unit on the ground that their work includes confidential duties pertaining to labor relations. Amalgamated would exclude the division stenographers from the operating and maintenance unit on the ground that they are office clericals. Clerks seeks their inclusion in the bargaining unit which it has requested.

The division stenographer has two kinds of duties which the Authority considers confidential. She maintains a personnel file for every operator attached to her division, both making the entries and doing the filing. The files show all reports, warnings, disciplinary action and grievances. She also acts as

secretary to the Division Superintendent, who has charge of the transportation department personnel at his division. In this capacity she types letters containing his recommendations in connection with discharge hearings.

A number of NLRB decisions sustain the Authority's position (e.g. Minneapolis-Honeywell Regulator Co., 107 NLRB 1191 (1954); Consolidated Vultee Aircraft Corp., 61 NLRB 869 (1945), but they appear to have been overruled by The B.F. Goodrich Co., 115 NLRB 722 (1956), which confines the category of confidential workers to "those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." The Goodrich case held that secretaries to divisional managers with power to hire, discharge, discipline and promote and to handle grievances should be included in an office and clerical unit. See also Intermountain Telephone Co., 79 NLRB 715 (1948).

The present record does not show that the Division Superintendents formulate, determine and effectuate labor policy. The somewhat fragmentary testimony indicates they hold positions of considerable responsibility, but the Authority's labor policy is determined at the top in highly centralized fashion and is spelled out in considerable detail before it reaches the Division Superintendents. There need be no inconsistency between the obligation of secrecy and participation in collective bargaining. The problem of conflicting loyalties is largely theoretical in a case like the present where the personnel records pertain to employees in a different bargaining unit. Accordingly I find that the division stenographers are not confidential employees. They should be included in the office clerical group for the purposes of voting.

Medical Accounts Clerk. The medical accounts clerk keeps records of the costs of the Authority's hospital and medical plan, takes care of the bills, maintains the information necessary to determine eligibility, and makes the routine decisions on questions of eligibility. Some of the information is highly personal and should be kept secret but since it does not pertain to labor relations policy the medical accounts clerk is not a confidential employee. Consolidated Vultee Aircraft Corp., 108 NLRB 591. (1954). Her duties are not managerial. Accordingly she may vote in the office clerical election.

Medical Clerk and Receptionist, Pension and Insurance Clerk, Assistant Insurance Clerk, Typist Clerk, Typist Clerk and Field Representative. This entire group of employees performs duties which the Authority contends have a confidential or managerial status for the same reasons as the medical accounts clerk. For the reasons stated above I find that they are not exempt. They may vote as office clerical workers.

Steno-Clerk and Interviewer. These two employees work under the employment supervisor. The former acts as his secretary and assists in processing new employees. There is nothing confidential or managerial about her duties.

The interviewer is more difficult to classify. An interviewer who screens applicants, appraises their qualifications and makes recommendations to the senior interviewer is exempt because the work involves independent judgment. Peter Kiewit Son's Co., 106 NLRB 194 (1953). But an interviewer is not exempt if the work is confined to grading tests and turning out applicants who are obviously unsuitable without participating in the final selection. Copperweld Steel Co., 102 NLRB 1229, 1230 n. 4 (1953). The substantial question is whether the interviewer belongs in the first category or the second.

The testimony shows that the interviewer "does substantially what we might term the preliminary interview or the primary interview." If an applicant is not rejected by the preliminary interviewer, he fills out a complete application and is then referred to the employment supervisor. The employment supervisor goes over the application and holds another interview. If he judges the applicant suitable, he refers the applicant to one of the departments which would then interview the applicant and determine whether to hire him. The first interviewer simply passes upon obvious disqualifications such as intoxication, physical handicaps, unsuitable appearance for an operator and lack of educational qualifications. There is no evidence that the preliminary interviewer makes any appraisal or recommendations beyond this obvious screening.

I find that the interviewer is not a confidential or managerial employee. She and the steno-clerk may vote with other office workers.

Cash Receivers, Typist-Timekeepers and Cash Receiver-Timekeepers. These employees are confined to the former MOL divisions where they were covered by the Clerks' agreement. Their duties are receiving and counting cash, keeping time and preparing related records. The Authority is contemplating the gradual elimination of these positions as the former LATL procedures and staffing pattern are extended throughout the system.

The Authority asks to have these employees voted with the operators. The Amalgamated also maintains that they belong in the operating and maintenance unit. Both pitch their argument chiefly upon the relationship to the division clerks and although the Authority asks to have the division clerks exempted as supervisors, it does not state how the cash receivers, typist-timekeepers and cash receiver-timekeepers should be classified if the exemption is granted. Clerks seeks to have them included in a clerical unit.

I find that this group should vote with the office clericals. Their background and present duties make that association stronger than any connection with operating and maintenance employees.

Schedule Checkers. The 16 schedule checkers obtain the data used in the preparation and revision of schedules, chiefly the times at which vehicles pass a particular point and the number of passengers. The work is done outdoors at irregular hours. Schedule checkers are drawn from the ranks of operators - 12 of the 16 schedule checkers were LATL operators - and usually they break into the work by serving an interim period as both operator and checker. On former LATL properties the schedule checkers retain their seniority as operators. The force is sometimes augmented by the temporary addition of operators.

It is apparent that the interests of the schedule checkers are aligned with the operating and maintenance employees. They should be included in any over-all unit rather than with the office and clerical unit. The only debatable question is whether they should vote with the operators or the janitors, storekeepers and miscellaneous employees or in a separate group.

I shall recommend classifying them with the operators. In this case the claims of history are too weak to override practicality. Only four of the 16 schedule checkers have been represented by Clerks. Trainmen seek to represent a number of employees who are not strictly operators - flagmen, switchmen and ground and traffic loaders. The Authority's arguments for excluding the schedule checkers from the clerical unit in favor of inclusion in a broader unit refute its subsequent request for a self-determination election.

Assistant Schedule Makers. The Authority asks that the two assistant schedule makers be classified with the schedule checkers. All four unions agree that these are office or clerical positions.

In my judgment the unions are correct. The hours and working conditions of the assistant schedule makers are not affected by the special considerations pertinent to the checkers. The table of organization groups the assistant schedule makers with the schedule typists and milage and schedule clerks. They should therefore vote with the office and clerical workers.

Storeroom Employees. The facts pertaining to these 41 employees were summarized above in discussing the principles which should govern the composition of the several occupational groups. For the reasons stated the storeroom employees should vote in the miscellaneous unit with Amalgamated, Clerks and "no union" appearing on the ballot.

Maintenance Clerks. The maintenance clerks prepare the work schedules and keep records of the work done in the Equipment Maintenance Department. They assign serviced equipment back to the daily

runs. Some maintenance clerks serve as part time storekeepers. They have considerable contact with other maintenance workers with whom they are under common supervision.

It is plain that the associations, problems and outlook of the maintenance clerks lie closer to the shop floor than the office despite the volume of record keeping. In view of the MCL bargaining history, however, they should vote with the storekeepers and other miscellaneous employees.

Utilitymen, Road Janitors and Terminal Janitors should vote in the maintenance group. Except for the request for a single operating and maintenance unit this proposition is undisputed.

Janitors at 6th and Main Street (Maintenance). These five janitors are currently represented by BRC and should therefore be allowed the opportunity to vote for the continuation of this form of representation. If the jobs are abolished and the work is assigned to utilitymen in the maintenance department, a new situation will exist for which it is unnecessary to make provision here.

These janitors might appropriately be included in an operating and maintenance unit. They should therefore vote with the maintenance clerks and stores employees.

Division Janitors. On the former LATL properties there is a janitor at each division point. Since there were no similar positions on MCL properties, none of the Brotherhoods has represented division janitors. Their jobs, however, are similar to the miscellaneous group of classifications represented by Clerks but also suitable for inclusion in an operating and maintenance unit. The division janitors should vote in this group.

Janitors at the Transportation Offices and Station Janitors. This group is governed by the same considerations as the division janitors with the additional factor that the station janitors have been represented by Clerks. They too should vote with the miscellaneous group.

Mailmen and Messenger. The four mailmen and messengers have closer associations with operating and maintenance personnel than with the office. Since Amalgamated and Clerks wish to represent them, they should vote with the miscellaneous group.

Ticket Clerks, Supervising Ticket Clerks and Baggage Clerks. This is a fringe group which has been represented by BRC. Amalgamated contends that it should be included in any over-all operating and maintenance unit which may be established as a result of the balloting. The Authority agrees that it should be part of the clerical unit.

There is something to be said for allowing this group a self-determination election in which it could choose whether to align itself with the office clericals or any over-all unit but to adopt such a measure at this time would complicate and confuse the issue. The ticket clerks, supervising ticket clerks and baggage clerks should vote with the office clericals because this is their closest historical and functional association.

Passenger Directors, Assistant Passenger Directors, Service Directors and Assistant Service Directors. These employees, all of whom work at 6th and Main Street, act as gatemen and starters. They also assign equipment, direct passengers and give out information. They are currently covered by the Clerks' contract. They should have the opportunity to vote for this form of representation but they could also more appropriately join in bargaining in an overall unit. Accordingly they should vote in the miscellaneous group.

The Head Service Director is exempt as a supervisor.

Red Cap Porters. At 6th and Main Street there are three red cap porters whose wages have been fixed for a period of years by collective agreements between MCL and the United Transportation Service Employees. These men have the same right to express their preference for the extension of their historical patterns of bargaining as the employees seeking to be represented by Trainmen, Machinists and Clerks. It would also be appropriate to include them in an operating and maintenance unit. The red cap porters should therefore vote separately with the opportunity to choose between United Transportation Service Employees and Amalgamated. A vote for Amalgamated will count as a vote for the comprehensive unit and the red cap porters should be included in that unit if a majority of all the employees favor its establishment. A vote for United Transportation Service Employees will be a vote for occupational bargaining.

Building Maintenance Employees. The Authority employs nineteen persons as service and maintenance employees for its main office building, half of which is occupied by tenants. None of these employees are presently covered by collective bargaining agreements.

Amalgamated seeks to represent these employees in a comprehensive unit. Clerks seeks to represent them in a clerical unit. They might appropriately be included in a comprehensive unit represented by Amalgamated if one is established. They might appropriately be represented by the Clerks if the classifications now represented by the Clerks come to be represented by them throughout the system. It is also apparent, however, that these employees are a special group with very little contact with the mass of the Authority's employees and no bargaining history.

5. (a) At the conclusion of the balloting the Service shall total the valid votes for Amalgamated in Groups 1, 2, 3 and 4. The Service shall also combine into one total the valid votes for Trainmen, Machinists, Clerks and United Transportation Service Employees.

(b) If the total valid votes for Amalgamated are a majority of the valid votes cast in Groups 1, 2, 3 and 4, the Service shall certify that Amalgamated is the exclusive representative for the purposes of collective bargaining of all of the Authority's employees exclusive of office clerical workers, supervisors, guards and watchmen (i.e. of the employees in Groups 1, 2, 3 and 4).

(c) If the total valid votes cast for Trainmen, Machinists Clerks and United Transportation Service Employees are a majority of the valid votes cast in Groups 1, 2, 3 and 4, the Service shall make a separate determination of the collective bargaining representatives of each group in the manner provided in sub-paragraphs (d) and (e).

(d) Subject to the sub-paragraph (e) the Service shall certify as the exclusive representatives of the employees in Groups 1, 2 and 4 the labor organization which receives a majority of the valid ballots.

(e) If Amalgamated receives a majority of the valid votes cast in Group 3 and also a majority in Group 2, such groups shall be combined and Amalgamated certified as the exclusive representative for the purposes of collective bargaining for the combined unit. If Clerks receives a majority of the valid votes cast in Group 3 and also a majority in Group 5 (as hereinafter defined), such groups shall be combined and Clerks shall be certified as the exclusive representative for the purposes of collective bargaining for the combined unit. If neither even occurs and a comprehensive unit is not established, the Service shall make no determination of a bargaining representative of Group 3 pending the receipt of a new petition and further proceedings thereon.

6. (a) In Group 5 the following employees shall be eligible to vote -

(i) the ticket office clerk, lost article clerk ticket stock clerk, and general clerk, and also the agents, ticket clerks, baggage clerks, chief clerk, supervising ticket clerk, and report clerk and caculator operator at Whittier, San Bernardino, Pomona and Sixth and Main Street stations;

(ii) PAX and information operators and employees in the Transportation Department - Schedule and Statistics except janitors, schedule checkers and supervisors (among whom is the Assistant

Chief Operator);

(iii) the steno-typist in Stops and Lones;

(iv) division stenographers, transcript stenographers, stenographers and stenotypists, cash receivers, typist-timekeepers, cash receiver-timekeepers and information clerks at division points excluding division clerks;

(v) clerks under the Vehicle Registrar but not such registrar;

(vi) steno-clerk in the Electrical Department;

(vii) material control clerks, order typists invoice clerks, printer, vari-typist and clerks in the Purchasing and Stores Department; and

(viii) the assistant chief clerk, medical accounts clerk, medical clerk and receptionist, pension and insurance clerk, assistant insurance clerk, typist clerks, field representative, steno clerk and interviewer in the Personnel Department.

(b) Upon the ballot for Group 5 the choices shall be Clerks and "no union".

(c) Subject to paragraph 5(e), Clerks shall be certified as the exclusive representative of the employees in Group 5 if it receives a majority of the valid ballots cast in Group 5.

6. The petitions are dismissed insofar as they pertain to the service and maintenance personnel in the Authority's main office building, without prejudice to new petitions upon resolution of the questions of representation among the other employees.

Archibald Cox
Hearing Officer

February 23, 1959