

Trumbull Asphalt Company, Inc. and Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 25-RC-5719

July 5, 1977

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

Pursuant to a petition filed on June 11, 1974, and a Stipulation for Certification Upon Consent Election approved on July 15, 1974, by the Regional Director for Region 25 of the National Labor Relations Board, an election by secret ballot was conducted on August 2, 1974, under the direction and supervision of the Regional Director, among the employees in the appropriate unit set forth in the stipulation. At the conclusion of the election, a tally of ballots was prepared and served on the parties which showed that, of approximately seven eligible voters, seven cast ballots, of which six were for, and one against, Petitioner. Thereafter, the Employer filed timely objections to the issuance of certification of Petitioner as bargaining representative.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on October 4, 1974, issued and duly served on the parties his Report on Objections and Recommendations to the Board, in which he recommended that the Employer's objections be overruled and that Petitioner be certified as the exclusive bargaining representative of the employees in the unit involved herein. Thereafter, the Employer filed timely exceptions to the Regional Director's report.

On December 29, 1975, the Board, having determined that this and a number of other cases involving alleged race and sex discrimination on the part of labor organizations presented issues of importance in the administration of the National Labor Relations Act, as amended, scheduled oral argument in this and other cases¹ limited to all issues arising from *N.L.R.B. v. Mansion House Center Management Corporation*, 473 F.2d 471 (C.A. 8, 1973), and *Bekins Moving & Storage Co. of Florida, Inc.*, 211 NLRB 138 (1974), Members Fanning and Penello, dissenting. Oral arguments were heard on February 2, 1976. *Amici curiae* arguments were also heard at that time.²

¹ *Handy Andy, Inc.*, 228 NLRB 447 (1977); *Bell & Howell Company* (Summary Judgment, 220 NLRB 881 (1975)); and *Murcel Manufacturing Corporation*, Cases 10-CA-10122, 10-CA-10152, and 10-RC-9502.

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

Upon the entire record in this case, including the exceptions and oral arguments, the General Counsel's statements of position, and the *amici* briefs, the Board finds:

1. The Employer is engaged in commerce within the meaning of Section 2(2) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representative of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties agree, and we find, that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time truck drivers employed by the Employer at its Brookville, Indiana establishment, BUT EXCLUDING all office clerical employees, all professional employees, all guards and supervisors as defined in the Act.

5. The Employer's objections to the issuance of a certification to Petitioner are that:

1. Petitioner, as a local of International Brotherhood of Teamsters, is obliged to, and does, engage in invidious discrimination as to membership (and privileges incident thereto) on the basis of sex and minority group characteristics, by virtue of its obligation to comply with the general laws, by-laws, and constitution of its international, and said international's practices. Evidence in support of this Objection is based upon the recent Justice Department proceeding against the International under the provisions of 42 U.S.C. §20003-6.

2. Petitioner, as a separate entity, engages in invidious discrimination as to membership (and privileges incident thereto) on the basis of sex and minority group characteristics. Evidence in support of this Objection is that, to Employer's knowledge and belief, the Petitioner has a disparate number of members who are women and minority group members in light of the demographic statistical distribution of such persons in Petitioner's geographic jurisdiction.

² The American Federation of Labor and Congress of Industrial Organizations and the Chamber of Commerce of the United States submitted briefs and presented oral argument as *amici curiae*.

By virtue of its decision in *Bekins Moving and Storage Co. of Florida, Inc.*, 211 NLRB 138, the Regional Director of the Twenty-Fifth Region is obligated, in light of *Bekins*, to direct a hearing on the basis of said objections, and must therefore stay issuance of said certification.*

* Employer contends that *Bekins*, in part, denies it due process under the Fifth Amendment on the grounds that said decision arbitrarily limits the filing of such objections to a period of five (5) working days from the date of the issuance of the tally of the ballots.

For the reasons set forth in *Handy Andy, Inc.*,³ and *Bell & Howell Company*,⁴ we hereby overrule the Employer's objections and shall certify the Petitioner as the representative of the employees in the unit found appropriate above.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135,

³ 228 NLRB 447 (1977).

a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time truck drivers employed by the Employer at its Brookville, Indiana establishment, BUT EXCLUDING all office clerical employees, all professional employees, all guards and supervisors as defined in the Act.

MEMBERS JENKINS, dissenting:

For the reasons stated in my dissenting opinions in *Handy Andy, Inc.*, 228 NLRB 447, and *Bell & Howell Company*, 230 NLRB 420, I dissent from the overruling of the Employer's objections.

⁴ 230 NLRB 420 (1977).