

**The A. S. Abell Company and Baltimore Typographical Union No. 12, ITU and Washington-Baltimore Newspaper Guild, Local 35, AFL-CIO-CLC. Case 5-RM-786**

June 7, 1976

**DECISION AND ORDER**

BY MEMBERS JENKINS, PENELLO, AND WALTHER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Albert W. Palewicz. At the close of the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 5, this proceeding was transferred to the Board for Decision. Thereafter, the parties filed briefs in support of their respective positions.

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

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed. Upon the entire record in this proceeding, the Board finds:

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

2. The Baltimore Typographical Union No. 12, hereafter called the BTU, and the Washington-Baltimore Newspaper Guild, Local 35, AFL-CIO-CLC, hereafter called the Guild, are labor organizations within the meaning of the Act.

3. No question affecting commerce exists concerning the representation of employees of the Petitioner within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

The Petitioner, A. S. Abell Company, is a Maryland corporation and maintains its principal place of business in Baltimore, Maryland, where it is engaged in the publication of daily and Sunday newspapers called *The Sun*, *The Evening Sun*, and *The Sunday Sun*. During the preceding 12 months, a representative period, Petitioner had gross revenues exceeding \$200,000 and regularly printed advertisements of products which are nationally advertised and sold, published nationally syndicated articles and news stories, and shipped newspapers to points outside the State of Maryland.

The Guild is the certified collective-bargaining

representative of approximately 700 of Petitioner's employees. The employees represented by the Guild are classified in either of two broad categories, commercial or editorial employees. The commercial classifications include electricians, mechanics, advertising personnel, circulation personnel, janitors, and bookkeeping personnel. The editorial employees include reporters, copy editors, library personnel, editorial workers, cartoonist, and photographers. The Petitioner and the Guild have been parties to a number of collective-bargaining agreements and during the period relevant herein were signatories to a current contract.

The BTU is the collective-bargaining representative of Petitioner's Typographical employees. Petitioner and the BTU also have had a number of collective-bargaining agreements and during the relevant period involved herein were party to a current collective-bargaining agreement.

The issue before the Board in the instant case has its origins in a series of studies conducted by Petitioner in 1972 to identify and apply new techniques to improve its production operations. The studies resulted, in part, in the introduction in the spring of 1974 of new computer-orientated equipment. This equipment was physically located in both the editorial and composing rooms and eliminated certain time-consuming operations between the writing of news copy and the completion of operations in the composing room. In effect, this new equipment completely eliminated the "hot metal" process in the composing room.

In the summer of 1974, Petitioner decided to develop an in-house staff to maintain this new equipment and in July 1974 began to hire employees. The Petitioner designated these employees as its Production Systems Group and eventually hired a complement of six individuals. Shortly after the hire of the first individual in the Production Systems Group, the Guild initiated a series of inquiries as to the status of that group. Eventually the Guild filed a grievance claiming that the work being done by the Production Systems Group was work that rightfully belonged to employees represented by the Guild.<sup>1</sup> In a similar but separate procedure, the BTU filed a grievance with the Petitioner claiming that the work being done by the Production Systems Group belonged to employees represented by the BTU. Petitioner, however, refused to arbitrate the BTU's grievance, and thereafter in June 1975 the BTU filed suit against Petitioner and the Guild in the United States District Court for the District of Maryland seeking to compel tripartite

<sup>1</sup> In January 1975 the dispute between Petitioner and the Guild was argued before an impartial arbitrator. It appears that that arbitration proceeding has been held in abeyance.

arbitration of Petitioner's assignment of the work to the Production Systems Group.<sup>2</sup> The Guild immediately agreed to participate in the tripartite arbitration, however, Petitioner claimed that such arbitration was inappropriate and that the action should be dismissed.

On November 7, 1975, Petitioner filed the RM petition involved herein and claimed that the Guild and BTU had separately filed claims to represent its assistant production managers in its Production Systems Group. The Guild and BTU individually filed responses claiming that the petition should be dismissed because they have not sought to represent Petitioner's assistant production managers but have merely claimed that, pursuant to their respective contracts, the work in question belonged to members of their respective Unions. Both Unions also contend that the petition should be dismissed because neither Union has attempted to represent the petitioned-for employees in the unit sought.

Clearly if Petitioner is correct and the Unions are seeking to represent employees doing particular work, the controversy involves a representation question within the meaning of the Act.<sup>3</sup> On the other hand, if the Unions' intentions are correct the controversy is a work dispute and is not properly before us. In cases such as the instant one, "the blurred line that often exists between work assignment disputes and controversies over which of two or more unions is the appropriate bargaining unit [is] often difficult to classify."<sup>4</sup> Therefore, where there is a dispute concerning this type of controversy, we carefully examine the record to determine what in fact is ultimately being sought.

In this case, the record reveals that at a very early stage the Guild indicated its dissatisfaction with Petitioner's creation of the Production Systems Group and claimed that the electricians in the unit represented by the Guild should be doing the maintenance work on the new equipment. In fact when the Guild filed its grievance, it indicated it was arbitrating the "position[s]" and not the individuals. In a similar manner, the grievance filed by the BTU claimed that individuals within the Production Systems Group "were performing work within our bargaining unit" and that the performance of such work by nonbargaining unit personnel was contrary to its collective-bargaining agreement with Petitioner. Since the ultimate effect of the claims by both

Unions is to dispute Petitioner's assignment of work, we find no merit to the claim that either of the Unions is seeking to represent the employees in the Production Systems Group.<sup>5</sup> In *The Gas Service Company*, 140 NLRB 445, 447 (1963), the Board stated

[W]ork assignment disputes are not properly matters for consideration and resolution in a representation proceeding. As the Board has said, its sole function in representation proceedings is to ascertain and certify the name of the bargaining representative, if any, that has been designated by the employees in the appropriate unit. It is not the Board's responsibility in representation proceedings to decide whether employees in the bargaining unit are entitled to do any particular work or whether an employer has properly reassigned work from employees in the bargaining unit to other employees.

Since the instant matter involves a work assignment dispute and is not a proper subject for consideration in a representation proceeding, we find that the petition fails to raise a representation question. Accordingly, we shall dismiss the petition.<sup>6</sup>

In dismissing the petition, we have not examined the merits of the contentions made by the parties as to whom the work should properly be assigned, nor have we examined the question as to whether arbitration is in fact proper. Our decision rests on the narrow ground that the instant petition has failed to raise a representation matter.<sup>7</sup>

## ORDER

It is hereby ordered the petition in Case 5-RM-786 be, and hereby is, dismissed.

<sup>5</sup> The record reveals that both Unions made a number of requests for the disputed work. Some of these requests were inartfully and vaguely worded and tend to "blur" the determination as to whether the Unions are seeking a work assignment or are seeking to represent certain employees. However, based on our examination of the record as a whole, we are of the view that both Unions were ultimately contesting Petitioner's assignment of the disputed work.

<sup>6</sup> We further note that neither Union is willing to go to an election in the unit sought in the petition. The BTU has disclaimed any intention of desiring to represent the assistant production managers in the unit sought by Petitioner and has unequivocally indicated it would not go on the ballot if the Board directed an election in that unit. As to the Guild, the record fully supports its claim that it has never requested and does not now presently seek to represent the employees who are the subject of the petition in a separate unit. As there has been no request to represent the employees sought in the petitioned-for separate unit, we find the petition has failed to raise a question concerning representation within the meaning of Sec. 9(c)(1) of the Act. Accordingly, we shall dismiss the RM petition on the additional basis that it fails to raise a question concerning representation within the meaning of the Act. See *Woolwich, Inc.*, 185 NLRB 783 (1970), *Aerojet General Corporation*, 185 NLRB 795 (1970), *Oyster Creek Division The Dow Chemical Company*, 179 NLRB 719 (1969).

<sup>7</sup> In that we are dismissing the petition we find it unnecessary to pass on the unit issues raised by the parties.

<sup>2</sup> *Baltimore Typographical Union No. 12 v. A. S. Abell Company and Washington-Baltimore Newspaper Guild, Local 35*, Civil No. K-75-726.

<sup>3</sup> In response to an inquiry from the United States District Court for the District of Maryland, the Regional Director suggested that the court hold the matter pending before it in abeyance until resolution of the instant representation matter.

<sup>4</sup> *Carey v. Westinghouse Corp.*, 375 U.S. 261, 268-269 (1964).