**T.I.M.E.–DC, Inc., Employer-Petitioner *and* General Drivers, Chauffeurs, Teamsters and Helpers, Local 886 *and* International Association of Machinists and Aerospace Workers, Local 850.** Case 16–UC–67

September 3, 1976

## DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND PENELLO

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on November 14, 19, and 20, 1975, before Hearing Officer C. L. Moser. On March 18, 1976, the Regional Director for Region 16 transferred this case to the National Labor Relations Board for decision. Thereafter, briefs were timely filed by T.I.M.E.–DC, Inc., herein called the Employer; General Drivers, Chauffeurs, Teamsters and Helpers, Local 886, herein called Teamsters; and International Association of Machinists and Aerospace Workers, Local 850, herein called Machinists.

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.[1]

Upon the entire record in this case, the Board finds:

The Employer is a Delaware corporation engaged as a common carrier in the hauling of general commodities by motor vehicle. The Employer operates in several States of the United States and has one facility located in Oklahoma City, Oklahoma, the only facility involved in the instant proceeding.

The Employer has filed the petition herein, seeking clarification of a bargaining unit of its shop employees at its Oklahoma City, Oklahoma, facility, for which the Machinists was certified on July 9, 1973 (see *infra*). The Employer and the Teamsters request that the Board clarify the certified shop unit so as to exclude certain work formerly performed by servicemen in that unit and "assign" such work to employees in a separate city pickup and delivery bargaining unit, which is represented by the Teamsters. The Machinists contends that the Board should defer to an arbitration award which assigned the work to employees in the shop unit.[2]

The shop unit did not exist prior to 1954. In that year the Employer expanded its operations and, as a result, created several maintenance job classifications. Later that same year, the Employer voluntarily recognized the Machinists and the Teamsters as a joint collective-bargaining representative for the shop unit. It is essentially undisputed that, since 1962 and at all times thereafter during the joint representation of the shop unit, the employees therein who performed the work in controversy were members of the Teamsters and were covered by the Teamsters National Master Freight Agreement and Southern Conference Area Local Freight Forwarding Pick-up and Delivery Supplemental Agreement notwithstanding that these employees were not included in the Teamster-represented city pickup and delivery unit.

From 1962 to July 1, 1973, the servicemen in the jointly represented shop unit performed certain duties known as hookup work.[3] The work in question is divided into two functions, only the second of which is in controversy and is described herein. Essentially, this function originates with an order by the dispatcher to the garage supervisor advising which tractors are to be hooked to specific trailers. The garage supervisor relays this instruction to a garage serviceman who takes the tractor from the "tractor ready" line to the trailer staging area where the trailer is connected or "hookup" to the tractor. The serviceman also inspects the rig for obvious safety defects and afterwards drives the rig to the scales for weighing. Finally, the rig is taken to the "road ready" line where it is turned over to the over-the-road driver.

On April 17, 1973, the Machinists sent a notice of termination, effective July 1, 1973, of the collective-bargaining agreement covering the shop unit. Thereafter, on April 26, 1973, the Machinists filed a petition for an election in the shop unit. The Teamsters filed a petition for virtually the same unit on or about

[1] The Employer and the Teamsters have excepted to the Hearing Officer's exclusion of evidence as to practices of other employers with respect to assignment of the work in controversy herein. We agree with the Hearing Officer that such evidence is not relevant in a representation proceeding and, therefore, find the exception without merit.

[2] The Machinists contended in its brief to the Board that the issues raised in this proceeding were being considered by the United States Court of Appeals for the Tenth Circuit on appeal from the dismissal by the United States District Court for the Western District of Oklahoma of the Machinists' complaint seeking enforcement of the arbitration award. The Machinists argues, therefore, that the Board should stay this proceeding until the court rendered a decision. On June 18, 1976, the court issued an unpublished decision in which it remanded the case to the district court with directions to reinstate the action but adopted the district court's grant to the Employer of leave to file appropriate pleadings with the Board. The court of appeals further ordered that the district court "may entertain any motions concerning grant of a stay of these proceedings pending an NLRB determination." Inasmuch as the court of appeals has issued its decision, we conclude that the Machinists' request that the Board stay the instant proceeding is moot.

[3] "Hookup" work was performed prior to 1962 but not, apparently, in the same manner as it was performed commencing that year and continuing to date.

April 30, 1973. Pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on June 28, 1973, in the following unit:

> Included: All maintenance, repair and equipment service employees including mechanics, lubrication men, tire men, parts men and porters employed at the Company's Oklahoma City, Oklahoma truck repair shop and the Oklahoma City, Oklahoma vicinity.
>
> Excluded: Office clerical employees, road drivers unit, city pick-up and delivery unit, professional employees, guards, watchmen and supervisors as defined in the Act.

On July 9, 1973, the Machinists was certified as the collective-bargaining representative for the above-described unit. Also on July 9 the Teamsters filed a grievance under the National Master Freight Agreement and Southern Conference Area Local Freight Forwarding Pick-up and Delivery Supplemental Agreement contending that the above-described hookup work should be performed by employees in the city pickup and delivery unit represented by the Teamsters (these employees had not previously done this work). The Southern Multi-State Grievance Committee, on September 24, 1973, found in favor of the Teamsters. Consequently, the Employer reassigned the work to employees in the city pickup and delivery unit on or about March 11, 1974. The Machinists did not participate in this proceeding.

During the time the Employer and the Teamsters were processing this grievance, the Employer was also negotiating its first contract with the Machinists as the single bargaining agent for the shop unit. Shortly after the Employer's reassignment of the "hookup" work to employees in the city pickup and delivery unit, the Machinists filed a grievance claiming that the work in question had been improperly assigned to those employees. The grievance ultimately proceeded to arbitration and on February 28, 1975, the arbitrator ruled in favor of the Machinists, holding that the work was to be returned to the employees in the shop unit. The Teamsters did not participate in this proceeding.

The Employer refused to comply with this arbitration award and, consequently, on March 10, 1975, the Machinists sought enforcement of the arbitrator's decision in the United States District Court for the Western District of Oklahoma. On July 22, 1975, the court dismissed the complaint, instructing the Employer to file appropriate pleadings with the Board. As a result of this decision the Employer filed the instant unit clarification petition.

The Employer and the Teamsters contend that the dispute herein involves an assignment of work rather than a question concerning representation but that, nonetheless, the issue has been appropriately raised in this unit clarification proceeding and the Board should entertain the petition. We disagree and find that the work assignment issue may not be resolved on this petition.

In *Carey* v. *Westinghouse Electric Corp.*,[4] the Supreme Court defined the Board's authority in jurisdictional dispute cases, holding that where the controversy concerns

> [W]hether certain work should be performed by workers in one bargaining unit or those in another . . . the National Labor Relations Act . . . does not purport to cover all phases and stages of it. While §8(b)(4)(D) makes it an unfair labor practice for a union to strike to [force] an employer to assign work to a particular group of employees rather than to another, the Act does not deal with the controversy anterior to a strike nor provide any machinery for resolving such a dispute absent a strike. The Act and its remedies for "jurisdictional" controversies of that nature come into play only by a strike or a threat of a strike. Such conduct gives the Board authority under §10(k) to resolve the dispute [footnotes omitted].[5]

The Employer and the Teamsters do not distinguish *Carey* v. *Westinghouse, supra,* but argue that under the circumstances of the instant case the Board should assign the work in question, applying the doctrine enunciated in *McDonnell Company*[6] In *McDonnell* the employer sought clarification of a craft unit of construction and maintenance electricians so as to exclude certain calibration work which had not been performed at the time of the certification of the craft unit. The Board majority noted that in *Carey* v. *Westinghouse* the Supreme Court emphasized the difficulty of distinguishing between work assignment disputes and controversies over which of two or more unions to represent the employees in the bargaining unit. The majority concluded in *McDonnell* that the Board was concerned essentially with a unit issue arising from enlargement and extension of the operations.[7] In addition, the Board majority noted the long history of litigation before two arbitrators and a Federal district court, as well as the efforts to refrain from conduct condemned by Section 8(b)(4)(D) of the Act, and concluded it would not serve the purposes of the Act to subject the parties to additional litigation, expense, and delay by refusing

[4] 375 U.S. 261 (1964)
[5] 375 U.S. at 263
[6] 173 NLRB 225 (1968)
[7] 173 NLRB at 225

to process the petition, but that conclusion was in the nature of dictum inasmuch as the contention that it was a work assignment dispute had already been rejected.

In the instant case, as the *McDonnell Company,* the parties are faced with two conflicting arbitration awards and various court proceedings. Thus, the Employer and the Teamsters urge that it would best serve the purposes of the Act for the Board to determine definitively the work assignment issue posed herein. However, unlike *McDonnell Company,* the instant case does not present any unit issue, or any question of an accretion to or enlargement or extension of the Employer's operations. On the contrary, the disputed work has remained the same since 1962, i.e., 11 years prior to the certification for which clarification is sought, and employees in the shop unit performed that work from that year until the Employer reassigned it to employees in the Teamsters city pickup and delivery unit in 1974, almost 8 months after the certification issued. Thus, the record establishes that neither the work nor the employees who performed it changed when the Machinists won the 1973 election and was certified as the sole representative of the shop unit employees, and the sole issue is whether employees in the Teamsters unit are entitled to perform the work. It is thus apparent, and we conclude, that the *McDonnell* decision is inapposite here.

Furthermore, it is clear that the work assignment issue raised herein falls squarely within the first definition of a jurisdictional dispute, stated in *Carey,*[8] since the present controversy involves a question as to whether certain work should be performed by employees in the Machinists unit or employees in the Teamsters unit. The Board has frequently held that such a dispute may be resolved by this Board only in a proceeding under Section 8(b)(4)(D) of the Act.[9] We note here, however, that there has been no strike or threat of a strike by either of the Unions involved in this proceeding, and it is undisputed that no charge alleging a violation of Section 8(b)(4)(D) of the Act has been filed. Accordingly, we conclude that we do not have authority under the Act to decide the work assignment issue posed by this case. We shall therefore dismiss the petition.[10]

## ORDER

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

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[8] A " 'jurisdictional' dispute could be one of two different, though related, species either—(1) a controversy as to whether certain work should be performed by workers in one bargaining unit or those in another, or (2) a controversy as to which union should represent the employees doing particular work " 375 U S at 263

[9] See e g *Pacific Northwest Bell Telephone Company,* 211 NLRB 1021, 1023 (1974), and cases cited therein The Supreme Court noted this policy with apparent approval in *Carey* v *Westinghouse, supra* at 268–269

[10] We find no merit to the Machinists alternative contention that the Board should defer to the arbitration award assigning the "hookup" work to the employees in the shop unit, as the Teamsters was neither a party to the arbitration proceeding nor bound by the award