In view of this ambiguity, it seems to me permissible to resort to parol evidence as to the meaning of the foregoing contract provisions. Such evidence seems to support a finding either that the parties failed to agree that the disputed work should be assigned to the Respondent, or that they did not intend such assignment. In either case, I would find that there was no contractual assignment to the Respondent and that the Respondent was, therefore, not entitled to the disputed work.

Members Rodgers and Bean took no part in the consideration of the above Decision and Determination of Dispute.


DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, an original hearing was held in the present case on April 14 and May 9, 1955, before I. L. Broadwin, hearing officer. At this hearing, Building Service Employees International Union Local 32, herein called the Intervenor, was permitted to intervene in order to contest the Petitioner's claim that the Board should assert jurisdiction over the operations involved herein. The Intervenor's offer of proof with respect to jurisdiction was rejected by the hearing officer upon the ground that the prior decision was res adjudicata on the issue of jurisdiction. Upon consideration of this matter, the Board remanded the case for further evidence, inter alia, upon the Intervenor's offer of proof concerning jurisdiction. Thereafter, a reopened hearing was held before the hearing officer on September 12 and 13, 1955. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Both the Intervenor and the Petitioner filed original and supplemental briefs, all of which have been fully considered by the Board. Upon the entire record in the case, the Board has decided, for reasons hereinafter set forth, that it will not assert jurisdiction over the particular operations involved herein.

1 The present case arose upon the Board's dismissal of a prior proceeding brought by a predecessor in interest of the Petitioner and dismissed by the Board because the unit sought therein was inappropriate. See Pinkerton's National Detective Agency, 111 NLRB 504.

2 The remand also sought further evidence upon the functions and duties of an usher, one of the employee classifications involved herein. In view of our present decision on the issue of jurisdiction, we find it unnecessary to consider any issue relating to the appropriateness of the unit sought.

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The Petitioner in the instant proceeding seeks an election among certain employees of Pinkertons' National Detective Agency, Inc., herein called the Employer, and employed by the Employer solely on the premises of the Empire Raceway, a harness racing track operated at Yonkers, New York, by the Yonkers Trotting Association, herein called the Association. The record shows that, while the employees concerned are those of the Employer, these employees are handled by a separate autonomous division of the Employer and are, to an unusual degree, closely identified with the work and interests of the Association. Thus, the labor relations of the instant employees are, like those of the Association's employees, equally the subject of special laws enacted by the State of New York for the regulation of employment at race tracks and for the representation of race track employees by labor organizations. In addition, the evidence discloses that the Employer, by agreement with the Association, has permitted the Association to assume the direct supervision of these employees. The effect of this practice has been to make such employees of the Employer part and parcel of the Association's race track operations.

The Board has not generally been concerned with the type of operation conducted by the customer of a service contractor where the latter was otherwise within the Board's jurisdictional plan. However, this is an atypical situation in which the service contractor has, in effect, compartmentalized one phase of his operation so that, unlike his main operations, his employees have been very closely integrated and virtually included in an industry over which the Board, as a matter of policy, does not assert jurisdiction. Consequently to assert jurisdiction here would, in effect, contravene our policy as to that industry. Accordingly, upon the basis of the particular circumstances of this case, we believe that the assertion of jurisdiction over

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9 These employees are in the classification of usher and patrolman.

*The Pari-Mutuel Revenue Law of 1940, Chapter 254 as amended, governing harness horse racing in the State of New York provides in part as follows:

Section 41 (a) provides for the licensing by the State harness commission of "all persons exercising their occupation or employed at harness race meets."

Section 44 (a) provides for the filing with the State harness commission of a copy of all agreements made by any racing association and concerning among other matters labor management relations and the hiring of designated classes of officers, employees, or contractors specified by the commission, or any such other contract as the racing commission may from time to time prescribe.

Section 52 (a) prohibits the making of union-security agreements covering the employment of any person at a pari-mutuel track for harness racing, unless such agreement is with a labor organization which has been certified as bargaining representative after an election pursuant to the provisions of the New York State Labor Relations Act. Any party who wilfully violates this section is subject upon conviction to a fine of not more than $5,000, or to imprisonment for not more than 1 year, or both

*The Employer's service contract with the Association, as amended in April 1951, specifically provides for direct supervision by the general manager and president of the Association over all of the employees of the Employer situated at the Yonkers track. The record reveals that such supervision is in fact exercised by Association officials.
this portion of the Employer's employees would not effectuate the purposes of the Act. We shall therefore dismiss the petition.

[The Board dismissed the petition.]

MEMBER PETTERSON, dissenting:
I would assert jurisdiction in this proceeding. As pointed out in the majority opinion, "the Board has not generally been concerned with the type of operation conducted by the customer of a service contractor where the latter is otherwise within the Board's jurisdictional plan." In this case, it is undisputed that the Employer's overall operations are nationwide in scope and are clearly sufficient for the assertion of jurisdiction. The only reason suggested for declining jurisdiction is that the Employer's operation here is "compartmentalized" and that the employees engaged therein have been "closely integrated and virtually included in an industry over which the Board, as a matter of policy, does not assert jurisdiction." The record clearly shows, however, that the services here performed are those of the Employer's own employees without interchange with those of the Employer's customer. I can see, therefore, no basis for departing from the broad principle which admittedly should govern in the generality of cases. Under the circumstances, I believe that it is error not to apply the Board's jurisdictional plan, and that the creation of an exception in the present instance is unwarranted.

MEMBERS MURDOCK and BEAN took no part in the consideration of the above Decision and Order.


DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Walter Werner, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.  

1 Hereinafter called Carpenters.
2 United Steelworkers of America, AFL-CIO; International Association of Machinists, AFL-CIO; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 833, intervened in this proceeding.

114 NLRB No. 205.