

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ARISTACAR & LIMOUSINE, LTD.
Employer

and

Case No. 29-RC-9410

DISTRICT 15, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO
Petitioner

and

LOCAL 713, INTERNATIONAL BROTHERHOOD
OF TRADE UNIONS
Intervenor

NYC 2 WAY INTERNATIONAL, LTD.
Employer

and

Case No. 29-RC-9411

DISTRICT 15, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO
Petitioner

and

LOCAL 713, INTERNATIONAL BROTHERHOOD
OF TRADE UNIONS
Intervenor

SUPPLEMENTAL DECISION

Upon petitions duly filed on December 29, 1999, under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, hearings were held on various dates in early 2000, before Amy Krieger, a Hearing Officer of the National Labor Relations Board, herein called the Board. At that time, the parties stipulated that Aristacar & Limousine, Ltd. ("Aristacar") and NYC 2 Way International, Ltd. ("2Way;" "NYC 2 Way"), are engaged in commerce within the meaning of the Act. The parties also stipulated that District 15, International Association of Machinists and Aerospace Workers, AFL-CIO ("Petitioner") and

Local 713, International Brotherhood of Trade Unions, affiliated with National Organization of Industrial Trade Unions ("Intervenor;" Local 713") are labor organizations as defined in Section 2(5) of the Act. The Regional Director of Region 29 found that the evidence adduced at the hearings established that the petitioned-for limousine drivers, including franchisee-drivers and lessee-drivers, are statutory employees; Aristacar and 2 Way had argued that the drivers are independent contractors and therefore, elections in units of these individuals were not warranted. On July 19 and 31, 2000, respectively, the Regional Director issued Decisions and Directions of Elections in the above-captioned matters in which he directed elections among limousine drivers employed by Aristacar and 2 Way in two separate bargaining units.

On July 27, 2000, the Intervenor filed a motion requesting that "all of the official papers" in both cases be amended to reflect that it had disaffiliated from the National Organization of Industrial Trade Unions ("NOITU). As a result thereof, an issue arose as to the Intervenor's labor organization status. Aristacar and NYC 2 declined to stipulate that the Intervenor, as a nonaffiliated entity, maintained its status as a 2(5) labor organization. A supplemental hearing was conducted on September 5, 2001¹, limited to this issue.²

Pursuant to the provisions of section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned:

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. At the initial hearing in Case No. 29-RC-9410, the parties stipulated that Aristacar, is a New York corporation with its principal office and place of business located at 335

¹ During the intervening period, further action on these matters was suspended at the request of the Petitioner.

² The Order Scheduling Hearing consolidated the above-captioned cases for the limited purpose of addressing the Intervenor's 2(5) status, but ordered them severed at the conclusion of the hearing. Although Aristacar and 2 Way are in the same line of business, have common ownership, share the same dispatch

Bond Street, Brooklyn, New York, and is engaged in the operation of a computer dispatched limousine service. During the past year, which period is representative of its annual operations generally, Aristacar derived gross revenues in excess of \$500,000 from its operations. During the same period, Aristacar derived revenue in excess of \$5,000 from providing service to firms located outside the State of New York, which services consisted of the interstate transportation of passengers.

At the initial hearing in Case No. 29-RC-9411, the parties stipulated that NYC 2 Way is a New York corporation with its principal office and place of business located at 335 Bond Street, Brooklyn, New York, and is engaged in the operation of a computer dispatched limousine service. During the past year, which period is representative of its annual operations generally, NYC 2 Way derived gross revenues in excess of \$500,000 from its operations. During the same period, NYC 2 Way derived revenue in excess of \$5,000 from providing service to firms located outside the State of New York, which services consisted of the interstate transportation of passengers.

Based upon the stipulations of the parties, and the record as a whole, the Regional Director found, and I continue to find, that Aristacar and NYC 2 Way ("Employers") are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. As indicated above, the Employers would not stipulate that the Intervenor, Local 713, following its disaffiliation from NOITU, is a 2(5) labor organization. The Employers did not call witnesses, offer documentary evidence or explain their legal theory regarding this issue. The Intervenor's witnesses were its president, Peter Hasho, and its secretary, Robert Scalza.

office, share dispatchers on occasion, and are represented by the same labor counsel, no party has raised the issue of whether Aristacar and 2 Way are a single integrated enterprise.

Section 2(5) of the Act defines a labor organization as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." That "employees participate" may be demonstrated through such evidence as the signing of authorization cards, attendance at meetings, the formation of employee committees and the right to elect officers and to vote on the adopting of by-laws and other matters of importance. See *Michigan Bell Telephone Company*, 182 NLRB 632 (1970); *Alto Plastics Manufacturing Corporation*, 136 NLRB 850, 852 (1962). Evidence that a labor organization negotiates collective bargaining agreements with employers and processes employee grievances is more than sufficient to prove that it "has the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, rates of pay, hours of employment, or conditions of employment." *Alto Plastics*, 136 NLRB at 852. If one of the purposes itemized in the statute is among the reasons for a labor organization's existence, it is not necessary to establish that such purpose has actually been accomplished. See *Betances Health Unit*, 283 NLRB 369, 375 (1987); *Wackenhut Corp.*, 223 NLRB 83, 85 (1976); *Comet Rice Mills Division Early California Industries, Inc.*, 195 NLRB 671, 674 (1972); see also *Butler Manufacturing Company*, 167 NLRB 308 (1967) (labor organization with the intent to represent employees certified); *The East Dayton Tool & Die Company*, 194 NLRB 266 (1971) (labor organization which requested recognition as the collective bargaining agent for an employer's employees).

Similarly, the Board has held that "structural formalities are not prerequisites to labor organization status." *Yale New Haven Hospital*, 309 NLRB 363 (1992) (no constitution or by-laws, no meetings and filing with the Department of Labor prior to filing); see *Betances Health Unit*, 283 NLRB 369, 375 (1987) (no formal structure and no documents filed with the Department of Labor); *The East Dayton Tool & Die Company*, 194 NLRB 266 (1971) (no constitution or officers); *Butler Manufacturing Company* 167 NLRB 308 (1967) (no constitution

or bylaws, dues or initiation fees). Moreover, if a labor organization meets the statutory definition, "the fact that it is an ineffectual representative, that its contracts do not secure the same gains that other employees in the area enjoy, that certain of its officers or representatives may have criminal records, that there are betrayals of the trust and confidence of the membership, or that its funds are stolen or misused, cannot affect the [Board's] conclusion...that the organization is a labor organization within the meaning of the Act." *Alto Plastics*, 136 NLRB 850, 851-52 (1962). Rather, allegations regarding improper or corrupt practices in the administration of internal union affairs are more properly addressed under the Labor-Management Reporting and Disclosure Act, rather than the National Labor Relations Act. *Alto Plastics*, 136 NLRB 853; see also *Family Service Agency San Francisco*, 163 F.3d 1369 (D.C. Cir. 1999); *Westside Community Mental Health Center*, 327 NLRB 661, 663 (1999). A labor organization found to be the beneficiary of unlawful employer domination, interference or assistance under Section 8(a)(2) of the Act does not thereby lose its Section 2(5) status; on the contrary, "[b]efore a finding of unlawful domination can be made under section 8(a)(2), a finding of 'labor organization' status under Section 2(5) is required. *Electromation, Inc.* 309 NLRB 990, 994 (1992) (employer-created Action Committees were labor organizations). However, a labor organization may not participate in a representation proceeding involving an employer, which has unlawfully dominated, assisted or interfered with that particular labor organization, until such time as those violations are remedied. See *Share Group, Inc.* 323 NLRB 704 (1997); *Halben Chemical Company, Inc.*, 124 NLRB 1431, 1432 (1959); *Sears, Roebuck & Company*, 112 NLRB 559, 559-60 n. 2 (1955).

In the instant case, Hasho testified that Local 713 was organized in October 1995. It subsequently became affiliated with NOITU in 1999. On March 30, 2000, Local 713 disaffiliated from NOITU, reverting to its original independent status. Since that date, there has been at least two cases in this Region, in which Local 713 was found to be a labor organization: *Echo Lake*

Industries, Ltd., Case No. 29-RC-9618, and *Meyers Transport of New York, Inc.*, Case No. 29-CA-23523.

The record testimony is sufficient to establish that Local 713 exists "for the purpose...of dealing with employers concerning grievances... wages, rates of pay, hours of employment, or conditions of work." Currently, according to Hasho, Local 713 represents employees at 40 to 55 companies, all of which have collective bargaining agreements with Local 713. Hasho further stated that the employees of "8 or 9" of these companies selected 713 as their bargaining representative after its disaffiliation from NOITU on March 30, 2000. In addition, Hasho testified that since March 30, 2000, it has processed numerous employee grievances. Of these, Local 713 proceeded to arbitration in "four or five" cases, on behalf of employees who were either terminated or denied promotions.

The record evidence further shows that "employees participate" in Local 713. Hasho testified that Local 713 currently has 1200 dues-paying members. The members elect its Executive Board members, and the shop steward at each company. During contract negotiations, proposals are generated by the employee bargaining committee at each shop, and by employees who attend regularly held general membership meetings. Ultimately, after a collective bargaining agreement is approved by the negotiating committee, it is presented to the membership for a ratification vote. Hasho asserted that all of these practices have continued since the time of the disaffiliation from NOITU.

Based on the foregoing, I find that Local 713 exists, in whole or in part, for the purpose of representing employees in dealings with their employers regarding terms and conditions of employment, and that employees participate in the functioning thereof. Accordingly, I conclude that Local 713 is a labor organization as defined in section 2(5) of the Act. In light thereof, I find that Local 713 is entitled to continue to participate in the processing of the petition in the manner set forth in the initial Decisions and Direction of Elections previously issued.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by October 3, 2001.

Dated at Brooklyn, New York, September 19,2001.

/s/ John J. Walsh

John J. Walsh

Acting Regional Director, Region 29

National Labor Relations Board

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