Chelsea Catering Corporation *and* United Food and Commercial Workers International Union, Local 174, AFL–CIO–CLC, Petitioner. Case 22–RC–10393

December 11, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

The issue in this case is whether the Employer, Chelsea Catering Corporation (Chelsea), a catering business which provides catering services primarily to the airline industry, is subject to the National Labor Relations Act or the Railway Labor Act.

An election was conducted November 23, 1990, pursuant to a Stipulated Election Agreement. The tally of ballots shows 347 for and 237 against the Petitioner, with 46 challenged ballots. On November 29, 1990, the Employer filed timely objections to conduct affecting the results of the election and, thereafter, the Regional Director ordered a hearing on the objections. On December 12, 1991, after 22 days of hearing on the objections, the hearing officer issued her report recommending that all objections be overruled and that a certification of representative should issue.

On January 13, 1992, the Employer moved to vacate the election and dismiss the petition on the ground that Chelsea and its employees are covered by the Railway Labor Act, and thus subject to the jurisdiction of the National Mediation Board (NMB).[1] The Petitioner, on the other hand, contends that jurisdiction is properly with the National Labor Relations Board and that the motion is untimely and interposed to forestall an inevitable certification of the Petitioner.[2]

Section 2(2) of the National Labor Relations Act provides in pertinent part that the term ''employer'' as used in the National Labor Relations Act should exclude any person subject to the Railway Labor Act.

Accordingly, because of the nature of the jurisdictional question presented here, we requested the NMB to study the record in this case and to determine the applicability of the Railway Labor Act to Chelsea. In reply we were advised by the NMB that it had concluded as follows:

> Chelsea employees perform in-flight catering services for Continental [Airlines]. In-flight food catering is work that has been traditionally performed by employees in the craft or class of Flight Kitchen and Commissary Employees. . . . Virtually all of Chelsea's operations are controlled by Continental. Continental exercises control over Chelsea's budget and its employment and training decisions. Chelsea leases its facilities and most of its equipment from Continental. Continental dictates most of Chelsea's purchases as well as recipes, vendors and purchasing requirements. Chelsea's highest ranking officer reports directly to Continental's management and its management works closely with Continental's management on a daily basis.
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> For these reasons, the Board is of the opinion that Chelsea Catering Corporation is a carrier under the Railway Labor Act and its employees are subject to the Railway Labor Act.[3]

In view of the foregoing, we shall vacate the election and dismiss the instant petition.[4]

ORDER

It is ordered that the petition in Case 22–RC–10393 is dismissed.

[1] The Employer filed a brief in support of its position and the Petitioner filed a brief in opposition to the Employer's motion. In addition, the Board also granted the Petitioner's May 20, 1992 request for special permission to file a brief ''for the purpose of advancing [its] position that the opinion of the National Mediation Board is wrong.''

[2] We find no merit to the Petitioner's argument that the Board has jurisdiction over Chelsea because Chelsea submitted to the Board's jurisdiction in the Stipulated Election Agreement and that Chelsea's jurisdictional challenge was asserted in an untimely manner. Sec. 2(2) of the Act is a statutory limitation on the Board's jurisdiction which may be raised at any time. *International Total Services*, 270 NLRB 645 fn. 1 (1984).

[3] *Chelsea Catering Corp.*, 19 NMB 301 (1992).

[4] We find no merit in the Petitioner's contention that it was denied due process before the NMB. The Petitioner had an opportunity to and did file extensive briefs, with numerous exhibits, before the NMB and there is no indication that the Petitioner requested a hearing or otherwise sought to submit additional evidence before that body.