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REPORT TO THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED NOVEMBER 7, 1941, UNDER THE PROVISIONS OF THE RAILWAY LABOR ACT TO INVESTIGATE A DISPUTE BETWEEN

THE RAILWAY EXPRESS AGENCY, INC.

A CARRIER, AND CERTAIN OF ITS EMPLOYEES

REPRESENTED BY

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN, AND HELPERS

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THE RAILWAY EXPRESS AGENCY, INC., A CARRIER, AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN, AND HELPERS

THE MEMBERS OF THE BOARD

Maj. Gen. William H. Tschappat, of East Falls Church, Va.; Mr. Matthew Page Andrews, of Baltimore, Md.; and Mr. Royal A. Stone, of St. Paul, Minn., convened at Room 900, No. 45 Broadway, New York, N. Y., at 10 a. m., November 12, 1941, and held hearings on that and the 2 following days. Hearings were concluded November 14, 1941. Mr. Stone was selected chairman, and Mr. Frank M. Williams, of Washington, D. C., secretary and reporter.

The Railway Express Agency, Inc. (hereinafter designated by the initials REA), appeared by Mr. Albert M. Hartung, vice president; the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America (hereinafter designated by the initials IBT) appeared by Mr. Joseph A. Padway, counsel, Messrs. Thomas P. O'Brien and Frank Tobin, national representatives, and Mr. David Kaplan, statistician. The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter designated by the initials BRC) did not appear formally or officially but was represented by Mr. Willard H. McEwen, of Toledo, as attorney, who requested that he be considered as appearing "in the capacity of an unofficial observer in these proceedings."

All the gentlemen named rendered invaluable assistance in enabling the Board to understand the facts and make this report concerning them.

Accompanying and part of this report is a transcript of the Board's proceedings.

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THE FACTS

We find the facts to be these:

Both the BRC and the IBT are affiliates of the American Federation of Labor (hereinafter designated by the initials AFL).

Both have contracts with the REA which include the scope rules hereinafter discussed, under which the IBT as of September 18, 1941, claimed that it had taken from the BRC the right to represent the vehicle employees of the REA at Detroit.

From that claim arose the whole controversy, and its events. The contracts, it is conceded, give to each union the right of representation of the employees designated by the scope rules. A brief chronology of events follows:

August 14, 1941: The BRC Local in Detroit filed request for adjustment of wage rates. The attitude of the higher officials of the BRC seemed to be that since changes in railroad wage rates on a national scale were then under discussion no action was at that time advisable.

September 18, 1941: The IBT Local in Detroit presented evidence to the REA purporting to show that it had a majority of the vhicle employees "signed up" and hence under rule 1 of the agreement of March 1, 1940, was entitled to recognition as the bargaining agency. The REA, assuming that the IBT had a majority, notified the parties concerned that representation had changed from the BRC to the IBT. Thereupon the BRC Local threatened to strike. It contended that the Teamsters' organization did not in fact have a majority of the vehicle employees.

September 19: Mr. Hartung, for the REA, appealed to the National Mediation Board to assist in preventing stoppage of work. The next day the Mediation Board accepted the case for mediation. Mediator Bickers arrived in Detroit September 21.

September 25: The BRC threatened to strike at midnight but on proffer of mediation by the National Mediation Board, under section 5 of the Railway Labor Act, called off the strike at that time. On the same day the National Mediation Board wrote a letter to Mr. L. P. Bergman, general manager, REA, and to the heads of the labor organizations concerned accepting the labor emergency existing between the parties mentioned as one of mediation and stating that it would from that time attempt to compose the differences under section 5 of the Railway Labor Act.

October 4: The BRC Local struck and the representatives of all parties concerned were called to Washington by the National Mediation Board. The strike continued until October 30. It prevented the teamsters from working and seriously interfered with the operations of the REA in Detroit.

October 14: The Mediation Board mailed inquiry ballots to 292 vehicle employees of the REA in Detroit in an effort to determine the number of employees of the REA that belonged to each of the labor organizations in question. Appropriate measures were taken to make these ballots secret. However, the IBT Local refused to participate in this mail ballot and returned many of the ballots without using them.

October 20: The National Mediation Board sent out results of this ballot which indicated a large majority of the 292 employees as belonging to the BRC. The Mediation Board then ordered that the BRC should continue to represent the vehicle employees.

October 29: A letter was written by Mr. R. H. Vogel, superintendent of the REA, to Mr. Otto E. Wendel, Jr., business representative, IBT, advising him that on decision of the National Mediation Board the BRC was again recognized as the representative of the vehicle employees under existing scope agreement.

October 30: The clerks went back to work on assurance that a wage increase would be granted. Many teamsters remained out in protest against recognition of the BRC.

October 31: Mediator Cook began mediation of the wage increase requested by the BRC on October 14.

November 1: There was violence between clerks and teamsters.

November 3: Mr. Daniel J. Tobin, general president, IBT, wrote a letter to Mr. David J. Lewis, Chairman of the National Mediation Board, protesting against the action of the mediator and the National Mediation Board in recognizing the BRC as the bargaining agency. He claimed that the AFL, to which both the BRC and the IBT belong, had decided that all truck drivers and helpers come under the jurisdiction of the IBT. In this letter Mr. Tobin also blamed the BRC and REA for the violence of November 1. On account of the above, Mr. Tobin gave notice to the Mediation Board that no agreement now existed between REA and IBT in any city, and he notified IBT in several other cities to hold themselves in readiness to stop work for REA when called upon to do so by the General Executive Board of IBT.

November 4: The National Mediation Board called Mr. Tobin, Mr. Harrison, general president of the BRC, and Mr. Head, president of the REA, to Washington for conference. Mr. Tobin declined, due to other engagements. The others accepted.

November 4: Mr. Harrison, in a letter to Mr. Tobin, accuses IBT pickets of assaulting members of BRC, and appeals to Tobin to stop this violence and to resolve difficulties under Railway Labor Act. States extension to other cities will be unfortunate.

November 6: The official notice awarding a wage increase for the BRC on a nation-wide basis was sent out by the Mediation Board.

November 7: The President of the United States sent a telegram to Mr. Tobin, general president of the IBT, requesting him to call off the strike within 48 hours. Mr. Tobin replied, explaining the difficulty of prompt compliance.

November 8: The President's request for immediate cessation of the strike was reiterated. It was called off, but normal REA service in Detroit was not resumed until the morning of November 11.

NATURE OF THE DIFFICULTY

In the terminology of the American Federation of Labor, jurisdiction is the right of a union, granted by charter from the AFL, to organize employees in stated classes or crafts. A union's right of representation is the possession of authority to speak and act for employees in the processes of collective bargaining. While representation differs from jurisdiction, it normally follows exercise of jurisdiction to organize. Where a craft or class has been organized, the resulting union wants and ordinarily gets the right to represent its members. True, under the National Railway Labor Act they have the right to designate anyone they wish and so may choose an agency outside their union.

With that by way of preface, it is emphasized that, while the subject matter of the present inquiry is a dispute concerning representation, its source is in a controversy over jurisdiction which was pending for many years between the BRC and the IBT. We were told that both originally claimed the right to organize the vehicle men in employ of the REA. That long-standing and troublesome question of jurisdiction has never heretofore resulted in a strike. Attempt was made to settle it through mediation by the National Mediation Board in 1937. There resulted two contracts; one between the REA and BRC and the other between the REA and IBT. These contracts were made at the same time and resulted from a single mediation, the purpose of which was not only to compose the issue as between employer and employee but also to adjust it between the two Brotherhoods.

That purpose appears from the scope rules of the two agreements. The result was to give the IBT authority to represent REA vehicle employees at Cincinnati, Cleveland, Newark (N. J.), New York, Philadelphia, St. Louis, San Francisco, Chicago, "and in any other city in which a majority of chauffers and helpers, stablemen and garagemen may hold membership" in the IBT.

The agreements reached in 1937 have been amended in particulars not here important. The current IBT agreement, effective March 1, 1940, by rule 84 declares that it "shall continue in effect for 2 years

and thereafter until it is changed as provided herein, or under the provisions of the amended Railway Labor Act."

The current BRC agreement became effective October 1, 1940. Rule 100 declares that "it shall continue in effect until it is changed as provided herein, or under the provisions of the amended Railway Labor Act."

It is thus plain that both contracts recognized the IBT as representative of the designated employees in the eight cities enumerated. Equally clear is the contractual right of the IBT to the same power of representation " in any other city" whenever "a majority" of the designated employees "hold membership" in the IBT.

The scope rules (the one from the IBT agreement is copied below [1]) unfortunately, do not provide any procedure for determining whether in "any other city," at any time, the IBT has the requisite majority membership to vest in it the right of representation.

For the IBT, the argument before the Board was that, insofar as its scope rule makes majority membership condition precedent to the right of representation, the contract is to that extent illegal and therefore void. That argument must stand or fall upon its premise that the agreement violates the Railway Labor Act, particularly its provisions which insure to employees untrammeled choice of their own representatives for collective bargaining.

With that argument the Board cannot agree. The declared and main purpose of the law is "to avoid any interruption to commerce or to the operation of any carrier engaged therein"; another, "the prompt and orderly settlement of all disputes." To that end, employees have complete right "to organize and bargain collectively through representatives of their own choosing."

Nothing in the act prevents any organized group of employees from designating their own union as its representative. Nothing is there to prevent their saying that their own union shall continue to have that right until another, by majority membership in their craft and locality, shall show a greater capacity for effective representation.

In collective bargaining, representatives are agents for their principals. The law is that both employers and employees may choose such agents. They may do so in any lawful way. Hence they may do so by contract. They may declare when and upon what condition the authority of their agents shall terminate. They may also declare

[1] RULE 1. *Employees affected.*—These rules shall govern the hours of service and working conditions of chauffeurs and helpers, stablemen and garagemen, who are now represented by the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America in the following cities: Cincinnati, Ohio, Cleveland, Ohio, Newark, N. J., New York, N. Y., Philadelphia, Pa., St. Louis, Mo., San Francisco, Calif., Chicago, Ill., and in any other city in which a majority of chauffeurs and helpers, stablemen and garagemen may hold membership in the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America.

when and upon what condition the authority of an agent will be transferred to another. The latter is the operation provided for in the scope rules in their declaration that the IBT shall become agent for employees upon its acquisition of majority membership in "any other city."

It is essential to collective bargaining that all concerned know who has the power of representation. It is needful also for that power not to shift from one agency to another too frequently or at the mere caprice or whim of anyone. To the extent that orderly change of representation can be provided for, both as to process and occasion, by definite contractual terms, there will be added assurance of industrial peace, particularly as between groups of employees. Although the matter under investigation had its origin in a question between the two brotherhoods, the REA as employer was speedily drawn in of necessity. The result was serious breach of industrial peace and damaging interruption of interstate commerce.

We find nothing in the Railway Labor Act, and know of nothing elsewhere in law or public policy, which prevents organized employees from entering into contracts to determine for a future period the bargaining agency and the method to be used in changing it.

The current contracts settled the long-standing jurisdictional issue between the two brotherhoods. They substituted for their conflicting jurisdictional claims a compromise whereby the employees involved were divided between the two on a definitely stated basis.

This whole controversy and its very considerable damage to all concerned—employer, employees, and public—arose not from anything that is in the scope rule but from the absence therefrom of a factor of peace and security which should be present.

Suppose the scope rules of the two agreements had these common additional provisions: (1) That, where a union claims that the right of representation has shifted to it, in addition to a showing of the requisite majority membership made to the employer, the claimant should give concurrent notice to its rival union; and (2) that the latter have 10 days for investigation and consideration, with the right, if desired, to invoke the aid of the National Mediation Board or any other appropriate tribunal for decision of the question. Had the scope rules been so implemented, it is inconceivable that this lamentable controversy, wholly unjustified, could have arisen.

The Board has seen enough of the union representatives to be confident that, if those whom they represent had been given time for investigation, consideration, and, if need be, appeal to proper authority, there would have been no interruption of either public service or private income.

There has been nothing to justify effort or threat to terminate either the BRC or IBT contract with the REA. The latter has com-

mitted no breach of either. The most that has been charged against it is that it was "precipitate" when, September 18, 1941, it recognized the IBT claim to representation at Detroit, attempting in good faith to perform contractual obligation.

SUMMARY

The immediate and sole cause of the trouble at Detroit was no breach of contract by the REA. Rather, it was rivalry between the two unions. Against the BRC the IBT campaigned for membership. The BRC waged a countercampaign. Which has a majority of the vehicle men employed by the REA at Detroit this Board does not, cannot determine. Suffice it to say that, as the hearing was concluded, each was claiming a majority.

That is the sort of issue which at no time should trouble employer or public. Particularly in time of national emergency such as this all must recognize that it is the paramount duty of the unions to settle such matters themselves, without interruption of the intensive and continuous production so necessary to national defense.

Because before this Board convened the strikes at Detroit had been called off and the immediate emergency thereby ended, so it was argued that the Board has no jurisdiction to proceed. However, the Board has conceived its duty to be to investigate and report. Representatives of both unions have gone far, but not all the way, in promising that there will be no strike on account of present jurisdictional or representational differences.

Local disputes such as that in the present case may be carried by the unions concerned to other parts of the system, as was threatened in this case, or even made Nation-wide. Therefore it seems that there should be authority in the National Mediation Board, if such does not now exist, to determine representation disputes in such cases locally, if they cannot be settled without strikes by the labor organizations themselves.

At times there is as much, or even more, danger of strikes over disputes between rival labor organizations as of strikes due to disputes between labor organizations and employers. Hence it seems that the National Mediation Board should have authority under the law, if it does not now, to intervene just as it now does in direct disputes between employer and employees.

The issue from which this emergency arose was in origin and content between the two unions. Temporarily at least it has been settled. Its permanent adjustment remains a problem.

The Board feels that all such disputes should be settled finally by the unions, peaceably and without embroiling employers or interrupting service, with consequent damage to public interest.

That is plain and inescapable duty—emergency or no emergency. It is a duty primarily to government and people. It is a duty also to labor, in the interest of which alone there should be prompt and complete performance.

The assurances given this Board by the representatives of the unions inspire the hope that they will perform their plain duty.

If that hope is disappointed there may come necessity for government to assert the supremacy of its interest and power. Not yet has it been established that the strike is a legitimate weapon of interunion contest, especially when it both thwarts national will and endangers national safety.

The strike at Detroit was a local matter. The only stake was the right to represent about 300 employees. No other question was involved. Yet it threatened for a time to spread to 8 other important cities and seriously to disrupt interstate commerce and industrial peace. Only the prompt intervention of the President barred grave damage to the national welfare.

(S) ROYAL A. STONE, *Chairman.*
(S) WILLIAM H. TSCHAPPAT.
(S) MATTHEW PAGE ANDREWS.

Dated at New York, N. Y., November 17, 1941.

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