

**Southern California Water Company, Employer-Petitioner and Local Union No. 47, International Brotherhood of Electrical Workers, AFL-CIO, Party to the Contract, and United Steelworkers of America, AFL-CIO, CLC, Party to the Contract. Case 31-UC-84**

April 5, 1979

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Lynn K. Thompson on November 9, 1978, at Los Angeles, California. On November 22, 1978, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 31 issued an Order transferring this case to the Board for decision. Thereafter, Southern California Water Company and United Steelworkers of America, AFL-CIO, CLC, submitted briefs.

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.

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

1. The Employer, Southern California Water Company, is a California corporation and public utility, engaged in the sale and distribution of water and electricity, with its principal place of business in Los Angeles, California. During the past calendar year, the Employer received gross revenues in excess of \$250,000. During the same period the Employer purchased goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

It is not disputed, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The parties stipulated, and we find, that Local Union No. 47, International Brotherhood of Electrical Workers, AFL-CIO, and United Steelworkers of America, AFL-CIO, CLC, are labor organizations within the meaning of Section 2(5) of the Act and that they claim to represent certain employees, respectively, of the Employer.

3. On August 29, 1969, the National Labor Rela-

tions Board certified United Steelworkers of America, AFL-CIO, CLC, hereinafter referred to as Steelworkers, as the bargaining representative of the service and maintenance employees of California Cities Water Company at its San Dimas, Wrightwood, Cowan Heights, and Santiago, California, locations; and on July 27, 1977, Local Union No. 47, International Brotherhood of Electrical Workers, AFL-CIO, hereinafter IBEW, was certified by the National Labor Relations Board as the bargaining representative of the water distribution employees, including servicemen, customer service representatives, service foremen, pump maintenance electricians, and storekeepers at the Eastern Division of Southern California Water Company, hereinafter referred to as the Employer.

Between April 1976 and August 11, 1978, California Cities Water Company existed as a wholly owned subsidiary of the Employer, when, on the latter date, they merged, resulting in the dissolution of California Cities Water Company.

The Employer filed a petition on September 13, 1978, to clarify the IBEW certification<sup>1</sup> by including the service and maintenance employees from the San Dimas and Wrightwood districts, and by deleting the portion of the exclusionary language which stated: ". . . all other employees presently represented for collective bargaining by any labor organization." The certification language sought by the Employer would thus read:

All water distribution employees in the Employer's Eastern Division in a unit including servicemen, customer service representatives, service foremen, pump maintenance electricians and storekeepers and excluding professional employees and supervisors as defined in the National Labor Relations Act.<sup>2</sup>

In support of its proposed clarification, the Employer points out that by virtue of the corporate merger the districts formerly administered by California Cities Water Company<sup>3</sup> are now within the Employer's control. The Employer further notes that the Board has previously determined<sup>4</sup> that the Employ-

<sup>1</sup> The certification language reads as follows:

Included: All water distribution employees in the Employer's Eastern Division, including servicemen, customer service representatives, service foremen, pump maintenance electricians and storekeepers;

Excluded: All other employees presently represented for collective bargaining by any labor organization, professional employees, and supervisors as defined in the National Labor Relations Act.

<sup>2</sup> It is the Employer's position that the employees within the "service and maintenance" classification delineated in the 1969 Steelworkers certification are performing the same duties as the employees within the classifications set out in the proposed clarification.

<sup>3</sup> The districts covered by the 1969 certification were San Dimas, Wrightwood, Cowan Heights, and Santiago.

<sup>4</sup> *Southern California Water Company*, 220 NLRB 482 (1975); *Southern California Water Company*, 228 NLRB 1296 (1977).

er's primary organizational structure is the "division," and that it is the division which constitutes an appropriate unit for collective bargaining. The Employer thus argues that because the "district" is subsumed by the "division"—not only from an organizational perspective, but also in terms of what constitutes an appropriate unit—the San Dimas and Wrightwood districts must be included in the eastern division by virtue of the community of interest shared by the district employees with those in the division. The Employer contends that it would thereby maintain the organizational consistency of its operations, as well as conform to the Board's determination as to what constitutes an appropriate unit. In support of its contentions, the Employer presented evidence relating to the community of interest of the San Dimas and Wrightwood employees, with that of the employees in the eastern division. We will not, however, engage in any analysis concerning whether the San Dimas and Wrightwood employees ought to be included in the eastern division by virtue of any of the factors usually considered in determining community of interest; for we are in agreement that the petition for unit clarification herein is not appropriate under the circumstances present in this case.

Subsequent to the certification which issued on August 29, 1969, the Steelworkers entered into a series of collective-bargaining agreements with California Cities Water Company, the most recent being effective from December 3, 1977, and expiring on December 2, 1978. The IBEW, having been certified on July 27, 1977, entered into a collective-bargaining agreement with the Employer which was effective March 1, 1978, through February 28, 1979. The IBEW has taken the position that it would not participate in the hearing on this matter, that it was not seeking to represent the employees in question, and that the Employer may not legally clarify the unit to include these employees.<sup>5</sup>

Our consideration of the appropriateness of the unit clarification petition begins with the observation that the petition would have the effect of consolidating two existing certified units—each represented by a different union. It is true, that the merger of the Employer and California Cities Water Company has resulted in the dissolution of the latter corporation. It is also true, however, that this corporate dissolution did not abrogate the existing Steelworkers certification so as to transform those unit employees into "free-agents." This is because as a result of the corporate merger the Employer became a successor to California Cities Water Company, thereby requiring the Em-

<sup>5</sup> Although the IBEW did not participate in the hearing, it sent its position, in writing, to the Regional Director, who made it a part of the record herein.

ployer to bargain with the Steelworkers in the appropriate unit.<sup>6</sup>

Having thus determined that the Employer must continue to bargain with the Steelworkers as the certified representative of those employees which are the subject of the Employer's petition for unit clarification, we now examine the concept of certification as it relates to the clarification procedure. Certification of a labor organization as the statutory bargaining representative of a particular group of employees occurs only after the employees have expressed their desire—through a Board election—to be represented or not by a particular labor organization.<sup>7</sup> Likewise, certification cannot be revoked unless a majority of employees in the appropriate unit manifest their intent in that regard. Clarification of a unit, then, does not occur as the result of the expressed desire of employees, but is rather an administrative determination of what constitutes an appropriate unit in the face of changed circumstances, carried out much in the same way the Board initially determines the appropriate unit prior to an election.

The case herein certainly presents us with changed circumstances relating to the Employer's organization, but the fact of the matter is that the Steelworkers certification is still in force and cannot be ignored. Inclusion of the San Dimas and Wrightwood districts into the eastern division would therefore have the effect of the Board imposing the IBEW on the San Dimas and Wrightwood employees, in spite of their having chosen—in a Board election—to be represented by the Steelworkers.<sup>8</sup> The Board would thus be administratively nullifying a certification which was conferred as the result of a representation proceeding. We are therefore in agreement that the Employer has invoked the inappropriate procedure here; for it re-

<sup>6</sup> See, generally, *N.L.R.B. v. Burns International Security Services, Inc., et al.*, 406 U.S. 272 (1972); *TKB International Corporation t/a Hendricks-Miller Typographic Company*, 240 NLRB No. 114, fn. 4 (1979). In the case herein, the employee complement did not change at the time of dissolution and merger; and the operations, location, working conditions, supervision, equipment, and services performed did not change. Those changes that did occur were primarily cosmetic: changing the Employer's name on uniforms and vehicles, buying these vehicles as opposed to leasing them, changing the name of the employer on signs at various plants, altering locks so as to have them conform to the Employer's master system, and placing radios on the Employer's uniform frequency. In addition, the employees formerly paid by California Cities Water Company are now paid by the Employer.

<sup>7</sup> See Sec. 9(c) of the Act.

<sup>8</sup> In addition, setting aside for a moment the fundamental concerns relating to the affected employees, it is noted that both the Steelworkers and the IBEW oppose the petition for unit clarification. The Steelworkers opposes the petition because it wishes to continue to represent the employees in the unit for which it was certified; the IBEW opposes the petition because, *inter alia*, it totally disclaims interest in the employees whom the Employer would have us foist upon it. See *LTV Aerospace Corporation (Range Systems Division)*, 170 NLRB 200, 203 (1968), where the Board held that "the proposed merger or amalgamation of so many different bargaining units represented by so many different unions, none of which claims to represent all the employees involved, is [not] a matter that may appropriately take place without an election."

quests that we engage in a unit determination process which, given the existence of the Steelworkers certification, would have representational consequences.<sup>9</sup>

The Employer further suggests that the Board conduct an election based upon its petition for clarification, apparently in answer to the argument that the desires of the employees should be considered. We have had the opportunity to consider a similar situation in *Libbey-Owens-Ford Glass Company*, 169 NLRB 126 (1968). That case involved a multiplant unit represented by different locals of the same international union. The union wished to include two additional plants in this unit—plants where the employees were already represented by certified labor organizations which were operating within existing collective-bargaining agreements. The Board majority therein determined an election in the context of a unit clarification petition to be proper. Then-Member Fanning and Member Jenkins dissented in relevant part, pointing out that a unit clarification petition does not arise in the context of a question concerning representation, and that “[t]here simply is no present statutory authority for permitting employees to decide, in a representational vacuum, which *contract* unit they wish.” The dissent went on to distinguish a *Globe* election by noting that, while in a *Globe* election the employees determine their unit preference, they do so in connection with selecting a bargaining representative—not the case in a unit clarification context.

Subsequent to that decision, an election was held in accordance with the then majority view, and a Sup-

<sup>9</sup> As no evidence has been presented which would in any way indicate that a majority of employees in the Steelworkers unit no longer wish to be represented by that labor organization, there is no reason for us to consider revoking that certification. Moreover, even if it could be said that the majority has been dissipated, the appropriate course lies with a representation petition—whereby the intent of the employees may have open expression.

plemental Decision and Order Clarifying Unit<sup>10</sup> issued, which included the additional two plants in the larger unit. In 1970, the union again filed a petition to further clarify the certification to include yet another plant already certified as a single-plant unit. *Libbey-Owens-Ford*, 189 NLRB 869 (1971). On this occasion, the Board majority reversed the position taken in the earlier case, and based the decision to dismiss the petition on the earlier dissent therein of then-Member Fanning and Member Jenkins.<sup>11</sup> We reaffirm that reasoning and the resulting determination, and we are in agreement that such reasoning is dispositive of the case herein.

Accordingly, and for the reasons stated above, we shall dismiss this petition to clarify the existing certification.

## ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.

<sup>10</sup> 173 NLRB 1231 (1968).

<sup>11</sup> *Libbey-Owens-Ford Company*, 189 NLRB 871 (1971), issued on the same date, concerned a refusal-to-bargain charge filed by the union-petitioner concerning a unit clarification petition in the earlier case (169 NLRB 126). Subsequent to the election, and after expiration of the collective-bargaining agreements, the respondent employer refused to bargain with one of the two plants in the multiplant unit, attacking the proceeding in the earlier unit clarification petition. The Board, in consonance with its companion decision (189 NLRB 869) dismissing the second unit clarification petition, also dismissed the 8(a)(5) allegation, concluding that since the Board was without statutory authority to direct the elections in that proceeding (169 NLRB 126; 173 NLRB 1231), the Order Clarifying Unit was of no force or effect, and the complaint was dismissed as resting on an improper clarification of certification. The court of appeals reversed the Board, *United Glass and Ceramic Workers of North America, AFL-CIO [Libbey-Owens-Ford Company] v. N. L. R. B.* 463 F.2d 31 (3d Cir. 1972), and remanded the case to the Board for a finding on the appropriateness of the units involved. The Board accepted the court's opinion as the law of that case and found the 8(a)(5) violation. The court's decision did not, however, disturb the Board's expressed determination in the second unit clarification petition (189 NLRB 869), which the Board had determined to dismiss for the reasons already discussed, *supra*.