

New Orleans Public Service, Inc. and Local Union 1700 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC, Petitioner. Case 15-AC-34

August 25, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS,
MURPHY AND TRUESDALE

On June 20, 1975, Cooperative Street, Railway, Shop Employees Association of New Orleans (the Association) was certified as the collective-bargaining representative of an appropriate unit of the Employer's maintenance, repair, and service employees.¹

On September 16, 1977, the Petitioner filed the instant petition to change the name of the certified bargaining agent from the Association to Local Union 1700 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC (Petitioner or Local 1700-4 or IBEW).

A hearing was held on the petition on October 17, 18, 27, 28, and November 1, 7, 9, and 11, 1977, in New Orleans, Louisiana, before Patrick M. Bardwell. All parties appeared at the hearing and were given full opportunity to participate therein. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Regional Director for Region 15 transferred this case to the National Labor Relations Board for decision. Thereafter, the Employer and the Petitioner filed briefs.²

¹ The certification issued in Case 25-RC-5661 for a unit described as follows:

All maintenance, repair, and service employees employed by the Employer at its 2820 Iberville Street (Canal Station), 8201 Willow Street (Carrollton Station), 5600 Magazine Street (Arabella Station), and the 419 Napoleon Avenue (Napoleon Station) locations in the maintenance division of the transit department, including all mechanics, pitmen, body repairmen, spray sign painters, painters, electricians, machinists, welders, blacksmiths, register repairmen, upholsterers, truck repairmen, carpenters, operator mechanics, track welders, grinders, switch repairmen, general helpers, track men, transit utility men, and cleaners of the transit department; excluding all office clerical employees, professional employees, all guards and all supervisors as defined in the Act.

² On December 13, 1977, the Petitioner filed a motion to correct transcript in certain respects. By letter dated December 23, 1977, the Board advised the parties that any objections or other comments with respect to the motion must be submitted to the Board in Washington, D.C., on or before January 3, 1978. No objections to the motion having been received within the time provided for, the Board, through the Acting Executive Secretary, ordered that the Petitioner's motion be granted and the transcript corrected. On January 4, 1978, the Employer notified the Executive Secretary that it had not been served with Petitioner's motion. That same day, Petitioner hand-delivered a copy of the motion to the Employer. In the circumstances here, we have decided to review the Petitioner's motion *de novo*. On the merits, we grant the motion and correct the transcript as to

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds they are free from prejudicial error. They are hereby affirmed.

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

The Association was certified as the collective-bargaining representative of the Employer's employees on June 20, 1975.³ Prior to certification, the Employer recognized the Association and they entered into a series of contracts covering the maintenance division employees dating from 1932.⁴ The current contract between the Employer and the Association is effective July 1, 1976, to June 30, 1979.

In December 1976, James Zansler, president of the Association, and Joseph Maziasz, an International representative of the IBEW, first discussed the possibility of the Association affiliating with the IBEW. Other discussions followed between the two men and in February 1977, Maziasz met with the executive board and several members of the Association. During this meeting, Maziasz talked about the IBEW and answered questions from individuals in attendance. No action was taken as to affiliation.

A few months later, the IBEW became the bargaining representative of a separate bargaining unit of the Employer's employees. This development relates to the instant case because Zansler had told Maziasz that the Association interest in affiliating with the IBEW was in part dependent on the IBEW's becoming the bargaining representative of the Employer's power department employees.

On May 4, 1977, the executive board of the Association met to consider affiliation with the IBEW. Following a discussion of the pros and cons of affiliation including the effect on the unit's autonomy, the executive board voted unanimously to recommend that the membership of the Association affiliate with IBEW Local 1700.

Thereafter, the affiliation question was presented to the membership at the Association's next regularly

items 1-7 and 9-11 which are unopposed. Item 8 involves a request to correct Mr. Zansler's testimony by adding "not" between the words "would" and "accept" in the following sentence: "We would accept any votes in a package from one person for a group of men." The Employer opposes this change. In the circumstances here, we find it unnecessary to resolve this dispute. Thus, the probative record evidence fails to show that absentee ballots were used in the actual affiliation vote on June 17, 1977. The Employer's reliance on the testimony of employee Kreutzer is misplaced because the record reveals that Kreutzer was confused between the use of absentee ballots and challenged ballots. No other evidence shows that absentee ballots were used in the June 17 vote. *Contra*, the notice of the meeting for the actual affiliation vote on June 17 indicated, *inter alia*, that "You Must Come To The Meeting Hall To Cast Your Vote." In addition, President Zansler testified that absentee ballots were not used in the June 17 vote.

³ See the unit description set forth in fn. 1, *supra*.

⁴ The Employer's operators are represented by ATU Local 1560, pursuant to a certification on September 29, 1974.

scheduled meeting on May 20, 1977. Notice of the meeting was placed on the company bulletin boards throughout the maintenance department, 8 days before the meeting. The notices indicated that there would be a discussion of affiliation. The May 20 meeting, presided over by President Zansler, was held at the Association's regular meeting location. A motion to affiliate the Association with IBEW Local 1700 was reduced to writing, read, and distributed at the meeting. During the discussion of the motion, IBEW Representative Maziasz spoke to and answered questions from the membership. Before the vote, Zansler and other Association officers spoke in favor of affiliation. By agreement of the membership, a head count was taken on the motion. All members present and voting voted in favor of affiliation. In accordance with the charter and bylaws of the Association, the motion was tabled until the next regularly scheduled monthly meeting.

The motion to alter or amend provided, *inter alia*, that certain information be sent by first class mail to all members of the Association. Hence, the Association distributed by first class mail to all unit employees (1) a cover letter explaining the action taken at the May 20 meeting, (2) a copy of the affiliation agreement, (3) a copy of the motion to affiliate, and (4) a copy of the IBEW constitution.

The Association also conducted three special meetings on June 8, 1977, at which IBEW representatives appeared and answered questions from unit employees. These meetings, scheduled to accommodate employees on the various shifts, provided another opportunity to question IBEW representatives about the effects of affiliation.

The actual affiliation vote was taken on June 17, 1977. As indicated in the notice to employees, the meeting began at 2:30 p.m. and ended at midnight in order to assure employees on all shifts an opportunity to vote. Various safeguards were used to assure the secrecy of the ballot. The ballot itself indicated that a "yes" vote was "to amend our charter and by-laws to become local Union No. 1700-4 I.B.E.W., AFL-CIO." Those employees whose names were not on the voter list voted by challenged ballot. The certified vote was 178 for and 19 against affiliation, with 7 challenged ballots. No employee voiced an objection to the fairness of the election.

By letter dated July 7, 1977, President Zansler notified the Employer that the Association had amended the charter to merge with Local 1700-4. Enclosed with the letter were numerous pertinent documents relating to the merger. By letter dated August 1, 1977, the Employer notified President Zansler that it would not recognize and bargain with Local 1700-4. As a result of the Employer's position,

the Association had not dissolved itself at the time of the hearing.

In opposing the instant petition, the Employer contends that the unit employees were deprived of a fair opportunity to consider affiliation and to vote on the question of affiliation with adequate safeguards. The Employer also contends that affiliation by the Association with the IBEW will result in a change in the identity of the Association and, finally, that there will be a change in the nature of the bargaining relationship between the certified representative and the Employer.

We find no merit in the Employer's contention that the unit employees were deprived of a fair opportunity to consider and vote on the question of affiliation with adequate safeguards. Thus, we note that several meetings were conducted by the Association to provide information regarding affiliation to unit employees. At these meetings, unit employees were given an opportunity to question Association officers and IBEW representatives regarding the effects of affiliation. Notice of these meetings was by first class mail as well as by posting on company bulletin boards and in some instances also by hand-billing. The meetings at which the preliminary vote (to table affiliation vote) and the actual affiliation vote were taken were regularly scheduled meeting nights at the Association's regular meeting location. Furthermore, IBEW representatives visited the homes of unit employees to discuss affiliation.

In addition, the motion to affiliate was reduced to writing and distributed at the May 20 meeting. Thereafter, the motion to affiliate, the affiliation agreement, the IBEW constitution, and a cover letter explaining the action taken at the May 20 meeting was distributed by first class mail to all unit employees.

The June 17 meeting at which the actual affiliation vote was taken began at 2:30 p.m. and the polls remained open until midnight. Thus, all employees had an ample opportunity to attend the meeting and to vote.⁵ The election was conducted by secret ballot and, significantly, no employee has objected to the procedure followed, challenged the validity of the election, or claimed that he was denied due process. In sum, we find ample record evidence that the requirements considered important by this Board were met.⁶ Thus, there is no question here as to the true desires of the employees and no question with regard

⁵ Member Jenkins is satisfied that the record amply supports the conclusion that the nonmember employees were given the opportunity to vote at the time the actual affiliation vote was taken. See *North Electric Company*, 165 NLRB 942 (1967); *The Hamilton Tool Company*, 190 NLRB 571 (1971).

⁶ See *Newspapers, Inc., Publishers of the Austin American and the Austin Statesman*, 210 NLRB 8 (1974).

to the validity of the method by which the employees' desires were made known.

The Employer also contends that the affiliation of the Association with the IBEW involves a substantial change in the actual identity of the bargaining representative. Thus, the Employer claims that there will be an entirely new set of bylaws, that there will be a new system of internal union discipline, that there will be a different fee schedule, and that persons outside the unit may be involved in the removal of officers, the investigation of membership applications, the amount of initiation fees, and the expenditure of funds. In these circumstances, the Employer contends that there is a question of representation which can only be resolved by a Board-conducted election and not by the Board's amendment of certification procedures. In support of its contention, the Employer places heavy reliance on the Third Circuit's decision in *American Bridge Division, United States Steel Corporation v. N.L.R.B.*, 457 F.2d 660 (1972).

We find no merit in the contention that the continuity of the bargaining representative has been broken. Thus, we note that the existing contract, the employees covered by the contract, and the local officers remain the same after the affiliation. Local 1700-4 retains the right to negotiate its own collective-bargaining agreement and process its own grievances through the same elected individuals who led the Association.⁷ Indeed, it appears that the current contract between the parties provides for the eventuality resulting from the affiliation election.⁸ In these circumstances, it has been made clear to the Employer that all contractual commitments made by the Association with the Employer will be honored.⁹

In addition, we note that the certified union does

⁷ We note that the bylaws of Local 1700, of which Local 1700-4 will be a subunit, provide that ratification of the contract "shall be by secret ballot of the affected employees covered by said agreement."

⁸ Sec. 24 of the current contract provides:

This agreement and all of its terms and conditions shall insure to the benefit of and be binding upon the successor and assigns of the respective parties.

⁹ In his letter to the Employer dated July 7, 1977, President Zansler referred to sec. 24 of the current contract (fn. 8, *supra*) and also provided a

summary of the affiliation procedure and the relevant documents. See *Quemetco, Inc., a Subsidiary of RSR Corporation*, 226 NLRB 1398 (1976), where the Board indicated that the commitment to honor contractual obligations is "the only element of continuity in which an employer has a legitimate interest."¹⁰ The president of Local 1700-4 is also a member of the Local 1700 executive board. Compare *Quemetco, Inc.*, *supra*, where the Board found a valid affiliation even though the officers of the certified union did not become officers of the successors.¹¹ See *Jasper Seating Company, Inc.*, 231 NLRB 1025 (1977), and the cases cited therein at fn. 1. See also *Quemetco, Inc.*, *supra*.

The Employer has also objected to the affiliation because it will enable Local 1700-4 to consolidate its bargaining strength with other units in the Local and have available to it additional financial and research resources. We find no merit in this objection. See *Newspapers, Inc.*, *supra*, at 210.

not oppose the amendment. Also, the affiliation agreement provides that "the officers and directors of the Association shall become officers of IBEW Local 1700-4."¹⁰ Finally, we note that application for membership in Local 1700-4 appears to be ministerial only. Thus, the application agreement provides that "All members of the Association shall become members of Local 1700-4 without payment of initiation fees." In these circumstances, we find there has been no essential change in the identity of the bargaining representative within the meaning of Board precedent.¹¹

In view of the foregoing, we perceive no reason for not granting Petitioner's request and therefore shall amend the certification in Case 15-RC-5661 to reflect the current name and affiliation of the certified union. This amendment is not to be considered as a new certification or recertification.

ORDER

It is hereby ordered that the petition to amend the certification filed by Local Union 1700 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC, be, and it hereby is, granted, and that the Certification of Representative in Case 15-RC-5661 be amended by substituting "Local Union 1700 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC" for "Cooperative Street, Railway, Shop Employees Association of New Orleans."

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