

McKesson Wine & Spirits Co., A Division of Foremost-McKesson, Inc. and General Teamsters Local 137, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 20-AC-31

September 20, 1977

DECISION ON REVIEW AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND MURPHY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing¹ was held before a Hearing Officer of the National Labor Relations Board. After the hearing and pursuant to National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 20 issued a Decision and Order dismissing the petition. Petitioner filed a request for review, which was granted by the Board.

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 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:

On July 6, 1976, Teamsters, Chauffeurs, Warehousemen and Helpers Local 684, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein IBT Local 684), was certified as the bargaining representative of an appropriate unit of clericals employed by the Employer.² Subsequent to the election held on February 19, 1976, but prior to the issuance of the certification, IBT Local 684 and Petitioner merged under the procedures established by the International, with Petitioner being the surviving Local. By letter dated July 28, 1976, Frank Wood, the secretary-treasurer of Petitioner, notified the Employer of the merger and that it would be taking IBT Local 684's place in representing these employees.

The Employer refused to recognize Petitioner as a successor to IBT Local 684 and on August 13, 1976, filed an RM petition. Petitioner then filed a petition in Case 20-AC-29, seeking an amendment to the certification. The cases were consolidated, and both petitions were dismissed on September 30, 1976—the

RM because an election had been held in the same unit within the previous year and the AC because there was no evidence of employee participation in the merger decision. The instant case is based on a second AC petition filed by Petitioner, in which it claims that the unit employees have since been afforded the opportunity to express their desires with respect to the change in representative.

The Regional Director found, in accordance with the contentions of the Employer and Intervenor, that Petitioner is not a successor to IBT Local 684, essentially because she found that, rather than asking the unit employees their desires with respect to the merger, they were merely informed of the merger, after the fact, and asked at that time whether they wished to have Petitioner represent them. The Regional Director also found that Intervenor, contrary to its contentions, is not a successor to IBT Local 684 inasmuch as it does not meet the test of continuity of leadership and representation.

While we agree with the latter finding, for the following reasons we find, contrary to the Regional Director, that Petitioner is a successor to IBT Local 684 and shall amend the certification accordingly.

In her decision, the Regional Director has fully set out the facts surrounding the merger of Petitioner and IBT Local 684, including the creation of Intervenor, as well as the procedure used by Petitioner in obtaining ratification of the merger from the unit employees. These essential facts are not in dispute. Thus, she found that in the spring of 1976 some members of IBT Local 684's executive board began examining the possibility of a merger with Petitioner. The merger was discussed by members of both boards, and on July 13, 1976, the proposal was approved by the International, which determined that Petitioner would be the surviving Local with jurisdiction over IBT Local 684's assets, territory, etc. On July 20, 1976, the merger was discussed at the final meeting of IBT Local 684's executive board and approved without any member's expressing dissent. By virtue of the merger, all of the approximately 900 members of 684 were transferred to Petitioner and issued cards from that Local. Although the membership of the two Locals were not given an opportunity to voice their approval or disapproval of this action, it appears that the merger was in accordance with the International's constitution and has been duly recorded with the Labor Department.

At the time of the merger IBT Local 684 had collective-bargaining agreements with some 57 employers, all save 6 of which have since recognized

¹ Teamsters, Chauffeurs, Warehousemen & Helpers Local 684 is the Intervenor in this proceeding.

² The unit description was:

All office clerical employees employed at the Employer's place of business in Eureka, California; excluding all other employees, guards and supervisors as defined in the Act.

Petitioner as the successor to IBT Local 684. Subsequent to the merger several persons who had been members of the defunct IBT Local 684 filed protests over the merger with the International. The International denied these protest, affirming the validity of the merger under its procedures. However, this dissenter group coalesced into an independent union, adopting its own constitution and bylaws and electing its own officers. This independent, designated as Teamsters, Chauffeurs, Warehousemen & Helpers, Local 684 (Intervenor), has intervened in these proceedings, claiming it is a continuation of the defunct IBT Local 684, or at least a successor, although no longer affiliated with the International.

Although the Regional Director failed to make specific findings in this regard, it is clear from the record that Petitioner has the same national union affiliation as the certified Local does and has the same negotiation and grievance procedures; the same elected official has negotiating authority; and the offices, insignia, membership and executive meeting schedules, mailing address, dues and initiation fees, and publications are the same as those of the certified Local. In contrast, Intervenor has a newly adopted and different constitution from the certified Local and, while two of its officers were formerly officers of the defunct local, the rest of its structure is essentially different.

With respect to Petitioner's efforts to obtain ratification of the merger from the unit employees, the Regional Director found, in accordance with the record, that on September 15, 1976, Joe Davis, previously secretary-treasurer of IBT Local 684, who now holds the office of business representative with Petitioner, gave five notices to a unit employee, who in turn left a notice on each unit employee's desk. The notice announced a meeting to be held at a local inn on September 21, 1976, for the purpose of conducting a vote among unit employees to determine whether they approved the merger. Only two of the five unit employees appeared at the designated time and place,³ and both marked ballots in secret which asked the question, "Are you in favor of being represented by Teamsters Local 137?" The results showed that both ballots were marked "Yes."

³ The notice, contained in the record, was a form prepared by the union which was amended to specify the time and place of the meeting, which we find sufficiently clear to constitute adequate notice. The record further

Although Intervenor argues that the notice of the meeting was ambiguous as to time, place, and purpose, and that the employees were not asked whether or not they approved the merger, but only whether they wished to be represented by Local 137 or no union, the Board has held, under similar circumstances, that subsequent ratification by bargaining unit employees of a previously accomplished merger is a sufficient basis for granting an amendment to a certification. *Ocean Systems, Inc.*, 223 NLRB 857, 860 (1976).

Inasmuch as the record shows that there has been no substantial irregularity in the procedures utilized in obtaining ratification, in that the notice was adequate and all bargaining unit employees were given the opportunity to discuss the matter and indicate their desires in secret, and as Petitioner has demonstrated that the continuity of the bargaining representative has not been broken because it retains IBT Local 684's constitutional framework, dues structure, and elected officials who have authority to negotiate collective-bargaining agreements and process grievances, we find no reason for not granting Petitioner's request and shall therefore amend the certification in Case 20-RC-13246 to reflect the correct name of the certified Union. This amendment of the certification 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 General Teamsters Local 137, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, be, and it hereby is, granted, and that the Certification of Representative issued in Case 20-RC-13246 be amended by substituting "General Teamsters Local 137, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America" for "Teamsters, Chauffeurs, Warehousemen and Helpers Local 684, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America."

shows that the meeting was delayed 10 to 15 minutes to allow time for late arrivals. Finally, there is some indication in the record that those employees who did not attend were otherwise occupied on personal matters.