

United States Gypsum Company and Oil, Chemical and Atomic Workers International Union, AFL-CIO, and its Local 7-239, Petitioners. Case 7-AC-8.

May 23, 1967

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND ZAGORIA

Pursuant to stipulation for certification upon consent election, a representation election was held among the Employer's production and maintenance employees at its Alabaster, Michigan, plant. As a result of this election, the National Labor Relations Board, on August 13, 1964, jointly certified Oil, Chemical and Atomic Workers International Union, AFL-CIO, and its Local 7-371, as the exclusive bargaining representatives of the aforementioned employees.¹ On December 28, 1966, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and its Local 7-239 filed the instant petition to amend the aforesaid certification by substituting the name of Local 7-239 in place of Local 7-371.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

A hearing was held on January 24, 1967, before Shlomo Sperka, Hearing Officer. The Hearing Officer's rulings made at the hearing were free from prejudicial error and are hereby affirmed.

The Board has considered the petition to amend certification, the Employer's brief, and the entire record in this case, and, for the reasons stated below, grants the petition to amend certification.

Prior to 1966, the petitioning Local 7-239 represented employees of a single employer. In January 1966, its members voted to become an amalgamated local. It currently represents employees of several employers. In March 1966, the members of Local 7-239 voted to accept into membership the members of the jointly certified Local 7-371.

Shortly thereafter, the membership of the jointly certified Local 7-371, which represented only the Employer's employees, decided to consider the merger with the petitioning Local 7-239 and notices were mailed out to all members, who comprised about 35 in the unit of approximately 50 employees, apprising them that the merger question would be put to a vote at a meeting to be held on May 13. The May 13 meeting was attended by 17 members and the vote was 15 for, and 2 against, the merger. A representative of the parent International of both locals participated in the merger meetings and spoke

in favor of the merger. Thereafter, the records and assets of Local 7-371 were transferred to Local 7-239. Since the merger, the former members of the certified Local 7-371, while participating with all other members of Local 7-239 in the election of its officers, also elected from their own unit a separate bargaining committee to represent them in bargaining with the Employer, and the chairman of this committee is automatically a member of the executive committee of the petitioning Local 7-239. The Employer's contract with the International and Local 7-371 expired on October 17, 1966, and a request to open negotiations for a new contract was transmitted to the Employer by letter dated August 10, 1966, signed by the unit bargaining committee chairman and the International.

The Employer moved that the petition be dismissed on the grounds that the substitution of Local 7-239 for Local 7-371 constitutes a change of representatives which raises a question concerning representation resolvable only by an election provided for under Section 9(c) of the Act, and a majority of the employees in the certified unit were not afforded an opportunity to express their desires as to the merger and resulting change of representatives. We find no merit in these contentions. It is well established that where, as here, adequate opportunity to vote is provided to all those employees eligible to vote, the decision of the majority actually voting is binding on all in the conduct of a democratic election.²

By the establishment of the bargaining committee to represent the employees in the previously certified unit only, the joint request of the committee and the International that the Employer negotiate a new contract, and the inclusion of the bargaining committee chairman of the certified unit on the executive committee of the joint petitioner Local 7-239, the day-to-day relationship between the unit employees and the Employer will be maintained and their contractual obligations honored.³ In addition, both Locals 7-239 and 7-371 are locals of the same International, which approved the merger, and will continue to be the joint representative of the certified unit.

In all the circumstances, we find that the requested substitution of Local 7-239 for Local 7-371 as jointly certified representative of the employees in the unit insures to these employees a continuity of their present organization and representation, and we shall therefore grant the petition to amend certification.⁴ Such amendment of the certification is not, however, to be considered as a new certification or a recertification.

¹ Case 7-RM-494, not in published NLRB volumes.

² *Emery Industries, Inc. (Dice Road)*, 148 NLRB 51

³ *The East Ohio Gas Company*, 140 NLRB 1269

⁴ *Climax Molybdenum Company*, 146 NLRB 508. Accordingly, the Employer's motion to dismiss the petition is hereby denied.

ORDER

It is hereby ordered that the certification of representatives issued to Oil, Chemical and Atomic

Workers International Union, AFL-CIO, and its Local 7-371 in Case 7-RM-494 be, and it hereby is, amended by substituting therein "Local 7-239" for "Local 7-371."