

North Electric Company and International Union, Allied Industrial Workers of America, AFL-CIO and United Steelworkers of America, AFL-CIO. Case 8-AC-4.

June 23, 1967

DECISION AND ORDER

On June 22, 1965, a representation election¹ was conducted among the employees of the Employer in an appropriate unit.² Thereafter, on October 6, 1965, the North Electric Independent Union of Kenton, Ohio, hereinafter referred to as the Independent, was certified as the representative of the employees of the Employer. On November 8, 1966, the Petitioner filed the instant request to amend the certification so as to designate its affiliated Local Union No. 481, in place of the Independent, as the certified bargaining representative of the Employer's employees.

The Intervenor³ alone opposed the granting of the amendment, contending, *inter alia*, that a majority of the unit employees had not authorized the change in their bargaining representative. The Employer took no position concerning the petition.

A hearing was held on November 30, 1966, at Kenton, Ohio, before W.R. Griesbach, Hearing Officer. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Regional Director for Region 8 transferred this case to the Board for original consideration.

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

After a Board-conducted representation election in which both the Petitioner and the Independent were on the ballot, the Independent was certified in October 1965 as the representative of the employees of the Employer. Subsequently, the Independent and the Employer entered into a collective-bargaining agreement, which has a terminal date in October 1967. On August 26, 1966, the Independent posted notices on four plant bulletin boards, which announced a special meeting for September 11, 1966. The notices stated that the purpose of the meeting was to consider the question of affiliation of

the Independent with the Petitioner. The meeting was attended by 55 members⁴ and the vote on the motion for affiliation, taken by secret ballot, was 52 votes for and 2 votes against the motion, the chairman of the meeting not voting. On October 17, Petitioner issued the Independent a charter as Local Union No. 481 of the Petitioner. Since then, the former Independent has been functioning as a local of the Petitioner and, with the same officers continuing in office, has been administering the contract between the Independent and the Employer.

In determining whether to grant a motion to amend a certification, we are guided by the general rule that such motions may not be granted when they raise a question concerning representation that can only be resolved by an election. Thus, we do not permit the amendment of a certification where a schism is involved; that is, where the certified representative remains in existence and opposes the amendment.⁵ Nor do we grant amendments where the possibility of a question concerning representation remains open because the change of affiliation took place under circumstances that do not indicate that the change reflected a majority view.⁶ The record here satisfies us that none of the above situations are present here. To the contrary, the amendment of the certification "would insure to employees the continuity of their present organization and representation,"⁷ as the Independent no longer exists as such, but functions as a local of the Petitioner. The decision by the Independent to affiliate with the Petitioner was as democratic as possible, and the fact that many employees chose not to attend the meeting in question cannot be considered significant.

Our dissenting colleagues appear to be concerned principally with about 50 unit employees who, at the time of the September 11 Independent meeting which voted to affiliate with the Petitioner, were not yet members of the Independent, pursuant to the union-security contract. But it must be borne in mind that almost five times as many employees were members; notices of the special meeting and its purpose were posted on plant bulletin boards where all employees, including nonmembers, could see

¹ Case 8-RC-5907

² The appropriate unit, as set forth in the Board's Decision, is All production and maintenance employees, including installers and plant clerical employees, at the Employer's Kenton, Ohio, plant

³ On November 29, 1966, the Intervenor submitted 26 representation authorization cards, executed by employees in the bargaining unit, as evidence of opposition to change of affiliation. The Intervenor's unopposed request to intervene was granted.

⁴ The current contract contains a union-security clause which requires employees to become members of the Union after they have completed 90 days of employment. It was agreed that there were 238 union members at the time of the meeting on September 11, 1966, and that there were a total of about 288 employees in the unit, of which about 50 employees were not as yet union members.

⁵ E.g., *Bedford Gear & Machine Products, Inc.*, 150 NLRB 1; *R.M. Hollingshead Corporation*, 111 NLRB 840.

⁶ As we stated in a similar situation,

... it is a well-established principle that in the conduct of a democratic election, where, as here, adequate opportunity to vote is provided to all those eligible to vote, the decision of the majority actually voting is binding on all. *The East Ohio Gas Company*, 140 NLRB 1269, 1270

The Intervenor also advances an argument that since the Independent's bylaws required 20 percent of its membership to constitute a quorum, the affiliation vote by less than this figure was a nullity. Whether or not the factual premise of this argument is sound we need not determine, for the absence of a quorum is no bar to the regularity of organizational proceedings unless timely raised

⁷ *Emery Industries, Inc.*, 148 NLRB 51, 53.

them 16 days in advance; all members, and nonmembers who chose to become members in the interim, were thus given an opportunity to attend, and 55 of them were sufficiently interested in the question of affiliation to attend the meeting, the largest attendance at any reported 1966 meeting of the Independent; and 52 of these 55 cast their ballots in favor of affiliation.

The rival Intervenor alone opposed the requested amendment of the certification, but alleged only that 26 employees signed its authorization cards (all but 2 being dated after the special meeting) and were therefore opposed to the affiliation. In these circumstances we are satisfied that no showing has been made that more than 28 employees in the unit were opposed to the affiliation. We see no sufficient basis for thwarting the affirmative expression of the 52 unit employees who voted in favor of the affiliation, or for overturning the recognized democratic principle of majority rule after due notice to all. We find the *Bedford Gear* case cited in the dissent distinguishable, for there, unlike in the present case, the employer and the certified labor organization both *opposed* the requested amendment of certification, in part on the ground that the petitioner was but a splinter group and the certified labor organization had won a Board election less than a year earlier, was still in existence, was supported by a substantial number of employees, and was currently engaged in collective-bargaining negotiations with the employer.

Where, as here, it appears from the evidence before us that the bulk of the adherents and all the officers of the certified Independent have now transferred to the Petitioner although they had successfully opposed it in an election 14-1/2 months ago, and it also appears that voluntary and regular procedures under appropriate safeguards have been followed to determine the employees' wishes on the question of affiliation, we see no reason to require the Petitioner now to renew its combat via the formality of a Board-conducted election to redetermine the choice already made.

In these circumstances, we shall grant the Petitioner's motion and substitute Local Union No. 481 of the Petitioner as certified representative of the employees in the unit. This amendment of the certification is not, however, to be considered as a new certification or recertification.

ORDER

IT IS HEREBY ORDERED that the petition to amend certification filed by International Union, Allied Industrial Workers of America, AFL-CO, on behalf

of its Local Union No. 481 be, and it hereby is, granted, and that the Certification of Representatives issued in Case 8-RC-5907 be amended by substituting "International Union, Allied Industrial Workers of America, Local No. 481, AFL-CIO," for "North Electric Independent Union of Kenton, Ohio."

MEMBERS JENKINS AND ZAGORIA, dissenting:

We cannot agree with our colleagues' decision to amend the certification here because the union-conducted election on which the majority relies as the basis for the amendment does not comport with minimal standards of due process. More importantly, however, the majority's action affords undue weight to a privately conducted election in circumstances which result in an undermining of the Board's own election and certification procedures.⁸

It is undisputed that on June 22, 1965, the Board conducted an election for this same bargaining unit in which the North Electric Independent Union defeated the Allied Industrial Workers of America (the Petitioner for amendment here) by an 84 to 80 vote. On September 11, 1966, approximately 15 months later, the Independent Union conducted an election at which 52 of the 55 votes cast were for affiliation with Allied Industrial Workers of America (AIW). The 52 votes cast for the AIW were 28 votes less than the AIW received at the Board-conducted election which it lost. As contrasted to the Board-conducted election, moreover, the union election foreclosed 50 employees who were not union members from the opportunity of voting and thereby expressing their choice of a bargaining representative. In the majority's view, therefore, 52 votes (18 percent of the 288 employees then in the unit) have effectively changed the designated bargaining representative, despite the fact some employees in the bargaining unit were precluded from voting.

The Petitioner is barred from securing a Board-conducted election at this time because of the existing contract with the Independent Union. Consequently, even though the Petitioner could get a majority in favor of designating it as bargaining representative, Board rules and procedure, specifically contract-bar rules, precludes the use of the usual Board processes to change the bargaining representative. By granting an amendment of certification, therefore, the Board is undermining its own processes and permits a change in the bargaining representative in midstream; i.e., during the term of an existing contract. Moreover, by granting the amendment here, the possibility exists

⁸ In *Bedford Gear & Machine Products, Inc.*, 150 NLRB 1 at 2, our colleagues (Chairman McCulloch and Member Brown) stated: "However, such a question [change of a bargaining representative to a union previously rejected in a Board conducted election] can be resolved only by the timely filing of a petition and a secret ballot election among the employees concerned, and not by a motion to amend the certification."

Citing [*Gulf Oil Corporation*, 109 NLRB 861.] Indeed, as the Board pointed out in the *Gulf Oil* case, granting such a motion in circumstances such as this would in effect result in the certification of the very union which less than a year before had been rejected by a majority of the employees. In accord with well-established Board policy, therefore, we shall deny the motion [Emphasis supplied.]

that the amendment process may in the future be utilized to facilitate raiding between unions, a result which could only increase industrial strife.

If the Board is to accept privately conducted elections as a basis for amending Board certifications, it should be certain that minimal standards of due process be observed lest the very validity of Board certifications and elections be undermined. Granted that employees in a bargaining unit cannot be compelled to vote, they can, at the very least, be afforded *the opportunity to vote*. It appears basic to the collective-bargaining process that the selection of a bargaining representative be made by the employees in the bargaining unit. In our view, therefore, a cardinal prerequisite to any change in designation of the bargaining representative is *that all employees* in the bargaining unit be afforded the opportunity to participate in such selection. This prerequisite was not met here.

It appears rather incongruous for the Board to spend a substantial portion of its time in other cases scrupulously scrutinizing whether employer or union conduct in a preelection period in Board-conducted elections may have interfered with the freedom of choice of employees *who voted* and yet condone and thereby ratify the complete disenfranchisement of 50 employees in the bargaining unit in a union-

conducted election *who were not afforded the opportunity to vote* because they were not union members.

In deciding to permit the amendment of the certification here, our colleagues conclude that a question of representation does not exist and that there is no indication that the change of affiliation does not reflect the view of "a majority of affected employees." The facts in the case point to the contrary. Some 15 months previously, the Board concluded that this same question of whether the Independent Union or the AIW was to represent the employees should be settled by a Board-conducted election, and the issue was resolved against AIW. Nothing here indicates any change in these circumstances, or raises any presumption that a change has occurred. In addition, in view of the disenfranchisement of 50 employees in the bargaining unit, the outcome of the election really resulted in a determination by even less than a *majority of a majority*; i.e., the 238 union members constituted a majority of the 288 employees in the unit and the vote of only 52 of those union members determined the selection of the bargaining representative.

For the foregoing reasons, we would deny the petition.