

Safway Steel Scaffolds Company of Georgia and Teamsters Local Union No. 769, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,<sup>1</sup> Petitioner, and Aircraft and Engine Maintenance and Overhaul, Building and Construction Manufacturing, Processing and Distribution and Allied Industries Employees, Local 290, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,<sup>2</sup> Petitioner. Cases 12-AC-7 and 12-RC-431

OCTOBER 24, 1968

DECISION AND ORDER  
AMENDING CERTIFICATION

BY CHAIRMAN McCULLOCH AND MEMBERS  
FANNING AND ZAGORIA

On February 17, 1959, in Case 12-RC-431, Local 290 was certified as the collective-bargaining representative of certain employees of the Employer.<sup>3</sup> On June 4, 1968, Local 769 filed the instant petition, requesting that the certification be amended by substituting Local 769 for Local 290 as the certified bargaining representative of the Employer's employees

The Employer opposed the granting of the amendment, contending, *inter alia*, that the unit employees had not properly authorized the change in their bargaining representative, and that Local 769's petition raised a question concerning representation which can be resolved only by the filing of a representation petition.

A hearing was held on August 6 and 13, 1968, at Miami, Florida, before Herbert N. Watterson, Hearing Officer. Following the hearing, and by direction of the Acting Regional Director for Region 12, this case was transferred to the National Labor Relations Board for original consideration. A brief has been filed by the employer.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case 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. The rulings are hereby affirmed.

Upon the entire record in this case, the Board finds

Following the Board certification of Local 290 as

the representative of the Employer's employees in February 1959, Local 290 and the Employer entered into a collective-bargaining agreement having a terminal date of May 31, 1964. After negotiations for a new contract failed, Local 290, on July 1, 1964, called a strike, and thereafter, filed unfair labor practice charges alleging violations of Section 8(a)(1), (3), and (5) of the Act. On June 24, 1965, following the issuance of a complaint, the Board issued its decision,<sup>4</sup> ordering the Respondent Employer, *inter alia*, to bargain with Local 290. The United States Court of Appeals, Fifth Circuit, granted enforcement, in major part, of the Board's Order,<sup>5</sup> including the order to bargain.

On February 1, 1966, Local 290 and Local 769 were merged,<sup>6</sup> and Local 769 thereafter assumed custody of the books and records of Local 290, as well as the administration of all Local 290 contracts. On April 26, 1968, Local 769 notified the unit employees that a special meeting would be held on May 2, 1968, at which time a secret ballot election would be taken to determine if they desired to be represented by Local 769. At the meeting, the employees were handed a ballot upon which was printed the following:

Do you agree to a transfer of the certification rights and bargaining rights which Teamsters Local 290 had for employees of Safway Scaffold to Teamsters Local 769 and hereby authorize Teamsters Local 769 to be your bargaining representative in dealing with Safway Scaffold.

The ballot contained a "Yes" and a "No" box. The balloting resulted in nine votes being cast for, and none against, the proposal.

In its brief in opposition to the amendment, the Employer relied, primarily, on *Rinker Materials Corporation*,<sup>7</sup> in which the Board denied a petition to amend certification involving the same Locals as appear in the instant case.

We find, however, that *Rinker Materials* is inapposite. The record there, like the instant case, reflected a merger in February 1966 of Locals 290 and 769. However, since it was not shown therein that the Unit employees participated in the decision to merge the Locals, the Board dismissed the petition, but "without prejudice to Local 769's right to file a motion to amend the certification when it is in a position to show that the unit employees have had an opportunity to pass upon the transfer of representation from Local 290 to Local 769." Here, unlike *Rinker Materials*, the record shows that the unit employees have been accorded an opportunity to state their position on the transfer of certification rights, and as

<sup>1</sup> Hereinafter referred to as Local 769

<sup>2</sup> Hereinafter referred to as Local 290.

<sup>3</sup> The unit was described as "All truck drivers, helpers and warehousemen" at the Employer's Miami, Florida, plant

<sup>4</sup> 153 NLRB 417

<sup>5</sup> 383 F 2d 273 (C.A. 5), cert. denied 390 U.S. 955.

<sup>6</sup> None of the unit employees herein participated in the vote on the merger

<sup>7</sup> 162 NLRB No. 156

to whether they wished to be represented by Local 769, and they voted to do so in what we find to be a properly conducted election.

In these circumstances, and since the amendment of the certification would insure to employees the continuity of their present organization and representation,<sup>8</sup> we shall grant the Petitioner's request and substitute Local 769 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.

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<sup>8</sup> *Emery Industries, Inc.*, 148 NLRB 51, 53.

#### ORDER AMENDING CERTIFICATION

It is hereby ordered that the petition to amend certification filed by Teamsters Local Union No. 769, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America be, and it hereby is, granted, and that the Certification of Representatives issued in Case 12-RC-431 be amended by substituting "Teamsters Local Union No. 769, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America" for "Aircraft and Engine Maintenance and Overhaul, Building and Construction Manufacturing, Processing and Distribution and Allied Industries Employees, Local 290, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America."