

Equipment Manufacturing, Inc. and United Steel Workers of America, AFL-CIO, Petitioner. Case 7-AC-90

February 12, 1969

DECISION AND AMENDMENT OF CERTIFICATION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

In a Decision and Certification of Representative of the National Labor Relations Board in Case 7-RC-7826 the Independent Equipment Employees Union was certified on April 14, 1967, as the bargaining representative of an appropriate unit of the Employer's production and maintenance employees with the usual exclusions. On March 13, 1968, the Petitioner filed its petition in this proceeding seeking to amend the certification and to substitute itself as the bargaining representative named in the certification. The Regional Director for Region 7 issued an Order to Show Cause on April 3, 1968, and a Supplemental Order to Show Cause on April 19, ordering the parties to show cause if there were any reason why the petition should not be granted. Thereafter, the parties made certain submissions to the Regional Director and on May 20, 1968, he issued a Notice of Hearing on the issues raised.

A hearing was held before Albert L. Becker, Hearing Officer.¹ Subsequent to the hearing, the Petitioner, Intervenor, and Employer filed briefs with 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 powers in connection with this case to a three-member panel.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

An election among the Employer's production and maintenance employees was held on January 27, 1967. Of approximately 206 eligible voters, 174 cast ballots, of which 78 were for the United Steelworkers Union, and 98 for the Independent Union. As noted above, the Independent was certified on April 14, 1967. Thereafter, the Employer and Independent entered into a contract effective from July 17, 1967, until March 31, 1970.

A number of the officers of the Independent favored affiliation with the Steelworkers, even after the Independent's certification. In November 1967

the Steelworkers held a dinner for such supporters at a local hotel, and among other matters discussed was the possibility of the Independent's membership voting for affiliation with the Steelworkers. The matter was further pursued after the dinner, and it was decided to present the issue to the Independent's membership at its regular meeting on February 8, 1968. At that meeting a Steelworkers' representative spoke to the membership there present, pointing out, *inter alia*, that upon affiliation the Union would maintain local autonomy, and keep its same officers and welfare fund. After some discussion, about 25 of the 30 members present voted that the Independent should hold a secret ballot election on the question of affiliation.

Thereafter, the Independent's secretary-treasurer posted a "Notice" concerning the election on the union bulletin board in the plant. The notice stated that the purpose of the election was to vote on merging with the Steelworkers and that it was to be held on February 29, 1968, between 1:30 and 4:30 p.m. at a local Veterans of Foreign Wars hall. It also listed the tellers for the election. Around February 12 he gave to a Steelworkers' representative a "Notice of Special Election" listing the purpose, time, and place of the election. The Steelworkers had the notice duplicated and mailed to a list of employees supplied by the Independent's secretary-treasurer and based on the Company's 1967 Christmas list. Then sometime later the Independent's president posted on the plant bulletin board a notice entitled "Rules For Voting" stating that the polls would close at 4:30 p.m., and that there could be no alcoholic beverages or loitering in the voting area.

The voting was held at the time and place scheduled. The election area was a large room. When each employee entered, his name was checked by each of three tellers against separate eligibility lists based on the plant seniority list. If found eligible, the employee was given a ballot which he marked and then deposited in a sealed cardboard box with a slit cut in it. After the polls closed the ballot box was opened and the ballots counted by the tellers and two union officers. The only employees denied the right to vote were some 13 who had been employed less than 30 days and thus did not appear on the seniority list.² There is no substantial evidence that any employee did see how another voted or that any person improperly "loitered" in the voting area. Of approximately 160 eligible voters, 149 cast ballots. The ballots stated: "Do you wish to affiliate with the United Steelworkers of America, AFL-CIO? Mark an 'X' in the square of your choice." There were two squares, the one on the left having "Yes" printed over it; while the one on the right had "No." Ninety-nine voters placed an "X" or other clear

¹The Independent Union made no appearance in this proceeding. However, Franuel Benedict, an employee and former officer of the Independent, intervened in opposition to the petition and participated through counsel at the hearing.

²The contract between the Independent and Company contained a union security clause requiring in effect that each unit employee become after the

marking in the "Yes" box; fifty, in the "No" box.³

On March 8, a letter on the Independent Union's stationery and signed by all Independent officers was sent to the Company. The letter stated the employees had voted to "transfer their affiliation from the status of an Independent Union to become a Local Union affiliated with the United Steelworkers of America, AFL-CIO." It also expressed the hope that the Company would voluntarily recognize the Steelworkers and amend the present contract by substituting that Union for the Independent in the agreement.⁴ The following day a Steelworkers' representative sought by letter a meeting with the Company for purposes of such contract modification. The Company refused to meet. Subsequently, officers of the Independent signed various documents provided by the Steelworkers, and on April 4, 1968, that Union issued a charter of affiliation to the Independent as United Steelworkers of America Local Union No. 7369. The charter was formally accepted by the Independent officers on April 8.

It is clear from the foregoing that employees constituting not only a majority of union members but also a majority of employees in the established bargaining unit have voted, in a properly run election with proper safeguards, for affiliation with the Steelworkers Union; that a majority of the Independent officers approved such affiliation and have continued to serve as officers of the Union; and that the Independent has not become defunct but has in fact become Local No. 7369 of the Petitioner. We find nothing inconsistent with our conclusions here in the facts, heavily relied on by the Employer and Intervenor, that even after the Petitioner's charter issued, officers of the local union continued to use forms and stationery with the

statutory grace period a member of the union. All unit employees employed over 30 days were members of the union and, thus, eligible to vote in the election.

³The Intervenor complains that the tellers did not consider some 42 proxy votes acquired by him and another union officer. We find no substance in the complaint as the Independent's constitution and bylaws made no provision for proxy voting, neither was provision made for such voting in the election here, and, finally, some of the individuals listed on the proxy sheet had previously cast secret ballots.

⁴Intervenor signed the letter but contends, as did another officer, that his intent, first stated after the letter was sent, was solely to inform the Employer of the results of the election, but not to urge recognition of the Steelworkers

Independent heading in handling grievances, and dealt with the company as officers of the Independent. As clearly appears, such practices were occasioned, first, by the availability of Independent stationery and forms, and second, by the fact the Company would not deal with the officers other than as representatives of the Independent. Finally, we find no support for the claim that the Intervenor revived the Independent in early July 1968. At most we have the Intervenor and a few other employees designating themselves as officers of an alleged union which they contend is the old Independent. Even assuming the relevancy of a revival, the claim here is not of a revival by a majority of the employees, and is so patently frivolous as not to require further consideration. In view of the foregoing, we can perceive no reason for not granting the Petitioner's request.⁵ We shall, therefore, amend the certification in Case 7-RC-7826 to reflect the current name and affiliation of the certified Union.⁶

ORDER

It is hereby ordered that the petition to amend the certification filed by the United Steelworkers of America, AFL-CIO, be, and it hereby is, granted, and that the Certification of Representative issued in Case 7-RC-7826 be amended by substituting "United Steelworkers of America, AFL-CIO, Local No. 7369" for "Independent Equipment Employees Union."

⁵*North Electric Co.*, 165 NLRB No. 88. Member Zagoria, who dissented in the *North Electric* case, joins in this decision because here, unlike in that case, voting eligibility extended as a practical matter to all employees in the certified unit and a majority of those in the unit cast their ballots for affiliation with the Steelworkers.

⁶The Employer objects to naming the Local, citing in support of its position *M. A. Norden Company, Inc.*, 159 NLRB 1730. That case is not, however, relevant for there, unlike the present situation, the company had an established bargaining relationship with the international and the local sought to be substituted had been in existence at the time of the election involved. Here, of course, the employer is opposed to any amendment of the certification, and it has failed to show that it would in any way be prejudiced if the Local rather than International were substituted. Finally, the employees had been told by Steelworkers' representatives before the election that even after affiliation they would retain a large measure of local autonomy. In our view, the granting of separate local status reflects not only the fact that the employees did not vote to have their union merged into the international, but also that in reality it is Local No. 7369 and not the Petitioner which is the employees representative.