Montgomery Ward & Co., Incorporated and Retail Store Employees Union, Local 692, affiliated with Retail Clerks International Association, AFL-CIO, Petitioner. Case 5-AC-10

February 17, 1971

## DECISION AND AMENDMENT OF CERTIFICATION

By Chairman Miller and Members Fanning and Jenkins

On August 13, 1958, in Case 5-RC-2513, Retail Store Employees Union, Local 886, Retail Clerks International Association, AFL-CIO, was certified by the Board as the collective- bargaining representative of certain employees of the Employer. On July 29, 1970, Retail Store Employees Union, Local 692, affiliated with Retail Clerks International Association, AFL-CIO, filed the instant petition, requesting that the certification be amended by substituting Local 692 for Local 886 as the bargaining representative of the employees in the certified unit. 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; that to substitute the petitioning union for the certified union would constitute a radical change of the bargaining representative; and that Local 692's petition raised a question concerning representation which can be resolved only by the filing of a representation petition.

A hearing was held on October 28, 1970, at Cumberland, Maryland, before Hearing Officer Joseph L. Kane. Following the hearing, and by direction of the Regional Director for Region 5, this case was transferred to the National Labor Relations Board for consideration. Briefs have been filed by the Petitioner and the Employer.

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 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: Prior to its merger into Local 692, Local 886 was an amalgamated local of the Retail Clerks International Union, representing employees at some 11 stores in six adjacent counties in the western portion of Maryland and West Virginia. At the time of its merger with Local 692 on March 1, 1970, Local 886 had approximately 500 members.2 Local 886 had a full complement of officers elected by members of the Local, but most of its business was conducted by Robert J. Brown, its secretary-treasurer and business agent, who was the only full-time official of Local 886. Prior to the merger, Brown maintained an office in Cumberland, Maryland, from which he conducted the business of the Local throughout the six counties. When Local 886 was still in existence, it held official monthly meetings of the membership in Cumberland. The record shows, however, that ratification of contracts for the individual stores represented by the amalgamated Local 886, and any other decisions peculiar to the particular units, were made only by members of the individual units involved. At the time of the merger, Montgomery Ward, the Employer involved in the case before us, employed about 50 unit employees, 31 to 33 of whom were dues-paying members of Local 886. The contract between Montgomery Ward and Local 886 contains a modified union-secu-

Local 692 is a larger amalgamated Local of the Retail Clerks International Association, spanning areas of Maryland, West Virginia, and Virginia. At the time that Local 886 was merged into Local 692, the latter Local had some 11,000 members. Again, the record does not establish the total number of employees represented by Local 692. For years preceding the April 1, 1970, merger, Local 692 had maintained a close working relationship with its smaller sister Local 886, providing such services as legal representation to Local 886 and covering 886-represented employees under the Local 692 pension and health and welfare plans. After numerous discussions, starting in 1964, with officers of Local 692 about the precarious financial condition of Local 886, the Executive Board of Local 886 eventually agreed with the Executive Board of Local 692 to seek a merger of the two locals. After approval of the proposed merger was received from RCIA headquarters and further approval was given by the Executive Board of Local 886, a special meeting of Local 886 was held on January 25, 1970, which was attended by approximately 114 members. They voted almost unanimously to approve the merger.<sup>3</sup>

<sup>2</sup> The record does not establish the number of employees, as opposed to members, represented by Local 886 in the 11 stores at which it held bargaining rights

<sup>&</sup>lt;sup>1</sup> The unit is described as "All employees in the Company's Cumberland, Maryland, retail store, excluding the store manager, assistant store manager, guards, professional employees, and supervisors as defined in the National Labor Relations Act."

<sup>&</sup>lt;sup>3</sup> The Employer has raised a question as to whether all members of Local 886 were given adequate notice of the meeting at which the merger vote was taken Robert J Brown, the business agent of former Local 886, testified that he and his secretary, on January 9, 1970, mailed such notices, together with copies of the merger resolution, to all 500 members listed in his office files. Only three such notices were returned to his office as undeliverable. The evidence proffered by the Employer to prove inadequate notice to members.

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After the merger, Local 886 transferred its assets to Local 692 and ceased to exist. However, Business Agent Brown was designated by Local 692 as the business agent for the 11 bargaining units which formerly were represented by Local 886, and he continues to service these bargaining units from his Cumberland office precisely as he did before the merger. Brown has also been elected to a 3-year term on the Executive Board of Local 692. Prior to the merger, the membership of Local 886 met at monthly meetings of that Local; such monthly meetings are still held for members formerly represented by Local 886, although the meetings now serve an informational purpose rather than an official one. At the meetings, Brown informs the members of current developments and elicits from the membership their opinions about pending issues, which he then relays to the monthly meetings of the membership of Local 692 that are held in Baltimore. Of course, all of the former members of Local 886 are now members of Local 692 and are entitled to attend the membership meetings of Local 692 in Baltimore, which is located about 135 miles from Cumberland. The merger has not affected the procedures previously employed with regard to matters of special interest to each individual unit: for example, just as before the merger, only members of the Montgomery Ward bargaining unit will vote on the question of ratification of bargaining contracts negotiated for that unit by Business Agent Brown.

Of the 11 employers formerly in a bargaining relationship with Local 886, 10 have agreed to continue bargaining with Local 692 as the representative of their respective employees. Montgomery Ward, however, has refused to do so, contending, among other things, that Local 692 is not a true continuation of the certified union and that the failure to permit all employees formerly represented by Local 886 to vote on the question of merger denied these employees their basic statutory right to choose their bargaining representative. In response to Montgomery Ward's refusal to extend recognition to Local 692, that Union has petitioned this Board to amend the certification given

in 1958 to Local 886 as representative of the Montgomery Ward employees, substituting therefor Local 692 as the certified representative.

We shall grant the requested amendment of the certification. In our view, the change of representation of the Montgomery Ward employees from a small amalgamated local to a larger amalgamated local, both affiliated with the same International union, has effected no substantial change in the identity of the bargaining representative. The obligations owed to the International union by the employee-members of the Montgomery Ward bargaining unit remain the same after the merger. Business Agent Brown continues to service the employees of the stores which formerly recognized and bargained with Local 886 and, as a member of the Local 692 Executive Board, he represents the interests of the employees in the former Local 886 bargaining units. Although the 30-odd Montgomery Ward members no longer are able to vote for officers chosen from a limited group of 500 members, they are permitted to vote for officers and Executive Board members selected from the 11,000 members of Local 692. Importantly, employee-members of each bargaining unit previously represented by Local 886 continue to exercise significant control over their own destiny by retaining the power to ratify bargaining contracts and to make decisions on similar matters affecting their own units without intervention by other members of Local 692. The Employer points out that, prior to the merger, the 31-33 employees of Montgomery Ward who were members of Local 886 represented about 7 percent of the total membership of Local 886, and thus had some influence in the decisions made by that organization, whereas these 30 or so members represent a much smaller proportion of the membership of Local 692. One assumption underlying this contention is that the Montgomery Ward members used to vote as a bloc, which may or may not be so. At any rate, we disagree with the Employer's position that the fact that Montgomery Ward employees comprised about 7 percent of the membership of Local 886 allowed them to exercise a "considerable voice" in the affairs of the Local which has been meaningfully diminished by the merger. Similarly, we are unpersuaded by the Employer's argument that the representation of Montgomery Ward employees has been effectively diluted by the fact that, within Local 886, employees of retail department stores amounted to 37 percent of the total membership, whereas such nonfood store employees comprise only 23.5 percent of the membership of Local 692. We consider this change to be of relatively slight materiality to the question of the basic identity of the certified union and the petitioning union.

We conclude, therefore, that the requested substitution of Local 692 for Local 886 as the certified repre-

is in itself quite inadequate. The parties merely entered into the record a stipulation that, prior to the hearing, the Employer's attorneys had interviewed, among others, 23 Local 886 members employed at the Montgomery Ward store, that 11 of these members stated to the attorneys that they did recall receiving the January 9 letter, and that the other 12 members gave statements to the effect that they did not recall receiving the January 9 letter. One of these latter 12, Chester Davis, the only employee who testified on this issue at the hearing, contradicted his earlier statement given to the Employer's attorneys and stated that, after further thought, he did recall receiving notice of the merger prior to the meeting. In light of Brown's unequivocal testimony, as contrasted to the insubstantiality of the evidence offered by the Employer, we conclude that proper notice of the merger meeting was given to all members of Local 886. It is undisputed that notice was not given to employees represented by Local 886 who were not, in fact, members of that Local

sentative of the employees in the Montgomery Ward unit insures to these employees a substantial continuity of their present organization and representation.<sup>4</sup> Having concluded that there has been no change in the essential identity of the bargaining representative, the question of whether all employees in the Montgomery Ward bargaining unit should have been allowed to vote on the merger becomes irrelevant.<sup>5</sup>

<sup>4</sup> United States Gypsum Company, 164 NLRB 931 In contrast to the factual situation in Gulf Oil Corporation, 135 NLRB 184, cited by the Employer, the record before us shows that the basic identity, rights, and obligations of the group of employees formerly represented by Local 886 have not been significantly affected by the merger

While we shall, accordingly, grant the petition to amend the certification, the amendment is not to be considered as a new certification of a recertification.

## ORDER

It is hereby ordered that the certification of representative issued in Case 5-RC-2513 on August 13, 1958, to Retail Store Employees Union, Local 886, affiliated with Retail Clerks International Association, AFL-CIO, be, and it hereby is, amended by substituting therein "Retail Store Employees Union, Local 692, affiliated with Retail Clerks International Association, AFL-CIO," for "Retail Store Employees Union, Local 886, affiliated with Retail Clerks International Association, AFL-CIO."

be given an opportunity to participate in determining that bargaining representative Cf North Electric Company, 165 NLRB 942, 943 (dissenting opinion)

cantly affected by the merger

In approving the amendment of the certification here, Member Jenkins is persuaded that the change to Local 692 from Local 886 is substantially a technical one, inasmuch as both locals are affiliated with the same International Union and an overwhelming majority of union members voted for the change after proper notice. However, Member Jenkins reaffirms his view that whenever there is a substantive change in the bargaining representative, all employees in the bargaining unit, whether or not members of the union, must