

**The Hamilton Tool Company and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local No. 1688. Case 9-AC-22**

May 28, 1971

**DECISION AND ORDER**

On February 7, 1969, a representation election<sup>1</sup> was conducted among the employees of the Employer in an appropriate unit.<sup>2</sup> Thereafter, on February 17, 1969, Hamilton Tool Employees Independent Federation, Inc., hereinafter referred to as the "Federation," was certified as the representative of the employees of the Employer. On April 28, 1970, the Petitioner, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local No. 1688, hereinafter referred to as the "UAW," filed the instant request to amend the certification so as to designate it in place of the Federation as the representative of the Employer's employees.

The Employer alone opposes the granting of the amendment, contending that: (1) the requested amendment would result in a change in the representative itself rather than a mere change in the name of the representative; (2) the requested amendment would violate the Board's contract-bar rules; (3) UAW participation in the Federation's affairs amounted to a raid invalidating all actions taken; (4) the procedure used to affiliate with the UAW did not comply with minimum standards of due process and did not provide adequate safeguards; and (5) the Federation remains a potentially viable functioning organization. The Federation did not enter an appearance at the hearing.

A hearing was held on June 9, 10, and 18, 1970, at Cincinnati, Ohio, before Hearing Officer D. Patton Pelfrey. Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director transferred the case to the National Labor Relations Board for decision. The Employer and the Petitioner filed briefs with the Board.<sup>3</sup>

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

<sup>1</sup> Case 9-RC-7980

<sup>2</sup> The appropriate unit, as set forth in the Board's Decision, is. all production and maintenance employees, including plant clerical employees, employed by the Employer at its plant at Walnut and Ninth Street and the Ninth Street annex, Hamilton, Ohio, but excluding all office clerical employees, coop students, technical employees, time study employees, guards, professional employees and supervisors as defined in the Act

<sup>3</sup> By Board order, oral argument was held in this case on December 7, 1970. All parties participated. Member Kennedy did not participate in the oral argument, however, he has read the transcript of the oral argument, the briefs, and the entire record in this case

Upon the entire record in this case, the Board finds: After a Board-conducted representation election in which the Federation and the United Steelworkers of America, AFL-CIO (Steelworkers), were on the ballot, the Federation was certified in July 1965 as the representative of the employees of the Employer. Subsequently, the Federation and the Employer entered into a collective-bargaining agreement which had an expiration date of February 21, 1969. On February 7, 1969, a second Board election was conducted among the Employer's employees with the Federation and the Steelworkers on the ballot. On February 17, 1969, the Federation was again certified as the collective-bargaining representative of the Employer's employees. Subsequently, the Federation and the Employer extended the collective-bargaining agreement of February 1, 1969, until April 25, 1969. Negotiations for a new contract were unsuccessful and resulted in a strike which lasted from April 26, 1969, until May 25, 1969. On May 26, 1969, the Federation and the Employer entered into a collective-bargaining agreement which has an expiration date of May 26, 1972.

Sometime during the course of the strike, five members of the Federation, including the president, the first vice president, and a trustee of the Federation, met with Ray Schmidt, an attorney who also represented the Petitioner. Sometime later, but also during the strike, the officers and committeemen of the Federation met with two UAW representatives and discussed "wages, the dues . . . what had to be done to affiliate with the UAW" and the UAW strike fund. In November and December 1969 Attorney Schmidt met two or three times with the officers and committeemen of the Federation "to talk over [what had to be done] to affiliate with the UAW."

Sometime after May 25, 1969, Attorney Louis Hoffman, an associate of Schmidt, began to handle some legal matters for the Federation, and in November 1969 Schmidt himself was retained by the Federation.

Article XI of the Federation's constitution provided, *inter alia*, that "[i]n order to submit a ballot for affiliation to the membership of the Federation, it will require the approval of 75 percent of the members present at the meeting of the Federation at the time such request is presented for vote" and that "[i]t will require the approval of 75 percent of the membership in good standing to permit such affiliation."

At the Federation's general membership meeting on August 10, 1969, James Garland, a trustee of the Federation, raised the possibility of "changing the by-laws [sic] for the purpose of affiliation from 75 percent to 50 percent." The then president of the Federation, Hayden Turner, stated that "the government is coming out with a ruling on this matter." No further action was taken.

At the Federation's general membership meeting on December 12, 1969, member Joseph Schmidt proposed, and committeeman Joseph D. Bruce seconded, a proposed amendment to article XI of the Federation's constitution which would only require the approval of 51 percent of the membership in good standing to permit affiliation. No action was taken on this proposal.

At the Federation's general membership meeting on January 18, 1970, with 60-65 members present, Bruce withdrew his seconding motion and Joseph Schmidt withdrew his motion to amend article XI of the Federation's constitution. Thereupon, President Meadors read a new proposed amendment which had been endorsed by the executive committee of the Federation. This proposed amendment provided that the question of affiliation with any other labor organization could be submitted to the membership for secret ballot vote after a notice had been posted on all bulletin boards at least 5 days before any vote and would be effective if at least 50 percent plus one of those members present at the Federation's membership meeting voted in favor of affiliation. The members discussed in detail this proposed amendment. Further, Attorney Schmidt gave "quite a talk on it" and explained what the UAW was and what it could do for the members of the Federation.

On January 19, 1970, notices were posted on five bulletin boards throughout the Employer's plant stating that at the Federation's next general membership meeting on February 15, 1970, the proposed affiliation amendment would be read for a second time and then would be voted on.<sup>4</sup> On February 9, 1970, a second notice was posted on the bulletin boards urging employees to attend the "very important meeting of February 15, 1970." On February 13, 1970, a "Special Reminder Notice" about the affiliation vote to be held on February 15, 1970, was given to the chairman of the shop committee. He, in turn, gave copies to the committeemen who distributed the notices to the men working on each shift.

At the February 15, 1970, meeting, President Meadors read the then current article XI of the Federation's constitution and the proposed amendment. After a lengthy discussion by the membership, Attorney Schmidt gave a "small talk" concerning the amendment. A stand-up vote was then taken which resulted in unanimous approval of the amendment (105 to 0).<sup>5</sup> After the vote, the membership discussed the amendment and Attorney Schmidt made a presentation of 10 to 15 minutes concerning the amendment and the UAW. The membership wanted to take an immediate

vote on affiliation with the UAW but upon the advice of Attorney Schmidt the vote on affiliation was set for the next regular monthly meeting, scheduled to be held on March 15, 1970.

On February 15, 1970, the Federation posted notices on the five bulletin boards in the plant which stated that a secret ballot vote on affiliation with the UAW would be held on March 15, 1970. On February 23, 1970, the Federation posted another notice stating that due to other commitments made by the Knights of Columbus (at whose hall the monthly membership meetings were usually held), the March 15 membership meeting would be held at the UAW local union hall and that there would be a secret ballot vote on affiliation. On March 9 the Federation posted a third notice on the bulletin board. The notice informed the members of the forthcoming election and contained a small map showing the location of the UAW local union hall together with directions of how to reach the hall. On March 13 the Federation also distributed a special reminder notice on the March 15 meeting through the shop committeemen. Further, on March 12, 1970, the Employer sent to the employees' homes a letter requesting that they go to the March 15 meeting and vote.

At the March 15 meeting each person, as he entered the hall, signed his name and shift on one of the two lists at a table near the entrance. These lists were kept by two members but they did not have a membership or seniority list against which to check the names.<sup>6</sup> After everyone had signed the lists, Secretary Weber checked to insure that no nonmembers were present. Two hundred seventy three persons signed the signature lists. Also three UAW representatives were present at the meeting.

The meeting began within a minute or two of the scheduled time of 1:30 p.m. and was "quiet and orderly." As some of the employees present were to be initiated into the Knights of Columbus at approximately 2:45 p.m., President Meadors dispensed with the regular order of business to allow time for questions from the floor about the proposed affiliation with the UAW. President Meadors read the affiliation proposal, introduced the UAW representatives each of whom gave a short talk, and then opened the meeting for questions from the floor.

The polls were opened at approximately 2:20 p.m. The trustees of the Federation who were in charge of the balloting had arranged to have four enclosed voting booths for the voting. A trustee stationed himself in front of each of the booths and handed a ballot to each voter as he approached the booth. The voter then took

<sup>4</sup> The notice also informed the employees that the amendment had been "unanimously proposed by the Executive Committee."

<sup>5</sup> It was originally planned to have a secret ballot vote, but Attorney Schmidt advised that a secret ballot vote was not required, whereupon a standing vote was substituted.

<sup>6</sup> In its brief, the employer contends that the voting list contained seven names which were not on the seniority list of March 15, 1970. However, no evidence was elicited at the hearing. Further, the evidence with respect to this seniority list from two employer officials was so contradictory and unclear as to cast grave doubt on its correctness.

the ballot into the booth, marked the ballot, and upon exiting deposited the ballot in a nearby ballot box. The question and answer period may have been going on while the first voters were in line or were in the polling booths.

After all persons present had voted, the ballot box was taken into a separate room which was then locked, and the trustees, the chairman of the shop committee, the president, and the two vice presidents counted the ballots twice. The vote was 197 for affiliation, 75 against, and 1 ballot blank, for a total of 273 ballots, which equaled the number of persons present at the meeting. The results were then announced to the membership and the meeting was adjourned.

By letter dated March 16, 1970, President Meadors informed the Employer that the membership of the Federation had voted to affiliate with the UAW; that from "this date on the name of the union has been changed to International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. Local Union No. 1688"; that "all officers and functional leaders remain the same"; that no change was anticipated in the day-to-day relationship with the Employer; that the "continuity of the Local Union has been completely preserved"; that all contractual commitments would be honored fully; and that the change in name of the contracting union should be noted in the Employer's records. About 3 weeks after the affiliation election, a UAW charter was issued to the Petitioner.

Approximately 4-7 days after the affiliation election, President Meadors asked the Employer if it would be possible to have a UAW representative present at grievance meetings. The Employer stated that it would rather not have a UAW representative present at such meetings until it had time to consult with its counsel. Several other requests for the presence of a UAW representative at grievance meetings as well as for recognition of the Petitioner were rejected by the Employer. By letter dated March 25, 1970, the Employer informed Meadors that its legal counsel had advised it that the Federation continued in existence and that it could not "recognize the validity of the claimed 'affiliation.'"

Although the Federation voted to affiliate with the UAW and informed the Employer of such affiliation, as of the time of the hearing no steps had been taken to dissolve the Federation and all financial affairs of the Union have been conducted in the name of the Federation. Further, the bank account is still in the name of the Federation, checked-off union dues are made out in the name of the Federation, and membership forms and checkoff authorizations are executed in the name of the Federation.

The Employer alone opposes the requested amendment of the certification. The Federation made no appearance at the hearing and no employee of the Em-

ployer testified in opposition to the requested amendment. Further, there is no evidence that any employee has opposed or objected to the affiliation with the UAW since the affiliation vote was taken.

The Employer contends that "[t]o allow amendment in this situation would violate the Board's contract bar rules." This contention is obviously without merit. The Petitioner has clearly stated that all contractual commitments with the Employer will be honored fully. Besides, under Board law, an amendment of a certification, such as the one here sought, neither affects the Board's normal contract-bar rules nor allows the processing of a representation petition during the midterm of a valid subsisting bargaining contract of reasonable duration.

The Employer also contends that "UAW participation in the Federation's affairs amounted to a raid invalidating all actions taken." In support of this contention the Employer argues that UAW representatives "not only guided but procured the actions of the Federation" in voting to affiliate with the UAW and that Schmidt, who was the attorney for both the Federation and the UAW, was a "partisan advocate and agent of the UAW in bringing about affiliation." We do not find that the participation by UAW representatives in the Federation's affiliation amounted to a raid by the UAW.<sup>7</sup> The Federation's contract with UAW representatives is understandable. To learn what steps it had to take to affiliate with the UAW it was necessary for the Federation to consult with the UAW. Although it is not clear from the record whether the Federation initially contacted the UAW with respect to the proposed affiliation, or vice versa, it is clear that, unlike the situation in *News-Press Publishing Co.*, 145 NLRB 803, relied on by the Employer, the UAW was not "instrumental in the efforts to terminate" the Federation's status as the representative of the employees. The Federation called and conducted all the membership meetings dealing with the proposed affiliation. The UAW representatives were present at some of these meetings as guests of the Federation and merely explained how affiliation could be effectuated and what advantages the employees would derive from such affiliation. We find that such circumstances do not nullify the action taken by the Federation to affiliate with the Petitioner. Finally, we note that all of the cases cited by the Employer in its brief in support of its contention are distinguishable since, unlike here, the certified union in those cases was still in existence and objected to the proposed certification amendment. Accordingly, we find no merit in this contention.

The Employer contends that the "procedure used [to achieve affiliation] did not comply with minimum standards of due process or provide adequate safe-

<sup>7</sup> *United States Gypsum Co.*, 164 NLRB 931

guards” because allegedly (1) there was no opportunity for debate before the affiliation resolution was voted upon; (2) the result was procured by a substantial and material misrepresentation in that it stated that all officers of the Federation desired to affiliate; (3) the timing and placement of the election was irregular and minimized participation; (4) nonmembers were improperly barred from participation; and (5) the election procedures were irregular.

With respect to (1), above, the evidence shows that after the president had read the affiliation resolution and the UAW representatives had made brief talks, the meeting was opened for questions from the floor and there were questions from the floor before the members voted on the amendment. While this procedure may not be in strict compliance with Robert’s Rules of Order which state “[a]ll resolutions . . . may be debated before final action is taken on them,” the fact remains that all members were accorded the opportunity to raise any questions they may have had about the proposed affiliation. We also note that no member, during the meeting or since, has objected to the procedures followed. Accordingly, we find no merit in this contention.<sup>8</sup>

With respect to (2), above, all the officers were present at the meeting and could have stated that they did not desire affiliation if, in fact, they did not. As none of them took advantage of this opportunity, their acquiescence in affiliation may reasonably be assumed. Contrary to the Employer’s contention, there is nothing in the record to show that any officer was opposed to affiliation. The only evidence bearing even peripherally on that point is the testimony of one officer that the officers had not been separately polled with respect to affiliation. Accordingly, we find no merit in this contention.

With respect to (3), above, the evidence indicates that previous secret ballot elections of the Federation had been held in a bus outside the Employer’s premises while the election here was held at the UAW hall on a Sunday afternoon. The Employer contends that this “move from a familiar location on a public street to an unfamiliar location and perhaps hostile location,<sup>9</sup> coupled with the scheduling of the meeting on a Sunday afternoon<sup>10</sup> . . . had an obvious impact on participation” and constituted “an irregularity sufficient to void this election.” By this argument the Employer would have us infer that the Federation deliberately set out to

restrict the number of members who would attend the meeting and, by doing this, load the ballot box. Since there is no evidence in the record to support such an inference, we cannot accept it. We also note that attendance at this meeting was abnormally high when compared with recent past membership meetings—273 of the approximately 474 members attended the March 1970 meeting, while only 105 attended the February 1970 meeting, 60–65 attended the January 1970 meeting, and an average of 40–45 attended the September, October, and November 1969 meetings. Further, not only was the affiliation election to take place at this meeting, but also the proposed affiliation was to be discussed and explained. It is obvious that the street outside the Employer’s premises was not a proper place to hold such a discussion. Finally, the members were notified at least three times where the meetings were to be held and were even provided with a map or chart with written instructions stating where the UAW local hall was located. In these circumstances, we find no merit in this contention.

With respect to (4), above, the evidence indicates that 30 probationary employees were not eligible to participate in the election. The Federation’s contract with the Employer provides for a 90-day probationary period for new employees and the union security clause requires new employees to become union members after 90 days of employment. None of the 30 probationary employees referred to above was a member of the Union at the time of the affiliation vote. Under the Federation’s constitution only members are entitled to vote in an election. The notices informing the employees of the affiliation election were entitled “Union Notice” and urged “all members” to attend. As the subject voted upon involved an internal union matter relating to the affiliation of the incumbent union rather than to the employee selection of a bargaining representative, the preclusion of nonmembers from voting did not affect the regularity of the election. As the Board has observed under similar circumstances, when “adequate opportunity to vote is provided to all those . . . eligible to vote, the decision of the majority actually voting is binding on all.”<sup>11</sup> Also, there is no evidence that any probationary employee attempted to vote in this election and was denied the right to vote. We note, moreover, that even if the 30 probationary employees had voted in the election and all had voted against affiliation, there would still have been a majority vote in favor of affiliation. Accordingly, we find no merit in this contention.

With respect to (5), above, the evidence shows that three UAW representatives were present in the room at the time of the voting and may have answered a ques-

<sup>8</sup> As the Board stated in *Gate City Optical Company*, 175 NLRB No 172, fn 3 “The Board . . . does not normally concern itself with determining whether a membership meeting was held in strict conformity with a Union’s constitution and bylaws absent a clear showing . . . of substantial irregularity.”

<sup>9</sup> There is absolutely no evidence in the record that the UAW local hall was a “hostile location.”

<sup>10</sup> The Federation’s general membership meetings were usually held on Sunday afternoons.

<sup>11</sup> *East Ohio Gas Company*, 140 NLRB 1269, 1270. See also *North Electric Company*, 165 NLRB 942.

tion or questions from the floor while the employees were lining up at the polls or the first employees were actually voting. Further, the voters' names were not checked by any membership or eligibility list before they were permitted to vote, and members remained in the hall after they had voted. Again, we note that it is the Employer alone who objects to the voting procedure—neither the Federation nor any member thereof objected to the procedure during the meeting, or has done so since. Also, there is no evidence that any person saw how another voted or that there was partisan electioneering going on during the actual voting. While the procedures used during this union election may not measure up to the standards the Board demands for its own elections, on the facts of this case, we are not willing to find that the procedures were so lax or so “substantially irregular” as to negate the validity of the election, and especially so in the absence of any complaint from the Federation or any member thereof. In our opinion the vote was an accurate reflection of the desires of the participating membership.<sup>12</sup> Accordingly, we find no merit in this contention.

The Employer contends finally that the Federation remains a “potentially viable, functioning organization” and that “[t]he Board’s procedure for amending certification may not be utilized to substitute one labor organization for another which circumvents the congressional mandate of Section 9 of the Act.” In support of this contention, the Employer argues:

No matter how similar two labor organizations may appear—no matter how regular and democratic the selection procedure may appear—if, in fact, the organization seeking certified status is not precisely the same organization which “survived the crucible” of a Board conducted election, the Board is without power to certify it.

We disagree. If we accepted this argument of the Employer, contrary to past precedent, we would never grant an amendment to a union’s certification which would permit affiliation with, or disaffiliation from, another labor organization. It is true, as we stated in *Missouri Beef Packers, Inc.*, 175 NLRB No. 170, that:

Amendment of certification, by and large, is intended to permit changes in the name of the representative, not a change in the representative itself. Where, as here, there is no guaranty of continuity of representative and the certified labor organization is a functioning viable entity, and opposes amendment, it cannot be granted without doing violence to the purposes of the Act, which include the promotion of stability in labor-management relations.

<sup>12</sup> See *American Bridge Division, United States Steel Corporation*, 185 NLRB No. 98, *Gate City Optical Company*, *supra*

However, the facts of this case are opposite to the facts presented in *Missouri Beef Packers, Inc.*, *supra*. Here, the certified labor organization does not oppose amendment and is not a presently functioning viable entity. In fact, the certified Union has now become the Petitioner. Our conclusion that the Petitioner is, in legal effect, no more than an organizational continuity of the Federation is not rebutted by the evidence showing that after the Petitioner’s charter was issued, the bank accounts, checkoff authorizations, and membership applications remained in the name of the Federation, no members of the Federation have resigned, and there has been no election of officers. As clearly appears, these practices were occasioned chiefly by the fact that the Employer refused to recognize the Petitioner and insisted upon dealing with its officers only as representatives of the Federation.<sup>13</sup> Also, there was no need for an election of officers, since, as the Employer was informed, the officers of the Federation became the officers of the Petitioner. Further, as the Board recently stated in *North Electric Company*, 165 NLRB 942:

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. Nor do we grant amendments where the possibility of a question concerning representation remains open because of the affiliation took place under circumstances that do not indicate that the change reflected a majority view.

However, here, as in *North Electric Company*, *supra*, we are satisfied that none of the above situations are presented by this record. It is our opinion that the amendment of the certification here “would insure to employees the continuity of their present organization and representation,”<sup>14</sup> as the Federation no longer exists but functions as a local of the Petitioner.

<sup>13</sup> See *Equipment Manufacturing, Inc.*, 174 NLRB No. 74. In support of this contention, the Employer also alleges that no steps have been taken to dissolve the Federation in accordance with Ohio law (the Federation had been incorporated under Ohio law) and that there is no evidence that the officers are not willing to continue to serve as officers of the Federation. With respect to the corporate dissolution of the Federation, we find this to be merely a ministerial act and of no substantive importance. We also find that the fact that the Federation officers informed the Employer that the Federation had voted to affiliate with the Petitioner, that the name of the Federation was not that of the Petitioner, and that the officers were now the officers of the Petitioner, shows that the officers were no longer willing to serve as officers of the Federation. Further, no evidence was elicited at the hearing that even suggested that the officers were still willing to serve as officers of the Federation.

<sup>14</sup> *Emery Industries, Inc.*, 148 NLRB 51, 53

In view of the foregoing, we can perceive no reason for not granting the Petitioner's request. We shall therefore amend the certification in Case 9-RC-7980 to reflect the current name and affiliation of the certified union.<sup>15</sup>

### ORDER

It is hereby ordered that the petition to amend the certification filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local No. 1688, be, and it hereby is, granted, and that the Certification of Representative issued in Case 9-RC-7980 be amended by substituting "International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local No. 1688" for "Hamilton Tool Employees Independent Federation, Inc."

CHAIRMAN MILLER concurring:

I agree with the result reached by my colleagues in this case, for the reason that it appears to conform with such precedent as we have in this area.

That precedent, however, rests upon a rather thin premise, i.e., that the now affiliated local is the same entity as the former independent union, and that no question concerning representation exists.

While there occasionally comes before us a case where the facts justify such a finding (as, for example, when a union merely changes its name or style of designation), this case raises a serious question as to whether such a finding here is no more than a legal fiction.

Members of locals affiliated with large international unions enjoy the benefits of, and are subject to the restrictions imposed by, the constitutions, bylaws, and practices of those sophisticated and highly institutionalized nationwide organizations. They are of a quite different character from a totally local, "home-grown" and autonomous independent union. Few realists in the world of industrial relations would assert that a local of the Auto Workers or the Steelworkers is the "same union" as the autonomous predecessor independent. A Board claiming expertise in this area of social and economic life should not close its eyes to these realities.

What we are really doing in these cases, therefore, is to permit certification of a new and different bargaining agent during the life of a contract, contrary to our usual contract-bar rules, although we place a limitation on

the normal right of a new agent to engage in fresh bargaining, holding that it must instead administer the existing contract.

This result is a quite reasonable accommodation between the statute's sometimes inconsistent purposes of industrial stability and freedom of choice. The procedures by which we reach that result are, however, very questionable, particularly because we now certify this new bargaining agent without having ourselves supervised the procedures by which the employees have determined to change agents. Instead, we content ourselves with the "internal" procedures of the employee group, provided they meet certain minimum safeguards of due process, which admittedly generally fall short of the carefully supervised and controlled procedures which apply when we are petitioned to conduct an election under Section 9 of our Act.

The rather incongruous result is that if the officers of an independent union were to secure the signatures of an overwhelming majority of the total work force on cards indicating a desire to abandon the independent, authorizing representation by a newly chartered local of an affiliated union and petitioning us to conduct an election to determine by secret ballot whether a change in employee choice had indeed occurred, we would summarily dismiss the petition on contract-bar principles. But if the same officials call an "affiliation" meeting and secure even a slim majority vote for affiliation by members present and voting in a procedure occurring outside our regulated procedures, we routinely issue our certificate to the same newly chartered local.

I would prefer, if we are to continue to reach the result here, that we adopt an appropriate modification of our contract-bar principles and permit, under appropriate circumstances, a mid-contract Board election to determine whether a different agent should administer the agreement for its duration. I believe we should face up to the facts in this manner, rather than to continue to rely on elections conducted under varying privately adopted rules.

Since, however, my colleagues are not disposed to follow this course, and since it would in any event probably be better to make any such change through the exercise of our rulemaking powers, I reluctantly concur in the result in this case since this record does show that the employees and their representatives met the requirements which we have thus far imposed as prerequisites for "amending" our certifications under like circumstances.

MEMBER JENKINS, dissenting:

For the reasons stated in my dissent in *North Electric Company, Inc.* 165 NLRB 942, I would not amend the certification.

<sup>15</sup> This amendment is not to be construed, however, as having the force and effect of a new certification of representative