

Factory Services, Inc. and General Drivers, Warehousemen & Helpers Local Union No. 89, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 9-AC-28

October 14, 1971

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

The petition in this case seeks the amendment of certification issued in Case 9-RC-8580 by the National Labor Relations Board on September 4, 1970, to Chauffeurs, Teamsters & Helpers Local Union No. 779, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herem called Local 779, for a unit of employees of Factory Services, Inc. Petitioner, General Drivers, Warehousemen & Helpers Local Union No. 89, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, seeks to substitute itself as the certified representative of the Employer's employees.

Hearings on the petition were held on March 9, 1971, before Hearing Officer Mark M. Reynolds and on June 21, 1971, before Hearing Officer Edward C. Verst. On July 7, 1971, the Acting Regional Director for Region 9 issued an order transferring the case to the Board for decision. Petitioner and the Employer have 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 Board finds that the Hearing Officers' rulings made at the hearings are free from prejudicial error. The rulings are hereby affirmed.

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

On September 4, 1970, pursuant to a Board-conducted election in a unit composed of truckdrivers and mechanics, the Board issued its certification to Local 779. Two days earlier, however, Local 779's officers and executive committee met with certain of Petitioner's officials and agreed to merge Local 779 into Petitioner. On or before September 8, 1970, Local 779 notified its members by letter that a special meeting would be held on September 13, 1970, for the primary purpose of discussing and voting to merge

"its membership with another Teamsters local union."

The scheduled merger meeting was attended by 138 or 139 of Local 779's 1,500 members who, after discussion, voted, with 1 dissenting vote, to merge their local with Petitioner's 15,000-member local. The evidence is conflicting as to whether the vote was taken by a show of hands or by voice, en masse.

Several days prior to the September 13 merger meeting, Local 779's business agent, Minnick, informed approximately 14 of the 33 unit employees that Local 779 was "thinking about" merging with Petitioner, that the matter would be discussed at the September 13 meeting, and that the decision to merge "was up to the membership." None of the unit employees, however, was sent a notice of the meeting or allowed to participate in the merger vote because, according to Local 779, they were not union members since no bargaining agreement between Local 779 and the Employer had been executed at the time of the merger vote.

Subsequently, the merger was approved by the Local Unions' parent International. Local 779 notified the employers with whom it had contracts of the merger,¹ transferred its assets to Petitioner, returned its charter to the International, and, on January 1, 1971, the effective date of the merger, ceased to exist. Petitioner, which had assumed Local 779's obligations, including the servicing of its bargaining agreements, then began functioning out of Local 779's office in Lexington, Kentucky, approximately 75 miles from its headquarters in Louisville, performing all functions and duties formerly performed by Local 779. These activities were now directed by one of Petitioner's officials who was transferred from its Louisville office and assigned to Lexington as branch manager of Local 779's former office. The branch manager ran that office with the aid of two of Petitioner's business agents: Minnick, who formerly held that position with Local 779, and a Lexington resident who formerly was a trucking company steward and who was appointed business agent on the date of merger. This arrangement thus replaced Local 779's president, who retired the day prior to the effective date of merger, and its only other officer, who was transferred to Petitioner's Louisville headquarters as an assistant business agent.

Meanwhile, Local 779 and the Employer had engaged in bargaining during the course of the foregoing events, meeting three to four times prior to the merger and at least once thereafter. During a postmerger session, Minnick requested that Petitioner's name, along with Local 779's, be included in any contract negotiated. The Employer refused to include

¹ The Employer, not having a contract with Local 779, was not so notified

Petitioner as a contracting party, thus precipitating the instant proceeding.

Based on the foregoing facts, the Regional Director concluded that Petitioner's motion to amend Local 779's certification was without merit because none of the unit employees participated in the decision to substitute Petitioner as their certified representative. He dismissed the petition without prejudice to another request by Petitioner to have the certification amended upon showing that the amendment reflects the desires of the unit employees.

Petitioner attempted to demonstrate this desire by introducing into evidence authorization cards designating itself as bargaining representative and which ostensibly were signed by 19 of the 32-35 unit employees. The cards were attained as the result of a union meeting at which Minnick told the employees that the cards were necessary "to further substantiate our position that we [Petitioner] were the certified representative." A minimum of eight of these cards, however, were not properly authenticated, thus negating both Petitioner's inferentially claimed status as a majority representative and its contention that the cards indicate that the unit employees approved of the merger.

Petitioner further sought to show such approval by a "Statement of Employees" which was signed by 17 of the 31 employees then in the unit and which declared, in substance, that the signatories thereon are employees of the Employer, that they "have knowledge of and consent to the merger," and that "they desire to be members of [Petitioner] and desire said Union to

be their Bargaining Representative with their employer." The statement was given to unit employee Horsemen by Business Agent Minnick with the admonition that "it came from the Labor Board. The Labor Board wanted it signed. . . ." Horsemen relayed this message to the employees while soliciting their signatures. It would appear, therefore, that despite the specific language of the statement, which was read by "some" of the employees prior to affixing their signatures thereto, the manner in which those 17 signatures were obtained mitigates against concluding that the document represents a free, or clear, expression of the employees' desire or approval.

In the circumstances of this case, therefore, we find no warrant for substituting Petitioner as the certified representative and, accordingly, we shall deny the petition to substitute Petitioner as the certified representative.

ORDER

The petition to amend certification filed by General Drivers, Warehousemen & Helpers Local Union No. 89, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the motions to amend certification filed either separately by said Union or jointly with Chauffeurs, Teamsters & Helpers Local Union 779, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are denied.