

Uniroyal, Inc. Coated Fabrics Plant and United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, Petitioner. Case 8-AC-83

November 22, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND KENNEDY

On November 27, 1970, Independent Employees Union of UniRoyal, Inc., Port Clinton Division, hereinafter Independent, was certified as the bargaining representative of an appropriate production and maintenance unit of the Employer's employees.¹

On March 30, 1971, the Petitioner filed its petition in this proceeding, seeking to amend the certification in the respects indicated below. The Acting Regional Director for Region 8 issued a Notice To Show Cause on April 19, 1971, 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 6, 1971, he issued a Notice of Hearing on the issues raised. Pursuant thereto, a hearing was held before Hearing Officer Donald E. Howard.² Subsequent to the hearing, the Petitioner and the Employer filed briefs with the Board. Thereafter, the Employer notified the Board that it was withdrawing its objections to the requested amendment of certification, and urged the Board to grant the petition.

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. They are hereby affirmed.

Upon the entire record in this case, the Board finds:
An election among the employees in the appropriate

unit described above was held on November 6, 1970. Of approximately 229 eligible voters, 206 cast ballots, of which 112 were for Independent, and 94 were for United Textile Workers of America, Local 777, AFL-CIO.³ As noted above, Independent was certified on November 27, 1970.

On December 13, 1970, slightly more than 2 weeks after its certification, Independent called a special membership meeting to discuss, *inter alia*, affiliation with an international union. Representatives of both International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the Petitioner attended, and addressed the approximately 15 or 20 employees present about the benefits of affiliation with their respective unions.

On January 26, 1971, pursuant to an agreement between the Teamsters, Independent, and Petitioner, a secret ballot election was conducted under the supervision of the Toledo Labor-Management-Citizens Committee. All the employees were eligible to vote for any of the three Unions or for "No Union" regardless of membership in Independent. The election results showed that of 196 ballots cast, the Petitioner received 104 votes, Teamsters received 89, Independent received 1, and 2 voters cast ballots for "No Union." Thereafter, on January 31, 1971, Independent held a second special membership meeting, attended by approximately 40 employees, at which a five-member bargaining committee was selected and a number of motions passed including, *inter alia*, (1) a motion to have the committee take the necessary steps to amend the Board certification to reflect affiliation with the Petitioner; (2) a motion to bring the employees under the Master Agreement between the Employer and Petitioner; and (3) a motion directing the committee to draft a local supplemental agreement.⁴ On February 1, 1971, Independent notified the Employer of the new bargaining committee and made its first request to bargain.

Concurrent with negotiations between Independent

maintenance bargaining units in which the Petitioner is recognized or designated in accordance with the regulations of the National Labor Relations Board during the life of agreement. It is expected that representatives of the Employer and the Petitioner would determine the steps to be taken to extend the provisions of the Master Agreement. The Employer argued at the hearing, and in its brief, that it objected to the instant petition on the grounds that the Master Agreement would apply, *ipso facto*, to the Port Clinton employees if the amendment was granted and would thus result in an immediate change in the employees' terms and conditions of employment and would break the continuity of their present organization and representation. Cf. *American Bridge Division, United States Steel Corporation*, 185 NLRB No. 98. Later, the Employer advised the Board that on September 1, 1971, after the case had been heard, the Employer and Petitioner entered into a "Memorandum of Agreement" which postponed the application of the Master Agreement to the Port Clinton facility, and withdrew its objections to granting the amendment of certification on the ground that its objections were rendered moot by the agreement of September 1, 1971.

¹ The detailed unit description was:

All production and maintenance employees including the shipping warehousemen and the shipping clerk and the receiving warehousemen and the receiving clerks in the Employer's plant in Port Clinton, Ohio, but excluding office clerical employees, laboratory employees, and professional employees, guards and supervisors as defined in the Act.

² Although served with a Notice of Hearing, Independent did not appear at the hearing, and notified the Hearing Officer that it did not wish to participate.

³ Textile Workers was the incumbent union, having represented the employees since 1966, when it was certified by the Board. During the pendency of these proceedings, employees continued to receive benefits in accordance with the Employer's contract with Textile Workers.

⁴ The Employer operates numerous plants throughout the United States. Production and maintenance employees at 18 of them are currently represented by the Petitioner, and are covered by the Petitioner's 1970-73 Master Agreement and a Supplemental Unemployment Benefits Plan. There are local supplemental agreements. Under appendix "B" of the Master Agreement, the agreement is applicable to all new production and

and the Employer, limited apparently to the nonsubstantive matter of a grievance procedure, the Petitioner, on February 16, 1971, filed a petition in another case, seeking to amend Independent's certification to reflect its affiliation with the Petitioner.⁵ The Regional Director dismissed the petition on March 9, 1971, because the course of conduct of the parties leading up to, and including, the election of January 26, 1971, showed that a question concerning representation existed in the bargaining unit.

When the Petitioner was notified of this action, it took no steps to seek review of the Regional Director's action by the Board,⁶ but instead took steps to conduct another election among the unit employees. On March 22, 1971, using its copy of the Board's *Excelsior* list from the November 6, 1970, election, notices were mailed to some 206 bargaining unit employees of a special membership meeting for the purposes of holding a second election on March 28, 1971. A smaller notice was posted on each of the Employer's bulletin boards, and copies were manually distributed to approximately 165 employees on March 24 and 25, 1971, by members of the bargaining committee.⁷ The issue, as framed by the notices and also by the ballot, was:

Shall our Local Union, Independent Employees Union of UniRoyal, Inc., (Independent) change its affiliation to the (URW) United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, CLC, to become our bargaining agent for the purpose of collective bargaining with our Employer, UniRoyal, Inc. [Emphasis supplied.]

Ninety employees appeared and cast ballots in the March 28 election. Apparently there was no advance debate, and the meeting was devoted exclusively to polling the employees. After the election, which followed essentially the same procedures utilized in a Board-conducted election, the ballots were counted and the results announced. Of 90 votes cast, 65 were in favor of affiliation and 25 were opposed.

It is clear from the above-described circumstances that the instant petition constitutes a further attempt to confirm the results of a private ballot concerning

representation, and must be dismissed in accordance with our well-settled principles.⁸ Questions concerning representation can be resolved only by a secret ballot election conducted under Section 9(c) of the Act, and not by a petition to amend the certification. As the Board said in *Missouri Beef Packers, Inc.*, *supra*:

Amendment of certification, by and large, is intended to permit changes in the name of the representative, not a change in the representative itself. The only change in the more recent vote was a reduction in the number of choices on the ballot. In the circumstances the Independent's conduct, in pursuing this course to achieve affiliation with some other union while failing to engage in the substantive bargaining to which its certificate entitled it, is not conducive to an orderly administration of the Act.⁹

Where, as here, the amendment-of-certification petition clearly presents a question concerning representation it must be dismissed, even in the absence of objections by any of the parties. Moreover, we are cognizant of our obligation to protect the integrity of our certifications. If we were to amend Independent's certification as requested, the employees in the appropriate unit covered by the certification would in effect become part of the existing multiplant unit covered by the Petitioner's Master Agreement discussed above; and this effect would not be cured by the parties' posthearing Memorandum of Agreement postponing application of the Master Agreement. By thus enlarging the unit of employees represented, without the safeguards guaranteed by a Board-conducted election, we would, in effect, be undermining the majority-rule concept established by the express language in Section 9 of the Act. Accordingly, we shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

weeks after its certification, and prior to the start of any negotiations with the Employer. We believe that a permissible inference might be drawn that Independent did not intend to remain an independent union at the time it appeared on the ballot in the November 26, 1970, Board-conducted election. Since the Board has always required full disclosure in its representation proceedings, possible grounds for revocation of the certification may exist. Cf. *St. Louis Harbor Service Company*, 150 NLRB 636, 652, *U.S. Chawcraft, Inc.*, 132 NLRB 922, 923. However, in the absence of record evidence on this point, we would be unwilling to revoke our certification on mere conjecture

⁵ Case 8-AC-81.

⁶ See Sec 102.71 Rules and Regulations and Statements of Procedure, Series 8, as amended

⁷ During this period, there were approximately 190-200 employees in the bargaining unit, including 126 employees who were members of Independent

⁸ *Missouri Beef Packers, Inc.*, 175 NLRB No. 179, *Bedford Gear & Machine Products, Inc.*, 150 NLRB 1, and *Gulf Oil Corporation*, 109 NLRB 861

⁹ We note that Independent commenced affiliation proceedings about 2