

F. W. Woolworth Co. Store No. 1370 and Retail Store Employees Union Local No. 214 a/w Retail Clerks International Association, AFL-CIO. Cases 30-RM-232 and 30-AC-26

January 20, 1972

DECISION AND AMENDMENT OF CERTIFICATION

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

On March 14, 1952, Retail Clerks International Association, AFL-CIO, was certified by the Board as the collective-bargaining representative of employees at Employer's Wisconsin Rapids store. Local 1685 of the Retail Clerks International Association was then chartered and has entered successive contracts with the Employer since then. The current contract runs from April 14, 1969, through April 14, 1972. On April 13, 1970, a merger with Retail Store Employees Union Local No. 214, a/w Retail Clerks International Association, was voted on and approved by the membership of Local 1685. This merger became effective on June 1, 1970. After the merger the Employer refused Local 214's demand to arbitrate grievances in accordance with the contract. On June 17, 1971, the Employer filed the RM petition herein. This petition was dismissed by the Regional Director but upon appeal to the National Labor Relations Board his decision was reversed and a hearing was ordered. On September 1, 1971, Local 214 filed the AC petition herein requesting that the certification be amended by adding Local 214 to the certification of the Retail Clerks International Association as the bargaining representative of the employees in the certified unit.¹ The Employer opposes the granting of the amendment and asserts that the addition of Local 214 to the certification would be tantamount to a change in the bargaining representative of the employees in the unit. Thus, the Employer contends that the effect of the request to add Local 214 is to raise a question concerning representation which could only be resolved through an election.

On September 8, 1971, these cases were consolidated. A hearing was held on September 23, 1971, at Wisconsin Rapids, Wisconsin, before Hearing Officer Kenneth N. Rock. Following the hearing, and by direction of the Regional Director for Region 30, this proceeding was transferred to the National Labor Relations Board for consideration. Briefs have been filed by both parties.

Pursuant to the provisions of Section 3(b) of the

¹ The unit is described as: "All selling and nonselling employees of the Employer at its Wisconsin Rapids Store No. 1370 located at 260 West Grand Avenue, Wisconsin Rapids, Wisconsin, but excluding the store

National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding 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 proceeding, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Union is a labor organization claiming to represent certain employees of the Employer.

3. No question concerning representation of employees of the Employer exists within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Both amalgamated local unions of the Retail Clerks International Association involved in the current proceeding, Local 214 and the former Local 1685, maintained a close working relationship with Wisconsin District Council 14 of the Retail Clerks International Association prior to the merger of Local 1685 into Local 214. Richard Eiden, formerly secretary-treasurer of District Council 14 and now secretary-treasurer and chief executive officer of Local 214, negotiated the last two labor contracts with the Employer on behalf of the employees in the bargaining unit involved in this proceeding. In addition, Eiden assisted in settling grievances that the unit's "store committee" and Local 1685's business representative were unable to settle. Further, after April 1969, when Local 1685 decided not to employ a business representative due to financial considerations, Eiden and his staff at District Council 14 "serviced" Local 1685. This service has included attending Local 1685 meetings and advising Local 1685 as to what was transpiring in all local unions within the District Council.

The evidence likewise discloses a close association between Local 214 and District Council 14. In addition to the sharing of offices in Oshkosh, Wisconsin, the evidence discloses that District Council 14 has consistently furnished assistance to Local 214 in collective-bargaining matters.

Prior to the merger five people served on the executive board of Local 214 and nine people served on the executive board of Local 1685. In accordance with the terms of the merger agreement, Local 214's executive board now consists of seven persons. Two of these are a former Local 1685 steward and a former Local 1685 executive board member who serve as "Board Members at Large" with continuing tenure as

manager, assistant manager and trainee, department 340 operator and trainee, personnel manager, cashier, casual employees and all supervisors within the meaning of the Act."

long as they remain in the trade and maintain membership in Local 214.

It is significant to note that procedures for the handling of contract proposals, negotiations, and ratifications are presently the same as they were before the merger, i.e., they are handled by the members of the various separate bargaining units represented by the local. The same holds true for the grievance procedure. As was the case before the merger, the unit's "store committee" represents employees at the first level of the grievance machinery. If they are unsuccessful in resolving a grievance assistance is then given by Richard Eiden.

The merged local has a membership of 2,100 people. There were 162 members in the former Local 1685 of whom only approximately 13 were within the unit here under consideration. Although it is clear that the unit herein thus has a smaller proportionate overall representation in the new local, this is not necessarily a determinative factor in ascertaining whether the basic identity of its representative remains the same.² Thus, upon a consideration of all the evidence we conclude that a substitution of the petitioning union for the certified union would not constitute any real change of bargaining representative.

The Employer also questions the legality of the merger of the two locals asserting that improper election and notification procedures were followed, and that the merger was therefore not properly authorized. The evidence, however, indicates otherwise. Notice of the meeting at which the merger vote was taken had been prepared under Eiden's direction on March 26, 1970, setting the meeting for April 13, 1970. Three employees testified that they and the other Woolworth employees received this notice, and no contrary evidence appears.

² *Montgomery Ward & Co., Incorporated*, 188 NLRB No 87

³ The Employer has asserted that only 20 percent of the membership

At the meeting, closed ballots were voted, although without the benefit of voting booths, and were collected and counted by a five-man committee. The tally in Wisconsin Rapids, the location of the Employer's unit, was 30 for the merger and 2 against. These votes included 10 or 11 ballots from among the 13 employees at the Employer's Wisconsin Rapids Store. The total vote on the merger reflected approval of the membership by a 47 to 11 margin. This constituted a vote by 35.8 percent of the Local 1685 membership.³ Finally, the evidence discloses that Employer's store manager was notified of the merger shortly after the merger was approved.

Since proper procedures were followed for authorization of the merger⁴ and since we have found no question concerning representation, but rather a substantial continuity of representation, we will dismiss the Employer's petition for an election. Additionally, we will grant the petition to amend the certification. This amendment, however, is not to be considered as a new certification or a recertification.

ORDER

It is hereby ordered that the Certification of Representative issued in Case 18-RC-1380 on March 14, 1952, to Retail Clerks International Association, AFL-CIO, be, and it hereby is, amended by substituting therein "Retail Store Employees Union Local No. 214, affiliated with Retail Clerks International Association, AFL-CIO," for "Retail Clerks International Association, AFL-CIO."

IT IS HEREBY FURTHER ORDERED that the petition filed in Case 30-RM-232 be, and it hereby is, dismissed.

voted on the merger proposal.

⁴ See *North Electric Company*, 165 NLRB 942