

**Allied Chemical Corporation, Specialty Chemicals Division, Baker & Adamson Works and Local 8-873, Oil, Chemical & Atomic Workers International Union, AFL-CIO, Petitioner. Case 4-RC-9333**

April 20, 1972

### DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Francis W. Hoeber of the National Labor Relations Board. Following the close of the hearing the Regional Director for Region 4 transferred this case to the Board for decision. Thereafter, the Petitioner, Employer, and Intervenor filed briefs with the Board.

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 proceeding,<sup>1</sup> 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 labor organizations involved claim to represent certain employees of the Employer.<sup>2</sup>

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons:

The Intervenor has been the collective-bargaining agent at the Respondent's plant for a number of years. There is currently a collective-bargaining agreement between the Intervenor on behalf of its Local 13866 and the Employer which was entered into on November 18, 1970, and which expires November 17, 1973. The Intervenor alleges that this agreement is a bar to this proceeding. Petitioner alleges it is not a bar because of a schism which has occurred within the ranks of the Intervenor. The Employer takes no position on the schism issue, but urges that the collective-bargaining agreement should continue to operate for the balance of its term.

In 1970, there was a contest for the presidency of the Intervenor between the incumbent president, Elwood Moffett, and Angelo Cefalo, who was at that time a member of its international executive board. An election was held, at which Moffett was elected

over Cefalo by a vote of 53,607 to 46,824. A complaint regarding the election was filed with the Secretary of Labor by Cefalo, and thereafter a civil action was instituted by the Secretary to set aside the election. In settlement of this action, the Intervenor entered into a stipulation with the Secretary of Labor to conduct, under the Secretary's supervision, a new election for its executive board and thereafter a new election for international officers. A convention of the International was called on March 15, 1971, to be held from August 22-25, to select the executive board and conduct other business as necessary.

On April 24, 1971, the Intervenor and the United Steelworkers of America, executed an agreement to merge the two organizations, subject to the approval of the convention to be held in August of 1971. This agreement to merge was announced to the staff at that time and they were instructed to return to their locals to seek support. Thereafter, Cefalo filed suit to enjoin the merger and the matter is currently waiting court action on a plan for a vote on the proposed merger, presented by District 50 and opposed by Cefalo. Moffett has continued to act as president of District 50 and has administered its affairs. Cefalo, who has proposed the affiliation of District 50 with the International Association of Machinists, was removed from the District 50 payroll and has become an employee of the International Association of Machinists. He remains, however, a member of District 50 and continues as an active contender for the presidency of that organization.

Local 13866 of District 50 has, through its officers, participated in the convention. In the election of officers in 1970, it supported Moffett. Since the time of the proposed merger, however, it has become concerned about the dues structure of District 50, and its president and officers met with representatives of the Petitioner to discuss the possibility of affiliation with the Petitioner. A special meeting was called on July 20, 1971, to discuss the issues. After some discussion, a resolution to call for a vote on the future of the Local was passed and a vote was held on July 30, 1971, by secret ballot. With about 202 of the 275 employees who are in the bargaining unit voting, a resolution to affiliate with the Petitioner was adopted by a vote of 196 in favor, 6 opposed.

The Petitioner filed a petition in Case 4-AC-26 seeking to have the certification amended to substitute Local 8-873 of the Oil, Chemical, & Atomic Workers International Union for the International Union of District 50, Allied & Technical Workers of the United States and Canada on behalf of Local 13866 as the certified representative. On August 31, 1971, this petition was dismissed by the Regional Director. Thereafter, the Local was placed in trusteeship. The Employer currently deals with the trustee of

<sup>1</sup> The request for oral argument is denied as the record and briefs adequately present the issues and the positions of the parties

<sup>2</sup> International Union of District 50, Allied & Technical Workers of the United States and Canada, intervened, based upon its collective-bargaining agreement with the Employer in behalf of its Local 13866.

the Intervenor in the processing of grievances at this plant.

Petitioner asserts and the Intervenor denies that the foregoing facts establish the existence of a schism sufficient, under the principles set forth in *Hershey Chocolate Corporation*,<sup>3</sup> to remove the contract as a bar. We agree with the Intervenor.

In considering *Hershey Chocolate* the essential elements of a schism, the Board held that a necessary prerequisite to a finding of schism was the existence of a basic intraunion conflict, which it defined as being "any conflict over policy at the highest level of an international union . . . which results in the disruption of existing intraunion relationships."<sup>4</sup> It appears to be the position of the Petitioner that the dispute, concerning whether the Intervenor shall remain independent or merge or affiliate with another union, and if the latter what union, satisfied the requirement that there be a conflict over policy at the highest level of an international union, and that the split between Moffett and Cefalo on this issue, in which Moffett has assertedly transferred his affiliation to one union and Cefalo has assertedly "opted" for another, satisfies the requirement that such conflict result in the disruption of existing intraunion relationships. Assuming, *arguendo*, that the facts establish the existence of the requisite policy conflict, we cannot agree with the Petitioner that they also establish that such conflict has resulted in the necessary disruption of intraunion relationships.

As the Board stated in *Hershey*, underlying its schism doctrine was its dual concern that a process be available for permitting an election in the face of a contract otherwise a bar when, because of an intraunion conflict, an immediate election was the only hope for restoring the industrial stability normally fostered by a collective-bargaining contract, but that an otherwise untimely election remain precluded when the alleged schism was in fact no more than a raid or an effort by dissident elements to repudiate their

representative's bargain. It was in the light of these concerns that the Board determined the essential elements of a schism, including the requirement that the policy conflict result in the disruption of existing intraunion relationships sufficient to undermine that industrial stability normally flowing from the existence of a collective-bargaining contract. As illustrations of the type of disruption envisaged, the Board cited the disaffiliation or expulsion of an international from a federation, coupled with the creation by the federation of a rival; or a split in an international combined with the transfer of affiliation of some officials to an existing rival or a new union; or any realignment which has substantially the same effect on the stability of bargaining relationships.

The situation with respect to District 50 does not, in our opinion, constitute such a disruption of existing relationships. Clearly there has been no disaffiliation or expulsion which is in any way related to the asserted policy conflict. Nor is there here the kind of split and transfer of affiliation contemplated by *Hershey*. We may postulate basic differences between Moffett and Cefalo and that each is seeking to pull District 50 in a different direction. Nonetheless, the fact remains that both continue to be members of District 50, and both seek to realize their objectives not by fragmenting that organization, but rather by controlling it. District 50 continues to exist, and there is no other organization which can, with any show of legitimacy, claim to be either District 50 or its heir.

In these circumstances, we conclude that the present situation with respect to District 50 does not show disruption or realignment sufficient to undermine the industrial stability flowing from the existing contract, and that therefore no schism exists. As the current collective-bargaining agreement which will not expire until November 10, 1973, is otherwise a bar, we shall dismiss the petition.

#### ORDER

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

<sup>3</sup> 121 NLRB 901.

<sup>4</sup> *Id.* at 907