

**The Bunker Hill Company and Local Union 7854,
United Steelworkers of America, AFL-CIO, Petitioner.** Case 19-AC-7

June 7, 1972

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
KENNEDY AND PENELLO

On August 27, 1971, the Regional Director for Region 19 issued a Decision and Order in the above-entitled proceeding, amending a previously issued certification by substituting the name of the Petitioner for that of Northwest Metal Workers Union, Independent. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, the Intervenor¹ filed a timely request for review of the Regional Director's Decision contending that the Regional Director erred in granting the requested amendment. Petitioner filed a brief in opposition to the request for review.

By telegraphic order dated December 14, 1971, the National Labor Relations Board granted the Intervenor's request for review. Subsequently, the Intervenor and Petitioner filed briefs on review.²

Pursuant to the provisions of Section 3(b) of the 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 entire record in this case with respect to the issues under review, including the briefs, and makes the following findings:

Northwest Metal Workers Union, Independent, hereinafter referred to as the Independent, represented a unit of the Employer's production and maintenance employees beginning in 1960, when it was first certified after a Board-conducted election.

The Employer and the Independent have entered into a series of collective-bargaining agreements since that time. The current agreement is a 3-year contract effective from November 6, 1970, which was executed following Independent's most recent Board certification issued on August 12, 1970. This last certification, which Petitioner seeks to amend in this proceeding, was based on a Board-conducted election held on May 27, 1970, in which Independent defeated the Petitioner's International Union (the

United Steelworkers of America, AFL-CIO, hereinafter referred to as the Steelworkers). Independent had also defeated Steelworkers in prior elections.

On March 3, 1971, a meeting of the Independent's members was held and pursuant to a motion a special committee of the Independent was authorized to investigate the possibility of merging the Independent with Steelworkers. This committee conferred with the Steelworkers shortly thereafter. Steelworkers representatives also attended a meeting of Independent's members on March 17, 1971, and informed Independent's members of the expected benefits which would result from a merger. At this same meeting but subsequent to the Steelworkers presentation and departure, a motion was approved authorizing the Independent's committee to hold further meetings with Steelworkers and to develop a merger proposal to be offered for ratification at a membership meeting of the Independent to be held on April 7, 1971.

After negotiations between Independent's committee and Steelworkers representatives, a merger proposal was reduced to writing and, on April 1, a copy thereof was mailed to each of the Independent's members of record at the Employer's plant and in the unit of Pend Oreille employees³ also represented by the Independent.⁴ Advertisements appeared in a local newspaper on April 5 and 6 reminding Independent's members of the scheduled April 7 note on the merger offer. Employees were handbilled at the Employer's facilities and notices of the meeting were placed on the plant bulletin boards setting forth the date of the meeting and the subject matter to be voted on.

On April 7, 1971, the merger proposal was voted on as scheduled by Employer's member-employees, at meetings held in Kellogg, and by the Pend Oreille employee-members, at meetings held at Metaline Falls. The results of the balloting of the Employer's employee-members showed 414 in favor of the merger and 121 opposed. The Pend Oreille employees rejected the proposal by a vote of 31 to 17. Adding the tallies of votes by employee-members in both units, 583 cast ballots of which 431 approved the merger and 152 opposed.

The merger was not immediately accomplished, however, because the Independent's attorney advised that the Independent's constitution should first be amended to provide authority for a merger. A proposed constitutional amendment was thereafter

¹ The Intervenor appeared at the hearing claiming that it is Northwest Metal Workers Union, Independent, the organization originally certified

² In its brief on review, Petitioner also requested oral hearing before the Board. However, as the record and briefs in our opinion adequately set forth the issues and the positions of the parties, this request for oral hearing is denied

³ The record also indicates that Independent was certified on January 3,

1968, by the Board to represent a unit of employees of Pend Oreille Mine & Metals Company, apparently a different employer which is located at Metaline Falls, Washington, some 145 miles distant from the Employer's plant in Kellogg, Idaho. The Independent has represented the Pend Oreille employees in accordance with various collective-bargaining agreements and supplements since that time.

⁴ The Independent sent out 1,187 copies of the proposal.

drawn up and read at meetings of the Independent on April 21 and 28. On April 30, copies of the proposed amendment were mailed to all members along with a notice of a meeting to be held on May 5, 1971, at which the amendment would be voted on.

On May 5, 1971, the amendment was carried by a majority of Independent's members voting at separate meetings. Among the Employer's employee-members the tally was 179 in favor and 49 against; among Pend Oreille's employee-members the vote was 13 in favor and 3 against—the combined totals being 192 for and 52 against.

On May 7, 1971, Steelworkers designated the Independent as Local 7854 (Petitioner herein) and the Employer was advised of the name change on the same date. On May 17, the Employer declined to accept the name change until it had been approved by the Board.

With minor exceptions, the postmerger officers and stewards of the Petitioner are identical with those who had previously held these offices in the Independent. These officers and stewards, who are also employees of the Employer, have continued to administer Independent's 3-year 1970 agreement with the Employer.

On May 20, 1971, the Petitioner filed the present petition seeking to substitute its name for that of the Independent on the Independent's 1970 Board certification.

On August 6, 1972, some of the Pend Oreille employee-members elected their own officers and their president, Batch, intervened at the hearing on

⁵ On July 8, 1971, the Regional Director issued a Decision and Order in which he dismissed Petitioner's petition to amend the Pend Oreille certification on the ground that a majority of the Pend Oreille employee-members had voted against the merger with the Steelworkers. See *Pend Oreille Mine & Metals Company*, Case 19-AC-8, not published in printed volumes of Board Decisions and Orders. No request for review was filed with the Board in Case 19-AC-8.

the instant petition claiming that the Pend Oreille group is the Independent.⁵

In his Decision herein, the Regional Director granted the petition and amended the Independent's certification to reflect that Petitioner is the certified bargaining representative of the employees of the Employer in the appropriate unit.

We conclude, contrary to the Regional Director, that the amendment petition seeks to raise a question concerning representation which may only be resolved on the basis of a Board-conducted election.

In view of the Board election on May 27, 1970, which was held within the year preceding the petition and involved a contest between the Independent and the Steelworkers for the support of the employees in the unit, the amendment is barred under the rule of the Board's decision in *Gulf Oil Corporation*, 109 NLRB 861. Were we to grant the amendment in these circumstances we would, for all practical purposes, be overturning the results of that Board election in which the very labor organization which has now chartered Petitioner was rejected by a majority of the Employer's employees in a secret ballot. Such a decision would in our opinion subvert the policies of the Act.⁶

Accordingly, we shall dismiss the petition.

ORDER

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

⁶ *Gulf Oil Corporation, supra, Bedford Gear & Machine Products, Inc.*, 150 NLRB 1. Compare *Emery Industries, Inc. (Dice Road)*, 148 NLRB 51, and *Minnesota Mining and Manufacturing Company*, 144 NLRB 419, in which amendments to certification were granted in recognition of an independent union's affiliation with another union, but wherein such other union had not previously been defeated by the independent in a Board-conducted election.