

Fall River House, Inc. and Hotel, Restaurant and Cafeteria Employees and Bartenders Local 100, Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, Petitioner. Case 1-AC-30

August 29, 1972

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND
PENELLO

On April 4, 1972, in Case 1-RC-10, 918, Local 99¹ was certified as the collective-bargaining representative of certain employees of the Employer.² On May 8, 1972, Petitioner Local 100 filed the instant petition, requesting that the certification be amended by substituting it for Local 99 as the certified bargaining representative of the Employer's employees.

The Employer opposed the granting of the amendment, contending that the unit employees had not properly authorized the change in their bargaining representative.

A hearing was held on June 8, 1972, at Boston, Massachusetts, before Hearing Officer Norman Zankel. Following the hearing, and by direction of the Regional Director for Region 1, this case was transferred to the National Labor Relations Board for original consideration. Briefs have been filed by both parties.

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 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 case, the Board finds:

On July 31, 1970, Local 99 merged with Local 100, affiliated with the same International. Local 99 had

been under trusteeship of the International Union from September 1969 until the time of merger.

Prior to merger, the trustee of Local 99 told its acting secretary to ascertain the sentiments of the membership concerning a possible merger between Locals 99 and 100. Thereafter, while collecting dues, the acting secretary spoke to about 30 of the 38 members in good standing concerning the merger, of whom 4 are employed by the Employer. The acting secretary also spoke to the approximately 31 other unit employees of the Employer herein. Letters announcing the intention to merge were sent to the 38 members in good standing.

The reaction of those contacted was favorable to the merger. Following the merger, Local 99's members were transferred to membership in Local 100. Local 100 held a meeting to which all previous members of Local 99 were invited. Of the 38 members invited, 5 or 6 attended and indicated their approval of the merger.

The Board does not, upon petition, amend certifications in the manner requested herein if the petition raises a question concerning representation. Nor does the Board grant such an amendment where the possibility of a question concerning representation remains open because the change which allegedly occurred took place under circumstances that do not indicate that it reflected a majority view.³ This record does not satisfy us as to the employees' desires to substitute Local 100 as their bargaining representative or that such action as may have been taken to determine the employees' wishes even comported with the appropriate safeguards which ought to attend any such effort. We shall therefore deny the petition to amend certification.⁴

ORDER

It is hereby ordered that the petition to amend the certification filed by Hotel, Restaurant and Cafeteria Employees and Bartenders Local 100, Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, be, and it hereby is, denied.

¹ Hotel, Motel, Restaurant, Cafeteria and Bartenders Union Local 99, AFL-CIO

² Pursuant to a petition filed by the Union, an election was held on February 4, 1970, but the ballots were impounded pending the disposition of an unfair labor practice charge, which had been filed a few days before. On November 16, 1970, the Union entered into a settlement of the complaint, and subsequently the ballots were opened and counted. It was

not until April 4, 1972, that various objections and exceptions were resolved and the certification issued

³ See *North Electric Company*, 165 NLRB 942; *The Hamilton Tool Company*, 190 NLRB No. 114.

⁴ Likewise denied as being inappropriately raised herein is the Employer's motion to revoke the certification issued to Local 99 in Case 1-RC-10, 918.