

Carriage Oldsmobile Cadillac, Inc., Employer-Petitioner and District Lodge No. 140, International Association of Machinists and Aerospace Workers, AFL-CIO¹ and Automobile Mechanics Local No. 701 International Association of Machinists and Aerospace Workers, AFL-CIO,² Petitioner and Mel Babel, Petitioner. Cases 13-RM-1090, 13-AC-28, and 13-RD-930

May 13, 1974

DECISION ON REVIEW, ORDER, AND
DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

On July 27, 1973, the Regional Director for Region 13 issued a Decision and Amendment of Certification in the above-entitled proceeding in which he granted Local No. 701's request for amendment of the certification issued in Case 13-RC-11704, by designating it in place of District Lodge No. 140 as the representative of the employees involved, and he dismissed the petitions filed in Cases 13-RM-1090 and 13-RD-930.³ Thereafter, in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds, *inter alia*, that in granting the requested amendment, he made erroneous findings of fact and departed from reported precedent.

By telegraphic order dated December 10, 1973, the National Labor Relations Board granted the request for review and accordingly stayed the amendment to the certification pending decision and review.

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.

In its request for review the Employer contends (1) that Local No. 701's request that its name be substituted for District Lodge No. 140 as representative of the employees involved may be resolved only in a Section 9(c)(1) election proceeding, and, therefore, the petition for amendment of certification should be dismissed; and (2) that, in any event, the Board's requirements for amendment of certification have not been met, as the members of District Lodge No. 140 involved herein were not given an opportu-

nity to vote on the requested change in their representation.

District Lodge No. 140 was certified on January 7, 1969, as the collective-bargaining representative of the "service, body shop and parts department" employees of Spero Motor Sales, Inc., at its automobile sales and service establishments at Waukegan and North Chicago, Illinois. On January 1, 1973, the Employer became successor owner of the operations and, after negotiations on January 31, it executed a contract with District Lodge No. 140 for a 1-year term covering the service employees at Waukegan.⁴

During the negotiations in January 1973, the officers of District Lodge No. 140, which then encompassed in its jurisdiction employees of industrial plants as well as automobile dealers, determined that the members who were employees of automobile dealers would be better represented by a sister local, Local No. 701, all of whose members were employees of automobile dealers. To that end, discussions were held among officials of District Lodge No. 140, Local No. 701, and their parent organization, referred to herein as the IAM, and on January 24, 1973, they agreed that Local No. 701 would assume jurisdiction over the automobile dealer employees who were then represented by District Lodge No. 140.

In February, representatives of Local No. 701 and the IAM visited the dealerships whose employees were represented by District Lodge No. 140, including the Employer, spoke to the employees about the planned transfer of jurisdiction, and said it would go into effect in approximately 1 month. On March 6, officials of District Lodge No. 140, Local No. 701, and the IAM apprised the Employer of their plans, and informed it that the transfer of jurisdiction would be effective April 1, 1973, and that the contract would remain the same. The Employer stated it would not recognize Local No. 701 unless a majority of its employees voted for it. Later that day, officials of Local No. 701 and the IAM went to the Employer's shop and asked District Lodge No. 140's steward to notify the employees that a meeting would be held that evening at the union hall to discuss the issues concerning the transfer of jurisdiction. The steward notified the employees of the meeting.

The meeting took place that evening, and was attended by 9 of the 10 employees in the bargaining unit and the involved officials of District Lodge No. 140, Local No. 701, and the IAM. The employees were told of the decision to transfer jurisdiction and,

the request

⁴ Apparently the North Chicago operations were either sold or discontinued at some point in time, as the only operations involved herein are those at Waukegan

¹ Referred to herein as District Lodge No. 140

² Referred to herein as Local No. 701

³ The Employer filed a motion for reconsideration of the Regional Director's decision. On August 14, 1973, the Regional Director issued a Supplemental Decision on Motion for Reconsideration in which he denied

after a question and answer period, membership applications and dues deduction cards in favor of Local No. 701 were distributed. One employee asked why the cards had to be signed. The Local No. 701 representative said it was a requirement so the employees could "be transferred into 701." The employees were not told that by signing the cards they were signifying their choice on the question of transfer of jurisdiction over them. All nine employees in attendance signed the cards.

Thereafter, the Employer was again informed by the IAM of the transfer of jurisdiction effective April 1. On March 26, District Lodge No. 140 wrote the Employer requesting that it meet with Local No. 701 for the purpose of expediting the transfer of representation rights. The Employer, on March 30, filed its petition for an election based on Local No. 701's claim for recognition. On April 20, Local No. 701 filed its petition seeking amendment of the certification issued to District Lodge No. 140 and, on May 11, the instant decertification petition was filed.⁵

Upon the foregoing we find, contrary to the Regional Director, that the requirements for amendment of certification have not been met. We are not satisfied that the steps taken by officials of the IAM, District Lodge No. 140, and Local No. 701 to obtain the approval of unit employees to their representation by Local No. 701—*after informing them that the decision to transfer jurisdiction over them had already been made*—meet the requirement of participation by unit employees in the decision to change their

⁵ On April 19, Local No. 701 filed unfair labor practice charges in Case 13-CA-12308, alleging violation of Sec. 8(a)(1) and (5) in the Employer's refusal to recognize it. On May 11, the Regional Director dismissed the charges and issued an order consolidating cases and rescheduling hearing on the instant petitions. An appeal from the dismissal of the charges was denied by the General Counsel.

⁶ Member Kennedy, in reliance upon *Gulf Oil Corporation*, 135 NLRB 184, would dismiss the petition solely on the basis that the requested amendment to reflect the transfer of jurisdiction from District Lodge No. 140 to Local No. 701, especially where the former continues in existence, would result in the substitution of a new and different union as

representative from District Lodge No. 140 to Local 701. For this reason, we shall dismiss the petition for amendment of certification.⁶

As District Lodge No. 140's contract terminated January 31, 1974, and would no longer bar an election, as the Employer's petition in Case 13-RM-1090 asserts that Local No. 701 claims to represent the employees involved, and as the Petitioner in Case 13-RD-930 asserts that District Lodge No. 140 is no longer their representative, we find that a question concerning representation exists herein within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Accordingly, we shall direct an election in the following unit, which we find, in accord with the parties' stipulation, is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees who work with the tools of the trade at the Employer's Waukegan, Illinois, establishment, excluding all office, salaried, supervising employees, service managers, parts managers, body shop managers, guards and supervisors as defined in the Act.

ORDER

It is hereby ordered that the petition filed in Case 13-AC-28 be, and it hereby is, dismissed.

[Direction of Election⁷ and *Excelsior* footnote omitted from publication.]

representative of the employees in the unit for which District Lodge No. 140 was certified

⁷ At the hearing, District Lodge No. 140 and Local No. 701 indicated that if an election were directed in these consolidated proceedings, both wished to appear on the ballot, subject to withdrawal by one of them before the ballot is printed. We are therefore including both of them on the ballot in the election, subject to a withdrawal request by either of them to the Regional Director within 7 days of the date of issuance of this Decision. In the event District Lodge No. 140 withdraws from the ballot, Case 13-RD-930 shall be dismissed by the Regional Director.