

Mosler Safe Company and Local 1862, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Petitioner. Case 9-AC-41

May 28, 1974

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND
PENELLO

Pursuant to a representation election conducted among the employees of the Employer on June 30, 1972, Safe Workers' Organization, Chapter No. 2, hereinafter referred to as the Safe Workers, was certified in Cases 9-RM-650 and 9-RC-9374¹ on July 11, 1972, as the exclusive bargaining representative of the employees in the appropriate unit.² On November 9, 1973, Local 1862, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), hereinafter referred to as UAW, filed the instant request to amend the certification to substitute its name for that of the Safe Workers.

A hearing on the petition was held on December 11, 12, 20, and 21, 1973, and January 3 and 21, 1974, before Hearing Officer Daniel J. Roketenetz. During the hearing, employees opposed to the affiliation of the Safe Workers with the UAW were permitted to intervene on behalf of the Safe Workers. The Intervenor and the Employer opposed the granting of the amendment, contending, *inter alia*, that the voting procedure at the meeting of November 4, 1973, where a majority of the employees present voted in favor of affiliation with the UAW, was not fair and regular; that the manner in which the meeting was conducted raises serious questions as to whether the results truly reflect the wishes of a majority of the unit employees; and that a question concerning representation exists which can be resolved only by a Board-supervised secret ballot election.

Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director transferred the case to the National Labor Relations Board for decision. The Employer and the Petitioner filed briefs with the Board.

The Hearing Officer's rulings made at the hearing

¹ Not published in NLRB volumes

² The certified collective-bargaining unit is as follows

All production and maintenance employees of the Employer at its Hamilton and Fairfield, Ohio, plants, including warehouse employees, but excluding all research and development employees at the Fairfield, Ohio, plant, service employees, polishers, buffers, platers, and helpers employed in the polishing and plating department who are represented

are free from prejudicial error and are hereby affirmed.

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.

Upon the entire record in this case, the Board finds:

The Safe Workers has been recognized by the Employer and certified by the Board as the bargaining representative of the unit employees since the mid-1930's. Since 1960, it has won four elections in which at least one other labor organization was on the ballot. In an election conducted on February 14, 1969,³ in which the Safe Workers, the UAW, and the United Steelworkers of America, AFL-CIO, were on the ballot, none of these unions received a majority of the votes, and a runoff election was held on March 14, 1969. The Safe Workers won the runoff election, receiving 402 votes to 356 for the UAW. Another election was conducted on February 18, 1972, with the Safe Workers and the UAW on the ballot. As neither union won a majority of the votes cast, a runoff election was again required, and was again won by the Safe Workers, which received 408 votes to 364 for the UAW. On October 23, 1972, the Safe Workers and the Employer executed a collective-bargaining agreement, effective until March 5, 1975.

On October 26, 1973, the president of the Safe Workers was presented with a petition purportedly signed by 432 members of the Safe Workers and requesting a special meeting for the purpose of affiliating with the UAW. Pursuant to the Safe Workers' bylaws, which authorized a special meeting for this purpose upon written request by a majority of the membership, the president called a special meeting for November 4. At the hearing herein, it was determined that the petitions contained valid signatures from only 376 of the 809 unit employees, and all unit employees were members of the Safe Workers.

The special meeting was scheduled to be held in a high school auditorium. Because the school was locked, the meeting was held on a tennis court on the school grounds. At the meeting, an affiliation resolution was read, the question of affiliation was discussed, and voting booths were erected. Employees were given ballots after giving their clock numbers to members of the election committee;

by another bargaining agent, all plant clerical employees who are represented by another bargaining agent, and all administrative, executive, and professional employees, engineering department employees, timekeepers, office employees, clerks to foremen, guards and watchmen, foremen, and all other supervisors as defined in the Act

³ Cases 9-RM-545, 9-RC-7972, and 9-RC-7976 (not published in NLRB volumes)

these numbers were not checked against a list of employees. After the voting was completed, the election committee counted the ballots and announced that the affiliation resolution had carried by a vote of 258 to 189.

Thereafter, the president of the UAW notified the Employer in writing of the outcome of the affiliation vote and requested that the Employer "note for your records the change in name of the contracting union." The international representatives of the UAW sent the Employer a telegram formally requesting recognition of the UAW. The Employer declined to recognize the UAW, stating that it would deal only with the Safe Workers, which was the certified bargaining representative and had a contract with the Employer, and that the UAW, a completely different organization, could not be substituted for the Safe Workers during the term of the contract. The Employer also expressed a belief that the alleged affiliation had not been carried out in accordance with the Safe Workers' constitution, and that events prior to the meeting, as well as the conduct of the meeting and balloting, prevented the employees from exercising a free choice in the affiliation vote. The UAW then filed the petition herein.

The UAW has the same officers as the Safe Workers. After the affiliation vote, a new bank account was opened in the name of the UAW. The documents authorizing the opening of the account were signed by John Davis, who had been treasurer

of the Safe Workers. However, Davis, who opposed the affiliation, testified that he was unaware of his legal rights when he signed these documents, and that subsequent transfers of the Safe Workers' funds to the UAW account took place without his approval.

The Employer contends, *inter alia*, that the petition to amend the certification raises a question concerning representation which can only be resolved in a Board-conducted election. We find merit in this contention.⁴

The purported affiliation herein was with a union which had twice been rejected by the employees in Board elections. Both elections were close, and it is evident that opinion in the plant remained sharply divided. At the special meeting, a majority of the voters voted in favor of affiliation, but a substantial number of employees voted against affiliation. To grant the requested amendment would, in effect, give conclusive weight to the vote at the special meeting as a basis for reversing the outcome of a Board election. Such a decision would, in our opinion, subvert the policies of the Act.⁵ Rather, we find that there remains a question concerning representation which can be resolved only by holding a Board election. Accordingly, we shall dismiss this petition.⁶

ORDER

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

⁴ The Employer further contends that the special meeting was improperly called, as the petitions requesting it were not signed by a majority of the members of the Safe Workers, and that the affiliation vote did not reflect the voters' free choice, as employees opposed to affiliation were prevented from speaking at the meeting and the secrecy of the voting was not safeguarded. In view of our disposition of the case, we need not pass on these contentions.

⁵ In *United Hydraulics Corporation*, 205 NLRB No. 20, and cases cited in

fn 2 therein, we declined to amend certifications where petitions were filed by unions defeated in Board elections less than a year previously. While slightly more than a year elapsed between the election and the affiliation herein, we are of opinion that this, in and of itself, does not warrant overturning the election results under the circumstances herein.

⁶ Member Penello would dismiss the petition for the additional reasons stated in *American Bridge Division, United States Steel Corporation v. N L R B.*, 457 F.2d 660, 663-665 (C A. 3, 1972).