

Kentucky Power Company and Local 978, International Brotherhood of Electrical Workers, AFL-CIO-CLC, Petitioner. Case 9-AC-44

September 27, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING
AND PENELLO

On June 1, 1970, the International Brotherhood of Electrical Workers, hereinafter referred to as the Union, was certified in Case 9-RC-8466 as the exclusive bargaining representative for an appropriate unit¹ of the Employer's employees.² Thereafter, during collective-bargaining negotiations with the Employer, the Union designated Local 1119 as its agent.³ Local 1119 executed two successive collective-bargaining agreements with the Employer, the last of which was in force from May 1, 1972, to April 30, 1974. A merger of Local 1119 and other locals into Local 978 was completed on December 1, 1972, pursuant to the order of the Union's International president. However, since December 1972, the Employer has refused to recognize Local 978.

On March 28, 1974, Local 978 filed the instant AC petition requesting that the Union's certification be amended by changing the certified bargaining representative from the Union to Local 978. The Employer opposes the granting of the petition and asserts that such a change in the bargaining representative raises a question concerning representation. The Employer contends that it voluntarily recognized and negotiated with Local 1119 as the designated agent of the Union and that if that designation has terminated it may insist on dealing only with the certified bargaining representative, i.e., the Union. Finally, the Employer asserts that its employees were not afforded a meaningful voice in the Union's decision to merge Local 1119 into Local 978, and that Local 978, because of its size and location, cannot adequately represent the Employer's employees.

A hearing on the petition was held on May 8, 1974, at Ashland, Kentucky, before Hearing Officer Robert

J. Weir. Pursuant to the provisions of Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 9 transferred this proceeding to the National Labor Relations Board for decision. Thereafter, the Employer filed a brief.

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 as follows:

The Union, through 10 separate locals, represented approximately 850 employees in 14 different units. All but one of these units were comprised of employees of Appalachian Power Company. Local 1119, the local involved herein, represented approximately 70 employees at the Employer's Big Sandy plant at Louisa, Kentucky, as well as two units of approximately 20 and 60 employees each at the Fort Pleasant and Huntington, West Virginia, plants of the Appalachian Power Company.

The parent group for these 10 locals was System Council U-5, a body controlled and staffed by the Union. This council handled all arbitrations, contract negotiations, and other related matters for its member locals and the various units thereof. Separate collective-bargaining agreements were negotiated for each unit, including the unit involved herein. Thereafter the contracts were separately ratified by the members of each bargaining unit. Each bargaining unit also conducted separate strike votes. Periodically there were individual unit meetings, but each unit was not individually represented within the System Council. At various times, Kinser, of the System Council, acted on behalf of the member locals in matters concerning arbitration and collective-bargaining negotiations.

On October 23, 1972, the System Council decided to merge all of its member locals into Local 978, an affiliate of the Union. It was decided to initially seek the approval of each local rather than to effect the merger by fiat of the International president of the Union.⁴ However, at a meeting of Local 1119 members at its headquarters in Huntington, West Virginia, a majority of the members present in effect voted not

¹ The unit is described as follows: All production and maintenance employees of the Employer at its plant located in Louisa, Kentucky, including technical employees and plant clerical employees, but excluding all office clerical employees, guards, professional employees and supervisors as defined in the Act.

² On July 30, 1971, in Case 9-RM-631, the Union was again certified as the exclusive bargaining representative of the Employer's employees in the same unit.

³ In designating Local 1119 as its agent, the Union reserved the right to change the designation "at any time." The Employer, in recognizing Local 1119, maintained that the Union could change agents only at the expiration of a collective-bargaining contract.

⁴ The union constitution provides: "The I.P. (International President) has the right and power to merge or amalgamate L.U.'s (local unions) in any community or section where the facts, developments or conditions—in the judgment of the I.P.—warrant such action, also to decide the terms or details of any merger or amalgamation where the L.U.'s involved cannot or do not agree."

to approve the merger.⁵ In addition to Local 1119, one other member local of the System Council did not approve the merger. On November 17, 1972, the International president of the Union ordered the merger to take place, effective December 1, 1972. On December 4, 1972, the Union informed the Employer of the merger, but the Employer refused to recognize Local 978, saying that it had previously recognized Local 1119, which had executed the current collective-bargaining agreement.

During December 1972 or January 1973, a second Local 1119 meeting was held at Huntington. Present at the meeting were Kinser, who had been appointed acting business manager of Local 978, Williamson, chief steward at the Employer's Big Sandy plant, and Bailey, the business agent of Local 1119. Williamson testified that written notice of the meeting "to discuss possible merger" was posted at the Employer's plant for an unspecified period of time. Approximately 50 to 100 employees from all 3 units which comprised Local 1119 attended the meeting and, according to Williamson, voted "almost unanimously" by a show of hands to approve the merger.

During April 1973, the Union and the Employer engaged in negotiations pursuant to a wage reopener provision for the second year of the contract which ran from May 1, 1972, to April 30, 1974. During the negotiations, in which the Union was represented by an International representative, the Union again requested that the Employer recognize Local 978, saying that Local 978 had replaced the System Council and that Local 1119 had been merged into Local 978. The Employer refused to allow Local 978 to execute the contract and, when the former local 1119 officers refused to sign the contract after it had been ratified by the employees, the Employer obtained the signatures of the employee-members of the Union bargaining committee. The Union then filed unfair labor practice charges against the Employer for bypassing the Union and the Employer filed unfair labor practice charges against the Union for refusing to execute the contract. These charges were eventually withdrawn by both parties in October 1973 when the Union agreed to execute the contract and the Employer agreed to execute a side agreement accepting Local 978 as the Union's agent in administering the contract.⁶ Thereafter, the Union designated Kinser, who was at that time financial secretary and business manager of Local 978, and Williamson, an executive

board member of Local 978 and chief steward at the Employer's plant, to act as its agents in administering the contract. Subsequently, they negotiated a collective-bargaining agreement with the Employer which was executed by the Union on April 1, 1974.

On February 21, 1974, the employees at the Employer's plant voted unanimously by a show of hands to file the petition in the instant case.⁷

In opposing the instant petition, the Employer argues that the employees at its Big Sandy plant have a smaller proportionate overall representation in the new Local 978 than they had in Local 1119 which represented only three units. However, this is not necessarily a determinative factor in ascertaining whether the basic identity of the employees' representative remains the same.⁸ In the instant case, the power of the unit employees has not been diluted by the change in representative from Local 1119 to Local 978 because both locals are affiliated with the same International Union and because there has been no change in the basic obligation of the employee-members to the Union or in the Union's obligation to the employees. In addition, Local 978 offers the same services through virtually the same individuals in connection with contract negotiations, grievance and arbitration handling, and other legal matters as did Local 1119 and System Council U-5. Local 978 has also continued the procedures used by Local 1119 for contract proposals, negotiations, and ratification whereby each unit of employees appoints a bargaining committee from its members, makes separate contract proposals, and negotiates, through designated bargaining agents, including its bargaining committee, a separate contract with its employer. Thus, the Employer's employees have retained significant control over their destiny by their power to participate in contract negotiations, and to vote separately on contract ratification and on strike votes. Arguably, the Employer's unit employees presently have more autonomy than they had before the merger because they have separate representation on Local 978's executive board, whereas they were not so represented within Local 1119 or the System Council.

The Employer also questions the legality of the merger of Local 1119 into Local 978, asserting that improper voting and notification procedures were followed and that the merger was therefore not properly authorized by the employees involved. The evidence, however, indicates otherwise. According to the

⁵ The exact date of the meeting and the exact number of employees present were not established in the record. There was testimony, however, that the meeting occurred after October 23 but prior to December 1, 1972. In addition, there was no evidence that the employees received any notice, written or oral, of the meeting.

⁶ However, the Employer continued to refuse to check off dues for Local 978 and instead sent the checkoff money to Local 1119 which then endorsed the checks over to Local 978.

⁷ Written notice of the meeting was posted in the plant for approximately 2 weeks and approximately 20 employees attended the meeting. The Employer contends that this procedure was improper and that it therefore contaminated the merger of Local 1119 into Local 978. However, we need not reach this contention inasmuch as the merger was previously effected and approved in December 1972 and January 1973.

⁸ *Montgomery Ward & Co., Incorporated*, 188 NLRB 551 (1971), *United States Gypsum Company*, 164 NLRB 931 (1967).

Union's internal procedures, as set forth in its constitution, the employees' consent to or approval of a merger ordered by the International president is not necessary. The International president is authorized to order the merger of local unions and to determine the terms thereof when in his opinion such a merger is warranted. None of the former members of Local 1119 have protested the International president's action or have challenged the procedures used to obtain the approval of Local 1119 members to the merger.

Although, prior to the effectuation of the merger, the Local 1119 members voted not to approve the merger, they subsequently approved the already effectuated merger at a meeting in December 1972 or January 1973. There is uncontradicted testimony that the employees were given both written and verbal notice of the meeting and were informed that the purpose of the meeting was to discuss a "possible merger." According to Williamson, approximately 50 to 100 of the approximately 150 members of Local 1119 attended the meeting and voted "almost unanimously" to accept the merger. The fact that the vote was by a show of hands rather than a secret ballot is not substantially irregular as to negate the validity of the expressions of the Local 1119 membership. We note that there were no challenges by Local 1119 members to the voting method used and there was no evidence of any improprieties in the voting. In addition, there were no protests that the notice of the meeting was insufficient and there is no evidence that any of the officers or members of Local 1119 were opposed to the merger.⁹ Although the record does not establish the exact number of the Employer's employees who attended the meeting, it is clear that they were given ample opportunity to express their preference as to the merger. Finally, we note that Local 1119 has ceased to exist as a representative of the Employer's employees. For these reasons, we find that the procedures followed for approval of the merger, which was effectuated by the Union's International president, were proper.

The Petitioner has requested that we substitute it for the Union as the certified bargaining agent for the Employer's employees. However, we believe that the realities of the situation as reflected in the record require the addition, rather than the substitution of Local 978 to the Union's certification. The evidence establishes that the Employer has in fact been dealing with both Local 978 and the Union jointly as the representative of its employees. As above indicated, the Employer and the Union mutually agree during the term of the 1972-74 contract, in withdrawing their respective unfair labor practice charges against each other, that the Union would execute the wage reopen-

er agreement dated May 1, 1973, in its capacity as the certified bargaining representative of the Employer's employees and that the Employer would accept Local 978 as the Union's agent to administer the contract for its duration. The Union also agreed, at the Employer's insistence, to execute the current collective-bargaining agreement dated May 1, 1974, which was negotiated entirely by Local 978 Representatives Kinser and Williamson and the employee committee appointed from the unit. The Union's agreement to continue to be the contracting party in the current contract in effect carried forward the Employer's *de facto* recognition of both the Union and Local 978 as the joint representative of its employees. We cannot, therefore, by way of an amendment to its certification, absolve the Union from its obligations under that contract and thereby nullify the apparent intentions of the parties. To the contrary, in order to reflect the course of dealing between the parties, we shall amend that Union's certification to add Local 978 as a certified bargaining representative of the Employer's employees. This amendment, however, is not to be considered as a new certification or a recertification.

ORDER

It is hereby ordered that the Certification of Representative issued in Case 9-RC-8466 on June 1, 1970, and the Certification of Representative issued in Case 9-RM-631 on July 30, 1971, to "International Brotherhood of Electrical Workers" be, and they hereby are, amended by adding thereto "and Local 978, International Brotherhood of Electrical Workers."

MEMBER FANNING, dissenting:

The majority's decision to change the Board's certification of the International by "adding" the name of its Local 978 because the Employer has been dealing with them "jointly" is illogical and unwarranted. A Board certification reflects the Board's conclusion that a particular union has won a Board election. That union, and that union alone, remains certified until the next Board election. No other union can be added to the certification on the ground that the Employer has been bargaining with that union as well as the winner of the election. The majority has confused the issue in this case by insisting that the Employer has been engaged in "joint bargaining" with an International and its local. Nothing could be further from the fact. Contrary to the majority, bargaining which occurs between an employer and an international, including its local, is not tripartite bargaining. An international's local is merely a branch of its parent and it has been standard Board law historically that

⁹ Cf. *Missouri Beef Packers, Inc., et al.*, 175 NLRB 1100 (1969).

an employer bargains essentially with the same union by bargaining with an international and/or its affiliate.

I believe this case must turn on the question whether it can reasonably be found that the Employer's employees have agreed to the substitution of Local 978 of the International for the International under the Board's certification of the latter. Since Local 978 is merely a section or affiliate of the International,

and not an entirely different labor organization, I see no reason why the substitution should not be approved in this case. I note particularly that the record shows that the employees of the Employer have now approved the merger of their Local 1119 into Local 978.¹⁰

Accordingly, I would grant the petition of Local 978 to substitute its name for that of the International.

¹⁰ Cf. *M A Norden Company, Inc.*, 159 NLRB 1730 (1966)