Standard Brands, Inc., Fleischmann Mfg. Division, Employer-Petitioner *and* Brewery Workers, DALU, Local 293, AFL–CIO, Union-Petitioner. Cases 20–RM–1748 and 20–AC–23

October 15, 1974

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Robert C. Grace.[1] The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. After the hearing and pursuant to the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Regional Director issued an order transferring the case to the Board for decision. Thereafter, the Union-Petitioner and the Conference of Brewery and Soft Drink Workers of the United States of America and Canada, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local 293, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein the Intervenor Unions, filed briefs.[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.

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

1. The Employer is engaged in commerce and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. We find that the Union-Petitioner and the Intervenor Unions[3] are labor organizations within the meaning of the Act who claim to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

The Conference of Brewery and Soft Drink Workers of the United States of America and Canada, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter Conference, contends that the RM petition must be dismissed because it is barred by a current collective-bargaining agreement expiring April 30, 1976, and further because the RM petition is not coextensive with the current bargaining unit. Brewery Workers, DALU, Local 293, AFL–CIO, hereinafter DALU Local 293, contends that an election is not appropriate and that the Board should declare DALU Local 293 to be the bargaining representative of the production and maintenance employees at the Oakland facility of Standard Brands, Inc. Standard Brands, Inc., hereinafter the Employer, does not contend that an election is necessarily appropriate but that it has filed the RM petition because two competing labor organizations have claimed to represent the employees at its Oakland facility.

The dispute in the instant case resulted from the merger of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, hereinafter UBW, with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter IBT.

On July 19, 1972, the UBW and IBT executed a declaration of intent to merge and a no-raiding agreement. On September 4, 1973, the UBW called a special convention in order to vote on merging and affiliating with the IBT. Thereafter, on November 5, 1973, the UBW held a special convention at which time, by means of a roll call vote of 26,129 to 4,756, the membership of UBW approved the merger with the IBT.

Article I of the merger/affiliation agreement approved by the special convention provided:

> Simultaneously with the approval of the Agreement . . . all Local Unions chartered by the United Brewery Workers shall become affiliates of the International Brotherhood of Teamsters and all members of such Local Unions shall be deemed for all purposes to be members of the International Brotherhood of Teamsters.

Prior to the special convention, members of Local 293 of the UBW voted to oppose the merger and voted "conditionally" to disaffiliate from the UBW if the merger was approved.

By letter dated November 1, 1973, Local 293 UBW's recording secretary, Powers, notified the Employer of its intention to vote against the merger and

[1] The Union-Petitioner filed an AC petition which was consolidated for hearing with the RM petition in Case 20–RM–1748. However, as there is no existing certification covering the employees at the Standard Brands Oakland facility, we shall dismiss the petition in Case 20–AC–23.

[2] Inasmuch as the record and briefs adequately present the issues and positions of the parties, the Intervenor Unions' request for oral argument is hereby denied.

[3] In its brief, the Union-Petitioner argues that Local 293, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is not a labor organization within the meaning of the Act. However, we note that the record indicates that Thomas Rusch, director of organization for the Conference and the person whom IBT General President Fitzsimmons has designated as trustee for Local 293, IBT, is willing and able to represent the employees of the Employer's Oakland facility for purposes of collective bargaining.

to become an independent union within the AFL–CIO if the merger were approved. Powers also requested that the Employer continue to abide by parts I and II of the existing contract. By letter dated November 2, 1973, Oakland Plant Manager Burgess replied to Powers that the Employer considered the contract "to constitute a legal and binding agreement on both Standard Brands and the Local Union."

On February 10, 1974, according to Powers, another meeting was held, after notices were posted, at which employees of the Oakland facility voted to disaffiliate from the UBW and to become a directly affiliated local of the AFL–CIO. Thereafter, Powers notified Burgess of the disaffiliation action, and Burgess agreed to recognize DALU Local 293 as the only collective-bargaining representative of the Employer's production employees at the Oakland plant.

On March 11, 1974, IBT General President Frank Fitzsimmons appointed Thomas Rusch as "trustee over the affairs of Local Union No. 293, effective March 11, 1974." On April 8, 1974, Rusch sent a letter to Burgess requesting that all dues deductions be transmitted to IBT. Also in April, Rusch spoke with Plant Manager Burgess and requested that the Employer cease recognizing DALU Local 293 and post IBT notices as to the institution of the trusteeship. However, since February 1974, the Employer has continued to transmit dues deductions to DALU Local 293.

The Conference contends that there has been no schism here within the meaning of *Hershey Chocolate Corporation,* 121 NLRB 901 (1958). We agree. *Hershey Chocolate* clearly states that certain conditions must be met before the Board will direct an election in the face of an existing collective-bargaining agreement. In the case herein, those conditions have not been met and no election is warranted.

First, we find that no schism, within the meaning of *Hershey Chocolate,* has taken place in this case. Here, the UBW, at its special convention in November 1973, passed a resolution providing for the UBW to disaffiliate from the AFL–CIO and to affiliate with the IBT. No party herein contests the bona fides of the vote of the special convention. Therefore, once the convention approved the merger/affiliation of the UBW with the IBT, there existed no conflict over policy at the highest level and there resulted no disruption of intraunion relationships. There is no indication that the AFL–CIO, subsequent to the UBW special convention, created any organization with jurisdiction similar to the UBW or assigned the jurisdiction of the UBW to a currently existing AFL–CIO organization. Nor did any of the leadership of the UBW form a splinter group in order to attempt to keep the UBW within the AFL–CIO. Thus, the disaffiliation of DALU Local 293 did not take place in the context of a basic intraunion conflict over policy at the highest level. Rather, the situation herein is more akin to where a dissident group of local union members has rebelled against actions taken by their international union. In such circumstances, the Board has found that no basic intraunion conflict is present and no schism exists. *Swift & Company,* 145 NLRB 756 (1963). In *Swift,* the Board refused to direct an election where a local union had disaffiliated because its international union would not agree to the local's negotiating deviations from the nationwide master agreement. Here, DALU Local 293 was created because certain members were dissatisfied over a proper and legitimate action taken by its international union. Thus, as in *Swift,* there exists here no basic intraunion conflict over policy at the highest level of the international. Instead, we have DALU Local 293 being dissatisfied with the actions of the international union, the UBW. *Hershey Chocolate* specifically stated that "with respect to the situation at the local level . . . an election is warranted only when the local action takes place in the context of a basic intraunion conflict, and *not otherwise* [emphasis supplied]." Finding no basic intraunion conflict here, we find an election unwarranted.

Secondly, *Hershey Chocolate,* while not defining a specific time period in which a disaffiliation action would be timely, suggested that a 1-month period would be reasonable. Here, the Oakland employees had long been aware of the possible merger of the UBW with the IBT. The UBW and IBT executed a declaration of intent to merge and/or affiliate on July 19, 1972. In October 1973, employees at the Oakland plant met to discuss the proposed merger but took only a "conditional" vote regarding disaffiliation. Though the UBW's special convention voted on November 5, 1973, to affiliate with the IBT, it was not until February 10, 1974, that members of Local 293 met and voted on disaffiliation. Without reaching the question of whether the low voter turnout at the February 10 meeting was caused by improper procedures, we conclude that, in light of the UBW's possible merger having been long publicized, the delay between the UBW's special convention and the action of the Oakland employees at the February 10 meeting was unjustified and unreasonable. Accordingly, we find that the disaffiliation action of February 10 was untimely and does not warrant the Board's directing an election.

Thirdly, since the RM petition herein is not coextensive with the nationwide bargaining unit of the Employer, it is inappropriate to direct an election in this case. In *Standard Brands, Incorporated,* 75 NLRB

394 (1947), the Board concluded that the employees of the Employer's Oakland plant, having for many years been included in the nationwide bargaining of the Employer and the UBW, did not constitute a unit appropriate for bargaining. In the case before us, as in the earlier case, items of mandatory bargaining such as wage rates, holidays, vacations, pension, welfare, overtime pay, premium pay, and shift scheduling are negotiated at the national level. In light of the long history of bargaining at a national level and after examining the scope, coverage, and application of the nationwide agreement, we conclude that the Employer's Oakland plant is part of a single multiplant unit. In regard to the local supplements negotiated at the local level, the Board has held that local bargaining as to local issues is not inconsistent with bargaining on a nationwide basis. See *General Electric Company,* 180 NLRB 1094 (1970).

Furthermore, within the nationwide bargaining unit here, only the local union at the Employer's Oakland plant has requested recognition as a disaffiliated local. *Hershey Chocolate* envisioned directing elections in certain cases in order to eliminate confusion destabilizing the bargaining relationship. Under the circumstances here, should the Board direct an election and, in effect, afford the Oakland employees the opportunity to withdraw from the nationwide bargaining unit during the term of the collective-bargaining agreement, the Board would be adding destabilizing confusion rather than bringing stability to the situation.

Therefore, we conclude, in accordance with precedent as stated in *Hershey Chocolate,* that the RM petition herein must be dismissed. The conditions required by *Hershey Chocolate* to warrant a direction of election have clearly not been met in this case. There exists no basic intraunion conflict over policy at the highest level, the employee disaffiliation action was taken in an untimely manner, and the disaffiliation action is not coextensive with the existing unit. Finding that the current collective-bargaining agreement is a bar to these proceedings, we shall dismiss the RM petition.

ORDER

It is hereby ordered that the petitions in Cases 20–AC–23 and 20–RM–1748 be, and they hereby are, dismissed.