

Ocean Systems, Inc. and Professional Divers Local Union No. 1012, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Petitioner

J. Ray McDermott & Co., Inc. and Professional Divers Local Union No. 1012, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Petitioner. Cases 15-AC-27 and 15-AC-28

April 12, 1976

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND WALTHER

On July 11, 1974, International Association of Professional Divers (hereinafter IAPD), affiliated with District 2, MEBA, AFL-CIO (Marine Engineers Beneficial Association, hereinafter MEBA), was certified as the bargaining representative of an appropriate unit of divers employed by Ocean Systems, Inc.¹

On April 18, 1975, IAPD, affiliated with District 2, MEBA (hereinafter IAPD-MEBA) was certified as the bargaining representative of an appropriate unit of divers employed by J. Ray McDermott & Co., Inc.²

On September 10, 1975, Petitioner, Professional Divers Local Union No. 1012 (hereinafter Local 1012), United Brotherhood of Carpenters and Joiners of America, AFL-CIO (hereinafter Carpenters), filed the instant request to amend the certification so as to designate it in place of IAPD-MEBA as the representative of the Employers' employees.

The Employers alone oppose the granting of the amendment,³ contending that at every step of the way the procedures used by Petitioner to change both its name and affiliation do not comport with Board standards in that there was lack of proper notice, lack of participation of nonmembers, lack of a representative number of participants, and a significant change in the identity and continuity of the bargaining representative.

A consolidated hearing was held on October 2, 3, and 7, 1975, in New Orleans, Louisiana, before A. Richard Gear, Hearing Officer. Following the hear-

¹ The detailed unit description was:

All regular divers and tenders at the Employer's Morgan City, Louisiana facility; excluding all other employees, office clerical employees, the salesmen, professional employees, guards, watchmen, and supervisors as defined in the Act.

² The detailed unit description was:

Divers, tenders and rack operators employed by the Employer in its Diving Division; excluding all other employees, free lance divers and tenders, shop employees, dispatchers, office clerical employees, shop clerical employees, guards, and supervisors as defined in the Act.

³ A representative of MEBA attended the hearing but stated that MEBA took no position in this matter.

ing and pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Regional Director transferred this case to the National Labor Relations Board for decision. Thereafter, Employer Ocean Systems, Inc., Employer J. Ray McDermott & Co., Inc., and the Petitioner filed briefs.⁴

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 rulings of the Hearing Officer made at the hearing and finds they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case,⁵ the Board finds:

IAPD came into existence in 1970 to establish community safety regulations for professional divers and tenders, and to improve their wages, hours, and working conditions. On February 11, 1974, IAPD entered into an agreement of intent to affiliate with MEBA. On March 2, 1974, IAPD became affiliated with MEBA. Subsequently MEBA granted a charter to IAPD and a constitution of IAPD-MEBA was executed.

IAPD-MEBA was certified as the bargaining representative at several employers in the gulf coast area, including Ocean Systems and McDermott. In the spring of 1975 the officers of IAPD-MEBA became dissatisfied with the help and support they were receiving from MEBA. At a meeting in the Washington, D.C., area, Paul Woodhall, president of IAPD-MEBA, initiated discussions with the Carpenters about the advantages of affiliation with that organization. Disaffiliation from MEBA and acceptance of a charter from the Carpenters was discussed in New Orleans among the officers and certain members of the IAPD. It was decided to place the question before the membership. Notices were sent on July 7, 1975, to the membership stating that the regular quarterly meeting would be held on July 11, 1975, and that the executive committee and the board of directors "will present for consideration and vote a resolution to disaffiliate from" MEBA, and that "an opportunity for consideration of affiliation with another international union will be given." Besides the mail notices, phone calls were made and members were contacted personally.

On July 11, 1975, several meetings took place. The first was a meeting of the executive committee attended by all committee members except one, at

⁴ As the record adequately presents the positions of the parties, the Employers' and the Petitioner's requests for oral argument are hereby denied.

⁵ We hereby deny the Employer's motion to reopen the record because the evidence sought to be adduced is not, in our view, relevant to our decision herein.

which two resolutions designated as "A" and "B" were approved and recommended to the board of directors and the membership.⁶ Resolution A presented the question of disaffiliation from MEBA. Resolution B presented the question of acceptance of a charter from the Carpenters. The second meeting was a meeting of the board of directors, which included all of the IAPD-MEBA officers. At this meeting resolutions A and B were adopted; the only negative votes were cast by the MEBA representative. The third meeting was a meeting of the corporate officers of IAPD, Inc., which was a nonprofit Louisiana corporation. A resolution to dissolve the nonprofit corporation was approved and Woodhall was authorized to take whatever action was necessary. The fourth meeting was that of the general membership of IAPD-MEBA. No one was allowed to attend who was not a member in good standing. This was done, according to President Woodhall, in order that the members directly affected would be allowed to consider the questions absent any restraints or inhibitions that might exist if two representatives of International unions (MEBA and Carpenters) were allowed to attend. During this meeting, full discussion was had, questions were answered, and a secret ballot vote taken. With 78 of the 201 members in attendance, resolution A passed 77 to 1 and resolution B passed 76 to 2.

The last meeting was a meeting of the shareholders of IAPD, Inc.⁷ Those present unanimously adopted the resolution to liquidate the nonprofit corporation. After adjournment of the shareholders meeting, a Carpenters representative was allowed to speak, and presented the members with the charter for Local 1012.

At the hearing Woodhall testified that he was assured by the Carpenters that the IAPD-MEBA members would become members of the new Local 1012. To this end and as a ministerial function only, all members of IAPD-MEBA were sent applications to become Carpenters members. Woodhall also testified that he received assurances that Local 1012 would determine its own collective-bargaining units and goals as it had when affiliated with MEBA. There have been no structural changes in the organization. Thus, all persons who had been elected as officers continue to be officers in comparable positions. The local continues to process its own grievances. The dues structure remains the same. The amounts are set by the membership; both Internationals require a per capita tax.⁸ The same group life

insurance program has been available to members during the time IAPD was an independent, through its affiliation with MEBA, and now as Local 1012.

With the transfer of affiliation accomplished, Local 1012 turned its attentions to its several certifications as IAPD-MEBA. It decided that a mail ballot system should be used as was done in the NLRB elections. The mail ballots contained a statement as to what occurred on July 11 and reasons therefor. Employees were asked to approve a transfer of the certification and bargaining rights from IAPD-MEBA to Local 1012.⁹ Letters were sent to each employer involved asking for an up-to-date list of divers, tenders, and rack operators. Both Employers involved herein refused to furnish such lists. The local then used the last *Excelsior* list obtained from each Employer and made appropriate additions and deletions on the basis of whatever information it could obtain.

The mailing procedure was as follows. An envelope was addressed to the eligible employee. It contained information as to what had taken place, instructions for voting, a ballot, a ballot envelope, and a return envelope. The return envelope was addressed to Local 1012 at a certain post office box. In the upper left-hand corner was a place where the employee was to affix his signature and return address. The employee was instructed to mark the ballot, place the ballot into the ballot envelope, and then place the ballot envelope into the return envelope. There was a 30-day return period.

After the mail ballots were sent out to both member and nonmember employees of each Employer, Local 1012 engaged the services of a neutral third party, Neil Sweeney II. After each return date, Sweeney went to the post office box and retrieved the ballots for one employer at a time using that employer's eligibility list. He took the ballots for each employer to his office separately, opened and counted them, and certified the results. He did not count improperly returned ballots. Thereafter, the instant AC petitions were filed.

It was stipulated that, at the time of the mail balloting, McDermott had 101 employees and Ocean Systems had 44 employees. The record reveals that of 95 ballots sent to McDermott employees, 60 were returned properly. Of these 60, 54 were voted "approve" and 6 were voted "disapprove." McDermott

However, the testimony is to the effect that one is required.

⁹ The language of the ballot is as follows: "Do you agree to a transfer of the certification rights and bargaining rights which International Association of Professional Divers, a/w District 2, MEBA, AFL-CIO had for divers, tenders, and rack operators of [the named employer] to Professional Divers Local Union No. 1012, United Brotherhood of Carpenters and Joiners of America and hereby authorize Professional Divers Local Union 1012 to be your bargaining representative in dealing with [the named employer]."

⁶ The MEBA representative was the only negative vote.

⁷ The testimony revealed that "member" and "shareholder" are synonymous.

⁸ The Employers contend that no per capita tax was ever paid to MEBA.

asserts that 13 of its employees did not receive ballots and that four ballots were sent to persons who were no longer employees and of those four, three were returned and counted. Even accepting McDermott's assertions, 51 of its 101 employees, a majority, voted to accept the transfer of affiliation. Of 35 ballots sent to Ocean Systems employees, 24 were returned, all of which were voted "approve." Ocean Systems asserts that nine of its employees did not receive mail ballots. In any case a majority, 24 of 44, of Ocean Systems' employees voted to accept the change in affiliation.

In opposing the amendment the Employers contend that there has been a change in the identity and continuity of the certified union. They point to the fact that Local 1012 is no longer a corporation, but a chartered local and thus an integral part of the Carpenters. They argue that the autonomy and independence the organization had when affiliated with MEBA has been destroyed. The Employers further note that the two organizations have different bank accounts and offices; members must apply for membership in the Carpenters; the officers' positions are different; and the constitution and bylaws have been replaced by a charter. They also contend that the continuity is necessarily broken by changing affiliation from one International to another.

We find no merit in the contention that the continuity of the bargaining representative has been broken. Local 1012 retains the right to negotiate its own collective-bargaining agreements and process its own grievances through the same elected individuals who led the organization under its old name. The dues structure has remained exactly the same. The certified labor organization does not oppose the amendment and is not a presently functioning viable entity. The certified Union has now become the Petitioner.¹⁰ The record clearly shows that the application for membership in the Carpenters by the IAPD membership is ministerial only. We are not persuaded that IAPD and Local 1012 are not the same by such factors as different offices, bank accounts, and titles for the officers. Hence, we find that Local 1012 is functionally the same organization as the certified representative and that the nature of the relationship between the local and each of the two International affiliates is substantially the same.¹¹

The Employers contend that the transfer of affiliation is a raid engineered and forced upon a smaller labor organization. This contention is unsupported. The record shows that it was the IAPD that initiated

the contact with the Carpenters. The IAPD officers thereupon sought assurances that IAPD would retain all its elected officers and autonomy if it chose to transfer affiliation. There was no contact between the IAPD membership and the Carpenters until after the membership voted by secret ballot to accept a charter from the Carpenters.

Ocean Systems contends that the petition with respect to its employees is not timely because of the existence of a recognition agreement signed at the end of the certification year. This contention is without merit. Even if the recognition agreement constituted a collective-bargaining contract, an amendment to certification is not affected by the Board's contract-bar rules.¹²

McDermott contends that the petition with respect to its employees is premature. It contests the validity of the certification and has formally refused to bargain with IAPD. It argues that the certification may not be amended since its validity has not been determined. We find no merit in McDermott's contentions. As the amendment merely reflects a change in the name and affiliation of the same certified bargaining representative, it has no effect on the validity of the original certification, or McDermott's ability to challenge it by appropriate means.

The Employers contend that the procedures used by IAPD to change its affiliation did not give the membership adequate opportunity to consider and vote on the question and that the subsequent mail balloting does not correct the deficiencies. They contend that notices mailed on July 7, 1975, for a meeting held on July 11, 1975, did not provide adequate time and that they did not specify the name of the proposed new affiliate. They assert that a majority of the membership did not approve the change (77 of 201 members voted in favor), the proposals were presented as a foregone conclusion with inadequate opportunity for discussion, and resolutions A and B were the only alternatives presented since the possibility of becoming an independent was never discussed. They further argue that the dissolution of IAPD was not in accord with its own rules. They point to its constitution which prohibits dissolution "while there are seven members who wish the Union to be maintained" and argue that the wishes of a great majority of the membership of IAPD were never sought. The Employers also question whether proper procedures were used in the dissolution of the nonprofit corporation.

We do not agree with the Employers' contentions. The Board has held that it "does not normally concern itself with determining whether a membership

¹⁰ See *New England Foundry Corporation*, 192 NLRB 785 (1971).

¹¹ *Carpinteria Lemon Association v. N.L.R.B.*, 240 F.2d 554 (C.A. 9, 1956), cert. denied 354 U.S. 909 (1957). Compare *American Bridge Division, United States Steel Corporation v. N.L.R.B.*, 457 F.2d 660 (C.A. 3, 1972).

¹² *The Hamilton Tool Company*, 190 NLRB 571, 573 (1971), Member Jenkins dissenting on other grounds.

meeting was held in strict conformity with a Union's constitution and bylaws absent a clear showing . . . of substantial irregularity."¹³ We believe that there has been no substantial irregularity herein and that adequate notice and opportunity to discuss the matter was accorded to all the membership. With respect to the corporate dissolution, the Board has held that this is "merely ministerial and of no substantive importance."¹⁴ We believe that resolutions A and B presented adequate alternatives; if any member chose to have the IAPD remain an independent, he needed only to vote against resolution B.

In objecting to the mail balloting of the bargaining units, the Employers contend that not all the employees received ballots; some persons who were no longer employees actually voted; and the ballots presented this matter as a *fait accompli*. They further assert that safeguards to insure the secrecy of the ballots were inadequate in that the ballots were not segregated by employer, several union officers had access to the post office box used for ballot return, and there was no way to prevent substitution of ballots.

We find no merit in the Employers' contentions. As shown above, even when the ineligible voters are discounted and those not receiving ballots are included, a majority of each bargaining unit voted to approve the transfer.¹⁵ We believe that a mail balloting procedure was an appropriate method to obtain the views of the employees herein since the nature of their work is such that they are offshore for significant periods of time and the Board itself used mail ballots in these bargaining units. We see no deficiency in the wording of the ballots.¹⁶ The transfer of affiliation had in fact been accomplished; it was necessary merely to secure ratification of the transfer of bargaining rights by a majority of each bargaining unit. In addition, we believe that efforts to insure the secrecy of the ballot were adequate. The ballots for each employer were removed by use of the eligibility list for each employer and then each batch was counted by a neutral third party. The Union strove at every step to follow the procedure used in the preceding Board elections in which mail ballots were used.

¹³ *The Hamilton Tool Company*, *supra*, fn. 12, Member Jenkins dissenting on other grounds, which quotes from *Gate City Optical Company, a Division of Cole National Corporation*, 175 NLRB 1059 (1969).

¹⁴ *The Hamilton Tool Company*, *supra*, fn. 12, Member Jenkins dissenting on other grounds.

¹⁵ We note that the Union achieved majority approval even though the Employers refused to cooperate by furnishing a current list of employees. Member Jenkins would note that Petitioner made every effort to assure that all employees in the units had the opportunity to vote, first by seeking a list of all current employees in the area and their addresses from the Employers and when this was denied, constructing as best it could a complete list of its own, to all of whom mail ballots were sent.

¹⁶ *Safway Steel Scaffolds Company of Georgia*, 173 NLRB 311 (1968).

In view of the foregoing, we can perceive no reason for not granting Petitioner's requests and shall therefore amend the certifications in Cases 15-RC-5375 and 15-RC-5361 to reflect the current name and affiliation of the certified union. This amendment of the certification is not to be considered as a new certification or recertification.

ORDER

It is hereby ordered that the petitions to amend the certifications filed by Professional Divers Local Union No. 1012, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, be, and hereby are granted, and that the Certification of Representative issued in Case 15-RC-5375 and that issued in Case 15-RC-5361 be amended by substituting "Professional Divers Local Union No. 1012, United Brotherhood of Carpenters and Joiners of America, AFL-CIO" for "International Association of Professional Divers, affiliated with District 2, MEBA, AFL-CIO."

MEMBER WALTHER, dissenting:

I would not amend the certifications issued to IAPD-MEBA to show Professional Divers Local Union No. 1012, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the certified representative of the two bargaining units involved in this proceeding.

On July 7, 1975, Paul Woodhall, the president of IAPD-MEBA, sent out notices addressed to members and shareholders announcing meetings to be held on the evening of January 11, 1975. The one addressed to members stated that the purpose of the meeting would be to vote on a resolution to disaffiliate from MEBA. It also notes: "An opportunity for consideration of affiliation with another international will be given." The second notice addressed to shareholders stated the meeting would be for the purpose of dissolving the corporation (IAPD). Neither notice made any reference to the Carpenters Union.

Woodhall states that, prior to calling these meetings, he had heard expressions of dissatisfaction by some of the officers and members with the affiliation with MEBA. However, it is clear that the calling of these meetings was directly related to negotiations conducted by Woodhall with officials of the Carpenters Union. At a conference held in Washington by the National Institute of Occupational Safety and Health, Woodhall became acquainted with an official of the Carpenters Union, Paul Connally. Thereafter, Woodhall took several more trips back to Washington for a series of meetings, first with Connally, and then with the top officials of the Carpenters, including the general president. Agreement was

reached that the Carpenters Union would charter a local for professional divers, tenders, and rack operators in connection with a six-point plan. This six-point plan included, *inter alia*: (1) negotiation of a national and international divers' agreement; (2) complete international mobility of divers within the jurisdiction of the United Brotherhood; and (3) complete reciprocity in all funds where divers are working, i.e., pension, welfare, vacation, etc. The six-point plan along with acceptance of a charter as a local from the Carpenters was drafted up by Woodhall with the assistance of the Carpenters Union as resolution B¹⁷ and presented by Woodhall on July 11, 1975, first to the executive board¹⁸ and then later to the membership meeting. MEBA representatives, who sought to attend the membership meeting, were not permitted to do so on the grounds that they were not members of IAPD. This was contrary to past practice with respect to their attendance at membership meetings. It appears that the only speakers at the meeting were those that urged the adoption of resolutions A and B.

It would appear that Woodhall was confident of the result before any membership vote was taken. This may have been related to the fact that the membership meeting was called on only a 4-day notice mailed out by regular mail. Membership in IAPD was held by employees of a number of employers widely scattered along the Mexican Gulf area. Attendance would have been physically impossible for a substantial number of members working offshore. On the other hand, Woodhall had personally contacted certain members and urged their attendance at the meeting. Nonmembers, even though employees in the bargaining unit, were not permitted to attend. In any event, at the conclusion of the meeting, Woodhall brought into the meeting Pat Campbell, vice president of the Carpenters Union, who had come out from Washington. Campbell presented Woodhall with an already prepared charter signed by the general president and general secretary for a local designated as "Local 1012 of Professional Divers, New Orleans, La."

Woodhall testified in the hearing that he did not know the number of unit employees at McDermott and Ocean Systems that were members of IAPD. The record shows that a substantial number of these unit employees were working offshore and could not have attended the meeting even if they had been

members. In the case of Ocean Systems, this was 22 out of the 44 employees in the unit. Woodhall merely asserts that "some" of the unit employees of McDermott and Ocean Systems were at the meeting.

Where the evidence mitigates against concluding that employees freely and clearly expressed their wishes relative to change of affiliation, the Board has held that the petition will be denied.¹⁹ The circumstances surrounding this meeting clearly mitigate against a finding that it represented an expression of desire on the part of a majority of the unit employees at McDermott and Ocean Systems. So far as the record shows, no mention was made to the general membership that there would be a vote taken on affiliation with the Carpenters Union until resolution B, previously drafted by Woodhall, was presented by him on the day of the meeting. The only speakers at the membership meeting were those urging adoption of the resolution. Representatives of MEBA with an opposing view were excluded from the meeting. Under such circumstances, there was clearly lacking an opportunity to consider and reflect upon opposing views before being required to vote.²⁰ It is pure speculation to assert that the change in affiliation occurring at a meeting called with a 4-day notice to a widely scattered membership, with no opportunity for members working offshore to vote, and with only slightly more than one-third of the members participating, reflects the views of a majority of the membership.²¹ More important, in my view, is the fact that we are dealing with a Board certification and therefore should be concerned with whether it reflects the majority view of the employees in the units in question. The record clearly does not support a finding that the employees of these units participated in the meeting in any meaningful number.

Neither do I find that this lack of expression of the desires of the unit employees was cured by the subsequent mail ballot election conducted by Local 1012. The majority decision would give the impression that this election was conducted under the direction and control of a neutral party, Neil Sweeney. The record shows that the ballots were sent out by Local 1012. The return envelope was addressed to the Tally Committee of Local 1012, P. O. Box 416. The only keys to this box were held by Woodhall and Paul Owen, a vice president of Local 1012, who with Woodhall had been the leading advocate of joining up with the Carpenters Union. The testimony of Sweeney shows that his role was to take the ballots

¹⁷ Resolution A called for the disaffiliation from MEBA. At the meetings for the board of directors and shareholders, a motion was also made by Woodhall to dissolve the IAPD corporation, which was adopted at both meetings.

¹⁸ Resolutions A and B were adopted by the executive board by a vote of three to one, with one member of the executive board absent.

¹⁹ E.g., *Factory Services, Inc.*, 193 NLRB 722 (1971); *The J. H. Day Company, a Division of Leblond, Incorporated*, 204 NLRB 863 (1973); *Peco, Inc.*, 204 NLRB 1036 (1973).

²⁰ See *American Bridge Division, United States Steel Corporation v. N.L.R.B.*, 457 F.2d 660 (C.A. 3, 1972).

²¹ See *Fall River House, Inc.*, 198 NLRB 1123 (1972).

turned over to him by either Woodhall or Owen, check the name on the return envelope against a list of names furnished to him by Woodhall, and tally the results. The ballot was originally sent out as a detachable part of a letter from Woodhall. The letter stated that the IAPD had already disaffiliated from District 2, MEBA, and accepted a charter from the United Brotherhood of Carpenters and Joiners. The letter then went on to exhort, "The reasons for this action were many . . . but paramount among them was the fact that the UBC has instituted a 6-point national plan for divers and tenders as a separate craft unit and are [sic] now dedicated to organizing the divers and tenders nationally, spearheading this drive through Local 1012 in the Gulf of Mexico." Nowhere does the letter advise that it will be a secret ballot.

The situation of the employees receiving the ballot was thus one in which they are presented with a "*fait accompli*," namely, the results of the July 11 meeting.²² The ballot was accompanied with a plea and propaganda for approval of the proposition on the ballot. With no assurance given to the voter that the ballot would be secret he could only assume his vote would be known to those who strongly favored the proposition. The ballot was received from, and to be returned to Local 1012. A mail ballot election conducted under these circumstances neither conforms to the procedures of Board-conducted mail ballot elections nor permits the exercise of a free choice.

Further, in my view, the contention of the majority that the Petitioner "is functionally the same organization as the certified representative" will not withstand scrutiny. As stated by the court in *American Bridge Division, U. S. Steel Corp. v. N.L.R.B.*, *supra*:

Previous cases which have considered the amendment of certification procedure concur that it is proper where there is merely a change in the name of the organization. The Second Circuit in *Cocker Saw Co. v. N.L.R.B.*, 446 F.2d 870, 872 (2nd Cir. 1971), held: "An amendment to a certification is proper only to permit changes in the name of the representative, not to change the representative itself." Cf. *N.L.R.B. v. Mulligan of Dearborn, Inc.*, 434 F.2d 1052 (6th

Cir. 1971). To permit the procedure to cover additional situations involving significant changes in the actual identity of representatives and a diminution in the rights of bargaining units' members without a Board-sponsored election exceeds the scope and purpose of the Board's own rules and is contrary to the sound legislative policy behind Section 9 of the National Labor Relations Act.

IAPD was incorporated as a nonprofit Louisiana corporation domiciled at New Orleans. It continued to maintain this corporate structure after its affiliation with District 2, MEBA, with the members also stockholders of the corporation.²³ It has sought to represent and bargain for employees of employers located in Louisiana and surrounding areas on the basis of single-employer bargaining units. The announced purpose of Local 1012 is to bargain on the basis of a national multiemployer basis backed by a "850,000 man union." In fact, the announced bargaining objectives of the Carpenters Union and its Local 1012 would appear to be in conflict with the very certification in this case which they seek to have transferred to them. As testified to by Woodhall, membership in IAPD was not automatically transferred to Local 1012. Subsequent to the meeting of July 11, 1975, letters were sent by Woodhall to members of IAPD soliciting their applications for membership in Local 1012 of the Carpenters Union. A copy of this application for membership, the signing of which is referred to in the majority decision as "ministerial only" is attached as an Appendix [omitted from publication] to this dissent. The record does show that Woodhall in his negotiations with the Carpenters Union was given assurance that he and other officers would retain their position in the new organization. However, I do not find this persuasive on the issue of continuity of representation or a change in the bargaining representative.

Under the circumstances presented here, to certify Local 1012 as the bargaining representative of the employees of the bargaining units involved in this proceeding without affording the employees of these units an opportunity to express a choice in a Board-conducted election is contrary to the purposes of Section 9 of the Act.

²² In *Carriage Oldsmobile Cadillac, Inc.*, 210 NLRB 620 (1974), the Board held the requirements for amendment of certification had not been met where the approval of unit employees was sought "after informing that decision to transfer jurisdiction over them had already been made."

²³ Although at the July 11, 1975, meeting, the membership as stockholders voted by a show of hands to dissolve the corporation, this had not been done. No distribution of its funds to the shareholders had been made as would be required upon dissolution. It is still listed as a Louisiana corporation, with a separate bank account from Local 1012.