

**Service America Corporation, Employer-Petitioner
and Teamsters Union Local No. 115, a/w Inter-
national Brotherhood of Teamsters, AFL-CIO.**
Case 4-RM-1186

April 9, 1992

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 6, 1992, the Regional Director for Region Four issued a Decision and Direction of Election in the above-entitled proceeding finding that a question concerning representation exists as the merger of Teamsters Local Union No. 513, International Brotherhood of Teamsters, AFL-CIO with Teamsters Local 115 did not result in continuity of representation.¹ Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, Local 115 filed a timely request for review of the Regional Director's decision alleging that the merger of the two Teamsters Locals met the requirements of continuity, and thus, the instant petition should be dismissed. By Order dated March 16, 1992, the Board granted Local 115's request for review.²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. The Board has considered the entire record in this case, including the Employer's brief on review, and concludes, contrary to the Regional Director, that the merger of the two Teamsters Locals involved here resulted in continuity of representation.

The Employer, a Connecticut corporation, is engaged in providing vending and cafeteria office food services to businesses and commercial facilities throughout the United States. For several years, the Employer recognized Local 513 as the bargaining representative of its office coffee service and vending service employees including drivers, sales employees, mechanics and warehouse employees at its facilities in Westchester and Malvern, Pennsylvania, and Pennsauken, New Jersey. The most recent contract between the Employer and Local 513 expired on September 25, 1991.

Local 513, chartered in Philadelphia, was an affiliate of the International for many years. Prior to its merger with Local 115, Local 513 represented approximately

1300 employees under approximately 80 separate contracts. Traditionally, it represented employees in the moving and waste hauling industry as well as employees engaged in the product distribution business. More recently, however, Local 513, like all Teamsters locals, organized in all available areas.

Local 513's seven-member executive board consisted of President and Principal Officer Larry Thomas, Secretary-Treasurer Ernie Harris, Vice President Santiago Gomez, Recording Secretary Elizabeth Chavous, and three trustees whose role on the board was to examine each month the Local's financial books. Thomas and Harris also served as business agents negotiating contracts and handling grievances. They were also the only full-time paid staff of Local 513, the other members of the executive board being full-time employees in bargaining units represented by Local 513. Harris, however, had only recently become the secretary-treasurer and business agent of Local 513, taking the place of Frank Carey, former secretary-treasurer and business agent, who retired in December 1990. Consequently, it was not Harris, but Carey, who negotiated the most recent collective-bargaining agreement with the Employer. Harris, however, did handle a number of grievances in 1991 which arose under Local 513's contract with the Employer.

Local 513 had for some time experienced problems servicing the bargaining units it represented because it lacked adequate manpower and financing. Consequently, in March 1991, Local 513 requested assistance from Teamsters Joint Council No. 53 in the administration and negotiation of its contracts. Thereafter, John Morris, president of Joint Council 53 and secretary-treasurer and principal officer of Local 115, sent Local 115 business agents to meet with employers on behalf of Local 513. Morris coordinated these efforts with Local 513's leadership, Thomas and Harris. Eventually, Local 115's assistance led the two Locals to talk of merger.

On September 5, 1991, Local 513 sent a notice to all of its members announcing a meeting to be held on September 29, 1991, for the purpose of discussing and voting on a merger with Local 115. The meeting was held at Local 513's hall and Harris estimated that approximately 800 members attended. The meeting was conducted by Local 513's officers and included a speech by President Thomas recommending the merger. Local 115 Secretary-Treasurer Morris was present and also spoke to the membership. A question-and-answer period followed. The vote took place in the second floor conference room where no Local 115 representatives were present. Members entered the conference room one at a time, and as their names were checked off a roster, they were handed a ballot by Harris who acted as an observer along with 2 or 3 union members. Each member, in turn, took the ballot

¹ The Region expedited the instant representation proceeding due to Local 115's picketing of the Employer which began on February 11, 1992, and the Employer's filing of an 8(b)(7)(C) charge. Local 115 also filed an 8(a)(1) and (5) charge against the Employer in Case 4-CA-20300 alleging that it was unlawfully refusing to recognize and bargain with Local 115. This charge was dismissed by the Region on March 6, 1992. The Employer's appeal of the dismissal is currently pending in the Board's Office of Appeals.

² The expedited election was conducted on March 17, 1992, and the ballots were impounded pending review.

which read, "DO YOU WISH TEAMSTERS LOCAL 513 TO MERGE WITH TEAMSTERS LOCAL 115?" and proceeded to the end of the conference table where the voter marked the "Yes" or "No" box on the ballot. The member then placed the ballot in a locked ballot box. At the conclusion of the voting, Harris and one of the trustee members of Local 513's executive board opened the ballot box and tallied the ballots. A few late arriving voters were allowed to vote and a separate tally was prepared. The final tally was 314 votes in favor of the merger, 12 votes against, and 2 void ballots.

Prior to the merger vote, the executive boards of both Local 115 and 513 voted unanimously on September 12 and 29, respectively, to approve the merger. Thereafter, Joint Council 53 approved the merger on October 3, 1991, as did the Eastern Conference of Teamsters on October 8, 1991. Approval by the International, however, was not given until February 3, 1992, as it was delayed pending the election and installation of the International's new officers.

Local 115, like former Local 513, was chartered in Philadelphia and is both a member of Joint Council 53 and an affiliate of the International. As noted earlier, Morris is the principal officer and secretary-treasurer of Local 115; other officers at the time of the merger included President Joseph Yeoman, Vice President Gerald Sheahan, a recording secretary, and three trustees. Prior to the merger, Local 115 represented approximately 2500 employees and had contracts with 65-70 different employers. Local 115 does not represent any particular work jurisdictional lines. Although at the time of the merger it had never represented any vending employees or product distribution drivers, it did represent a variety of employees such as factory, office and garage employees as well as warehouse employees, one of the classifications also represented by former Local 513.

While the International's approval of the merger was pending, contract negotiations between the Employer and Local 513 began; their contract had expired on September 25, 1991. Local 513 Business Agent Harris had already requested the assistance of Local 115 in negotiating this contract. Thereafter, Harris discussed the negotiations with Local 115 Vice President Sheahan and agreed to Sheahan's using the standard Local 115 contract as the initial proposal. On November 1, 1991, Sheahan and Local 115 Business Agent Johnson met with Local 513 unit employees, including some of its stewards who worked for the Employer, to present and discuss the contract proposal. The document was reviewed item by item and approved.

On November 25, 1991, the Employer's negotiator, Pamela Lewis, met for the first time with Local 115 Business Agent Sheahan and a negotiating committee composed of Local 513 stewards and employees.

When Lewis expressed concern as to whether Local 115 actually represented the Employer's employees, Sheahan informed Lewis about the merger vote and told her that Local 115 would be succeeding Local 513 as the union representative and that Local 513 had asked Local 115 to handle the negotiations on behalf of Local 513, Joint Council 53 and ultimately Local 115. Local 115 then offered Lewis its proposal. Lewis looked it over and due to its extensiveness, set a date in December for the next meeting. Since then, the parties have conducted a number of negotiating sessions but as of the time of the hearing, February 10-11, 1992, had reached no new agreement.

Once the merger was approved by the International, Local 513 ceased to exist. By that time, all of Local 513's membership information and most of its assets and liabilities had been transferred to Local 115. Local 513's union hall, however, was not transferred. Although the building was not in good condition, it represented by far Local 513's largest asset.

As of the hearing, the ultimate fate of the building was uncertain. For the time being, it was decided that Local 513's former members could use the hall and that it would also serve as the offices for former President Thomas and Secretary-Treasurer Harris, as well as Recording Secretary Chavous. Chavous will use the hall to continue to administer Local 513's benefit funds, i.e., its pension, legal services, and health and welfare funds. Former officers Thomas and Harris were appointed business agents for Local 115 and in that capacity will maintain offices in the old Local 513 hall where they can meet with both employees and employers.

As business agents for Local 115, Thomas and Harris will continue their same functions of negotiating contracts and handling grievances. They will not, however, be working exclusively in the shops previously represented by Local 513. Local 115, unlike former Local 513, does not permanently assign its business agents to service specific shops. Instead, Secretary-Treasurer Morris assigns business agents on the basis of availability and the type of assistance needed. Thus, Thomas and Harris would, like Local 115's other business agents, service and administer contracts signed by both Local 115 and former Local 513. As for the contract currently being negotiated with the Employer, neither Thomas nor Harris is handling those negotiations; instead, as indicated above, Vice President Sheahan heads Local 115's negotiating team.

Although stewards for Local 115 are appointed, while former Local 513 stewards were elected, none of the Local 513 stewards were removed when the Locals merged, and as of the hearing all were still serving in this capacity. The dues structure for both Locals is essentially the same, 2-1/2 times the hourly rate for full-time employees as set by the International's constitu-

tion, although former Local 513 had a higher minimum (\$18) than Local 115 (\$16) and a special formula for employees paid by commission. Initiation fees, however, are different; \$200 for Local 115 as compared to \$100 for former Local 513. Both Locals' constitutions and bylaws provide for employee ratification of collective-bargaining agreements and employee strike votes as does the International constitution. Although these provisions are not identical (the procedures with respect to these votes are described in more detail in Local 115's constitution), both are subject to the International constitution, which specifies how many votes are needed in any given circumstance for employees to approve a contract or call a strike. Strike benefits are also the same for both locals as such benefits come from the International's strike fund.

Based on the above, the Regional Director found that the merger vote conducted by Local 513 complied with minimal due process standards, as there was adequate notice, an opportunity for discussion and a vote by secret ballot.³ The Regional Director also found, however, that the merger did not result in continuity of representation. He noted, in particular, that the former officers of Local 513, Harris and Thomas, have no leadership role in Local 115, and that Thomas and Harris as Local 115 business agents will not be the exclusive agents for former Local 513 shops, nor were either of them participating in the on-going contract negotiations with the Employer. Thus, it is possible that contract administration and grievance processing for these shops will not be handled by former Local 513 officers. These changes in leadership and administration were found by the Regional Director not to be simple structural changes but instead the substitution of a new and different local union. Accordingly, the Regional Director, relying on *Chas. S. Winner, Inc.*, 289 NLRB 62 (1988), *Western Commercial Transport*, 288 NLRB 214 (1988), and *Independent Drug Store Owners of Santa Clara County*, 211 NLRB 701 (1974), directed an election to resolve the question of representation.⁴

³No request for review was filed as to this finding.

⁴Subsequent to the Regional Director's Decision and Direction of Election, Local 115 filed a motion to reopen the record to present evidence as to events which occurred after the close of the hearing. The motion alleged that the president of Local 115 had resigned to become president of another Teamsters local and that Local 115's executive board, at its meeting on March 12, 1992, was expected to fill this vacancy on the board by appointing Harris, former secretary-treasurer of Local 513, to the position of trustee. On March 12, 1992, the Regional Director denied the motion on the ground that even assuming Harris is appointed trustee, he would be the only former officer of Local 513 to be given a position of responsibility and his tenure on the executive board appears uncertain. Whoever becomes Local 115's new president, that person automatically has a seat on Local 115's seven-member board and will therefore unseat one of the current members unless Local 115 expands the size of the board. Also, there is no guarantee that Harris will win a seat on the executive board at the next election to be held in the fall.

The Board, after giving careful consideration to this issue, finds that the Regional Director gave undue emphasis to former Local 513's lack of "leadership" in Local 115 and the fact that Local 513 shops were not being solely administered by former Local 513 officers. Instead, considering all the relevant facts set forth above, the Board finds that the merger of Local 513 with Local 115 did not result in a "new and different" representative but instead in the continuity of their chosen representative.

In *Western Commercial*, supra at 216, and cases cited therein, the Board set forth a number of factors to be considered in determining continuity: (1) continued leadership responsibilities by the existing union officials; (2) perpetuation of membership rights and duties, such as membership eligibility and dues structure; (3) continuation of the manner in which contract negotiations, administration and grievance processing are effectuated; and (4) the preservation of the certified union's physical facilities, books, and assets. The Board has also applied this test to the merger of two locals of the same International. See *News/Sun-Sentinel*, supra.

Although generally speaking, Local 513's membership information and assets were transferred to Local 115, there were significant exceptions. First, Local 513's union hall remains in the hands of Local 513 and is being actively used by former Local 513's officers. There is no evidence that it is going to be transferred. Second, Local 513's benefit funds will continue to be administered separately by a former Local 513 officer. Thus, we find that Local 513 has retained substantive and significant assets which it controls and administers for the benefit of former Local 513 members.

There is no evidence of any change with regard to membership rights, duties, or eligibility, and the dues structure for both Locals is essentially the same. The only major difference is the amount of the initiation fee which is \$200 for Local 115 as compared to \$100 for former Local 513.

Although none of Local 513's officers or executive board members will be officers or sit on the board of Local 115, both of Local 513's primary officers, Thomas and Harris, were appointed business agents for

Accordingly, the Regional Director reiterated his earlier finding that the changes involved in the instant case are sufficiently dramatic that the former members of Local 513 are now members of and represented by an entirely new and different labor organization, Local 115. The Regional Director distinguished cases involving the mergers of locals of the same international in which the Board found continuity. For example, in *F. W. Woolworth Co.*, 285 NLRB 854 (1987), a new executive board was created and 6 of 11 positions, including the presidency, were filled by former officers of the merged local, and in *News/Sun-Sentinel Co.*, 290 NLRB 1171 (1988), the authority of the merged local continued in that it retained responsibility for processing grievances, administering its contract, and influencing the bargaining process.

Local 115.⁵ Although continued leadership by the officials of a merged union is one element the Board has examined, we know of no requirement that officers of a merged local must become *officers* of the new local in order to find continuity. Rather, we think “leadership” has a broader definition and thus may encompass, in addition to union officers, other representatives of the union such as business agents who fill positions of responsibility and trust. As business agents, Thomas and Harris are charged with the responsibility of contract negotiations and grievance handling, and thus will play a vital role in the future of Local 115. In addition, as this is the same job they performed as officers of Local 513, their appointment as agents for Local 115 allows them to continue to represent and further the interests of Local 513 employees.

Admittedly, Thomas and Harris are not the only Local 115 business agents (there are three others), nor will they be exclusively assigned to service the former Local 513 shops. However, there is no evidence that in the ordinary course of business they will not be so assigned. Also, we recognize that although Harris was handling grievances for the Employer’s employees prior to the merger, Harris did not participate in the recent contract negotiations between Local 513 and the Employer. Rather, the union negotiators handling those contract talks are headed by Sheahan. The Regional Director made much of the fact that the former Local 513 employees would now be represented by different individuals. To us, this is not controlling.

In the first place, we note that even if Local 513 had not merged and instead Harris was negotiating the successor contract with the Employer, the Employer would still have been dealing with a different person from the one it had previously dealt with. The record establishes that Harris did not assume his present duties until early 1991 on the retirement of Frank Carey, former secretary-treasurer, in December 1990. Consequently it was Carey, not Harris, who negotiated the Employer’s prior contract with Local 513 and it was Carey, not Harris, who had been, until recently, handling contracts and grievances for Local 513. Thus, in 1991, when the current contract expired, there was going to be new union representation at the bargaining table with or without a merger. Besides, Local 513 employees still have ratification authority over whatever contract is negotiated.

⁵ Although Local 115 alleged in its motion to reopen, see fn. 4 supra, that Harris was going to be appointed a trustee on Local 115’s executive board on March 12, 1992, we see no need to reopen the record to obtain any additional facts with respect to Harris’ position in Local 115. As discussed in this decision, we think the present record evidence is sufficient to establish the required continuity of representation. If, in fact, Harris has been appointed trustee as alleged, this merely provides further evidence in support of our decision.

Secondly, the fact that former Local 513 employees may not be serviced by former Local 513 business agents, but instead be represented by different individuals (Local 115 business agents), is little different from the situation that would have ensued had elections been conducted by Local 513 and new officers or business agents been elected to represent the Local’s member employees. These newly elected or appointed individuals would merely have succeeded to the authority of the representatives they replaced. This is generally the situation where a change in officers or business agents occurs as a result of the merger of two locals of the same International. In the case at hand, Local 115 is in no different position or standing than was Local 513; their representatives possess no more authority than did the representatives of Local 513. In any event, Harris, as discussed above, was new in the position of business agent because he had only recently taken over Carey’s job. Thus, Local 513 members would have had a new representative handling contract grievances and administration even if no merger had occurred.

It is true that in *News/Sun-Sentinel* and *F. W. Woolworth*, supra, cases in which the Board found continuity in the merger of two locals of the same international, some officers of the merged local became officers in the new local and the merged local had input in contract negotiations or its business agent had the responsibility for negotiating the contract with the employer. Nevertheless, these distinctions are not critical. In addition, both *News/Sun-Sentinel* and *F. W. Woolworth* are comparable to the instant case in that in both, the dues structure remained the same, employee benefits and membership rights continued, and in *Woolworth* “for the most part” the same business agents continued to service the employees assigned to them before the merger.

Moreover, the cases relied on by the Regional Director in which the Board found no continuity bear little resemblance to the instant case. *Western Commercial* involved the affiliation of a tiny, independent union of approximately 136 employees with an international union, Machinists District Lodge 776, representing some 8500 employees. The independent union had contracts with only one employer and its membership had complete autonomy in governing its affairs: it elected its officers as well as its representatives to the executive board who in turn elected the executive committee to represent the union in contract negotiations and it ratified collective-bargaining agreements. In contrast, District Lodge 776 had 18 contracts with a number of different employers and was organizationally divided into 10 local lodges each of which was represented in the District Lodge by an elected delegate at the ratio of one delegate per 500 members. Day-to-day representation matters were handled by

full-time professional business agents. These agents had no previous connection or working experience with either the independent's members or the employer with whom it contracted.

Similarly, in *Chas. S. Winner*, supra, an independent union of only approximately 30 members voted to affiliate with Teamsters Local 115 (the same local involved here) representing about 2500 members. By virtue of the affiliation the independent's funds and assets were to be comingled with those of the Teamsters, its officers fully replaced by Teamsters officers and its affairs no longer in its hands but governed entirely by the Teamsters' constitution and bylaws. So too in *Independent Drug Store Owners*, supra, where the merger of a small, independent union of 38 with Local 428 of the Retail Clerks resulted in the complete loss and identity of the independent union.

In all three of these cases, the affiliated or merged union underwent enormous changes in size, organizational structure, and administration. In the instant case, however, not only was the increase in membership less substantial, the organization, structure, and administration of the merged local remained essentially the same. Before the merger Local 513 was a Teamsters local, member of the Teamsters Joint Council 53 and affiliated with the International. After the merger, former Local 513 employees were still members of a Teamsters local, which likewise was a member of Joint Council 53 and affiliated with the Teamsters International. The Employer, too, was in a similar position. Prior to the merger it dealt with a Teamsters local and its officers and business agents; after the merger it still dealt with a Teamsters local and the Teamsters organization. Although Local 513's constitution and bylaws was replaced by Local 115's, since both are subject to the controlling provisions of the International's constitution and bylaws, their organization and administration are to a great extent identical. Thus, in all important respects the Employer was bargaining with an entity similar to the one with which it had previously recognized and bargained. Consequently, the changes which occurred here are more in the nature of administrative changes and are not the kind of substantial changes which result in the creation of a different representative.

As the Board finds the merger of the two Teamsters Locals in the instant case to constitute continuity of representation, no question concerning representation exists. Accordingly, the expedited election held on March 17, 1992, is vacated and the petition is dismissed.⁶

⁶In the Employer's brief on review, the Employer requests that even though it did not file a request for review of the Regional Director's finding that the merger vote complied with minimal due-process standards and even though it recognizes that the Board generally only considers those issues raised in the request for review,

MEMBER OVIATT, dissenting.

I would affirm the Regional Director's finding of no continuity for the reasons stated in his Decision and Direction of Election, the relevant portions of which are attached as Appendix A. I would, however, reverse the Regional Director's Order Denying Motion to Reopen Record, also attached as Appendix B, and grant the motion of Local 115 to reopen the record.

if the Board should reverse the Regional Director's lack of continuity finding, the Board should then consider the Employer's argument to the Region that the merger vote was not the result of a properly conducted, secret ballot election. The Employer is correct in that under § 102.67(g) of the Board's Rules and Regulations, the Board after granting a request for review considers only those issues on which review was granted. However, even assuming it were appropriate for the Board now to review the merger vote, the Employer has failed to present any evidence or make any argument demonstrating that the Regional Director's finding that the vote met due-process standards is incorrect.

APPENDIX A

With respect to the issue of continuity of representation, however, I find that a question concerning representation exists. The continuity of representation requirement is designed to ensure that no one can substitute an entirely different representative in disregard of established mechanisms for making such a change. *Seattle-First National Bank*, 290 NLRB 571 (1988); *Western Commercial Transport*, 288 NLRB 214, 217 (1988). The evidence establishes that Local 513 has ceased to exist, and all of its assets, with the exception of its building, have been transferred to Local 115. The former officers of Local 513, who are now Local 115 business agents, have no leadership role in Local 115. They may continue to service former Local 513 shops, but they will not be limited to such assignments. Thomas and Harris will be assigned work on a daily basis, as will the other Local 115 business agents. Thus, contract administration and grievance processing may not be handled by former Local 513 officers. In addition, neither Thomas nor Harris was or will be involved in the ongoing contract negotiations with the Employer. These are not "simple administrative structural changes" but instead the substitution of a new and different local union as the representative of the unit employees. *Gulf Oil Corp.*, 135 NLRB 184, 185 (1962). As noted, the initiation fees of Local 115 differ from those of Local 513. Although for the time being the Local 513 union hall will remain open to members, and the Local 513 benefit funds will remain intact, these facts alone are insufficient to outweigh the changes in leadership and administration as a result of the merger. Given these changes, the employees are not assured of the continuity of their present organization and representation. *Newspaper, Inc.*, 210 NLRB 8, 9 fn. 2 (1974). In these circumstances, I find that a question concerning representation exists and that an election is appropriate. *Charles S. Winner, Inc.*, 289 NLRB 62, 68-69 (1988); *Western Commercial Transport*, supra; *Independent Drug Store Owners of Santa Clara County*, 211 NLRB 701 (1974).

APPENDIX B

ORDER DENYING MOTION TO REOPEN RECORD

On March 6, 1992, A Decision and Direction of Election was issued in the above-captioned case finding that there was a lack of continuity of representation following the merger of Teamsters Union Local No. 513 with Teamsters Union Local No. 115. On March 9, 1992, Local 115 filed with the undersigned a Motion to Reopen the Record and supporting brief requesting that the record be reopened to permit Local 115 to present evidence concerning certain developments which occurred or were going to occur subsequent to the close of the hearing on February 11, 1992. The Motion alleged that the President of Local 115 had resigned following his election to the presidency of another local of the Teamsters, thereby creating a vacancy on Local 115's executive board, and that when the executive board met on March 12, 1992, it was expected to appoint Ernie Harris, former Secretary-Treasurer of Local 513 and current business agent of Local 115, to fill that vacancy until elections for the executive board are held this fall. On March 10, 1992, the Employer-Petitioner filed its opposition to Local 115's Motion and requested that, if the Motion was granted, additional evidence concerning the current negotiations should also be considered.

It is clear from the record in this proceeding, as described in greater detail in the Decision and Direction of Election, that Local 513, a local union of approximately 1300 members, with only 2 full-time paid officials, was unable to properly service the approximately 65 bargaining units it represented, and was experiencing administrative, financial and institutional difficulties. It turned to Joint Council 53 for assistance in conducting the day-to-day affairs of the Union and received help from various officials of Local 115, which has approximately 2500 members. The principal officer of Local 115, Secretary-Treasurer John Morris, is also the President of the Joint Council. Subsequently, Local 513 submitted a proposal to merge with Local 115 to the membership for a vote. The membership voted in favor of the merger. Apparently, the membership of Local 115 never voted on the merger but Local 115's executive board unanimously approved the merger on September 12, 1991. After the merger was approved by the International Union, the books, records and assets of Local 513, except for the building which housed its offices and meeting rooms, were transferred to Local 115. Local 115 assumed the debts of Local 513. Local 513 ceased to exist and all its members became members of Local 115, subject to Local 115's constitution, by-laws, dues and fees, and governed by the officers and executive board of Local 115. While the two former full-time paid officials of Local 513 became business agents of Local 115, the record shows that those officials were going to be assigned duties in the same manner as other Local 115 business agents and that the bargaining units previously represented by Local 513 would not necessarily be serviced by, or only by, the two former Local 513 officers. The record evidence shows that Local 115 had taken over the collective bargaining negotiations with the Employer-Petitioner, and no former official of Local 513 participated in these sessions. As business agents, the former Local 513 officials would have no role in the leadership, control and administration of Local 115. Assuming for purposes of this ruling that former Local 513

Secretary-Treasurer Harris, who only became an officer of Local 513 in December 1990, is appointed as a member of the executive board of Local 115, he would have some voice in the administration of Local 115. However, none of the other six members of Local 513's executive board have been appointed to any positions of responsibility in Local 115. Moreover, the Local 115 executive board consists of seven members—four union officers and three trustees. Harris' tenure on the executive board appears uncertain as the individual who succeeds the former President who resigned will have a seat on the executive board and will have to displace one of the current members, unless the Union expands the size of the executive board. Of course, there is no way of knowing whether Harris will win election to the executive board in the fall.

The foregoing establishes that Local 513 merged with, but in effect was absorbed or swallowed up by, Local 115, the dominant organization. The only entity that existed after the merger was Local 115, augmented by the former membership of Local 513. Nothing of sufficient significance or substance representing Local 513 survived the merger. The fate of Local 513's building and benefit funds is unclear. None of the organizational or institutional trappings of Local 513 remained after the merger. In these circumstances, it is clear that the changes involved were sufficiently dramatic that the former members of Local 513 were now members of and represented by an entirely new and different labor organization, Local 115.

The continuity requirement has been recognized by the Supreme Court, *NLRB v. Financial Institution Employees of America Local 1182*, 475 U.S. 192, 206 (1986), and the Board has never held that this requirement does not apply or should be applied differently in the case of the merger or affiliation of two locals of the same international union. On the contrary, the Board has decided a number of cases involving such situations and has applied the same analysis and rationale as in other merger or affiliation cases. See *Gulf Oil Corporation*, 135 NLRB 184 (1962); *Quality Inn Waikiki*, 297 NLRB No. 71 (1989); *News/Sun Sentinel Company*, 290 NLRB 1171 (1988); *F. W. Woolworth Company*, 285 NLRB 854 (1987). The Board has found continuity to exist in some cases involving the mergers of locals of the same international union. See *F. W. Woolworth*, supra; *News/Sun Sentinel*, supra. However, those cases are distinguishable on their facts. In *F.W. Woolworth*, supra at 854, a new executive board was created and 6 of 11 positions, including the presidency, were filled by former officers of the absorbed local. See also *Action Automotive, Inc.*, 284 NLRB 251 (1987) (president of merged local added to surviving local's executive board as Executive Assistant to the President, retaining primary responsibility for all negotiations and grievance activity in areas previously serviced by merged local and supervising former business representatives). In *News/Sun Sentinel Company*, supra at 1177, the autonomy and authority of the absorbed local remained substantially unaltered as it continued as a chapel retaining responsibility for processing grievances, administering its labor agreement and influencing the collective-bargaining process. In the face of the precedents discussed above, which I am obliged to follow, I am compelled to find that continuity of representation is lacking in the instant case and that a question concerning representation exists. Any questions and arguments as to the wisdom of the

Board's policy in applying its continuity requirement to the merger of two locals of the same international union must be

addressed to the Board. Accordingly, the Union Involved's Motion to Reopen the Record is denied.