

City Wide Insulation, Inc., Employer-Petitioner and Local Union No. 314, affiliated with the Milwaukee and Southeast Wisconsin Carpenters' District Council of Carpenters, affiliated with the International Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 30-RM-502

April 3, 1992

ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

The Employer's request for review of the Regional Director's Decision and Order is denied as it raises no substantial issues warranting review. A copy of the Regional Director's Decision and Order is attached.

MEMBER OVIATT, dissenting.

The question in this case concerns the continuity of a union's representation in a situation where a district council of the Carpenters of which the certified bargaining representative, Local 314, was a part, merged into another, much larger district council. The Regional Director refused to process the Employer's RM petition, finding that the merger in no way affected the continuity of the bargaining representative. I conclude, to the contrary, that the facts show a lack of continuity of representation. Accordingly, I dissent from the majority's decision to deny the Employer's request for review.

The Employer is engaged in the sale and installation of insulation. Local Union No. 314, which was part of the Southwest District Council of the Carpenters' Union, is the certified bargaining representative. It had a contract with the Employer expiring June 27, 1989. William Barreau was the business manager pro tem for the Southwest Wisconsin District Council and the chief negotiator for Local 314. He did not report to anyone. In December 1989 the Southwest District Council, which has 1600 members, merged into the Milwaukee and Southeast Wisconsin Carpenters' District Council which had 4600 members. Local 314 members were not permitted to vote on the merger. After the merger, Barreau continued to be Local 314's chief negotiator for the successor collective-bargaining agreement, but union counsel was added to the negotiating team and Barreau was required to report to Gregory Shaw, secretary-treasurer of the Southeast District Council.¹ On January 30, 1990, Local 314 members were mailed new authorization cards which authorized the Southeast District Council to be the employees' bargaining

representative; the employees were asked to sign and return the cards.

The merger affected the dues structure. On the merger of the councils, all funds of the Southwest District Council went to the Southeast District Council. The Southwest Council's dues were \$40 a month. The Local membership voted on the dues. The dues of the Southeast District Council are \$16.75 a month and 17 cents for each hour worked during the month. Local 314 members did not vote on these dues. Prior to the merger, the employees paid their dues to Local 314. After the merger dues are sent to the Southeast District Council. The Southeast District Council then gives back to each local a certain amount of money.

Finding that no question concerning representation existed, the Regional Director dismissed the Employer's RM petition. He relied on the facts, among others, that: (1) the officers of Local 314 remained the same after the merger; (2) there has been no change in the actual bargaining with the Employer, since Business Agent Barreau still negotiates the collective-bargaining agreement. The Regional Director concluded that the new Council "merely serves an auxiliary function to the Local Union and the International Union." I disagree.

In this case, the merger has altered "the fundamental character of the representing organization" without due process for the employees involved. See *Western Commercial Transport*, 288 NLRB 214, 218 (1988). The way in which collective bargaining is conducted has fundamentally changed. Whereas the Local's chief negotiator, Barreau, was not responsible to anyone before the merger, now he must bargain together with union counsel, and is responsible to the business manager of the Southeast District Council, Shaw. Barreau's autonomy has been substantially reduced if not eliminated. Further, this diminution in the Local's bargaining authority has been accomplished without a vote of the employees. Local 314, which was once part of the 1600 member Southwest District Council, is now merged into a council with about 6200 members, almost four times the size of the old Southwest District Council. The Local's members were not permitted to vote on the merger.

In these circumstances, I think the Employer rightly questioned the continuity of the bargaining representative.² To remove any cloud over Local 314's current representative status, I would process the petition and hold an election. I therefore dissent from the decision to deny review.

¹The bylaws of the Southeast District Council provide that the Council's secretary-treasurer or his designee has the authority to negotiate collective-bargaining agreements.

²The changes occurring here were, in the words of the Supreme Court in *NLRB v. Food & Commercial Workers Local 1182*, 475 U.S. 192, 206 (1986), "sufficiently dramatic to alter the union's identity" and therefore a question concerning representation has been raised.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The Hearing Officer's rulings made at hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

Background:

The Employer, located at McFarland, Wisconsin, is engaged in the sale and installation of insulation. Local Union No. 314, Southwest District Council of Carpenters, affiliated with the International Brotherhood of Carpenters and Joiners of America, AFL-CIO² in Case 30-RC-4796 was certified by the Board on May 23, 1988 for a unit of all the Employer's insulators. The most recent contract between the parties was effective from June 28, 1988 through June 27, 1989, and apparently reflects the name of the certified union as the party to the contract.

Effective December 1989, the Southwest District Council of Carpenters merged into the Milwaukee and Southeast Wisconsin Carpenter's District Council. This merger occurred pursuant to Article 6-A of the International Constitution which gives the Union's International President the authority to merge District Councils. There has been no vote on the merger. The International President on November 15, 1989 notified the Southwest District Council of its dissolution and merger into the Milwaukee-Southeast Wisconsin Council effective December 1, 1989. On December 19, 1989, Gregory Shaw, secretary treasurer of Milwaukee Southeast District Council by letter notified the Employer of the change in councils and that all existing collective-bargaining agreements remained in effect.

William Barreau, who is presently business representative—administrative assistant of the Milwaukee and Southeast Wisconsin District Council and prior to the merger was business manager protem for Southwest District Council—continues to be the Union's chief negotiator for the successor collective-bargaining agreement, with the addition of Union counsel.

¹Briefs from the Employer and Union have been received and carefully considered.

²The changes occurring here were, in the words of the Supreme Court in "sufficiently dramatic to alter the union's identity" and therefore a question concerning representation has been raised.

The Issue:

The Employer contends that it does not know if the Union is a valid legal successor to the certified union in Case 30-RC-4796 and, therefore, filed the instant RM-petition. The Employer asserts it continues to recognize, conditionally, the Union until such time as its status is determined by the Board.

The Union asserts that Local 314 as well as the International Union remain the same entities as were certified in Case 30-RC-4796 and that the District Councils are merely internal union administrative branches which provide assistance to locals in servicing and negotiating collective-bargaining agreements. The Union asserts that there has been no change in the continuity of the bargaining representative and the merger of the councils constitute nothing more than an internal union affair which is not subject to scrutiny of the Government or the Employer.

The Facts:

William Barreau was the business representative of Local 314 when it was certified in 1988, as well as an officer of the Southwest District Council. He continues to be business representative of Local 314 and now is an officer of the Milwaukee Southeast District Council. There has been no change in any of the officers of Local 314, nor has there been any change in the bylaws of Local 314. Local 314 has occupied the same address in Madison, Wisconsin both prior to and after the merger of the councils. Likewise, prior to and after the merger the membership of Local 314 has and will continue to elect the officers of Local 314. Each local union elects delegates to the District Councils. Prior to the merger, Local 314 had 11 delegates representing the local in the Southwest District Council. After the merger Local 314 will have 10 delegates in the Milwaukee Southeast District Council—elected by the membership of the local union. Prior to the merger, Local 314 had one delegate on the council's executive committee—William Barreau, and after the merger, William Barreau is the delegate of Local 314 to the executive committee of the Milwaukee Southeast District Council. Since the merger there has been no change in the pension, health and welfare funds, or in the vacation fund, education or apprenticeship funds which Local 314 members participate.

Barreau's duties have been the same before and after the merger. He is in charge of the business representatives working under him. He is in charge of the Madison office—and he services all the contracts of Local 314. Likewise, there has been no change in the business agents. The Madison office of the Milwaukee Southeast Council occupies the same facilities as the Southwest District Council. It acts as a satellite office of the main office which is located in Milwaukee.

Local 314 has not opposed the merger of the councils, however "a few employees have voiced concerns" over the merger. Apparently, a few years ago the Southwest District Council was formed by directive of the Union's International President from the previous council which was the Central Wisconsin District Council. The membership of Local 314 is the same now as before the December 1, 1989 merger of the councils. There were approximately 1,600 members of the Southwest District Council, whereas there were approxi-

mately 4,600 members in the Milwaukee Southeastern Council. The newly merged councils have approximately 6,200 members. The by-laws of the Milwaukee Southeastern Council provide that the contract ratification will be by the members of the local union. While the by-laws of the Southwest Council provide that the delegates to the council have the authority to ratify local contracts. William Barreau testified, however, that in fact, the union members of the Employer ratified the past collective-bargaining agreement.

Upon the merger of the councils all funds of the Southwest Council went to Milwaukee. The Southwest District Council's dues were 40 dollars a month which the local membership voted upon. The new dues of the Milwaukee Southeast District Council are \$16.75 a month and 17 cents each hour worked during the month. Apparently, the employees have no authority to vote on these dues. The initiation fees remain the same. Prior to the merger, the employees of the Employer paid their dues to the local union. After the merger the employees dues are sent to the Milwaukee Southeast District Council in Milwaukee and each local is given a certain amount of funds received from the Council. The Employer by letter of January 26, 1990 from Barreau was notified of the change in the dues, and that the dues should be remitted to the Milwaukee District Council in Milwaukee. The recent collective-bargaining agreement's check-off clause provided that the dues would go to Local 314 and not the district council.

The by-laws of the Southwest District Council provided that the District Council shall be the sole and exclusive bargaining agent for the negotiation of all collective-bargaining agreements. The Milwaukee Council's by-laws merely state that the secretary-treasurer or his designee shall be the chairman of all negotiating committees.

On December 1, 1989, Barreau, by letter to the Employer's Council, asked for a short delay in negotiations in order to review negotiations with Gregory Shaw, the business manager of the Milwaukee Southeast District Council. Prior to the merger, Shaw was not consulted regarding negotiations. Finally, on January 30, 1990, the members were mailed new authorization cards which provided Milwaukee-Southeast Wisconsin District Council as the employees bargaining representative—and the employees were asked to return the signed cards to the Milwaukee Southeast District Council.

Conclusion

The U.S. Supreme Court stated in *NLRB v. Financial Inst. Employees (Seattle-First National Bank)*, 475 U.S. 192 (1986):

The Act recognizes that employee support for a certified bargaining representative may be eroded by changed circumstances. In such cases, employees may petition the Board for another election alleging that the certified representative no longer enjoys majority support. Also, the Employer can based on objective considerations petition the Board for an election if it can show reasonable grounds for believing the union has lost its majority.

The court went on to state that it has been the Board's practice to reject an election when two tests are met. First the union members have had an opportunity with adequate no-

tice, to vote on the merger. Second, there has been a substantial "continuity between the pre and post affiliation union." In *Seattle-First National Bank*, supra, the Court affirmed the Circuit Court of Appeals decision which reversed the Board's decision. The Board had dismissed the Union's 8(a)(5) refusal to bargain charge. The Board's dismissal of the charge was based on the fact that non-union members were not given the right to vote on the affiliation. The Supreme Court stated the voting on affiliation is an internal union matter not subject to the Board's scrutiny. Rather, the Board must decide only whether the new union was in fact a substantial continuation of the bargaining representative. The Board is restricted by the Act to either amend the certification or find an 8(a)(5) violation. The Board exceeds its authority when it dismisses an 8(a)(5) complaint based solely on the procedure followed in disallowing non-union members the right to vote on the affiliation. The Court stated the Act provides, the only method for decertifying the union and that is by allowing the employees the right to vote on the matter. The Board cannot by itself defeat this procedure. The court appears to hold that if the Board in dismissing the 8(a)(5) did so based on the lack of continuing representative status of the merged union then the dismissal would be appropriate.

In *Underwriters Adjusting Company*, 227 NLRB 453 (1976), the Board found a question concerning representation when the existing certified local affiliated with a much larger local union of the same parent international. The certified local union consisted of approximately 120 members and the newly merged local consisted of approximately 8,000 new members. The Board noted the substantial difference in members as well as the affected members not only were not provided an opportunity to express their approval of the merger, but in fact an "overwhelming majority signed a petition to the International protesting the merger and the Local Union filed an action in Federal District Court seeking to enjoin the merger."

However, the Board in *National Posters*, 289 NLRB 468, 479 (1988), adopted an ALJ decision ordering the Employer to bargain with the new entity. The judge in finding a continuity of representative stated:

[T]he proper question in a case like this one is not whether there is a "lack" of local authority, but whether the preexisting local authority, with which the unit employees had presumptively been satisfied, has substantially *changed* for the worse. The record shows that almost all of the same officers . . . continued to serve after the merger; the Local's bylaws remained virtually the same . . . the dues structure, including the procedure for increasing dues, remained intact, as did the per capita payments to the parent union; the Local's assets remained its own; the negotiating committees stayed basically the same [and it appears the local has never retained complete authority to sign contracts].

Likewise, the Board in *New Orleans Public Service*, 237 NLRB 919 (1978), granted an Amendment to Certification when an independent Union voted to affiliate with an international union. The Board assumed entirely new by-laws and different dues structures, but still found a continuity of representation where the locals contracts remained in effect, and

the locals officers retained the right to negotiate new collective-bargaining agreements.

However, in *Western Commercial Transport, Inc.*, 288 NLRB 214 (1988), the Board held a question concerning representation exists when an independent merged with the machinists union. In noting a question concerning representation existed, the Board emphasized the small number of employees in the independent union (136) versus 8,500 employees in the new IAM union. The local union no longer would be able to retain its officers, and the local would not play any role in collective bargaining. See also *Garlock Equipment Co.*, 288 NLRB 247 (1988).

Turning to the instant case, there are many factors which may dictate that a question concerning representation exists. First, there has not been a vote held regarding the dissolution of the Southwest District Council and its merger into the Milwaukee Southeastern Wisconsin District Council. Likewise, the collective-bargaining agreement provides for the dues to be sent to Local 314, whereas after the merger the dues were to be sent to the District Council. The by-laws of the new council provides that the council's secretary-treasurer or designee has the authority to negotiate collective-bargaining agreements. The new district council did in fact have members sign new union authorization cards.

However, despite the foregoing, I am satisfied that no question concerning representation exists. It is clear that the officers of Local 314 remain the same. The Employer has in fact been notified that all existing contracts will be honored. Likewise, the International's constitution provides for the president of the international union to alter the District Council's by his own declaration, not subject to vote. It is likewise clear that the purpose of District Council's is to assist the local union in servicing and negotiating collective-bargaining agreements. Further, there has been no change in the actual bargaining of collective bargaining agreements with the Employer. Union Business Agent Barreau negotiated the agreement prior to the merger and he is the designated representative of the new council responsible for negotiating the

current collective bargaining agreement, along with union counsel. The only change is that Barreau must now seek approval from Gregory Shaw. Barreau testified that under the old council—all contracts were in fact subject to ratification of the Local Union's membership, and that under the new council there as been change in ratification procedure. I am satisfied that the council merely serves in an auxiliary function to the Local Union and the International Union. Its purpose is administrative. Neither the Local Union or International has changed. Inasmuch as the council is nothing more than an administrative adjunct to the Local Union—I am satisfied that the merger of the councils in no way affects the continuity of the bargaining representative and a vote of the membership is not necessary. *Pottes' Medical Center, Inc.*, 289 NLRB 201 (1988); *The House of the Good Samaritan*, 248 NLRB 539 (1980). No such vote is called for by the International Union's constitution. Likewise, unlike *Underwriters Adjusting Company*, supra, the local union has not protested the merger of the councils in the instant case. The constitution states that a merger of councils can be effectuated by the international president. Such internal union procedures, I find, are not subject to scrutiny of the Government where the continuity of representation continues. *NLRB v. Financial Inst. Employees*, supra; *May Department Stores Co. v. NLRB*, (C.A. 7 Nos. 88-3302 and 89-1065 decided February 28, 1990), enfg. 289 NLRB 661 (1988), where the court held that the newly merged union was a continuation of the prior representative, despite the fact that the new international union had the right to review bargaining proposals and final agreement, before their submission to the local union. The court noted that "primary control" over negotiation and implementation of bargaining agreements is still vested in the local's officers and that the ultimate authority to approve or reject a contract still rests with the local membership. Such facts, in the instant case, are the same as in *May Department Stores*, supra. I shall accordingly dismiss the Employer's RM-petition.