Hammond Publishers, Inc. *and* Chicago Newspaper Guild, Petitioner. Case 13–AC–48

30 September 1987

DECISION ON REVIEW

BY MEMBERS JOHANSEN, BABSON, AND STEPHENS

On 21 July 1983 the Regional Director for Region 13 issued a Decision and Amendment of Certification in which he granted the Petitioner's request to amend the Certification of Representative, substituting the name "Hammond Unit of the Chicago Newspaper Guild" for "The Organization of Newspaper Employees" (the ONE) as the certified collective-bargaining representative of a unit of the Employer's employees.

In accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Employer, inter alia, challenged the amendment of certification on the grounds that the procedures followed in the affiliation election did not meet the minimal standards of due process necessary for a valid election. The Employer also contended that the substitution of the Petitioner for the ONE was a substantial change in the identity of the bargaining representative and thus raised a question concerning representation requiring a Board election. By telegraphic order dated 8 March 1984, the Board granted the request for review on these issues and remanded the proceeding to the Regional Director for the purpose of holding a hearing on them.[1] The Regional Director was further instructed to transfer the case to the Board subsequent to the hearing. The hearing was held on 23 and 24 April; 3, 4, 14, and 15 May; and 5 and 6 June 1984 before Hearing Officer John Peck. Subsequent to the hearing, the proceeding was transferred to the Board and the Employer and the Petitioner filed briefs.

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 Petitioner's and the Employer's briefs, and makes the following findings:

As a result of a Board election held on 28 June 1974, the ONE was certified as the exclusive bargaining representative for a unit of employees[2] at the Hammond Times, a newspaper published by the Employer.[3] Thereafter, the Employer and the ONE entered into successive collective-bargaining agreements, the most recent of which was effective from 1 July 1980 through 30 June 1984.

The issue of the ONE's affiliation with Petitioner was first raised and discussed at the ONE's general membership meeting held on 9 September 1982. Pursuant to a unanimous resolution passed at that meeting, the ONE's secretary sent a letter to the Petitioner, dated 27 October 1982, requesting to meet with the Petitioner's representatives to discuss possible affiliation. On 11 January 1983[4] the ONE's officers held a meeting with the Petitioner's executive director at which affiliation was discussed. During the next 3 months, a number of meetings were held between representatives of the ONE and the Petitioner. By April, these representatives had prepared an affiliation agreement. This was approved by the ONE's executive board on 6 April and by the Petitioner's executive board on 13 April. An affiliation election for the ONE's represented employees was then scheduled for 22 May.

In accordance with the ONE's bylaws, which required 15-day prior notice of all matters to be decided by referendum, the ONE's executive board mailed written notices to the home addresses of all known unit employees on 4 May.[5] The notice included a letter announcing the date, time, and place of the affiliation election to be conducted by secret ballot. The notice also described events leading to the negotiation of the affiliation agreement; noted that the executive board had recommended affiliation; and announced that a series of meetings would be held with employees to discuss affiliation prior to the election. The notice also contained a copy of the affiliation agreement. In addition to the mailing, copies of the notice and the affiliation agreement were posted on the ONE's bulletin boards at the Employer's premises on 4 May. Five meetings subsequently were held for unit employees who were notified orally as to their date, time, and place. Certain of the Petitioner's representatives attended these meetings to answer questions. Further, members of the ONE's executive board

[1] The Board denied review on another issue raised in the Employer's request for review

[2] The bargaining unit is described as follows

All employees employed by the Employer in the publisher's editorial department, including the space rate correspondents, and including the employees employed in the subdepartments of newsroom, sports, and women's subdepartment, and also including the display advertising department, but excluding the editor, managing editor, news editor, editorial writer, display advertising manager, retail advertising manager, advertising director, national advertising manager, and guards and supervisors as defined in the Act

[3] The record shows that prior to the 1974 election, a substantially similar unit of employees had been represented by the Petitioner, which intervened in the 28 June 1974 election

[4] All dates are in 1983 unless otherwise specified

[5] The ONE compiled its mailing list from employee rosters which were periodically distributed by the Employer and which set forth each employee's name, address, and telephone number The rosters were supplemented by adding the names of employees whom the ONE's executive board knew had been hired since the rosters were last published

offered to meet privately with employees who could not attend the group meetings.

The election took place as scheduled on 22 May.[6] Finn, the president of the ONE, opened the meeting prior to the election. He explained that the election was being held to determine whether the ONE should affiliate with the Petitioner. He also read aloud the language printed on the ballot and explained that different colored ballots—blue for full-time employees and yellow for correspondents—would be used so that ballots could be counted separately in anticipation of a possible challenge by the Employer to the employee status of correspondents.[7] Finn then explained the voting procedures and offered employees an opportunity to ask questions or make comments. No employee did so.

The balloting began at approximately 3:20 p.m. In accordance with instructions, each employee approached the head table and gave his name to one of the three members of the tally committee seated at the head table. A tally clerk then checked the employee's name on the master list before giving the employee a yellow or a blue ballot. Although the record shows that a majority of employees voted at the voting table, the record also shows that a number of employees chose to vote elsewhere, including along the walls of the room, and, in at least one instance, on the back of another employee. One employee chose to vote at the head table, in front of the tally committee. After marking the ballot, each employee placed it in the taped shoe box used as the ballot box. There is no evidence that any employee protested the voting procedures or that any ineligible voter attempted to vote. The voting period was extended until 3:50 p.m., to accommodate late voters, after which the ballots were counted. The results of the election were 39 votes in favor of, and 16 votes against, affiliation. Following the affiliation election, the Petitioner's executive director sent three letters to the Employer. The first letter notified the Employer of the ONE's decision to affiliate with the Petitioner and asserted the Petitioner's status as bargaining representative of the employees. The second letter requested bargaining on behalf of the employees, and the third letter requested certain information relevant to bargaining. In response, the Employer asserted that it was party to a contract with the ONE and that the ONE was the certified representative of the unit employees. On 1 June 1983 the Petitioner filed a petition seeking to amend the certification.

As noted above, the Employer has challenged the Regional Director's grant of the amendment of certification on the basis that the affiliation itself was invalid. The Board has traditionally required that two conditions be met before it will grant a petition for the amendment of certification based on an affiliation or merger. First, the Board requires that the vote itself occur under circumstances satisfying minimum due process and, second, that there be substantial continuity between the pre- and post-affiliation bargaining representative.[8] It is the Employer's position that the instant affiliation satisfies neither of these conditions. For reasons set forth below, we disagree.

We turn first to the issue of due process. The Employer contends that the affiliation in this case was invalid as the circumstances under which the election was conducted did not meet minimum standards of due process. The Employer argues that employees were not given an adequate opportunity to vote. It contends that the notification procedures were based on a composite of employee rosters that omitted eligible voters and were otherwise inadequate and that the refusal to permit proxy voting not only was an improper departure from past procedures but also disenfranchised eligible employee voters. The Employer also contends that the affiliation vote was not conducted in circumstances designed to guard against voting fraud or to preserve the secrecy of the ballot.

The record shows that, with the exception of one individual, all union members as well as a large number of nonunion members in the bargaining unit were mailed notices of the upcoming election on 4 May, approximately 2-1/2 weeks before the 22 May election.[9] Also, on 4 May, notices of the

[6] The election was held off the Employer's premises in two adjoining motel rooms where the movable wall separating them had been rolled back leaving an open area of approximately 22 feet by 22 feet The room contained approximately 40 chairs, a check-in table by the entrance, a head table located in the front of the room, and a table for voting several feet to one side of the head table As employees entered the room, they passed the check-in table, which was staffed by three union members who checked off names from a list of names and telephone numbers This list, like the mailing list, was based on employee rosters The three employees who took attendance came from three different represented departments and generally were able to identify employees by sight, they asked employees whom they did not know to provide their telephone numbers as a means of identification With the exception of two representatives of the Petitioner and a local high school teacher who acted as parliamentarian, only employees were permitted in the room, and there is no showing that any nonemployees, other than the three noted above, entered the room during the voting In this respect, we find that the testimony of the Employer's witness, Inkley, i e , that he thought he saw two other nonemployees in the room during the meeting, is insufficient to establish that these nonemployees were actually present during the voting

[7] The ballots were identical in all other respects

[8] *Hamilton Tool Co*, 190 NLRB 571 (1971) In *NLRB v Financial Institution Employees (Seattle-First National Bank)*, 475 U S 192 (1986), the Supreme Court acknowledged the Board's traditional two-part test, but did not have to reach the question of whether both continuity of representation and due process must be satisfied in all affiliation cases Id at 199 fn. 6 and 209 fn 13 In light of our finding below that both factors are met here, we find it unnecessary to address the issue

[9] We find no merit in the Employer's contention that the omission of the names of certain individuals from the mailing list warrants a finding

Continued

election were posted in various parts of the Employer's premises. Additionally, approximately five meetings, at which the upcoming election and its purpose were discussed, were held in the weeks prior to the election. We find that such procedures clearly satisfied the requirement that notice of the election be communicated to all union members. We further find that such efforts also gave members ample opportunity to discuss the affiliation prior to the actual voting so that members were in a position to cast an informed vote.

The Employer also contends that the election did not guarantee due process because the ONE failed to permit proxy voting, thus failing to provide all eligible voters with an opportunity to vote. In this respect, the Employer contends that the 17-day period between the mailing and posting of election notices and the election failed to give sufficient time to permit employees to alter schedules to attend the election. The Employer also contends that the ONE's denial of proxy voting was an unjustified departure from its own past practices permitting proxy voting[10] and was designed to reduce the number of votes against affiliation. We find no merit to these contentions. We first find that the mailing and posting of a notice approximately 17 days before the election provided a reasonable amount of time for employees to rearrange their schedules. Next, noting that nothing in the ONE's constitution or bylaws provides for proxy voting, we find nothing improper about the decision of the ONE to disallow proxy voting in this election. Finally, even assuming that the denial of proxy voting was somehow irregular, we note that there is evidence that only two employees complained regarding the denial of proxy voting.[11] Neither of these employees was a union member and therefore their participation in the election was not required under *Seattle-First National Bank*, supra.

The Employer also contends that the election was conducted in circumstances that failed to safeguard against voting fraud or otherwise served to invalidate the election. The Employer argues that the methods of identifying potential voters based on sight or production of a phone number were inadequate as methods to prevent nonemployees from voting, that the use of color-coded ballots for full-time employees and correspondents was an irregular procedure and further conveyed the impression that voters against affiliation could be readily identified, that no procedures were taken to safeguard the ballot box,[12] and that the election was conducted in an atmosphere of general confusion.

With respect to methods of ascertaining voter identity, we note that the Board requires no special procedures. We also note that uncontradicted record evidence shows that the three employees who served as attendance and tally clerks were able to identify most of the voters by sight. Further, we note that the name of each employee participating in the election was first recorded on an attendance list when the employee entered the voting area and then on a ballot list before he received a ballot. These lists show that 55 voters attended and that 55 ballots were cast; these results, at least, support the inference that each voter cast but one ballot. Further, although there is conflicting employee testimony regarding the display and placement of the ballot box (see fn. 13, supra), the Employer does not submit, and we do not find, any evidence of tampering with the ballot box or its contents. With respect to the Employer's contentions regarding the color-coded ballots, we find nothing inappropriate in their use in the absence of evidence that the color coding served to identify individual voters and how each voted. Thus, we note that although the record shows that approximately 33 full-time employees and 22 correspondents voted, there is no indication as to how each individual within the group voted. Finally, we find nothing in the record to support the finding that the balloting was conducted in confused or confus-

that the ONE's notice procedures were inadequate. The Employer contends that the name of one employee, Staresnick, was omitted from the mailing list with the result that he had to obtain details regarding the election on his own initiative We note first that there is no evidence that Staresnick was a union member. Under the holding of the Supreme Court decision in *Seattle-First National Bank*, supra, as there is no requirement that he, as a nonmember, be permitted to vote, there is also no requirement that he be notified of the election. Second, the fact that Staresnick, who, the record shows, voted in the election, learned of the election other than by receiving a mailed notice, lends support to an inference that news of the upcoming election had been communicated effectively to unit employees

The Employer also contends that approximately 12 other individuals did not receive notice of the election The parties have stipulated to certain facts with respect to the status of these employees with the request that the Board determine whether they were eligible to vote Of these 12 individuals, however, only 1 is identified as a union member and therefore only his status is relevant to our findings regarding notice Even assuming he had employee status, however, we do not find, in the absence of affirmative evidence, that he did not receive notice from any of the postings or group meetings or that his omission from the mailing list defeats our finding of adequate notice Further, even assuming he voted against the affiliation, his vote would have had no effect on the outcome of the election

[10] The Employer here relies on employee testimony that proxy voting was permitted in secret-ballot elections in the past

[11] Of these, one voted in the election

[12] In support of this contention, the Employer points out that there were discrepancies in the testimony of two officers of the ONE and one of the tally clerks regarding who displayed the ballot box before the election and the location of the box, i e , whether it was on the voting table or the head table during the election The Employer contends that this conflicting testimony raises a question concerning whether the ballot box was displayed at all and further demonstrates a lack of concern about maintaining security of the ballot box

ing circumstances. Rather, the evidence shows that employees attending the election identified themselves, were instructed in election procedures, received ballots, voted, and deposited their ballots in the ballot box in an orderly way. Although there is evidence that some employees voted away from the table provided for voting, the record also shows that a majority of the employees voted at the designated table. There is, however, no evidence that any employee saw or otherwise knew how any other employee voted.[13]

In light of all the foregoing, we do not find the procedures used so irregular or so unmindful of due process to invalidate the election. See *East Dayton Tool & Die Co.*, 190 NLRB 577 (1971).

We turn now to the matter of continuity of representative. The Employer contends that the results of the affiliation election have resulted in a complete change of representative. In support of its argument, it contends that, by virtue of this affiliation, the ONE has become "subservient" to the International (The Newspaper Guild) subject to its constitution, bylaws, and ultimate authority in matters such as finances, contract negotiation, and strikes. The Employer also argues that a merger, rather than an affiliation, has taken place, with the result that a new organization has emerged as the purported representative of the Employer's unit employees. In the face of this change of identity, the Employer argues that a question concerning representation has been raised, which requires a Board election and makes this case inappropriate for resolution through the amendment of certification procedure.

As the court of appeals stated in *NLRB v. Insulfab Plastics*, 789 F.2d 961, 966 (1st Cir. 1986), enfg. 274 NLRB 817 (1985), "whether a union's identity has remained essentially the same or whether it has changed so substantially as to require a new representation election depends on a factual determination by the Board after it examines the various changes the affiliation may effect." The record shows that prior to the affiliation vote, the ONE was an independent union that had approximately 50 members and that represented approximately 90 unit employees. According to the ONE's bylaws, the governing body of the ONE was its executive board, composed of elected officers as well as individuals appointed chairmen of the ONE's committees, including, e.g., its collective-bargaining and grievance committees. These bylaws stated that the supreme authority of the ONE rested in its membership. Further, the bylaws provided that any matter to be decided by the ONE was to be based on a referendum vote by its members. In matters of collective bargaining, the bylaws stated that negotiators were to be selected by the executive board and any agreement reached was to be submitted to the ONE's membership for approval and to the executive board and the membership for final ratification. The bylaws provided for dues increases by vote of the membership and delegated the responsibility of handling the ONE's finances to the executive board. The bylaws provided that strikes, including strikes in sympathy with another union and in response to employer lockouts, could be called by a vote of the membership at a meeting called by the executive board.

The Employer contends that as a result of the affiliation, and according to the International's constitution, the ONE has become an administrative functionary of the Petitioner. It further contends that the supreme authority of the ONE, once vested in its membership, is now vested in the International convention.

We note, however, that although the affiliation agreement provides that, after affiliation, the ONE shall become the Hammond Unit of the Chicago Newspaper Guild and subject to International's constitution and the Petitioner's bylaws, the agreement also expressly provides that unit jurisdiction of the ONE will remain the same, the same officers will be retained, and the existing collective-bargaining agreement will be honored. Further, although the constitution states that the International convention shall be the the supreme authority, we also note that the International convention is composed of employee-elected delegates from the individual locals, and the constitution also states that the membership may override an act of the International convention by subsequent referendum.

The Employer next contends that, by virtue of the affiliation, the treasury of the ONE, once subject solely to the authority of the ONE's executive board, has been transferred to the Petitioner. We note, however, that the affiliation agreement, which provides for the transfer, states that the former treasury of the ONE shall be kept separate and solely for use by the Hammond Unit.

The Employer also argues that the ONE will no longer be able to select its negotiating committee members or to determine what provisions will be included in the contract. The Employer notes that pursuant to its bylaws, the Petitioner's executive

[13] We do not find that the ONE's failure to provide a voting booth invalidated the election See, e g , *Bernard Gloeckler North East Co* , 217 NLRB 626 (1975), enf denied on other grounds 540 F 2d 197 (3d Cir 1976) Similarly, we do not find that voting at an open table approximately 2-1/2 feet away from the table at which the tally committee was seated invalidated the election in the absence of evidence showing that any employee knew how another voted With respect to that one employee who voted at the table in front of the tally committee, we note that although there is no dispute that members of the tally committee saw him vote, there is still no evidence that anyone saw *how* he voted

board selects negotiators and that the International's constitution mandates the inclusion of certain contract proposals. The Employer further argues that where once the ONE membership ratified the contract, ratification of a contract covering represented Hammond employees is now subject to the approval of the Petitioner's and the International's executive boards.

The Petitioner's bylaws provide that negotiators who act on behalf of a local or any of its units shall be selected by the local's executive board, with any agreement made subject to a vote of approval by the membership of the unit or units involved. Further, uncontradicted testimony indicated that the composition of the negotiating committee representing Hammond employees remained the same after affiliation as before the affiliation, with the addition of the executive director of the Petitioner as the chief negotiator. With respect to collective-bargaining matters, the constitution provides that certain provisions, set out in its "Collective Bargaining Program," be included in every agreement. An examination of this document shows that the program sets out certain topics to be included in every agreement, such as seniority, health and welfare, and equal rights, but does not dictate the particular terms of the individual contract provision. The constitution itself further provides that the power and duty for collective bargaining for the local shall rest in the local's executive board and that results of negotiations shall be subject to ratification by the unit members of the unit concerned.[14]

Finally, the Employer contends that the employees represented by the ONE have lost the authority to determine whether to strike, and the employees' decision to strike will be subject to the approval of the Petitioner's or the International's executive board. The Employer also contends that the constitution entitles the Petitioner to call a sympathy strike without a membership vote.

With respect to strikes, the constitution provides that a local's executive board may call strikes, including sympathy strikes, on approval of the unit involved; where the local fails to call a strike on a vote of the membership, the units involved may request the International's executive board to do so. The constitution also states the local's executive committee may, as an alternative to calling a strike on a vote of the membership, direct unit members not to cross picket lines.[15]

Our examination of the evidence thus shows that authority to approve their own collective-bargaining agreements, call their own strikes, and control their own expenditures continues to rest with the membership of the Hammond Unit, either directly or through their elected officials. Additionally, we find that the retention by the Hammond Unit of the ONE's personnel responsible for collective bargaining and grievance procedures favor a finding of continuity of representative.[16] Further, with respect to the Employer's arguments regarding the transfer of control, although it is true that certain procedures and obligations have been placed on the Hammond Unit employees by virtue of the affiliation, we do not find that the autonomy of the unit has been significantly curtailed. See *Insulfab*, supra at 967.

Further, to the extent that the Employer's arguments suggest that the affiliation of a small, independent union with a large, international union, in itself, creates a substantially different bargaining entity, we find no merit to this contention. As noted by the first circuit in *Insulfab*, supra at 966–967, the Board has consistently rejected the notion that an increase in bargaining power alone is determinative of whether an affiliation raises a question concerning representation. We affirm that position here.

Finally, we find no merit to the Employer's contention that a purported merger has occurred and that a new organization has emerged as a result, or that the action taken by the ONE in this matter is inappropriate for resolution through an amendment of certification. We would point out that in cases of both affiliation and merger, the Board examines the evidence to determine if minimal standards of due process have been met and whether continuity of bargaining representative has been assured. Additionally, we note that the Board will grant an amendment of certification involving affiliation or merger when it finds that both these conditions have been satisfied. Cf., e.g., *Peco, Inc.*, 204 NLRB 1036, 1037 (1973) (petition for amendment for certification dismissed when action failed to meet mini-

[14] According to the constitution, a final contract proposal or contract settlement must be submitted to the International's contracts committee prior to submission to the unit employees for ratification The contracts committee then has 5 days in which to examine the proposal and advise the local regarding conformity of the proposal to the constitution and the collective-bargaining program It may withhold approval of the proposed contract, but may do so only when the contract contains serious deviations from the collective-bargaining program In this case, the committee must inform the local of its disapproval and offer assistance to the local In the event that approval is withheld and the committee does not take these actions, the local may proceed with the ratification of the final contract or contract settlement

[15] The fact that a local executive committee may, as an alternative to seeking a membership vote, endorse a strike and direct members not to cross a picket line does not, in our view, defeat the conclusion that, in most strike situations, the unit membership retains the power to decide to take strike action

[16] *Independent Drug Store Owners*, 211 NLRB 701 (1974), affd sub nom *Retail Clerks Local 428 v NLRB*, 528 F 2d 1225 (9th Cir 1975)

mum standards of due process and ensure continuity of representative).

Accordingly, as the affiliation of the ONE with the Chicago Newspaper Guild took place as a result of an election that meets the minimal standards of due process, shows continuity of representative, and does not raise a question concerning representation, we affirm the Regional Director's amendment of the certification.

MEMBER JOHANSEN, concurring.

I concur in the result.