

Missouri Beef Packers, Inc., Missouri Cartage Company, Inc., Iowa Beef Packers, Inc., and National Oats Company, Iowa Beef Packers, Inc., Farmbest, Inc., Noble Manufacturing Company and Associated Employees Organization, Local 1284, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, Petitioner. Cases 17-AC-11, 17-AC-12, 18-AC-9, 18-AC-10, 18-AC-11, and 18-AC-12

May 19, 1969

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND ZAGORIA

The Associated Employees Organization (AEO) was certified by the National Labor Relations Board as the collective-bargaining representative of the Employers' employees in appropriate units on various dates in 1965 and 1966.¹ On October 28, 1968, the Associated Employees Organization, Local 1284, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, filed petitions in Cases 18-AC-9, 10, 11, and 12, and on January 2, 1969, filed petitions in Cases 17-AC-11 and 12, requesting that the certifications be amended to designate itself in place of the AEO as the certified bargaining representative.

Cases 18-AC-9, 10, 11, and 12 were consolidated by the Regional Director for Region 18 by his Order dated November 18, 1968. A hearing was held on December 10, 1968, and January 7 through January 10, 1969, at Denison, Iowa, before Hearing Officer Harold E. Jahn. Following the hearing, the cases were transferred to the Board for original decision.

Cases 17-AC-11 and 12 were consolidated by the Regional Director for Region 17 by his Order dated January 16, 1969. A hearing was held on January 28, 1969, at Kansas City, Missouri, before Hearing Officer R. L. DeProspero. At the hearing the record in Cases 18-AC-9, 10, 11, and 12 was incorporated by reference by stipulation of the parties. Subsequently, the Regional Director for Region 17 transferred these cases to the Board for original decision.

On February 11, 1969, the Board, by Executive Secretary Order, granted Intervenor's (AEO) motion and consolidated Cases 18-AC-9, 10, 11, and 12 with Cases 17-AC-11 and 12.

Thereafter, the Petitioner, Intervenor, Farmbest, and Iowa Beef Packers filed briefs in support of their respective positions, and Petitioner and Intervenor filed reply briefs by special permission of the Board. Intervenor (AEO), Farmbest, and Iowa

Beef Packers oppose the amendment. National Oats Company and Noble Manufacturing Company, who did not file briefs in the instant proceeding, have amended their collective-bargaining agreements with AEO to recognize the Petitioner.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officers' rulings made at the hearings and finds that they are free from prejudicial error. They are hereby affirmed.

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

Following Board-conducted elections, the AEO was certified as collective-bargaining representative of the Employers' employees in appropriate units on various dates in 1965 and 1966 and subsequently entered into collective-bargaining agreements with the several Employers. On March 14, 1968, AEO's Board of Directors met in Omaha with representatives of the United Packinghouse Food and Allied Workers of America, AFL-CIO (UPWA),² following preliminary negotiations with the UPWA independently conducted by Fred Claxton, then AEO's president. Nine of AEO's ten board members (not counting Claxton) were present and, following the meeting, voted unanimously to affiliate with the UPWA. Claxton did not vote on this question. It was also decided that, upon affiliation, Claxton should be paid \$25,000 by UPWA in payment of back salary and loans allegedly made by Claxton to the AEO. This money was placed in escrow contingent upon the UPWA succeeding to AEO's bargaining rights. On March 19, 1968, UPWA issued a charter to AEO as Local 1284.

Thereafter, meetings were held at which AEO members were advised of their Board's affiliation resolution. Claxton resigned as president in March and at a board of director's meeting held April 2, 1968, Ronald Goodrich was either appointed to act in the capacity of president or elected president of the AEO. Sometime subsequent in either May or June, Martin Pardekooper, a paid UPWA representative, was elected president of the AEO to permit him to conduct negotiations with employers having collective-bargaining agreements with the AEO.

On July 3, 1968, the Board of Directors adopted a resolution to advise UPWA that it was dissatisfied with the representation that it was receiving and with UPWA's failure to compensate Claxton. At a meeting held July 17, 1968, the AEO Board voted to disaffiliate unless the UPWA lived up to the affiliation agreement by July 24. The Board then

¹AEO was certified as collective-bargaining representative as follows. National Oats, Case 18-RC-6201, 1/12/65; Iowa Beef Packers, Case 18-RC-6227, 2/17/65; Farmbest, Case 18-RC-6564, 1/27/66; Noble Manufacturing, Case 18-RC-6636, 1/20/66; Missouri Beef Packers, Case 17-RC-4985, 10/31/66; and Iowa Beef Packers, Case 17-RC-4990, 5/2/66.

²The UPWA merged with the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Amalgamated) effective July 12, 1968.

voted that Pardekooper was no longer president³ and elected Ronald Goodrich president. Amalgamated (formerly UPWA) was first advised of AEO's disaffiliation action by a letter from Goodrich dated August 13, 1968. AEO has continued conducting meetings and processing grievances at Iowa Beef Packers and Farmbest.

Petitions for amendment of the certifications involved in these cases were originally filed May 20, 1968. Those in Region 17 were withdrawn August 15, 1968, and those in Region 18 were withdrawn August 23, 1968. The withdrawal of the Region 18 petitions followed a letter from that Region to Petitioner advising that the steps taken to affiliate appeared to be inadequate and setting forth certain minimum requirements, to include a secret ballot vote by employees on the question of affiliation. Following receipt of this letter, affiliation votes were held in September and October 1968. Eligibility was limited to AEO members. The Intervenor (AEO) took no part in these elections and did not encourage employees to vote on the ground that the elections were illegal and a nullity. For the most part the elections were conducted under the direction of the Petitioner, although the record does show that the president of the Missouri Beef Packers' local participated in that election. All elections resulted in substantial majorities, of those voting, in favor of affiliation.⁴

Petitioner relies heavily on two recent Board decisions in support of its position: *Equipment Manufacturing, Inc.*,⁵ and *Northern Electric Co.*⁶ The Board amended the certification in *Equipment Manufacturing* pursuant to a properly conducted affiliation vote, despite the claim that the intervenor there had subsequently revived the independent. The Board stated that:

At most we have the Intervenor and a few other employees designating themselves as officers of an alleged union which they contend is the old Independent. Even assuming the relevancy of a revival, the claim here is not of a revival by a majority of the employees, and is so patently frivolous as not to require further consideration.

Here, unlike *Equipment Manufacturing*, it appears that all of the officers and members of the Board of Directors of AEO now oppose affiliation, with the exception of Pardekooper, and that their decision to "revive" AEO preceded rather than followed the elections held to ratify the affiliation.

In *North Electric* the United Steelworkers intervened and alone opposed the amendment,

alleging only that 26 employees had signed its authorization cards. The Board, in amending the certification, pointed out that, at a proper and representative meeting, those employees present voted 52 to 2 in favor of affiliation and that there was thus no showing that more than 28 employees opposed affiliation. Additionally, the Board stated that it was guided by the general rule that amendments of certification may not be granted when there is a question concerning representation such and that amendments are not permitted "... where the certified representative remains in existence and opposes the amendment." The same officers continued in office, the independent functioned as a local of the petitioner, and the Board was satisfied that the amendment "would insure to employees the continuity of their present organization and representation" [citing *Emery Industries, Inc.*, 148 NLRB 51, 53], as the Independent no longer exists, as such, but functions as a local of the Petitioner." *Bedford Gear and Machine Products, Inc.*,⁷ in which the Board denied amendment, was distinguished by the majority on the grounds that there both the employer and the certified labor organization opposed amendment of the certification; the petitioner was a splinter group; the certified labor organization had won a Board election within the preceding year, was still extant, was supported by a substantial number of employees, and was engaged in collective-bargaining negotiations with the employer.

Here the circumstances are clearly distinguishable from those in *North Electric* and *Equipment Manufacturing*. Whatever else may be in doubt, it is clear from the facts before us that by August, well before the affiliation votes, the Board of Directors of AEO and its officers with the exception of Pardekooper, if he was still an officer, had repudiated affiliation, and are now opposed to affiliation. There is thus no guaranty of continuity of representation; nor can it be said that the affiliation was ratified, since by the time the elections were held the AEO Board had already voted to rescind its earlier action.

As we have frequently held in the past, amendment of certification is not appropriate in those cases where a question concerning representation is presented.⁸ Amendment of certification, by and large, is intended to permit changes in the name of the representative, not a change in the representative itself. Where, as here, there is no guaranty of continuity of representation and the certified labor organization is a functioning, viable entity, and opposes amendment, it cannot be granted without doing violence to the purposes of the Act, which include the promotion of stability in labor-management relations. Additionally,

³However, article VII of the AEO constitution and bylaws provides that the president may be removed only by a majority vote of the Board of Directors and must be ratified by a two-thirds vote of the membership present at a regular or specially called meeting. No such vote was taken.

⁴Of approximately 2,150 employees in the units represented by AEO, of whom approximately 1,542 were union members, some 501 voted, not counting 1 void and 39 challenged ballots; 481 were in favor of, and 20 opposed to, affiliation.

⁵174 NLRB No. 74.

⁶165 NLRB No. 88.

⁷150 NLRB 1.

⁸See e.g., *North Electric Co.*, *supra*; *Bedford Gear and Machine Products, Inc.*, *supra*; *Gulf Oil Corp.*, 109 NLRB 861.

amendment of certification under these circumstances would circumvent and unnecessarily abridge the Act's requirement that employees select their own collective-bargaining representative. The result we arrive at here does not preclude the Petitioner from renewing the combat by filing representation petitions when permitted under our contract-bar rules, if it musters the required 30 percent support. If we, in fact, err in this result, only time is lost without the possibility of interfering with a reasonably tranquil continuity of representation and without submerging the right of the employees to choose their own collective-bargaining representative. Accordingly, we shall dismiss the petitions.

ORDER

It is hereby ordered that the petitions filed herein be, and they hereby are, dismissed.

MEMBER ZAGORIA, concurring:

I concur in the result as, apart from any other considerations, a number of unit employees sufficient to have affected the results of the balloting were disenfranchised because they were not members of AEO. See the dissenting opinion in *North Electric Company*, 165 NLRB No. 88, and footnote 5 of *Equipment Manufacturing, Inc.*, 174 NLRB No. 74.