Santa Maria, California

STATE OP CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, LOCAL UNION NO. 389, Petitioner, and ADAM FARMS, Employer.	)	Case Nos. 87-RC-4-SAL(SM) 87-RC-4-l-SAL(SM] 16 ALRB No. 2

DECISION APPROVING AMENDMENT
OF CERTIFICATION

Pursuant to the provisions of Title 8, California Code of Regulations, section 20385, petitioner International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Local Union No. 389 (Local 389) filed a petition on October 10, 1989, with the Salinas Regional Office to amend the certification issued by the Agricultural Labor Relations Board (ALRB or Board) to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Local Union No. 865 (Local 865) in Case No. 87-RC-4-SAL(SM) on September 18, 1987. That certification establishes Local 865 as the exclusive bargaining representative of all the agricultural employees of Adam Farms (Employer) in San Luis Obispo and Santa Barbara counties, State of California. The purpose of the petition is to change the name of the certified representative

from Local 865 to Local 389.[1/]

The Regional Director (RD) of the Salinas Regional Office conducted the investigation mandated by Title 8, California Code of Regulations, section 20385(c) as to the propriety of amending the certification, and issued the attached report on December 26, 1989, in which he recommended that the amendment be approved. Pursuant to Title 8, California Code of Regulations, section 20385(d), the Employer filed exceptions to the RD's recommendations on January 5, 1990.

We have considered the RD's recommendation to approve the amendment to the certification issued in 87-RC-4-SAL(SM) and the basis for approval established in the RD's investigative report together with the Employer's exceptions and points and authorities adduced in support thereof, and have decided to adopt the RD's conclusions and recommendations and to amend the certification in 87-RC-4-SAL(SM) to name Local 389 as the certified exclusive bargaining representative of the Employer's agricultural employees in the designated unit. As this matter presents the first opportunity for the Board to define the relevant factors in a certification amendment proceeding, those factors will be briefly set forth below.

Labor Code section 1148 mandates the Board to follow applicable precedents of the National Labor Relations Act (NLRA or national act). The relevant factors in making the certification

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[1/]Prior to the filing of the petition to amend certification filed by Local 389, the Employer had filed a petition to revoke the certification in 87-RC-4-SAL(SM) on March 1, 1988. As a result of the decision we reach herein, we will dismiss the Employer's petition as indicated below.

amendment decision under the national act have been thoroughly reviewed in the United States Supreme Court's decision in NLRB v. Financial Institution Employees of America, Local 1182 (SeaFirst) (1986) 475 U.S. 192 [106 S.Ct. 1007, 121 LRRM 2741]. In SeaFirst the Supreme Court rejected the national board's adjustment of the policy factors involved in overseeing internal union organizational or structural changes. The court decided that the national board's requirement that non-members of a union in a certified unit be allowed to vote in union affiliation decisions was in excess of its jurisdiction under the national act. The court also repeated the general rule that the organizational changes desired by the union should be allowed to proceed without outside interference so long as the change was accomplished with adequate due process safeguards, and so long as the resultant structure maintained representational continuity with the predecessor organization.[2/]

The national board's rule was found by the court to permit unwarranted intrusion into internal union decision-making processes, and thereby violated the policy of the national act to foster labor relations stability. (Id. at pp. 204-208.) The court repeatedly emphasized the limitations on the national

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[2/] The court mentioned such due process factors as an adequate opportunity to vote on the change as signified by such indicia as notice of the election to all members, an adequate opportunity to discuss the impending changes, and reasonable precautions to maintain ballot secrecy. (SeaFirst, supra, at p. 199.) The court identified sufficient continuity as existing where no substantial change had occurred. (Ibid.) In making the continuity determination the court mentioned such factors as retention of local officers and autonomy and continued application of established procedures. (Ibid.)

board's authority to scrutinize internal union decisions; the national act gives the national board no authority to require unions to follow specific procedures in adopting organizational changes (id. at p. 204), no authority to interfere in a union's affairs in the absence of a question concerning representation generated by a change sufficiently dramatic to alter the union's identity (id. at p. 206), and no authority to prescribe internal procedures for a union to follow in order to invoke the protections of the national act (id. at pp. 207-208).

Moreover, the national board's rule was found to have the unfortunate side effect of encouraging employers to seize upon perceived procedural defects in union structural decisions in order to cease bargaining with their employees' certified representatives even though the post-change union is the successor of the organization the employees chose, the employees, have made no effort to decertify the resultant organization, and no evidence indicates the post-change organization has lost majority status in the unit.[3/] The national board's rule would effectively give employers a veto over internal union organizational decisions that Congress intended to be free of such outside interference. (Id.

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[3/]Under the Agricultural Labor Relations Act (ALRA or Act), loss of majority status by the incumbent union cannot be raised by an employer as a defense to a refusal to bargain charge. Under our Act a labor organization continues as the certified bargaining representative of the unit's employees until those employees vote to decertify that labor organization, or elect a rival union, and the results of such elections are certified by the Board. (See, e.g., Nish Noroian Farms (1982) 8 ALRB No. 25, United Farm Workers of America, AFL-CIO (The Careau Group dba Egg City) (1989) 15 ALRB No. 10.)

at p. 209.)[4/]

We believe that our RD correctly applied the above principles to the merger decision of Local 865 and Local 389. He found adequate due process was afforded by a meeting held on November 12, 1987, in which 250 members out of Local 865's total membership of 450, after notification of the upcoming meeting and an opportunity to discuss the proposed merger, voted in favor of the organizational change. He likewise found substantial representational continuity in the merger of one Teamsters local with another where the reorganization satisfied the procedural requirements of the Teamsters constitution, the business representative of Local 865 would continue in that capacity in Local 389 and would maintain a business office for servicing members in the same location, and Local 389 assumed the financial assets and liabilities of Local 865.

We find no disqualifying procedural impediments in the facts that the merger vote was taken on voice vote and that the Employer's employees were not present at that same vote. The RD explicitly found no evidence of pressure, coercion or restraint in the vote on merger. Moreover, the agricultural employees of the Employer were informed of the upcoming merger and submitted a petition to Local 389 requesting representation.[5/] The RD also

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[4/] The court had also noted earlier that an additional practical consequence of the national board's rule was to effectively decertify the post-change union even in the absence of a question concerning representation. (SeaFirst, supra, at p. 203.)

[5/]Contrary to our dissenting colleague, we find no reasonable cause for believing that merger information was withheld from

(fn. 5 cont. on p. 6)

correctly noted that under SeaFirst, supra, non-members of the concerned locals need not join in the merger decision. We find in the non-participation of the Employer's employees due to the absence of a contract between the Employer and Local 865 no indication of improper denial of voting opportunity, unfair disenfranchisement, manipulative foreclosure from participation, or deliberate exclusion that would warrant setting aside the result of the merger vote. (See, e.g., Amoco Petroleum Co. (1979) 239 NLRB 1195 [100 LRRM 1127], Providence Medical Center (1979) 243 NLRB 714 [102 LRRM 1099], Ohio Poly Corporation (1979) 246 NLRB 104 [102 LRRM 1402]; see also Potters' Medical Center, Inc. (1988) 289 NLRB No. 28 [131 LRRM 1321] [non-membership of respondent's employees in merging union and consequent absence from merger vote not grounds to deny bargaining order against respondent employer, citing SeaFirst, supra, and F W. Woolworth Co. (1987) 285 NLRB No. 119 [126 LRRM 1139].)[6/] We likewise find that the incorporation of the Employer's agricultural employees into another local of an international labor organization with a

(fn. 5 cont.)

members of the unit at the Employer's operations. The case cited by our dissenting colleague in support of his contention, Pacific Southwest Container, Inc. (1987) 283 NLRB 79 [124 LRRM 1217] is inapposite in that therein a pre-election merger was not disclosed to the electorate and the new post-merger union's name did not appear on the ballot. Under those circumstances, not present here, the national board declined to recognize the union's restructuring.

[6/]It should ordinarily be possible for employees to join the certified union by submitting dues voluntarily even in the absence of a contract providing for automatic dues deduction. As no evidence herein indicates that unit employees were denied the opportunity to join the certified local voluntarily and the unit

(fn. 6 cont. on p. 7)

long history of representation of agricultural workers does not constitute the sort of "dramatic change" requiring the finding of a question concerning representation and the consequent voiding of the merger. (SeaFirst at p. 206; see also May Department Stores Co., Ventura Stores Div. v. NLRB (7th Cir. Feb. 28, 1990) __ F.2d __ [Dock. Nos. 88-3302, 89-1065] [7/8/]

To the adequacy of the RD's determination must be added the strong policy implications under our Act that counsel even

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(fn. 6. cont.)

employees did indicate their approval of the new local by signing a petition, adequate due process was maintained. A different result is not required by our dissenting colleague's citation to Factory Services, Inc. (1971) 193 NLRB 722 [78 LRRM 1344]. That case was decided on the basis that unit employees who were not members of the merging union were not notified of the merger vote and did not therefore participate in the election. (Id. at pp. 722, 723.) This result is clearly contrary to the controlling precedent in SeaFirst, supra, as is indicated by the different result on similar facts in the more recent case of Potters' Medical Center, Inc., supra.

[7/] We are not persuaded by our dissenting colleague's suggestion that we must engage in a detailed factual comparison of the pre-and post-merger locals in this case. The precedent upon which he principally relies, F. W. Woolworth Co., supra, examines in detail only those factors which would have significance if the unit members at the Employer's operations had been members of Local 865. (See id. at pp. 3-4.) As such they are irrelevant to our determination here. The remaining factors examined in Woolworth, supra, are in all respects identical with those our RD took into consideration.

[8/]We reject the Employer's exceptions and supporting argument for the following reasons as well. We do not find the statement of the importance of labor relations stability and organizational independence set out in SeaFirst, supra, inapposite merely because it is a court decision rather than a decision of the national board. We follow the applicable decisions of the U.S. Supreme Court construing the NLRA. Nor are we persuaded that we can or ought to "presume" a question concerning representation exists merely because Local 865's initial certification year has expired and a bargaining hiatus has intervened. (Kaplan's Fruit & Produce Co., Inc. (1977) 3 ALRB No. 28, Montebello Rose Co. v. ALRB (1981) 119 Cal.App.3d 321 [173 Cal.Rptr. 856].)

greater restraint in scrutinizing internal union organizational changes than is required under the NLRA. (Cf. SeaFirst, supra.)[9/] Our Act recognizes only one method of resolving questions concerning representation, viz., a secret ballot election of the concerned agricultural employees. To allow an employer to frustrate the continuing expression of that election based on a hypertechnical construction of procedural requirements would permit the sort of employer intrusion into employee free choice the ALRA proscribes.

Moreover, that same interest in deciding representational matters through employee choice, which encompasses interests in bargaining relationship stability as well, has previously led us to decide that a labor organization representing agricultural employees must remain certified until the Board certifies the results of a decertification or rival union election in which the incumbent union fails to sustain a majority status. (Nish Noroian Farms, supra.) Thus, in the absence of effective employee repudiation of an organizational change through our decertification or rival election procedure, to invalidate the merger between the affected union locals, with a resultant representational

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[9/] The scrutiny we are required to give a union's internal disciplinary actions taken pursuant to a union security agreement authorized by Labor Code section 1153(c) does not implicate the structural independence or labor relations stability at issue here. (Cf. Pasillas v. ALRB (1984) 156 Cal.App.3d 312 [202 Cal.Rptr. 739].)

vacuum, would be inimical to the purposes of our Act.[10/]

In adopting our RD's resolution of the matters presented herein, we wish to emphasize that we are not indifferent to the full and effective participation of agricultural employees in their union's affairs. We adopt his recommended decision because he correctly interpreted the controlling legal principles and rendered a decision that reveals no abuse of his investigative or decisional discretion. We note additionally that should employee dissatisfaction develop as a consequence of the merger, the employees have an effective statutory remedy in our decertification procedures to express their will. (Cf. SeaFirst at p. 209.)[11/] Our decision here recognizes that our duty to protect the free expression of employee choice in representational elections and to maintain bargaining relationship stability precludes our disturbing the locals' organizational decision in this matter.

We therefore grant the petition to amend certification filed by Local 389 in this matter, and dismiss the Employer's petition to revoke certification. The Executive Secretary is

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[10/]We do not address here the proper response to a situation involving a defunct labor organization or one which has sufficiently demonstrated an ongoing inability to adequately represent its membership. Nor should we be understood as establishing a rule requiring the full panoply of SeaFirst scrutiny for very minor organizational changes; de minimis changes will require correspondingly reduced examination by our RDs and regional staff.

[11/]An employer's interest in such matters is adequately protected by its option to pursue the avenue of judicial review by means of a refusal to bargain.

directed to issue the amended certification.

Dated: April 23, 1990

BRUCE J. JANIGIAN, Chairman[12/]

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

JOSEPH C. SHELL, Member

[12/] The signatures of Board Members in all Board Decisions appear with the signature of the Chairperson first, if participating, followed by the signatures of the participating Board Members in order of their seniority.

MEMBER ELLIS, Dissenting:

The employees' right to a collective bargaining representative of their own choosing, a right for which the Agricultural Labor Relations Act (ALRA or Act) was enacted and the Agricultural Labor Relations Board (ALRB or Board) was entrusted with the responsibility to enforce, has been overlooked by the majority in its pursuit of industrial stability. For this reason, I must respectfully dissent.

My colleagues have failed to address the primary issue presently before us, and, that is whether the agricultural employees of Adam Farms (Employer) effectuated their desires and wishes as expressed at the polls during the election conducted by the ALRB on September 4, 1987, when they as eligible voters under the Act selected as their collective bargaining representative International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Local Union No. 865. I submit that the present state of the record does not permit this Board to resolve this issue in the affirmative and thereby warrant

amendment of the certification, but rather, obligates it to dismiss the Onion's petition to amend without prejudice to file another request upon showing by objective facts that the amendment reflects the desires and wishes of the employees. (Factory Services, Inc. (1971) 193 NLRB 722 [78 LRRM 1344].)

The record states that only four days after the election, but ten days prior to certification by this Board of Local 865, "some" of the agricultural employees of Adam Farms are informed at a meeting held by the Union at Russell Park, Santa Maria, that the bargaining representative they have just selected will be merged with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Local Union No. 389. We do not know much about Local 389 except that it is based out of Los Angeles, about 150 miles from the offices of Local 865 and that its membership is comprised only of van and storage workers. There is no evidence to indicate that Local 389 had prior experience in representing agriculture workers except that John Miranda, formerly the Secretary/Treasurer of Local 865, is now the business representative of Local 389.

The record further informs us that the merger was due to deteriorating financial conditions caused by plant closures and resulting lack of sufficient supporting membership of Local 865. Since there was no mention of merger talks predating the date of the election, one can only conclude that such plant closures and resulting reduction of membership all occurred during the four days since the election, which I feel is highly unlikely.

We are then informed by the record that a membership

meeting of Local 865 was held in November 1987 wherein the proposed merger was discussed and voted on by the members present. The record does not indicate that the entire membership was given notice of the meeting, since the Regional Director (RD) does note in his report at page 3 that notices were posted at only "several" of the employers which had Local 865 certified bargaining units. We do know for a certainty that the agricultural employees of Adam Farms were not notified of, nor in attendance at, the membership meeting. The majority finds this to be of no consequence, citing NLRB v. Financial Institution Employees of America, Local 1182 (SeaFirst) (1986) 472 U.S. 192 [106 S.Ct. 1007, 121 LRRM 2741] for its proposition, even though such exclusion from participation effectively eliminates for this Board any reliable objective indication that the merger did not frustrate the employees' choice of a bargaining representative recently expressed at an ALRB-conducted election from just two months prior.

The record indicates that "some" of the agricultural employees of Adam Farms, who were in attendance at the Russell Park meeting, signed a petition informing Local 389 that they wished representation by it. We are not informed, however, that all of Employer's agricultural employees were given notice of this Russell Park meeting, and that of those who showed up, a majority willingly and knowingly signed the petition. (Cf. Factory Services, Inc., supra, 193 NLRB 722 [78 LRRM 1344].) The majority finds the Russell Park petition as evidence of the employees' wishes despite the fact that the RD does not rely on the Russell Park petition for its conclusions and recommendation (see pp. 6-7 of the RD's Report).

The record is clear that the Employer was prevented from producing controverting evidence, and that even if it had wanted to come forward with the facts, it could not. There is evidence indicating that the Employer's attorney sought to obtain from the Union information relating to the merger almost two years prior to the Union's filing of the instant petition. The Employer's request for information was never answered. Moreover, the Union aptly excludes from its petition to amend any reference to the Russell Park meeting or to the Russell Park petition. The first mention of the meeting or the petition was in the RD's Report, and even then the Employer had only five days to file its exceptions and to obtain[1/] and produce its supporting evidence thereto.

The only objective evidence that this Board has as to the employees' wishes and desires are the results of the Final Tally of Ballots of the September 4, 1987, ALRB-conducted election. There we can see that the employees have chosen Local 865 as their representative. Unfortunately, however, this single piece of objective evidence for which this Board through its established procedures strived to attain its accuracy and reliability is tainted as well. I believe that the employees could have been informed of the prospective merger prior to the election. From the present state of the record, we cannot be certain at this time that the employees would have voted for Local 865 in light of its

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[1/]Moreover, had the Employer attempted to obtain the necessary controverting evidence directly from the employees, it would have been subject to the risk of violating section 1153(a) of the Act. (See, e.g., Duke Wilson Company (1986) 12 ALRB No. 19; and American National Insurance Company (1986) 281 NLRB 713 [124 LRRM 11161.)

prospective merger with Local 389. It is without doubt that the withholding of such information is sufficient cause for the Board to set aside an election (see, e.g., Pacific Southwest Container, Inc. (1987) 283 NLRB 79 [124 LRRM 1217] where election was set aside because of union's failure to adequately inform all employees of its merger with another labor organization) and it is contrary to established precedent of the National Labor Relations Act (NLRA or national act) for this Board to suggest that since it is beyond the election objection period, it is without jurisdiction to consider the matter (see, e.g., F. W. Woolworth Co. (1987) 285 NLRB No. 119 [126 LRRM 1139] where the issue arises during an unfair labor practice proceeding).

The second disagreement I have with the majority is that because of SeaFirst, we need not be concerned about whether there is evidence of majority support for the new local so long as we can be made certain by our continuity of representation analysis that the new local is merely a continuation of the old. In proceeding to find continuity on what little that we do know of the two locals, the majority has in effect constructed a per se rule of continuity for mergers of sister locals of the same international union. Per se rules of continuity have never been adopted nor condoned by the National Labor Relations Board (NLRB or national board) or the federal circuit courts. In Seattle-First National Bank v. NLRB (9th Cir. 1989) 892 F.2d 792 [133 LRRM 2193), for example, the court there resisted a per se rule of continuity even though it had a finding of local autonomy of the independent union upon affiliation with the international,

and instead proceeded to analyze the detailed factual characteristics of the pre- and post-affiliation union.

The Supreme Court was clear in SeaFirst, supra, at page 199, in its discussion reviewing the national board's practice in determining whether an affiliation substantially changed the union, that the focus of the continuity determination is a fact-based inquiry of the characteristics of the pre- and post-affiliation union. As the majority has correctly noted at footnote 2, page 3 of its opinion, the national board has considered such factors as retention of local officers and autonomy and continued application of established procedures. Here, in our case, we do not have any information on the local officers or of the established procedures of either of the two locals. Nor do we have any information to indicate that there is a retention of local autonomy. The majority simply presumes that all of this exists on the mere finding that the two locals are bound by the constitution of the same international. In F. W. Woolworth Co., supra, 285 NLRB No. 119 1126 LRRM 1139], the national board was similarly faced with the merger of two sister locals that were also bound by the constitution of the same international. There the board did not conclude that there was continuity of representation per se as between the two locals, but rather, it proceeded to review in detail the factual characteristics of the pre- and post-merger locals. (Also cf. Potter's Medical Center, Inc. (1988) 289 NLRB No. 28 [131 LRRM 1321J where the national board engages in a similarly detailed continuity analysis where the unit employees were not yet members

of the union due to the absence of *a* collective bargaining agreement; and NLRB v. Commercial Letter, Inc. (8th Cir. 1974) 496 F.2d 35, 41 [86 LRRM 2288], where the circuit court found that closer scrutiny was necessary for the merger of the two sister locals in that case than for the previous merger of the two international unions.)

Contrary to the majority's articulated interpretation of SeaFirst, the Supreme Court did not overrule or change the national board's traditional test of continuity of representation.[2/] The Supreme Court in SeaFirst decided only one narrow issue and that was to overturn the national board's rule promulgated in Amoco Production Co. (Amoco IV) (1982) 262 NLRB 1240 [110 LRRM 1419].-/ As aptly noted by the 9th Circuit in Seattle-First National Bank v. NLRB, supra;

> A new label to identify a change that would defeat continuity, "sufficiently dramatic," emerged . . . but it was just that - a new label. The Court's discussion of continuity constituted a blessing of the Board's basic approach.

The national board since SeaFirst continues to apply the same tests in determining continuity as between the pre- and post-merger locals, but now accords such tests closer scrutiny (see Morris, The Developing Labor Law, 1982-1988 Supp., pp. 351-355). I submit that this Board is bound to do the same in this case.

[2/] In fact, the Supreme Court in SeaFirst, supra, at page 201, footnote 7, declined to address the continuity issue on the facts of that case.

[3/] And though the union argued before the Supreme Court that the due process test imposed by the national board was inappropriate, the Supreme Court refused to address the issue. (SeaFirst, supra, at p. 201, fn. 6.)

Even if we were to find that the continuity determination in the majority opinion was correctly executed, its finding of continuity on the facts alone *is* not sustainable. The national board in Factory Services, Inc., supra, 193 NLRB 722 [78 LRRM 1334], though upon a fuller record, denied the union's petition to amend the certification on the basis of a factual scenario that was almost identical to the one herein. There, as in our case, union discussions of a proposed merger of two sister locals of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, occurred shortly before certification by the national board of the old local as the exclusive bargaining representative selected by the unit employees in a board-conducted election. As in our case, the employees of Factory Service, Inc. were not notified of the union's merger ratification meeting since they were not members of. the union, and like in our case, they were not members because there was no collective bargaining agreement. Curiously enough, the employees in that case were similarly informed of the prospective merger at a meeting held by the union, and they similarly signed a petition to the new local requesting representation by it. The national board in Factory Services, unlike the majority in our case, also engaged in a detailed analysis of the characteristics of the pre-and post-merger local. The circuit court later in NLRB v. Commercial Letter, Inc., supra, distinguished Factory Services from its case at bar to be a finding by the national board that the new local in Factory Services was not a continuation of the old. Nothing in the Supreme Court's subsequent decision in

SeaFirst, nor in the interpretations thereof by the national board and the various federal circuit courts, provide any authority for this Board to now depart from the national board's analysis and consequent holding in Factory Services.

Lastly, I am particularly troubled by the perceived representational vacuum that the majority asserts will arise in the event the petition to amend the certification is denied. Local 389 may call for a new election under Cattle Valley Farms (1982) 8 ALRB No. 24 and quickly rectify the present situation.

As the majority correctly notes at page 8 of its opinion, "[o]ur Act recognizes only one method of resolving questions concerning representation, viz., a secret ballot election of the concerned agricultural employees". We had an election in this case, and the results of the election indicated that the employees wanted Local 865. On the fortuitous occasion that -the merger talks occur a few days after, rather than before, the ALRB-conducted election, the majority, for purposes of industrial stability, permits the Union to select for the employees its bargaining representative. This proposition is contrary to prevailing precedent. (0 & T Warehousing Co. (1979) 240 NLRB 386 [100 LRRM 12121; and M. A. Norden Company, Inc. (1966) 159 NLRB 1730 [62 LRRM 1363].) Moreover, the majority misreads the Supreme Court's discussion in SeaFirst, supra, at pages 203-204 concerning the national board's need to take into account industrial stability when analyzing union organizational adjustments. There, the Supreme Court in arriving at its conclusion that the national board's Amoco IV rule was excessive and inappropriate, did not

abrogate the employees' right to select their own representative, but rather, balanced it with the conflicting interest to maintain industrial stability. Nowhere in the SeaFirst decision does the Supreme Court set forth a rule requiring that this Board ignore the employee's choice of a newly-selected representative especially in situations not unlike this case where the merger talks occur so soon after an ALRB-conducted election so that there was no semblance of industrial stability for which this Board has an interest in maintaining.

Unlike the majority, I would rather ascertain whether the amendment of certification reflects the desires and wishes of the employees before I, by default, permit the Union to select for the employees their collective bargaining representative. Section 1152 of the Act guarantees this prerogative only to the farm workers, and neither the Union nor this Board through any perceived authority granted by the Supreme Court in SeaFirst has the right to frustrate their specific choice of representation.

Dated: April 23, 1990

JIM ELLIS, Member

CASE SUMMARY

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Local Union No. 389 (ADAM FARMS)

Case Nos. 87-RC-4-SAL(SM)
87-RC-4-l-SAL(SM)

16 ALRB No. 2

Background

On September 18, 1987, the Agricultural Labor Relations Board (ALRB or Board) certified Local 865, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Local 865) as the exclusive bargaining representative of all the agricultural employees of Adam Farms (Employer) in San Luis Obispo and Santa Barbara counties, State of California. Thereafter the parties held preliminary discussions in October and November, 1987, and met on January 7 or 8, 1988, at which meeting representatives of Local 865 informed the Employer that Local 865 was in the process of merging into Local 389, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Local 389). In effectuation of that merger, the membership of Local 865 had been notified of a ratification election to be held on November 12, 1987. At that meeting, 250 out of Local 865's membership of 450 approved the merger by voice vote. Unit members represented by Local 865 at the Employer's operations did not participate in the merger election due to the absence of a contract between the Employer and Local 865 at that time, but had presented a petition to Local 389 requesting representation. On February 16, 1988, representatives of Local 865 informed the Employer that Local 865 was disclaiming any interest in representing its employees, but rescinded that disclaimer on February 19, 1988, at the same time informing the Employer that Local 865 would request an amendment of its certification under the provisions of Title 8, California Code of Regulations, section 20385 to name Local 389 as the certified bargaining representative. In response, the Employer petitioned the Board to revoke the certification of Local 865 on March 1, 1988. Local 865's petition to amend certification was filed on October 10, 1989.

Regional Director's Report

The Regional Director of the Salinas Regional Office issued a Report and Recommendation to Amend Certification pursuant to 8 CCR section 20385(c) on December 26, 1989, in which he applied the standard for union affiliations, mergers, or other organizational changes found in NLRB v. Financial Institution Employees of America, Local 1182 (SeaFirst) (1986) 475 U.S. 192 [106 S.Ct. 1007, 121 LRRM 2741]. Pursuant to that standard, he found adequate due process in the notification of and attendance at Local 865's ratification election of November 12, 1987. He found no evidence of pressure, coercion, or restraint in the

conduct of the election. Noting that the Employer's workers were not present at the vote, he observed that by petition of September 8, 1987, those employees had expressed their willingness to be represented by Local 389, and further observed that SeaFirst explicitly rejects a requirement that non-members vote in union affiliation or merger decisions. The Regional Director likewise found sufficient continuity of representation as required by SeaFirst in the merger *of* one Teamsters local into another where the merger meets the requirements for such actions as set forth in the Teamsters constitution, the business manager of Local 865 responsible for administering the representation of Employer's workers would continue in that capacity with Local 389 and would maintain a business office at the same location as previously maintained by Local 865, and all the assets and liabilities of Local 865 were assumed by Local 389. Under such conditions the Regional Director found no question concerning representation was raised sufficient to require setting aside the merger. The Regional Director therefore recommended that the Board approve the merger and dismiss the Employer's petition to revoke certification.

Board Decision

The Board adopted the Regional Director's recommendation and approved the amendment of certification. The Board found SeaFirst, supra, applicable precedent under Labor Code section 1148, and concurred in the Regional Director's analysis thereunder. The Board particularly noted that no evidence of improper denial of voting opportunity, unfair disenfranchisement, manipulative foreclosure from participation, or deliberate exclusion appeared in the record or was argued by the Employer so as to require a finding of inadequate due process in the merger decision. The Board also observed that where, as here, no evidence indicates that unit employees were denied the opportunity to join the pre-merger certified local voluntarily, and the unit employees did, in fact, indicate their approval of the new local by signing a petition to that effect, adequate due process was maintained. The Board found that the merger of one local of an international labor organization with a lengthy history of representing agricultural employees into another local of the same organization was not a "dramatic change" under SeaFirst requiring a finding that a question concerning representation existed. In conclusion, the Board noted that employee dissatisfaction with the merger, if it came to exist, had an effective statutory remedy in the decertification process available under the ALRA, and that the Employer's interest in such matters was adequately protected by means of judicial review following a refusal to bargain.

Dissent

Member Ellis finds that the present state of the record does not permit the Board to amend the certification as petitioned, but rather, obligates it to dismiss the petition without prejudice to file another request upon showing by objective facts that the

amendment reflects the desires and wishes of the employees. Not only is the record devoid of any objective evidence of the employees[1] wishes, but there is reasonable cause to believe that the employees could have been informed of the prospective merger prior to the ALRB-conducted election causing this Board to be uncertain of whether the employees would have voted for Local 865 in light of its prospective merger with Local 389. Even if this Board were to find that evidence of majority support is neither necessary nor required so long as the continuity of representation analysis indicates that the new local is merely a continuation of the old, the majority fails dramatically to provide sufficient justification for a finding of continuity in this case for two reasons. The majority's per se rule of continuity for mergers of sister locals of the same international is contrary to prevailing precedent, and the analysis and consequent holding in Factory Services, Inc. (1971) 193 NLRB 722 [78 LRRM 1344], in which the National Labor Relations Board (NLRB or national board) denied the union's petition to amend the certification on the basis of a factual scenario almost identical to the one presently before this Board, is controlling. Member Ellis concludes that NLRB v. Financial Institution Employees of America, Local 1182 (1986) 472 U.S. 192 [106 S.Ct. 1007, 121 LRRM 2741] does not provide any authority for this Board to depart from the national board's traditional continuity of representation test, since the holding therein addresses only one narrow issue and that was to overturn the national board's Amoco IV rule. By proceeding to grant the petition to amend the certification not only in the absence of objective evidence of the employees' wishes, but also in the absence of an appropriate analysis of continuity of. representation of the pre- and post-merger locals, the majority has in effect guaranteed a representational vacuum for the agricultural employees of Adam Farms. Member Ellis would rather ascertain whether the amendment of certification reflects the desires and wishes of the employees before he, by default, allows the Union to select for the employees their collective bargaining representative.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TEAMSTERS LOCAL UNION #389, Petitioner, and ADAM FARMS, Employer.	)	Case No. 87-RC-4-SAL(SM) 87-RC-4-l-SAL(SM) REGIONAL DIRECTOR'S REPORT AND RECOMMENDATION TO AMEND CERTIFICATION

THE ISSUE

Petitioner Teamsters Local Union #389 (herein Local 389) requests that the certification in above-captioned case be amended to reflect Teamsters Local Union #389 as the certified bargaining representative rather than Teamsters Union Local #865. Employer objects to the requested amendment.

INTRODUCTION

Teamsters Union Local 865 filed a petition 87-RC-4-SAL(SM) in August of 1987. The ALRB certified that union, on September 18, 1987 for a unit of "all agricultural employees employed by the Employer in the counties of San Luis Obispo and Santa Barbara, State of California" as a result of the election in that case. The certified union and the Employer thereafter exchanged correspondence and information and met on January 7, 1988, at which time Teamsters Local 865 notified the Employer that it was in the process of merging into Teamsters Local Union 389.

FACTS

1. The Employer, Adam Farms, a partnership, is engaged in agricultural production of cauliflower, broccoli and lettuce in the Santa Maria Valley. The partnership is owned by John F. Adam Jr. and Richard E. Adam.

2. Local Union 389 requests that the Certification of Representative issued in case number 87-RC-4-SAL(SM) by the ALRB be amended to reflect that Teamsters Local Union #389, the surviving union, is the sole collective bargaining representative of the agricultural employees of Adam Farms.

3. In support of its contentions that it is the successor and surviving union in the above mentioned merger and that the certification be amended, Teamsters Local 389 provided undisputed evidence as follows:

A. That Teamsters Local 389 is an affiliate local of the International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers of America.

B. That Teamsters Local 865 until November 1987 was an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

C. Both Unions recognized and operated under the rules and convenants of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Constitution adopted by the Teamsters 23rd International convention May 19-23, 1986.

D. Article IX section 11 of the Teamsters Constitution permits Teamsters General Executive Board to allow

mergers of locals due to financial conditions.

E. In its petition Teamsters Local 389 alleged that due to a deteriorating financial condition caused by the closing of several plants and the resultant lack of sufficient supporting membership of Teamsters Local 865, that union merged into Local 389 and it is the sole surviving and successor union.

F. In further support of its position, Local Teamsters 389 provided evidence showing that John Miranda, previously Teamsters Local 865 business representative in the Santa Maria Valley, was appointed to continue performing the same duties for the newly merged union. The offices previously operated by Teamsters Local 865 on 118 West Fesler Street, Santa Maria, to service the unit employees is maintained at the same address by Teamsters Local 389.

The assets and liabilities of Teamsters Local 865 were assumed by Teamsters Local 389. Several of the employers which had Local 865 certified bargaining units in the Santa Maria area recognized Local 389 as successor: Bonita Packing Company, H.Y. Minami, Pismo Oceano Vegetable Exchange, Simplot Frozen Food and others.

G. In November 1987, the membership of Teamsters Local 865 was notified of a merger ratification meeting scheduled for November 12, 1987 at 17:30 hours, by the posting of a notice in the working areas of Bonita Packing, H. Y. Minami, Pismo Oceano Vegetable Exchange and Simplot Frozen Food. The total number of members was 450. At the meeting the merger was explained to the approximate 250 members in attendance. The membership

participated in the discussion and a voice vote was called for ratification. There is no evidence of pressure, coercion or restraint upon the voting membership. The vote was accepted as showing that the majority members of Teamsters Local 865 at the meeting favored the merger. That same day, November 12, 1987, the Teamsters General Executive Board approved the merger.

H. There is no evidence that employees of Adam Farms attended this meeting.[1] There is evidence, however, that Adam Farms' employees were informed of the proposed merger during a meeting on September 8, 1987 at 17:30 hours in Russell Park, Santa Maria and signed a petition informing Local 389 that they wished representation by Teamsters Local 389.

4. The Employer objects to the request to amend the certification on the following grounds.

A. An Election was held on September 4, 1987, by the ALRB, in the case 87-RC-4-SAL(SM). The Board certified Teamsters Union Local 865 as the sole collective bargaining representative on September 18, 1987.

B. Negotiations began between both parties until February 16, 1988. On that day, Teamsters Local 865 sent a letter disclaiming any interest in representing employees of Adam Farms. On February 19, 1988 Teamsters Local 865 sent a second letter to Adam Farms rescinding its disclaimer letter of February 16, 1988 and informed the Employer that it will pursue an amended

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[1]Business Representative John Miranda states that Adam Farms' employees were not yet members as no contract had been signed with the Employer.

certification petition pursuant to section 20385 of the rules and regulations of the ALRB. The Employer ceased bargaining with Teamsters Local 865 and refused to recognize Teamster Local 389 as the surviving successor union and filed a petition to revoke certification in case No. 87-RC-4-SAL(SM).

C. In support of its petition to revoke certification, the Employer's Counsel contends that Teamsters Local 865 has lost its status as a certified and separate legal entity due to being "defunct" and because of its February 16, 1988 disclaimer letter. Employer also asserts that the offices of Teamsters Local 389 are regularly closed and that John Miranda spends the majority of his time in an office in the Los Angeles area. Employer has not had any contact with the union for the last 20 months, apart from the request for amendment following the merger; and the Union never responded to Employer's request for information letter dated January 14, 1988.[2]

CONCLUSIONS and RECOMMENDATIONS

The test for granting a request to amend a certification is whether minimal standards of democratic procedures have been met and that the change insures to employees a continuity of representation and organization.[3]

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[2]Employer's counsel also asserts that Adam Farms employees were not given an opportunity to vote on the merger and that the employees who voted in the 1987 election do not constitute a majority of the current unit employees. Thus, it asserts that a question concerning representation exists.

[3]See e.g. East Dayton Tool & Die Company, 190 NLRB 577 (1971); The Hamilton Tool Company, 190 NLRB 571 (1971).

Upon a consideration of the evidence adduced, the undersigned concludes that sufficient basis here exists to support the requested amendment of the certification to reflect Teamsters Union Local 389 as the certified representative of the Adam Farms unit employees and it is recommended that it be so amended.[4]

The evidence reveals that because of its financial condition due to a loss of members, Local 865 sought a merger with sister Local 389 to assume its duties and obligations. The membership of Local 865 was properly noticed of a meeting regarding the proposed merger and a majority met and discussed the issue and voted in favor of the merger. Subsequently, the General Executive Board of the International Union approved the merger. Following the merger, John Miranda has continued to be the business representative of the surviving Local 389 and the prior offices in Santa Maria remain open. Therefore, it is concluded that the resultant merger of the two sister locals of the same International Union was little more than a change in name and that Local 389 will maintain a continuity of representation. Contrary to the Employer's contention, this is not the kind of "dramatic" change in representation which cannot

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[4]Employer counsel's assertion, without evidentiary support, that John Miranda spends time in the Los Angeles area and that the Santa Maria offices may not be continually open, does not establish that the Employer's unit members are deprived of continued representation by Local 389. Nor is it relevant that a majority of those employees who voted in the 1987 Board election do not constitute a majority of the current workforce. A certification by this Board continues to exist until decertification.

be achieved by an amendment of the certification.[5]

The required minimal standards for democratic procedures appear to have been met in this case. The failure of the Adam Farms employees to vote is not critical. Under the Supreme Court's decision in NLRB v. Financial Institution Employees of America Local 1182, 475 US 192, 121 LRRM 2741 (1986) there is no requirement that non-members be permitted to vote in such internal union matters. The Court found that the NLRB's decision requiring such a vote intruded into the Union's internal decision making procedures. Further, the court declined to pass on the propriety of the "minimal due process" prong of the NLRB's traditional test for mergers and affiliations, however, the NLRB continues to apply it. (Morris, Developing Labor Law, 1982-85 Supp., p. 250)

Based on the above, I recommend that Petitioner's request to amend the existing certification to show Teamsters Local Union 389 as the certified representative be granted.6 The conclusions and recommendations of the regional director in this report shall be final unless exceptions to the conclusions and recommendations are filed with the executive secretary by personal service within five days, or by deposit in registered mail postmarked within five days following service

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[5]The undersigned does not find that a "question concerning representation" exists here, as Employer contends. Compare: Western Commercial Transport, 288 NLRB No. 27, (1988), 127 LRRM 1313; NLRB v. Financial Institution, supra.

[6]If the Board agrees with this recommendation, the Employer's Motion to Revoke Certification should be dismissed.

upon the parties of the regional director's report. An original and six copies of the exceptions shall be filed and shall be accompanied by seven copies of declarations and other documentary evidence in support of the exceptions. Copies of any exceptions and supporting documents shall be served pursuant to section 20430 on all other parties to the proceeding and on the regional director, and proof of service shall be filed with the executive secretary along with the exceptions.

DATE: December 26, 1989

DONALD J. SALINS
Regional Director