

**The Williamson Company and Local Union No. 304,  
Sheet Metal Workers International Association,  
AFL-CIO, Petitioner. Case 25-AC-24**

September 11, 1979

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS JENKINS,  
PENELLO, AND TRUESDALE

Upon a petition for amendment of Certification of Representative filed on September 11, 1978, a hearing was held before Hearing Officer Robert C. Biessel. The petition requests the Board to amend the Certification of Representative issued to the Furnace and Container Makers Association,<sup>1</sup> the Intervenor in this proceeding, by substituting the name of the Petitioner, Local Union No. 304, Sheet Metal Workers International Association. The Intervenor supports the affiliation. The Employer, however, is opposed to the granting of the amendment on the grounds, *inter alia*, that the petition raises a question concerning representation which can only be resolved through a Board-conducted election, that the petition is barred by an existing contract, and that the affiliation election conducted by the Intervenor was not in accord with relevant Board standards of secrecy and neutrality. On October 20, 1978, the Regional Director for Region 25 issued a Decision and Order dismissing the instant petition. The Regional Director concluded that the petition was barred by the fact that various locals of the Sheet Metal Workers had been rejected by unit employees in three elections conducted by the Board. Citing *Mosler Safe Company*, 210 NLRB 934 (1974), and noting that the safeguards provided at the affiliation election were less than those of a Board election,<sup>2</sup> the Regional Director ordered dismissal of the petition.

Thereafter, in accordance with Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's decision asserting, *inter alia*, that the Regional Director departed from officially reported Board precedent and that compelling reasons exist for reconsideration of the policy applied by the Regional Director in this case. In response to the request for review, the Employer directs our attention to the arguments against amending the Intervenor's certification raised in its

brief to the Regional Director relative to the instant proceeding. By telegraphic order dated December 7, 1978, the Board granted Petitioner's request for review.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The events giving rise to this proceeding are essentially not disputed by the parties. The Intervenor was originally certified as the exclusive bargaining representative for a unit of the Employer's production and maintenance employees in 1963. Since 1970, the Board has conducted three successive secret-ballot elections at the Employer's facility in Madison, Indiana, involving the Intervenor and various local unions of the Sheet Metal Workers. In each election, the Intervenor defeated the different locals of the Sheet Metal Workers. In the most recent election, the Intervenor defeated Sheet Metal Workers Local 229 by a vote of 81 to 64, with 1 challenged ballot and 1 vote against representation. The Intervenor was subsequently certified on March 4, 1977, in Case 25-RC-6512. Thereafter, the Intervenor and the Employer negotiated a collective-bargaining agreement effective April 1, 1977, until March 31, 1980.

In June 1978, the Intervenor struck the Employer for a period of 6 weeks. The strike ended when the parties signed a new, superseding contract, effective from April 1, 1978, until March 31, 1980. As an apparent result of the strike, including its drain on the Intervenor's treasury,<sup>3</sup> members of the Intervenor broached the subject of affiliating with the Sheet Metal Workers. The Sheet Metal Workers subsequently agreed to charter the Intervenor as a new local with retention of its organizational structure, leadership, bylaws, and bargaining committee. At a meeting of the Intervenor's executive and bargaining committee on June 29, 1978, a motion was made and carried by the vote of all 15 members of the committee to hold a special meeting for the purpose of discussing the possibility of amending the Intervenor's certification. A notice was posted at the Employer's plant on July 31, announcing that the meeting would be held on August 20.

The special meeting of the Intervenor's membership was held, as scheduled, on August 20. The minutes of this meeting reveal that a motion was raised and passed by a vote of 19 to 0 to hold an affiliation election.<sup>4</sup> On August 23 a notice to all bargaining unit employees was posted at the plant announcing that an election would be held on September 8 to deter-

<sup>1</sup> The certification, which encompasses a unit of the Employer's production and maintenance employees, was issued by the Board on March 4, 1977, in Case 25-RC-6512.

<sup>2</sup> In support of this finding, the Regional Director cited *Gary Enterprises, Inc.*, 86 NLRB 431 (1949).

<sup>3</sup> According to the minutes of the Intervenor's June 29 meeting, the 6-week strike cost the Union's treasury \$11,697, leaving a balance of \$2,461.

<sup>4</sup> Although not clear from the record, it appears that the Intervenor had a total membership of between 150-160 employees at times material herein.

mine whether the Intervenor's certification should be amended to reflect the name of the Petitioner. This notice was followed by a notice sent by the Intervenor's president on August 28 to all bargaining unit employees, including nonmembers. In this notice the president expressed his support for affiliating with the Sheet Metal Workers, emphasizing the important contributions the Sheet Metal Workers could make to securing a better contract, financial aid, legal aid, and proper training for officers and representatives. The notice concluded by urging all unit employees to vote for affiliation with the Sheet Metal Workers on September 8.<sup>5</sup>

The affiliation election was conducted as scheduled at the Knights of Columbus Hall across from the Employer's plant. Three rank-and-file members of the Intervenor served as tellers and judge. As the voter entered the building the first teller crossed off the name of the voter on a voting list. The voter then proceeded to the second teller where the voter signed the minutes and was given a ballot. Employees were then instructed to vote either yes or no to the proposition:

TO AMMEND THE CERTIFICATION DATED MARCH 4, 1977, FROM THE FURNACE AND CONTAINER MAKERS ASSOCIATION TO LOCAL #304, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO.

After receiving the ballot, the voter walked a distance of approximately 50 feet across the room to a table where the voter marked his ballot and placed it into a nearby locked metal ballot box. According to uncontroverted record testimony, the employees voted with their backs to the tellers and judge. Other than the judge and two tellers, there is no evidence that anyone else was present in the polling area.

At the close of the polls the ballot box was opened by the judge in the presence of approximately 20 people. The judge took out each ballot individually and called it off as a yes or no vote. Of the approximately 160 employees in the bargaining unit, 123 voted in the affiliation election. At least one nonmember unit employee voted pursuant to the Intervenor's open voting policy. The final tally was 81<sup>6</sup> in favor of affiliation and 42 against.<sup>7</sup>

<sup>5</sup> During this same period the Employer circulated to employees a letter, dated July 26, urging employees to vote against the proposed affiliation with the Sheet Metal Workers International Association. This letter was followed by another letter on September 6 from the Employer's president reiterating the Employer's opposition to the proposed affiliation and reemphasizing the reasons why the employees should vote against affiliation.

<sup>6</sup> One ballot was marked to the left of the yes box with a checkmark. The judge held this ballot up for all to see and the group of individual's present unanimously determined that the ballot was a yes vote.

<sup>7</sup> On advice of counsel, the Intervenor has continued to function as the representative of the unit employees pending amendment of its certification to reflect the Petitioner's designation.

In refusing to amend the Intervenor's certification to reflect the Petitioner's designation, the Regional Director, as noted, emphasized the particular fact that the current Petitioner is the local of an international union that had been rejected by the unit employees in three Board elections in the recent past. Relying on *Mosler Safe Company, supra*, the Regional Director concluded that to grant the requested amendment would, in effect, reverse the outcome of a Board-conducted election. In reaching this conclusion, the Regional Director also emphasized that the procedural safeguards provided in the affiliation election were not in accord with the standards of a Board-conducted election.

Having carefully considered the issues, the contentions of the parties, and the Regional Director's decision, we are of the opinion, as is more fully set forth below, that the requested amendment should be granted. Our conclusion in this respect is the product of careful examination of the circumstances preceding the filing of the petition herein and of a concern that the employees' Section 7 rights to select "representatives of their own choosing" be adequately protected. Our review of the facts in this case, in the context of relevant Board principles, satisfies us that granting the amendment will result neither in displacement of the current bargaining representative nor in institution of a successor organization that would represent a reversal of the results of the Board election in Case 25-RC-6512.

In dismissing the petitions, the Regional Director, as noted, primarily relied on the decision in *Mosler Safe*. We have reviewed the circumstances of that case and find that the Regional Director's reliance on *Mosler Safe* is misplaced. Thus, in *Mosler Safe, supra*, the Board was confronted not only with a proposed affiliation involving a union that had been rejected by unit employees in two earlier Board-conducted elections, but with a major official (treasurer) of the incumbent union who opposed the affiliation.<sup>8</sup> Further, the Board particularly noted that there was a substantive irregularity in the conduct of the affiliation election; i.e., a failure to cross-check the employees' clock numbers against the list of employees eligible to vote. But the Board also noted that little more than a year had elapsed since the last Board election involving the same union that the unit employees had rejected. Thus, the Board, in dismissing the petition, was expressing its concern that insufficient time had elapsed in the interim between the Board's election and the affiliation to remove any doubt that the affiliation was an attempt to circumvent the statute's normal processes for achieving representative status. In reaching that conclusion, the Board was following a

<sup>8</sup> Cf. *The Hamilton Tool Company*, 190 NLRB 571, 575 (1971).

line of cases espousing the principle, grounded in policy, that more than a year would be required before the incumbent representative could affiliate with the union that had been previously rejected by unit employees in a Board election.<sup>9</sup> Thus, a combination of factors underscored the Board's finding that the petition should be dismissed.

In the instant case, by contrast, no major official of the Intervenor opposed the affiliation and thus, unlike the possibility in *Mosler Safe*, stability will be maintained in the successor organization. The affiliation election itself appears to have been conducted in accord with the minimal standards the Board requires of such elections.<sup>10</sup> Thus, all employees in the bargaining unit, whether union members or not,<sup>11</sup> were provided with adequate notice, time for reflection, discussion, and opportunity to vote on the question of affiliation. In addition, reasonable efforts were made to preserve the secrecy of the ballot. Significantly, no unit employees have objected to the conduct of the election. More importantly, nearly 19 months had passed since the last election involving a local of the Sheet Metal Workers and the affiliation election herein. Finally, the organization of the certified union remains intact, with only its name being changed to reflect its affiliation with an international union.

As the foregoing illustrates, the circumstances which led the Board to dismiss the petition in *Mosler Safe* are clearly not evident here. Of particular significance is the extended period of time that has elapsed in the instant case between the last Board election and the affiliation election herein. We believe this fact, considered together with the absence of any procedural or substantive irregularity in the conduct of the affiliation election, compels the conclusion that the amendment should be granted. While we have barred petitions for amendment of certification in similar situations where the affiliation occurred less

than a year after the last Board election,<sup>12</sup> we have never stated, as an inflexible proposition, that we would never permit amendment of a union's certification if that union is affiliating with another labor organization that had been previously rejected by unit employees. The statute does not mandate such a rule and we perceive no policy basis for imposing such an unyielding rule when, in our judgment, the evidence clearly demonstrates the *bona fides* of the affiliation election.

Further, we must temper our policy concerns in this area with the practical realization that the Section 9(a) bargaining representative must be free to readjust its internal organization in order to meet changing financial and contractual demands. The employees' bargaining representative has a responsibility to carry out its statutory responsibilities in the most effective way. Because of this responsibility, the bargaining representative must remain largely unfettered in its organizational quest for financial stability and aid in the negotiating process. Moreover, permitting amendment in this case is particularly consonant with the concept that affiliations are purely internal union reorganizations that do not result in dissolution of the existing bargaining representative.<sup>13</sup> Because affiliations do not engender a change in the essential identity of the incumbent representative, a question concerning representation is not raised requiring a Board-conducted election. Accordingly, the Board only requires that the proposed change be approved by a simple majority of the incumbent union's membership voting on the subject of affiliation.<sup>14</sup> As it is clear that a majority of the Intervenor's members voting on the question of affiliation assented to the affiliation with the Petitioner and, as we perceive no procedural impropriety in the conduct of the affiliation election,<sup>15</sup> we, contrary to the Regional Director,

<sup>9</sup> See *United Hydraulics Corporation*, 205 NLRB 62 (1973); *The Bunker Hill Company*, 197 NLRB 334 (1972); *Bedford Gear & Machine Products, Inc.*, 150 NLRB 1 (1964); *Gulf Oil Corporation*, 109 NLRB 861 (1954).

<sup>10</sup> In his decision, the Regional Director particularly noted that the "safeguards provided (in the affiliation election) were less than those of a Board conducted election." The Board, however, has consistently held that such elections in order to be valid need not measure up to the standards the Board demands for its own elections. As we stated in *Quemetco, Inc., a Subsidiary of RSR Corporation*, 226 NLRB 1398, 1399 (1976), "the strictures which [the Board] imposes on its own election proceedings are not generally applicable in proceedings to amend certification, or in proceedings [like] this involving [union] affiliation elections." As the affiliation election appears to have been conducted in accordance with minimal standards of due process and with reasonable efforts expended to preserve the secrecy of the ballot, we find no procedural basis for disregarding the results of that election. See *Amoco Production Company*, 239 NLRB 1195 (1979).

<sup>11</sup> Because the matter voted on concerned affiliation, the validity of the affiliation election is not affected by whether nonmember unit employees were accorded the opportunity to vote. See *Amoco Production Company, supra*. Member Jenkins does not subscribe to this footnote.

<sup>12</sup> See the cases cited at fn. 9 *supra*. Thus the Decision in *Mosler Safe* represents an exception to the usual 1-year rule enunciated in *Gulf Oil, supra*, and its progeny. While little more than a year had elapsed between the election and the affiliation in *Mosler Safe*, the Board noted that the particular circumstances of that case precluded approval of the requested amendment.

<sup>13</sup> *Amoco Production Company, supra*.

<sup>14</sup> *The Hamilton Tool Company, supra* at 574. Member Jenkins does not adopt this view.

<sup>15</sup> As discussed above, the Employer also argued that the petition in this case was barred by the current contract between the Employer and the Intervenor. In view of our finding that the petition does not raise a question concerning representation, we find no merit to the Employer's contract-bar argument.

Additionally, the Employer contends that the election procedures were not in strict accordance with the requirements of the Intervenor's constitution. Specifically, the Employer argues that the constitution does not provide for a vote on amending a certification and that the sergeant-at-arms did not distribute the election ballots as required by the constitution. As we have previously stated, "[s]trict adherence to the constitution is not the controlling factor in such cases: 'What is important is whether the employees (members) had proper opportunity to express their desires.'" *Newspapers, Inc.*, 210 NLRB 8, 9, fn. 3 (1974). As we have found the election to have been properly conducted, we find no merit to the Employer's argument.

grant the requested amendment of certification to reflect the name of Petitioner.

### ORDER

It is hereby ordered that the petition to amend certification filed by Local Union No. 304, Sheet Metal Workers International Association, AFL-CIO, be, and it hereby is, granted, and that the Certification of Representative issued in Case 25-RC-6512 to Furnace and Container Makers Association be amended by substituting the name of the Petitioner.

MEMBER PENELLO, dissenting:

Unlike my colleagues, I would not amend the certification in this case. For the reasons expressed in my recent dissent in part in *Providence Medical Center*,<sup>16</sup> I would apply the principles of *American Bridge*<sup>17</sup> to the facts herein and find that the proposed affiliation raises a question concerning representation which can only be resolved by a Board-conducted election.

The Intervenor herein, Furnace and Container Makers Association, is an independent association which has represented the production and maintenance employees of the Employer since it was certified by the Board in 1963. Only employees of the Employer are eligible to belong to the Association. At the time of the affiliation election there were approximately 160 unit employees. In 1975 the Sheet Metal Workers' International Association, with which affiliation is sought, reported a membership of 160,860 employees.<sup>18</sup>

Unlike the affiliation election cases in which I have recently expressed my views on this subject,<sup>19</sup> this

case does *not* involve a situation in which only members of the incumbent union were permitted to vote in the affiliation election. The record reveals that, pursuant to its "open voting" policy, all unit employees, regardless of membership in the Intervenor, received notice of, and were permitted to vote in, the affiliation election.

Under certain circumstances, this fact alone might persuade me to sanction the results of a privately conducted affiliation election.<sup>20</sup> However, this fact, standing alone, is not sufficient in the circumstances of *this* case to lead me to approve the affiliation election, for the election was not conducted under the auspices of the Board. I have repeatedly indicated that the affiliation of a small, independent local union with an international union affects a substantial change in the identity of the bargaining representative, such that a question concerning representation is raised which can only be resolved by a Board-conducted election.<sup>21</sup>

Since the affiliation of the Intervenor, representing 160 employees, with the Sheet Metal Workers' International Association, representing over 160,000 employees, would, in my opinion, result in a substantial change in the identity of the employees' bargaining representative, I cannot, in the absence of a Board-conducted election, approve the affiliation vote conducted privately herein. I would not, therefore, amend the certification to reflect the proposed affiliation.

1025 (1977), my dissenting opinion in *Amoco Production Company*, 239 NLRB 1195 (1979), and my dissent in part in *Providence Medical Center*, *supra*.

<sup>20</sup> As I noted in my dissent in part in *Providence Medical Center*, such circumstances would include "a change in designation of a local union, a change in affiliation from one international to another, and a change from one local to another within the same international." Those are situations in which the proposed affiliation would *not* result in a change in the bargaining representative's identity.

<sup>21</sup> In view of this finding, I find it unnecessary to reach and pass on the applicability of the principles of *Mosler Safe Company*, 210 NLRB 934 (1974), to the facts herein.

<sup>16</sup> 243 NLRB 714 (1979).

<sup>17</sup> *American Bridge Division, United States Steel Corporation v. N.L.R.B.*, 457 F.2d 660 (3d Cir. 1972).

<sup>18</sup> Directory of National Unions and Employee Associations 1975, published by the U.S. Department of Labor Bureau of Labor Statistics.

<sup>19</sup> See my concurring opinion in *Jasper Seating Company, Inc.*, 231 NLRB