O & T Warehousing Co., a Division of Bowline Corporation *and* AFL–CIO and/or its Appropriate Affiliate, Petitioner. Case 11–RC–4538

January 29, 1979

DECISION AND DIRECTION OF ELECTION

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on June 12, 1978, before Hearing Officer Ronald L. Yost. Following the close of the hearing, the Regional Director for Region 11 transferred this proceeding to the Board for decision. Thereafter, briefs were filed by the Employer and 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 authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudical error. They are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. At the hearing in this case, the Employer moved for dismissal of the petition on the ground that the Petitioner, AFL–CIO and/or its appropriate affiliate, is not a labor organization as defined in Section 2(5) of the National Labor Relations Act, as amended. The motion was referred to the Board for ruling.

In its brief to the Board, the Employer asserts that the petition bearing the name "AFL–CIO and/or its Appropriate Affiliate" designates neither the AFL–CIO nor a specific affiliate as the labor organization seeking representative status. Thus, the Employer contends that the employees do not know the identity of the prospective bargaining agent they are asked to vote for and, therefore, cannot select a representative of their choice. To buttress its contention, the Employer notes that, at the hearing, Petitioner admitted that it was uncertain what organization would appear on the ballot or, assuming Petitioner as currently designated won the election, whether an affiliated organization would be designated as exclusive bargaining representative.[1]

While Petitioner concedes the possibility that it may, upon certification, appoint an affiliated labor organization to assume the role of exclusive bargaining representative, it nevertheless argues that the petition should not be dismissed inasmuch as the Board has held that the AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act and that its designation may support a valid showing of interest.[2]

It is apparent from its brief herein and the above argument that Petitioner misperceives the issue in this case. Contrary to Petitioner's contention, the issue is not whether the AFL–CIO is a labor organization; rather, the issue is whether the designation "AFL–CIO and/or its Appropriate Affiliate" sufficiently identifies a labor organization to accord employees their Section 7 rights of selecting bargaining "representatives of their own choosing." We find that the designation fails to accord those rights and is, therefore, improper.

As noted, employees, pursuant to Section 7, are entitled to select the labor organization or organizations they desire to represent them for the purpose of bargaining collectively with their employer. That statutory right can only be meaningfully exercised if the employees are presented on the election ballot with the choice of a clearly identified labor organization. In the instant case, it is far from clear what labor organization or organizations are seeking representative status inasmuch as Petitioner's designation encompasses three possibilities: the AFL–CIO, the AFL–CIO and an affiliate, or an affiliate of the AFL–CIO.

While we would, of course, certify the AFL–CIO to represent the Employer's employees,[3] we perceive no basis for certifying "AFL–CIO and/or its Appropriate Affiliate" inasmuch as the affiliate is, as yet, unknown, and the prospective bargaining representatives are listed in the alternative as well as jointly.[4] Thus, under the current designation, if the employees select the Petitioner, they would, in effect, delegate to the AFL–CIO the authority to choose, in its discre-

[1] In response to the question how the Petitioner intends to appear on the ballot, the Petitioner's witness provided the following testimony:

> I am not sure at this point. It may be that we name an affiliate before the election . . . . or we may choose to represent them directly, or . . . . we may like to designate an affiliate after the election is over with . . . .

[2] See, e.g., *General Shoe Corporation*, 113 NLRB 905 (1955).

[3] See fn. 2, *supra*. It is, of course, beyond question that the AFL–CIO and its affiliates are labor organizations within the meaning of Sec. 2(5) of the Act, inasmuch as they exist, in whole or in part, for the purpose "of dealing with employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

[4] In some previous decision we have held that a parent federation such as the AFL or the CIO may file a petition on behalf of an after-designated labor organization. See, e.g., *Sherold Crystals, Inc.*, 104 NLRB 1072 (1953). However, for certification purposes, the designation must be made prior to the balloting and must appear on the ballot. Thus in *M. A. Norden Company, Inc.*, 159 NLRB 1730 (1966), the Board, in an amendment of certification case, refused to permit the AFL–CIO to substitute an affiliated labor organization when only the AFL–CIO appeared on the ballot and was certified.

tion, which entity would become the exclusive bargaining representative. Such a delegation would be, in our judgment, contrary to the concerns inherent in Sections 7 and 9(a) of the Act inasmuch as the ultimate right to select the actual bargaining representative would rest not with the employees, but with the AFL–CIO.

Accordingly, for the reasons set forth above, we find that the Petitioner, "AFL–CIO and/or its Appropriate Affiliate," cannot appear on the election ballot as currently designated. We will not, however, order dismissal of the petition herein.

It is well-established Board law that the showing of interest is an administrative matter not subject to litigation.[5] In the instant case, we are satisfied that Petitioner's showing is adequate to support the petition filed herein. As we stated in *General Dynamics Corporation*, 213 NLRB 851, 854 (1974):

> [T]he showing of interest evinces an underlying substantial employee intent to acquire a bargaining representative or, at the very least, an employee desire of being placed in a position to cast a ballot. The mere showing of interest is *prima facie* evidence thereof. We cannot assume, therefore, that these employee intents and desires have been blunted by the wording on the [authorization] cards.

Here, the employees, by signing authorization cards designating "AFL–CIO and/or its Appropriate Affiliate," have demonstrated an interest in representation by a labor organization within the designated class sufficient to justify acceptance of the showing of interest and direction of election. Accordingly, we will allow the petition to stand. However, we shall place only the AFL-CIO on the ballot at this time. If the AFL-CIO wishes to designate the name of the labor organization or organizations[6] it desires to appear on the ballot with it or in its place, it may do so within 10 days from the date of this direction.[7] The labor organization or organizations so designated must be among those described by the designation "AFL-CIO and/or its Appropriate Affiliate" and must satisfy the requirements of Section 2(5) of the Act.

3. We, therefore, find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and 2(7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including warehousemen, order pullers, saw operators, and crane operators at the Employer's Charlotte, North Carolina, facility; excluding officer clericals, guards, professional and supervisory employees as defined in the Act.

[Direction of Elections and *Exelsior* footnote omitted from publication.]

[5] *O. D. Jennings & Company*, 68 NLRB 516 (1946).

[6] Two or more labor organizations are permitted to act jointly as bargaining representative for a single group of employees. See *S. D. Warren Company*, 150 NLRB 288 (1964).

[7] If the AFL-CIO wishes not to appear on the ballot by itself, it may withdraw the petition without prejudice, provided it does so within 10 days from the date of this Decision.