

**Butler Manufacturing Company, Employer and
Butler Independent Union, Petitioner. Case
10-RC-7107**

September 1, 1967

**DECISION AND DIRECTION OF
ELECTION**

**BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer H. Carlton Bryan, Jr. A brief was filed by the Intervenor, Shopmen's Local Union No. 539 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case 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 prejudicial error. They are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Intervenor contends that the Petitioner is not a labor organization within the meaning of Section 2(5) of the Act.² It specifically alleges that the entity called the Butler Independent Union has never actually come into existence and that the Petitioner does not have the requisite intent and purpose of representing the Employer's employees for purposes of collective bargaining. It points out that the Petitioner does not have a constitution or bylaws, and collects no dues or initiation fees. Despite this lack of formality in its structure, it may still be a labor organization within the broad meaning given that phrase in Section 2(5).³ During the

hearing herein, the chairman of the organizing committee testified unequivocally that the Petitioner admits employees to membership, it was established for the purpose of representing the employees herein, and it intends to do so if certified. Accordingly, we find it is a labor organization within the meaning of Section 2(5) of the Act.⁴

The Intervenor contends further that the Petitioner does not intend to fulfill its bargaining obligation if certified, but to affiliate with another labor organization immediately after certification. However, it would be premature and inappropriate at this time to consider the possibility suggested by the Intervenor that this still uncertified independent union would affiliate with another labor organization if it should win an election. Correlative to the Board's power to certify labor organizations pursuant to Section 9(c) of the Act is its authority to police its certification.⁵ Further, if after certification there is a movement for affiliation with another labor organization, the Board has provided procedures through which to test the propriety of such an affiliation.⁶

3. 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 (7) of the Act.

4. As stipulated by the parties, the following employees of the Employer 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 employed at the Company's Birmingham, Alabama, plants but excluding superintendents, assistant superintendents, general foremen, foremen, assistant foremen, supervisors, guards, office janitors, time keepers, time clerks, clerks, office employees, sales or service representatives, engineers, draftsmen, nurses and inspectors, and employees engaged in erection or construction work.

[Direction of Election⁷ omitted from publication.]

¹ Local No 539 was permitted to intervene, without objection, on the basis of its current contractual interest in the employees involved herein.

² Although the parties did not stipulate that the Intervenor is a labor organization within the meaning of the Act, it is clear that it meets the statutory definition, as it has been bargaining with the Employer on behalf of the employees involved herein concerning wages, hours, and other working conditions and admits employees to membership.

³ See, e.g., *Stewart Die Casting Division (Bridgeport) of Stewart Warner Corporation*, 123 NLRB 447.

⁴ *Iowa Packing Company*, 125 NLRB 1408, fn. 3.

⁵ Cf. *Hughes Tool Company*, 147 NLRB 1573.

⁶ See, e.g., *Minnesota Mining and Manufacturing Company*, 144 NLRB 419.

⁷ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 10 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.