

In the Matter of BUNDY TUBING COMPANY and AMALGAMATED PLANT
PROTECTION LOCAL UNION No. 114, UAW-CIO

Case No. 7-R-1540.—Decided October 6, 1943

Beaumont, Smith and Harris, by Mr. Percy J. Donovan, of Detroit, Mich., for the Company.

Maurice Sugar and N. L. Smokler, by Mr. N. L. Smokler, of Detroit, Mich., for the Union.

Mr. William R. Cameron, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Amalgamated Plant Protection Local Union No. 114, UAW-CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Bundy Tubing Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Max Rotenberg, Trial Examiner. Said hearing was held at Detroit, Michigan, on September 10, 1943. The Company and the Union appeared, participated and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bundy Tubing Company, a corporation organized and existing by virtue of the laws of one of the States of the United States, has its principal office and place of business in the city of Detroit, Michigan,

52 N. L. R. B., No. 202.

where it owns and operates two manufacturing plants engaged entirely in the manufacturing of war materials for the United States Government. During the year 1942 the Company used raw materials amounting in value to more than \$4,500,000, of which approximately 95 percent was purchased and shipped from points outside the State of Michigan. During the same period, the Company sold finished products amounting in value to more than \$10,500,000, of which approximately 50 percent was shipped to points outside the State of Michigan.

II. THE ORGANIZATION INVOLVED

Amalgamated Plant Protection Local Union No. 114, UAW-CIO is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated August 5, 1943, the Union notified the Company that it claimed to represent a majority of the plant-protection employees at the Company's plants, and requested a collective bargaining conference. The Company replied, by letter of August 11, 1943, that because of a provision in its contract with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, and its Local Union No. 369, whereby the said International and its Local No. 369 agreed not to solicit, or accept for membership, plant-protection employees, it became necessary for the Company to reject the Union's request.

The Company, at the hearing, denied that a question concerning the representation of the Company's plant-protection employees has arisen, and contends that the Union is estopped from seeking to represent the plant-protection employees, by reason of the contract provision above mentioned. For reasons which we have set forth in similar cases cited below, we find that the Company's contention is without merit, and that the contract does not constitute a bar to an investigation to determine representatives in this proceeding.¹

A statement to the Regional Director, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.²

¹ See *Matter of Packard Motor Car Company*, 47 N. L. R. B. 932; *Matter of Briggs Manufacturing Company*, 49 N. L. R. B. 57; *Matter of The Murray Corporation of America*, 49 N. L. R. B. 925; *Matter of Federal Motor Truck Company*, 50 N. L. R. B. 214; *Matter of Arvey Corporation*, 50 N. L. R. B. 999

² The Regional Director reported that the Union had submitted 12 authorization cards, dated from July 31 to August 4, 1943, all of which bore the apparently genuine original signatures of persons whose names were on a list of the Company's employees submitted by the Company's attorney on August 17, 1943. Said list contained the names of 19 persons.

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union contends that all plant-protection employees of the Company, in its plants both at Hern Avenue and at East Nine Mile Road in Detroit, excluding the chief and assistant chief, constitute an appropriate bargaining unit. The Company contends that a unit composed of its plant-protection employees is not an appropriate one. It asserts, in support of its contention that, inasmuch as these employees have been sworn in as members of the auxiliary military police, and are subject to certain control and discipline by officers of the armed forces of the United States, they are not employees within the meaning of the Act. It further asserts that their duties as plant-protection employees are such that they constitute part of the Company's supervision or are allied with management; and that certification of a bargaining representative for such employees would not effectuate the policies of the Act, would be contrary to public policy, and would be inconsistent with the war effort. The record discloses that their duties are those customarily assigned to plant-protection employees, i. e., guarding the entrances to the plant, observing the actions of employees and others on the premises, suppressing disorders, caring for certain plant equipment, and generally guarding the property of the Company and of the Government against fire, theft and sabotage. We have heretofore held that plant-protection employees, having similar duties, may constitute a unit appropriate for the purposes of collective bargaining.³ No sufficient evidence appears in the present case to justify a departure from our established policy.

We find that all plant-protection employees at the Hern Avenue and East Nine Mile Road plants of the Company, excluding the chief, assistant chief, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

³ See *Matter of Frigidaire Division, General Motors Corporation*, 39 N. L. R. B. 1108; *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881; *Matter of The Maytag Company*, 44 N. L. R. B. 1265; *Matter of McCormick Works, International Harvester Company*, 44 N. L. R. B. 1332; *Matter of Curtiss-Wright Corporation*, 45 N. L. R. B., 1268; *Matter of Jones and Laughlin Steel Company, Otis Works*, 49 N. L. R. B. 390; *Matter of Federal Motor Truck Company*, 50 N. L. R. B. 214; *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Hudson Motor Car Company*, 52 N. L. R. B. 399.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Bundy Tubing Company, Detroit, Michigan, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Amalgamated Plant Protection Local Union No. 114, UAW-CIO, for the purposes of collective bargaining.