

In the Matter of PANGBORN CORPORATION and U. A. W.-C. I. O.

Case No. 5-R-1367.—Decided October 25, 1943

Mr. Douglas L. Hatch, of Washington, D. C., and *Mr. P. J. Potter*, of Hagerstown, Md., for the Company.

Messrs. Frank J. Bender and *E. J. Moran*, of Baltimore, Md., for the C. I. O.

Mr. Ernest C. Carlson, of Jamestown, N. Y., and *Mr. V. S. Gauthier*, of Toledo, Ohio, for the I. A. M.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by U. A. W.-C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Pangborn Corporation, Hagerstown, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Anthony J. Molina, Trial Examiner. Said hearing was held at Hagerstown, Maryland, on September 24, 1943. The Company, the C. I. O., and International Association of Machinists, affiliated with the A. F. of L.,¹ herein called the I. A. M., appeared and participated. All parties 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 an opportunity to file briefs with the Board.

¹ We take notice that the I. A. M. became an affiliate of the A. F. L. by action taken at the A. F. of L. Convention October 7, 1943.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Pangborn Corporation is a Maryland corporation, engaged in the manufacture and distribution of blast-cleaning and dust-collecting equipment at its plant in Hagerstown, Maryland. Approximately 95 percent of the raw materials used, consisting principally of sheet steel and plate, hot and cold rolled bars, structural shapes, pig iron, coke, scrap iron, sateen cloth, galvanized screen cloth and lumber, are purchased outside the State of Maryland. The Company manufactures finished products valued annually at approximately \$3,500,000, of which approximately 98 percent is sold and delivered outside the State of Maryland. The Company's products are presently used in the prosecution of the war.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATIONS INVOLVED

U. A. W.-C. I. O. (United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations) is a labor organization admitting to membership employees of the Company.

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

As a result of a Board election held May 8, 1941, the I. A. M. was, on June 2, 1941, certified as the exclusive bargaining representative of the Company's maintenance and production employees.³ The latest contract executed between the Company and the I. A. M., dated September 25, 1942, contained a 30-day automatic renewal clause. The Company and the I. A. M. contend that as no notice to *terminate* was given prior to August 25, 1943, the contract is still in force and effect and is a bar to a present determination of representatives. It is undisputed that the C. I. O. notified the Company on August 16, 1943, that it claimed to represent a majority of the Company's employees and filed its petition on August 23, 1943, both prior to the automatic renewal date of the contract, and that the I. A. M. on August 25 re-

² See *Matter of Pangborn Corporation*, 31 N. L. R. B. 501.

³ *Matter of Pangborn Corporation*, 32 N. L. R. B. 266.

requested conferences under the termination clause of its contract, for the purpose of modifying the contract. The contention that the contract is a bar, therefore, has no merit.⁴

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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 parties stipulated that all production and maintenance employees of the Company, including employees in the shipping and receiving department, but excluding all clerical employees, all engineering employees, all plant-protection employees and supervisory employees, constitute an appropriate unit. The present contract covers the following categories about whom the parties disagree:

(1) "*Supervisors.*" There are 30 employees who are termed "supervisors." They give the work out to the men, direct and instruct them, and see that the work is properly performed. They take no part in actual production except for purposes of getting a job started or illustrating for a new man. Their recommendations are given weight in matters of hiring, discharge, and discipline. The I. A. M. contends that these employees should be included in the unit because they have been covered by its contracts since 1941. We find no merit in this contention. As they are clearly supervisory employees, we shall exclude them from the unit.

(2) *Janitors.* There are one shop janitor and two office janitors employed by the Company. They clean the offices and the rest rooms. The only difference between the shop janitor and the office janitors is the locale of their work. There are five "sweepers" who keep the production room and its environs clean. The I. A. M. contract did not cover the office janitors. The I. A. M. and the Company would include the shop janitor and the sweepers but would exclude the office janitors. The C. I. O. would include all janitors. We perceive no basis for differentiation among the janitors. We shall include all janitors and sweepers in the unit.

⁴ See *Matter of Groveton Papers Co.*, 52 N. L. R. B. 1256; *Matter of James Doaks, Jr. Company*, 52 N. L. R. B. 378.

⁵ The Field Examiner reported that the C. I. O. submitted 338 designation cards all of which bore apparently genuine original signatures; that the names of 320 persons appearing on the cards were listed on the Company's pay roll of September 1, 1943, which contained the names of 590 employees in the appropriate unit. The I. A. M. relies upon its contract to show its interest.

(3) *Shop clerks and timekeepers* clock the time that each job takes and turn in to the office the necessary data for computing costs. They work under the direction and control of the production foremen of the departments to which they are assigned. They help the foreman with his paper work, and in some departments they keep a record of materials used. There are 11 of these shop clerk-timekeepers and 3 clerks, termed expediters, whose duty it is to follow emergency jobs through the plant and see that they are quickly taken care of. The unions would include and the Company would exclude these 14 clerks. We find that their work is closely allied to production and shall include them in the unit.

(4) *Experimental employees* test materials and build sample machines. As the operation of the experimental department was but recently resumed, the status of these employees under the I. A. M. contract is not clear. The Company admits that their work is substantially the same as production employees but would exclude them as confidential employees. The confidences which these employees share have no relation to labor relations. We shall include experimental employees in the unit.

(5) *Inspectors*. The Company would exclude inspectors but adduced no evidence to support its attitude. We perceive no reason for their exclusion.

We find that all production and maintenance employees of the Company including employees in the shipping and receiving department, janitors, sweepers, shop clerks and timekeepers, expediters, experimental employees, and inspectors, but excluding all clerical, engineering, and plant-protection employees, "supervisors" 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.

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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The I. A. M. has requested that its name appear on the ballot as "Lodge 1163, I. A. of M." The request is hereby granted.

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 Pangborn Corporation, Hagerstown, Maryland, 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 Fifth 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 those employees who have since quit or been discharged for cause and who have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by U. A. W.-C. I. O., or by Lodge 1163, I. A. of M., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.