

In the Matter of BLACK RIVER FOUNDRIES, DIVISION OF BOHN ALUMINUM & BRASS CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

Case No. 7-R-1512.—Decided October 30, 1943

Messrs. Maurice Sugar and N. L. Smockler, by Mr. N. L. Smockler, of Detroit, Mich., and Mr. Robert S. Feldman, of Benton Harbor, Mich., for the C. I. O.

*Mr. William J. Hover, of South Haven, Mich., for the Independent.
Mr. David V. Easton, of counsel to the Board.*

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Black River Foundries, Division of Bohn Aluminum & Brass Corporation, South Haven, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frederick P. Mett, Trial Examiner. Said hearing was held at South Haven, Michigan, on September 28, 1943. The C. I. O. and the Black River Independent Union, herein called the Independent, appeared,¹ 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 an opportunity to file briefs with the Board.

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

¹ The Company made no formal appearance at the hearing herein.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bohn Aluminum & Brass Corporation is a Michigan corporation with its principal office located in Detroit, Michigan. It is engaged in the operation of several plants, among which is the Black River Foundries Division of the Company, with which we are concerned herein. The Black River plant is engaged in the manufacture of magnesium alloy aircraft engine castings. In the month of August 1943, the Company purchased raw materials for use in connection with its Black River plant valued at approximately \$20,000, all of which were shipped to said plant from points outside the State of Michigan. The Company estimated that its annual purchases of raw materials for use in connection with the Black River plant will total approximately \$200,000 annually, all of which will be shipped to said plant from points outside the State of Michigan. During the month of August 1943, the value of the finished products manufactured by the Company at the Black River plant approximated \$340,000, of which about 97 percent was shipped from said plant to points outside the State of Michigan; the Company estimated that the average monthly value of the finished products manufactured at said plant approximates \$300,000, of which about 97 percent is shipped to points outside the State of Michigan. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Black River Independent Union is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 6, 1942, the C. I. O. filed a petition, seeking to represent the production and maintenance employees of the Company.² Thereafter, a consent election agreement was executed by the Board, the Company, the C. I. O., and the Independent. Pursuant to this agreement an election was conducted on February 18, 1942, among the 115 production and maintenance employees then engaged by the Company, which was won by the Independent. Subsequently, on March 26, 1942, the Company and the Independent entered into a

² Case No. 7-R-935.

collective bargaining agreement covering these employees. This agreement contained a modified closed-shop clause which provided that "the Company agrees that all present employees shall join the [Independent] by April 15, 1942, as a condition of their continued employment, and all new employees must join the [Independent] within sixty (60) days after date of employment, or they shall be discharged." Between February and December 1942 the number of employees of the Company decreased to approximately 88.

Commencing in November and continuing through January 1943, the Black River plant underwent a process of "reconstruction" preparatory to manufacturing magnesium alloy aircraft engine parts not previously manufactured by it. By January 17, 1943, the number of employees had increased to approximately 123.

On December 18, 1943, the Company anticipating an increase in personnel due to the change in production, informally presented to representatives of the Independent details of a proposed wage upgrading program. Thereafter, counsel for the Independent drew up a proposed contract which was submitted to the membership at a meeting on January 10, 1943. This contract was rejected by the membership present at that meeting. At the same meeting, representatives of both the American Federation of Labor and the C. I. O. addressed the membership. At the conclusion of these talks, a motion was made and carried that the Independent be dissolved. At this point many of the members left the meeting. A subsequent motion that the membership of the Independent be affiliated with the C. I. O. was made and carried by those members of the Independent who remained at the meeting.

On January 12, 1943, the C. I. O. contacted the Company by telephone and requested recognition as the bargaining representative of the production and maintenance employees. The Company indicated at this time that it was unable to give an answer to the request. On the same day, the C. I. O. made a formal written request for recognition, to which the Company made no reply.

Between January 10 and January 15, 1943, the C. I. O. conducted an intensive organizational campaign among the Company's employees, and, on January 18, filed a petition with the Board.³

As indicated above, the entire membership of the Independent did not agree with the action taken at the meeting of January 10, and on or about January 15, several of the dissenting members engaged new counsel for the Independent.⁴ On January 16, this group held a

³ Case No. 7-R-1284.

⁴ After the meeting of January 10, the original Independent was apparently split into two groups, one of which had voted to dissolve and affiliate with the C. I. O., and the other which decided to continue the organization. It is the latter group which we will refer to hereinafter as the Independent.

meeting at which the Independent agreed to accept the upgrading program of the Company for a trial period of 6 months. Thereafter, the counsel for the Independent contacted the Company, and on January 19, a supplemental agreement to the contract of March 26, 1942, was executed between the Company and the Independent. This Agreement continued the term of the original contract until March 1, 1944, making certain modifications to the original sections, and providing for the institution of the upgrading program. The supplemental agreement also changed the wording of the modified closed-shop provision in the contract of March 26, 1942. However, all employees were still required, as a condition of employment, to "be and remain members in good standing of the [Independent]," and new employees were required to join within sixty (60) days of employment.

On April 9, 1943, the C. I. O. filed with the Regional Director a request for the withdrawal, without prejudice, of its petition docketed on January 18. This request was granted, and shortly thereafter, the C. I. O. filed unfair labor practice charges against the Company.⁵

Subsequent to January 18, the C. I. O. continued its organizational activities among the Company's employees, and on July 9, it filed the petition herein, which stated that "this petition is filed as a reinstatement of the original petition for certification filed January 15, 1943." On July 13, after being advised that a petition for certification would not be entertained while an unfair labor practice charge was still pending, the C. I. O. requested withdrawal of the charges previously filed. This request was approved by the Regional Director on July 16, 1943.

The Independent contends that its contract of March 26, 1942, as amended and supplemented by the agreement of January 19, 1943, constitutes a bar to the instant proceeding. We do not agree. Although under other circumstances we might be constrained to accord weight to the contention of the Independent, the primary factors confronting us in this case are that at the time the Independent and the Company executed the supplemental agreement of January 19, the Company anticipated a substantial increase in personnel,⁶ and that both contracting parties were aware of the claims of the C. I. O. Furthermore it appears that at the time of the execution of the supplemental agreement of January 19, the Company had employed only approximately one-fourth of its present total personnel. We have

⁵ Case No 7-C1162. The Company was charged with having violated Section 8 (1) and (2) of the Act

⁶ As indicated above, the Company employed approximately 123 persons on January 17. By September 12 (as hereinafter disclosed by the report of the Regional Director. See footnote 8, *infra*.) the Company employed 591 production and maintenance workers. The record discloses that the Company anticipated that this complement will remain fairly constant.

recently held that a contract made by a Union which was certified at a time when approximately one-third of the anticipated personnel was employed was not a bar to a subsequent determination of representatives.⁷ We so find in the instant proceedings.⁸

A statement of the Regional Director introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁹

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

Substantially in accordance with an agreement of the parties at the hearing, we find that all production and maintenance employees of the Company at its Black River Foundries, excluding foremen, assistant foremen, group leaders, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, office employees, technical employees,¹⁰ checkers, watchmen, and plant-protection employees, 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 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

⁷ *Matter of Aluminum Company of America, Mead Aluminum Plant*, 49 N. L. R. B. 1431.

⁸ See *Matter of Aluminum Company of America*, 51 N. L. R. B. 1295.

⁹ The Regional Director reported that the C. I. O. submitted 218 application cards, of which 140 bore the apparently genuine and original signatures of persons whose names appeared on the pay roll of the Company of September 12, 1943. This pay roll contained the names of 591 employees in the appropriate unit. In view of the closed-shop provisions in both the contract of March 26, 1942, and the supplemental agreement of January 19, 1943, the showing of the C. I. O. is substantial. See *Matter of Oregon Plywood Company*, 33 N. L. R. B. 1234, *Matter of Northern States Power Company of Wisconsin*, 37 N. L. R. B. 991.

¹⁰ Excluded by the contract of March 26, 1942, between the Company and the Independent. In the absence of sufficient reason to the contrary, these employees are not properly included within a unit of production and maintenance employees. See *Matter of Western Cartridge Company*, 46 N. L. R. B. 948.

Act, and pursuant to Article III, Section 9, of the 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 Black River Foundries, Division of Bohn Aluminum & Brass Corporation, South Haven, 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, or by Black River Independent Union, 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.