

In the Matter of SMITH COMMERCIAL BODY WORKS, INC. and LOCAL 905, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

*Case No. 18-R-854.—Decided December 28, 1943*

*Messrs. L. U. Stambaugh and Donald A. Smith, both of Fargo, N. D., for the Company.*

*Messrs. Carl A. Hallquist and Edward J. Murnane, both of Minneapolis, Minn., for the Union.*

*Mr. David V. Easton, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 905, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Smith Commercial Body Works, Inc., Fargo, North Dakota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Fargo, North Dakota, on November 16, 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 an 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

Smith Commercial Body Works, Inc., a North Dakota corporation with its principal office and place of business located at Fargo, North Dakota, is normally engaged in the manufacture and sale of truck and  
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bus equipment and bodies. At the present time, however, due to conditions caused by the national emergency the Company has altered its operations to a large extent, and is now engaged in the production of ammunition crates and the servicing, maintaining, and repairing of rolling equipment. During the year 1942, the Company's purchases of raw material totaled in value \$933,282.46 of which approximately 58 percent was received from points outside the State of North Dakota. During the same period, the sales of the Company totaled in value \$1,204,308.06, of which approximately 7 percent was made to points outside the State of North Dakota. The Company's purchases of raw materials during the year 1943 is estimated at 40 to 50 percent less than that of 1942 and its interstate purchases are estimated at 40 to 45 percent of this figure. The Company's sales during the year 1943 are estimated at approximately one-half the value of those of 1942, but the volume of interstate sales is estimated at 14 percent of the total. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

Local 905, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On or about October 1, 1943, the Union requested recognition as the bargaining representative of the Company's production and maintenance employees. The Company did not reply to this request.

A statement of the Regional Director indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>1</sup>

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 seeks a unit comprised of all production, maintenance, and yard employees of the Company, including employees working on portable saw mills under an independent contractor, watchmen,

<sup>1</sup> The Regional Director reported that the Union submitted 32 applications of which 31 bore apparently genuine original signatures; of these 31, 27 contained the names of persons whose names appear upon the Company's pay roll for the period ending October 9, 1943. Said pay roll contained 36 names. The record reveals that, as of the date of the hearing, there are approximately 81 employees in the unit hereinafter found appropriate but that this number will decrease to approximately 73.

parts department employees, and working foremen, but excluding office employees, outside salesmen, parts department manager, foremen, and all supervisory employees with authority to hire or discharge. While not specifically disagreeing with the foregoing group, the Company contends that no election should be conducted at the present time inasmuch as the Company is not engaged in its normal operations; it further contends that employees in its crate department, who are concerned with the production of ordnance crates, should not be included within the same unit as its main plant employees, whose duties are confined to the serving of rolling stock.

We do not agree with either contention. The fact that the national emergency has prevented the Company from pursuing its normal operations is no reason for denying its employees the benefits of collective bargaining. Nor is the diverse nature of the respective work performed by crate department and the main plant employees sufficient to warrant their separation. The record discloses that both groups are centrally controlled under a common administration; that all accounting and paper work is performed at a common office; and that the employees of both are hired by the same personnel manager. Furthermore, both the crate department and the main plant are serviced by the same protective staff; the tools and supplies of both are kept by a common parts department; and there is evidence that the foreman of the crate department exercises authority over employees in the main plant. Under these circumstances, we are of the opinion that the interests of both groups of employees can best be served by their inclusion within a single unit.

The Company employs an individual in the crate department whom it designates as assistant or working foreman. This hourly paid employee is in charge of the night shift, and has authority to make recommendations which would affect the status of employees working under him. While his position is of a temporary nature, and will be eliminated when the necessity for a night shift no longer exists, we are of the opinion that at the present time, the working foreman exercises powers sufficiently supervisory in nature to warrant his exclusion from the industrial unit. We shall therefore exclude him.

Included on the Company's pay roll is a group of 12 individuals who are engaged in milling operations on the Company's property. Although they work under the direct supervision of an independent contractor, they are hired through the Company's personnel department, punch the same time clock as regular employees of the Company, and are included with them for purposes of Workmen's Compensation. We are of the opinion that these persons are employees of the Company, and under normal circumstances, should be entitled to a voice in the selection of a bargaining representative for Com-

pany employees. However, the record discloses that these employees were hired for a specific duty of a temporary nature; that they were aware of this at the time they accepted employment, and that they have no reasonable expectation of being retained by the Company at the conclusion of the work for which they were engaged. Under these circumstances, we are of the opinion that their employment interests are not sufficient to warrant their inclusion with a unit of regular employees of the Company. We shall therefore exclude them.<sup>2</sup>

We find that all production, maintenance, and yard employees of the Company, including watchmen, assistant in the parts department, but excluding office employees, temporary milling employees, outside salesmen, parts department manager, foremen, assistant foremen, 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 hereinbefore described. The Union contends that eligibility to vote in said election be determined as of November 15, 1943. However, we are of the opinion that the reasons advanced in support thereof are insufficient to warrant a departure from our customary practice, and shall direct that the employees of the Company eligible to vote in the election shall be those 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.<sup>3</sup>

#### 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Smith Commercial Body Works, Inc., Fargo, North Dakota, an election by secret

<sup>2</sup> See *Matter of Cardinals Macaroni Mfg Co., Inc.*, 29 N. L. R. B. 1145.

<sup>3</sup> The Union requested that it be designated on the ballot as "United Automobile Workers of America, UAW-CIO, Local 905." This request is hereby granted.

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 Eighteenth 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 or not they desire to be represented by United Automobile Workers of America, UAW-CIO, Local 905, for the purposes of collective bargaining.