In the Matter of DETROIT MICHIGAN STOVE COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO, LOCAL 771

Cases Nos. 7–R–1581 and 7–R–1619, respectively.—Decided January 11, 1944

Hill, Hamblen, Essery & Lewis, by *Mr. Richard A. Forsyth*, of Detroit, Mich., and *Mr. John A. Fry*, of Detroit, Mich, for the Company.

Messrs. Maurice Sugar and *Jack N. Turner*, of Detroit, Mich., for the C. I. O.

Mr. M. D. Smith, of Cincinnati, Ohio, for the A. F. of L.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, Local 771, herein called the C. I. O., alleging that questions affecting commerce had arisen concerning the representation of employees of plants 1 and 2, respectively, of Detroit Michigan Stove Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Detroit, Michigan, on November 22, 1943. The Company, the C. I. O., and International Molders and Foundry Workers Union of North America, affiliated with the A. F. of L., herein called the A. F. of L., 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 the 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

Detroit Michigan Stove Company, a Michigan corporation, has its principal office and place of business in Detroit, Michigan, where it operates two plants involved in these proceedings. In one of these plants the Company manufactures automobile fenders and stoves for the United States Government. In the other plant it is engaged in the heat treating and fabricating of armor plate, also for the United States Government.

During the fiscal year ending July 1, 1942, the Company used at its No. 1 plant raw materials valued at approximately $2,284,000, of which approximately 90 percent was obtained from sources outside the State of Michigan. During the same period the Company manufactured at its No. 1 plant finished products of the value of approximately $5,637,000, of which 82 percent was sold and shipped to points in States other than the State of Michigan. During the period from September 1, 1942, to February 1, 1943, the Company used at its No. 2 plant raw materials valued at approximately $930,000, of which approximately 90 percent was obtained from sources outside the State of Michigan. During the same period, the Company manufactured at its No. 2 plant finished products of the value of approximately $1,723,000, all of which were sold and shipped to points in States other than the State of Michigan.

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

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, Local 771, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

International Molders and Foundry Workers Union of North America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

On September 22, 1943, the C. I. O., claiming to represent a majority of the production and maintenance employees at the Company's No. 2 plant, requested that the Company recognize it as exclusive bargaining representative and also filed with the Board a petition for investigation and certification of representatives for the employees of the said plant. On September 30, 1943, the Company replied to the

C. I. O.'s request for recognition as bargaining representative for the employees of plant No. 2 stating that it could not consent to an election upon the ground that it had an existing bargaining agreement with the A. F. of L.[1] Prior thereto, on September 27, 1943, the A. F. of L. addressed to the Company a letter in which it stated that it had received a notice from the Board concerning the petition filed with respect to plant No. 2 and requested that the Company arrange a conference for the purpose of negotiating a new agreement with regard to plant No. 1.

Pursuant to this request, representatives of the Company and A. F. of L. met in conference on October 8, 1943, and on the following day executed an exclusive bargaining agreement covering the employees of plant No. 1.[2] Thereafter, on October 22, 1943, the C. I. O. filed its petition for investigation and certification of representatives with respect to the employees of plant No. 1 hereinabove referred to. The Company and the A. F. of L. contend that the several contracts constitute a bar to the present proceedings as affecting both plants of the Company.

With respect to the employees of plant No. 2, the contention is clearly without merit. Both the claim of the C. I. O. to majority representation and the filing of its petition for investigation and certification of representatives occurred within a reasonable time prior to the expiration date of the contract relevant thereto and before the effective date for the automatic renewal of such contract. We find, accordingly, that the contract in question is not a bar to an investigation and certification of representatives with respect to the employees of plant No. 2.

As regards the employees of plant No. 1, it appears that as of the date when the Company and the A. F. of L. executed their new agreement with respect to this plant, the C. I. O. had not then formally claimed to represent a majority of the employees within the group covered by the agreement between the Company and the A. F. of L. We are of the opinion, however, that the premature extension of a contract of reasonable duration for another of like period should not operate as a bar to a claim of representation made prior to the expiration date of the extended contract.

As we have recently stated in *Matter of Memphis Furniture Co.:*[3]

> Were we to hold that the parties to a collective bargaining agreement * * * could forestall a petition for investigation

[1] The agreement which covered both plants of the Company had been in existence since December 23, 1942, and was of 1-year duration subject to automatic renewal in the absence of 30 days' notice given prior to the date of expiration.

[2] The new agreement superseded the then existing agreement so far as plant No 1 was concerned and continued the contractual relations of the parties until December 23, 1944, with a provision for automatic renewal similar to that in the preceding agreement.

[3] See *Matter of Memphis Furniture Co.*, 51 N. L. R. B. 1447.

and certification of representatives by entering into a supplemental agreement modifying the contract in advance of the date fixed for reopening negotiations, the right of the employees to seek a change of representatives after the lapse of a reasonable time might be defeated. So to hold would require of employees, desiring to change representatives, acceleration of organization activities so that they would be ready to assert a claim of majority representation at any time the contracting parties might elect to discuss modification of the existing agreement, thus leading to dissatisfaction and unrest under the existing agreement instead of stabilized labor relations.

In accordance with the foregoing principle, we find that the agreement of October 9 does not operate as a bar; to hold otherwise would unreasonably impede the exercise by the employees of their right to select a new bargaining representative if they so desire. Since the original contract of December 23, 1942, is no longer operative with respect to plant No. 1, we find that neither contract constitutes a bar to a present investigation and determination of representatives.

A statement of the Acting Regional Director, introduced in evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the units hereinafter found appropriate.[4]

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

IV. THE APPROPRIATE UNITS

The parties stipulated and we find that (1) all production and maintenance employees employed at the Company's No. 1 plant, excluding supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, administrative, office, salaried, and plant-protection employees, and (2) all production and maintenance employees employed at the Company's No. 2 plant, excluding

[4] The Acting Regional Director reported that the C. I. O. had submitted, in the proceeding relating to plant No. 1 (7–R–1619), 62 application for membership cards of which 1 was dated in March 1943, 24 in October 1943, and 37 undated; that of the 62 cards, 57 bore the apparently genuine original signatures of persons whose names are on the Company's pay roll of October 23, 1943, containing 110 names within the claimed appropriate unit.

The Acting Regional Director further reported that the C. I. O. had submitted, in the proceeding relating to plant No. 2 (7–R–1581), 81 application for membership cards of which 78 were dated in September 1943 with 3 undated; that of the 81 cards, 76 bore the apparently genuine original signatures of persons whose names are on the Company's pay roll of October 23, 1943, containing 142 names in the claimed appropriate unit.

The A. F. of L. made no showing of representation with respect to either plant but relied entirely upon its contracts with the Company.

supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, administrative, office, salaried, and plant-protection employees, constitute separate units 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 questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

The A. F. of L. has requested that its name be omitted from the ballot in any election affecting either plant of the Company. The request is hereby granted.

DIRECTION OF ELECTIONS

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 Detroit Michigan Stove Company, Detroit, Michigan, separate elections 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 units 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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, Local 771, for the purposes of collective bargaining.