

In the Matter of AUTOMATIC INSTRUMENT COMPANY and UNITED
FURNITURE WORKERS OF AMERICA, CIO, LOCAL No. 415

Case No. 7-R-1545.—Decided January 11, 1944

*Messrs. Stephen F. Dunn and A. L. Shaw, of Grand Rapids, Mich.,
for the Company.*

Mr. Russell Bogart, of Grand Rapids, Mich., for the CIO.

*Mr. Alexander E. Sullivan, of Grand Rapids, Mich., as an in-
terested party.*

Mr. Wallace E. Royster, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Furniture Workers of America, CIO, Local No. 415, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Automatic Instrument Company, Grand Rapids, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice¹ before Robert J. Wiener, Trial Examiner. Said hearing was held at Grand Rapids, Michigan, on November 24, 1943. The Company, the CIO, and Alexander E. Sullivan² 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.

¹ Although duly served with Notice of Hearing, Metal Specialties Workers' Union neither appeared at the hearing nor authorized a representative to appear in its behalf

² Sullivan moved to intervene at the opening of the hearing and pending ruling on his motion participated fully. At the close of the hearing, the Trial Examiner denied the motion to intervene. For reasons appearing in Section III, *infra*, the ruling of the Trial Examiner is sustained.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Automatic Instrument Company is engaged at Grand Rapids, Michigan, in the manufacture of aviation instruments and precision aircraft controls and parts. The Company expends from \$15,000 to \$20,000 monthly in the purchase of raw materials of which approximately 60 percent is shipped to the plant from points outside Michigan. The value of the Company's monthly production ranges from \$75,000 to \$80,000, of which approximately 75 percent is shipped to points outside Michigan. The Company does not contest the jurisdiction of the Board and we find that its operations affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Furniture Workers of America, Local No. 415, is a labor organization affiliated with the Congress of Industrial Organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On May 19, 1941, the terms and conditions of a bargaining agreement covering the production and maintenance employees of the Company were incorporated in a written contract signed by the Company and Metal Specialties Workers' Union, herein called the MSW. The initial 6-month term of the contract expired November 19, 1941, but since neither party gave notice of termination 60 days prior to that date, it was automatically renewed, in accordance with its terms, for a year. Similarly on November 19, 1942, and November 19, 1943, no notice of termination having been given, the contract was twice again automatically renewed for an additional year. MSW was a labor organization incorporated under the laws of Michigan but appears to have submitted a Certificate of Dissolution to the Michigan Corporation and Securities Commission under date of September 24, 1943. It was testified at the hearing that MSW is in the process of disbanding and that its membership has voted to affiliate with the CIO. The Company has met recently with the MSW grievance committee but it appears that their discussions concerned only matters long in the process of settlement. Since, as noted above, the MSW has apparently disclaimed interest in this proceeding, and since, as appears below, the CIO gave timely notice of its claim to represent the employees concerned, we find that the MSW contract constitutes no bar to this proceeding.

Alexander E. Sullivan moved to intervene at the hearing as representative of certain employees of the Company. Sullivan introduced

into evidence a petition bearing 53 apparently valid signatures below the following caption :

We, the undersigned employees of the Automatic Instrument Company ask the National Labor Relations Board *for a place on the ballot for an independent union* in any election taking place in this factory located at 1500 Union Avenue, S. E., Grand Rapids, Michigan, to select a bargaining agency: [*Italics supplied*]

Sullivan concedes that the signatories to the petition form no organization nor does it appear that he is attempting to form one. At another point in the hearing, he testified that his appearance at the hearing and the introduction of the petition was with the sole design of gaining the rejection of the CIO at the polls. We customarily accord a place on the ballot to any labor organization, if it so desires, when it has indicated that it represents employees in the appropriate unit. But the record here shows and we find that Sullivan represents no such organization, and that neither he nor the signatories to the petition profess allegiance to any labor organization seeking to represent employees in matters of collective bargaining. Under these circumstances, we shall not accord Sullivan a place on the ballot.³

It was stipulated at the hearing that prior to August 13, 1943, the CIO requested recognition of the Company as bargaining representative for the employees and that the Company refused such recognition.

A statement of the Acting Regional Director introduced into evidence at the hearing indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 Company and the CIO are in substantial agreement with respect to the appropriate unit and their agreement appears to encompass the same unit as that represented by the MSW under its contract. The CIO would exclude, however, and the Company include 7 skilled part-time employees who work regularly 20 to 35 hours each week, but who also have regular full-time employment with another employer. Their employment with the Company is stable, apparently, for the duration of the war and their interest in wages and conditions of employment is therefore substantial. We find no

³ Cf. *Matter of Tabardrey Manufacturing Co.*, 51 N. L. R. B. 246; *Matter of The Globe Brick Company*, 51 N. L. R. B. 1096.

⁴ The Acting Regional Director stated that the CIO submitted 45 application for membership cards, dated in July and August 1943. All cards bore the apparently genuine original signatures of persons whose names appear on the Company's pay roll of August 12, 1943. There are approximately 90 employees within the appropriate unit.

valid reason to exclude them from the unit.⁵ Accordingly, we find that all production and maintenance employees of the Company including regular part-time workers and non-militarized watchmen, but excluding militarized plant guards, clerical employees, and 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 pay-roll period immediately preceding the date of the Direction of Election herein,⁶ 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Automatic Instrument Company, Grand Rapids, 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 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 Furniture Workers of America, CIO, Local No. 415, for the purposes of collective bargaining.

⁵ See *Matter of Aluminum Company of America*, 51 N. L. R. B. 1442.

⁶ The CIO requested that eligibility to vote be determined by the November 1 pay roll. Since the number on the pay roll is relatively stable, we see no reason to depart from the customary eligibility date.