

In the Matter of EXTRUDED METALS DEFENSE CORPORATION, GRAND RAPIDS, MICH., and LOCAL 328, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

*Case No. 7-R-1633.—Decided January 27, 1944*

*Mr. H. M. Huer*, of Grand Rapids, Mich., for the Company.

*Mr. D. R. Sherwood*, of Grand Rapids, Mich., for the Union.

*Mr. Robert Silagi*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon an amended petition duly filed by Local 328, International Union, United Automobile, Aircraft & 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 Extruded Metals Defense Corporation, Grand Rapids, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Sylvester J. Phenev, Trial Examiner. Said hearing was held at Grand Rapids, Michigan, on December 14, 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

Extruded Metals Defense Corporation is a subsidiary of Extruded Metals, Inc., of Belding, Michigan. The Company operates a plant

located in Grand Rapids, Michigan, where it manufactures aluminum extrusions. Said plant is entirely owned by the Defense Plant Corporation. During the year 1943, the Company purchased raw materials valued in excess of \$500,000, of which 80 percent was shipped to the plant in Grand Rapids from points outside the State of Michigan. During that same period, the Company produced finished products valued in excess of \$500,000, at least 75 percent of which was shipped to points outside the State of Michigan. The Company is entirely engaged in war work.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Local 328, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has entered into a contract with Local No. 277, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), hereinafter called Local 277, for a period of 1 year beginning May 28, 1943. As recited in said contract, Local 277 is "the exclusive bargaining agency for all production and maintenance employees, excluding supervisory and office and shop clerical employees, timekeepers, executives, laboratory employees, and plant protection employees." On October 20, 1943, the Union notified the Company that it represented a majority of its plant-protection employees and requested recognition as their exclusive bargaining representative. The Company has refused that recognition, contending that its contract with Local 277 operates to bar representation of the plant-protection employees by a co-affiliate of Local 277. Since we have permitted the same unions which represent the production and maintenance employees to bargain for plant-protection employees,<sup>1</sup> *a fortiori*, another union, although affiliated with the same international union as the one which represents the production and maintenance employees, can represent the plant-protection employees. Nor does the fact that the petitioning union seeks to represent a group of employees excluded from the contract unit alter our decision in any respect.<sup>2</sup>

<sup>1</sup> See *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733; also *Matter of Cramp Shipbuilding Company*, 46 N. L. R. B. 1186

<sup>2</sup> See *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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 to represent all plant-protection employees of the Company, with the exception of the chief. The Company contends that inasmuch as its plant-protection employees are members of the Auxiliary Military Police, they cannot constitute an appropriate unit. This argument has been previously considered and rejected by the Board.<sup>4</sup> The sole remaining point to be settled is whether or not sergeants should be included in the unit.

The plant-protection employees work in three shifts throughout the day. The chief is on duty during the day shift, but is not present at either the late afternoon or night shift. There is a sergeant for each shift who is stationed in an office at the main gate of the plant. By means of a machine installed therein, he is able to check the whereabouts of the plant-protection guards while they make their rounds throughout the plant. When the chief is off, the sergeant is in complete charge of the shift. Sergeants wear uniforms showing their rank and receive higher pay than the ordinary guards. The evidence shows that sergeants can effectively recommend discipline or the discharge of a guard to the chief and further that this has happened on at least one recent occasion. We therefore find that sergeants are supervisory employees within the meaning of the definition hereinafter given and we shall exclude them from the unit.

We find that all plant-protection employees of the Company, excluding the chief and the sergeants 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, 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 em-

<sup>3</sup> The Acting Regional Director reported that the Union submitted 16 authorization cards, all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll of November 28, 1943, which contained the names of 20 employees in the appropriate unit; and that the cards were all dated in October 1943.

<sup>4</sup> See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

ployees 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 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 Extruded Metals Defense Corporation, 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 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 Local 328, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.