

In the Matter of FEDERAL MOTOR TRUCK COMPANY and AMALGAMATED
PLANT PROTECTION LOCAL No. 114, U. A. W.-C. I. O.¹

Case No. 7-C-1209.—Decided January 29, 1944

DECISION

AND

ORDER

On November 23, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. No request for oral argument before the Board at Washington, D. C., was made by any of the parties. The Board has considered the rulings of the Trial Examiner made at the hearing, and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the additions noted below:

1. The respondent concedes that the contentions, which it now urges as a defense to its refusal to bargain with the Union, are the same which it urged as a bar to an election in the representation case. The Trial Examiner rejected the contentions, in accordance with our determination in the representation case. We affirm the Trial Examiner's findings.

2. The respondent contends, in addition, that the Board is precluded from proceeding in this case because of the limitations imposed upon the Board by the National Labor Relations Board Appropriations Act, 1944.² In support of its position, the respondent contends

¹ The Union's name in the representation case was "Amalgamated Plant Protection Local Union No. 114," but it is clear that the same organization is meant.

² Title IV, Act of July 12, 1943, P. L. 135, 78 Cong., 1st Sess. The Appropriations Act contains the following provisions:

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which
54 N. L. R. B., No. 145.

that the charge in this case was filed more than three months after its execution of an agreement with the International Union, which was dated April 1, 1942, and provided, among other things, that plant-protection employees would not be accepted as members. However, the record shows that, at sometime during the period between May 14, 1943, and November 15, 1943, the respondent and the International signed a superseding agreement, which reenacted the aforementioned membership exclusion clause and made material changes in other provisions of the preceding agreement. On the basis of the entire record we find that the 1943 agreement was intended by both contracting parties to be, and in fact was, a new agreement. Since charges were filed by the Union on July 24, 1943, the 1943 agreement was not in existence for 3 months or longer without complaint being filed, within the meaning of the 1944 Appropriations Act.³

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Federal Motor Truck Company, Detroit, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Plant Protection Local No. 114, U.A.W.-C.I.O., as the exclusive representative of all its plant protection employees at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Amalgamated Plant Protection Local No. 114, U.A.W.-C.I.O., as the exclusive representa-

has been in existence for three months or longer without complaint being filed. *Provided*, That, hereafter, notice of such agreement shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested persons.

³ *Matter of The Cleveland Pneumatic Tool Company*, 53 N. L. R. B., No. 262.

tive of all its plant protection employees at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places at its plants in Detroit, Michigan, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

MR. GERARD D. REILLY, dissenting:

The real question presented here arises out of the provision in the collective contract between the Union and the Company covering production and maintenance workers, in which the Union agreed that it would not solicit or accept for membership plant protection employees, *inter alia*.

In the *Packard* case⁴ there was a similar provision in the contract, although the phraseology of the agreement was somewhat different. In that case a majority of the Board held that a union which had made such an undertaking was, nevertheless, entitled to an election in which it sought to act as the collective representative of one of the categories it had agreed not to organize. Since I dissented in that case, I feel constrained to disagree with the holding in the instant case. The opinion of the majority in the *Packard* case was that such a provision in a collective agreement was invalid, the theory being that it contravened those provisions of the Act giving employees freedom of choice in their selection of a bargaining representative.

To my mind, however, there is a real difference between an agreement under which employees give up rights guaranteed to them by the Act or by the Constitution, and an agreement pursuant to which a labor organization simply declines to act as a representative for particular groups. There is no doctrine that a labor organization, in order to be certified as a representative under this Act, has to be willing to represent every occupational category. On the contrary, we know and have recognized the practice among craft unions of restricting membership only to certain classes of employees. In elections for public office, voters are free to select anyone of their choice, but it has never been suggested that the famous pledge of General

⁴ *Matter of Packard Motor Car Company*, 47 N. L. R. B. 932.

Sherman's, "If nominated I shall not accept; if elected I shall not serve," was contrary to public policy.

Since the proceedings in the representation case which gave rise to the instant proceeding make it clear that the Union was the moving party, the principle of estoppel is applicable here.

INTERMEDIATE REPORT

Mr. Max Rotenberg, for the Board.

Beaumont, Smith & Harris, by *Mr. Albert E. Meder*, of Detroit, Michigan, for the respondent.

Mr. Maurice Sugar, *Mr. N. L. Smokeler*, and *Mr. Irving E. Griffeth*, of Detroit, Michigan, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on July 24, 1943, by Amalgamated Plant Protection Local No. 114, UAW-CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its acting Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint, dated October 30, 1943, against Federal Motor Truck Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance: (1) that the employees of respondent at its plants in Detroit, Michigan, engaged in plant protection, excluding the plant engineer, the assistant chief of plant protection and other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining; (2) that a majority of the employees in the aforesaid appropriate unit designated the Union as their representative for the purposes of collective bargaining at an election conducted by the Board on July 3, 1943; (3) that at all times since July 3, 1943, the Union has been the exclusive representative of all employees in said appropriate unit; (4) that on July 16, 1943, the Board certified the Union as the exclusive representative of all employees in said unit for the purposes of collective bargaining; (5) that on or about July 15, 1943, the Union requested the respondent to bargain collectively; (6) that on or about July 20, 1943, and at all times since, the respondent refused and still refuses to bargain with the Union; and (7) that by such refusal, the respondent interfered with, restrained and coerced its employees in the rights guaranteed in Section 7 of the Act.

On November 4, 1943, the respondent filed an answer, denying the appropriateness of the unit and the commission of any unfair labor practices, but admitting the Board's certification of the Union, the Union's request to bargain and the respondent's refusal to bargain.

Pursuant to notice, a hearing was held on November 15, 1943, at Detroit, Michigan, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board, the respondent and the Union were represented by counsel. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the whole case, counsel, both for the Board and the respondent, moved to conform the pleadings to the proof, as to names and dates. The motions were granted with-

out objection. Although afforded an opportunity to do so, none of the parties argued orally before the undersigned. Pursuant to permission granted at the hearing, the respondent filed a brief.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Federal Motor Truck Company is a Michigan corporation, having its principal place of business at Detroit, Michigan. Normally, it is engaged in the production of motor trucks, bodies, cabs and parts, but at present it is wholly engaged in the manufacture of trucks and truck parts for the United States Army. For these purposes it operates three plants, all of which are located in Detroit, Michigan. In the calendar year 1942, the respondent purchased raw materials from points located outside the State of Michigan valued at approximately \$10,400,000. During the same period the respondent made deliveries of finished products to points outside the State of Michigan totaling approximately \$25,000,000.

At the hearing the respondent stipulated that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Amalgamated Plant Protection Local No. 114, UAW-CIO is a labor organization which admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

The refusal to bargain

1. The appropriate unit and representation by the Union of a majority therein

On June 8, 1943, the Board issued a Decision and Direction of Election (Case No. R-5356)¹ finding, among other things, that all plant protection employees of the respondent engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On July 3, 1943, an election was held pursuant to said Direction of Election. On July 16, 1943, the Board certified the Union as the representative of the employees in the unit heretofore mentioned, for the purposes of collective bargaining.

At the hearing the respondent did not question the fact that the Board had certified the Union as the representative of its employees, but contested the appropriateness of the unit and the subsequent certification of the Union by the Board.² By stipulation the record in Case No. R-5356 was made a part of the record in the instant proceeding; the respondent did not adduce any additional evidence on the question of the appropriateness of the unit.

¹ *Matter of Federal Motor Truck Company and Amalgamated Plant Protection Local Union No. 114, UAW-CIO.*

² At the hearing, counsel for the respondent made the following statement:

The position of the Federal Motor Truck Company is, in the first place, that the Plant Protection men are a part of the supervision, part of management. Therefore, the Company should not be required under the Act to recognize the bargaining agency for them; that the men here involved are militarized Plant Protection men, and as such, in this case, are not employees within the meaning of the Act; that it would be contrary to public policy to include militarized Plant Protection men such as these men, within the Act; that it is not within the legal discretion of the Board to issue any certification under the facts of this case; that it is inconsistent with the prosecution of

The undersigned finds, in accordance with the Board's previous determination, that all plant protection employees of the respondent engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. The undersigned further finds that on and at all times after July 3, 1943, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provision of Section 9 (a) of the Act, the Union was on July 3, 1943, and at all times thereafter has been and is now the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The refusal to bargain

Enclosed with a letter dated July 15, 1943, the Union sent the respondent a proposed contract and in the letter the Union requested the respondent to ". . . select a time and place for said contract to be negotiated." In reply to the Union's letter, the respondent sent the Union the following letter dated July 20, 1943:³

Mr. IRVING E. GRIFFETH
Amalgamated Plant Protection
Local No. 114, UAW-CIO
907 Hofmann Building
2539 Woodward Avenue
Detroit, Michigan.

DEAR SIR:

Answering yours of the 15th in which you ask that this Company negotiate a contract for its plant protection employees, please note that we do

the war effort and the war itself to certify this Union, or any other union, as the bargaining agency of Plant Protection men.

Without waiving any of the positions we have thus far taken, the Company takes the further position that even if these Plant Protection men are employees within the Act, the International Union, of which Local 114 is a part, is under written contract with the Company, in which contract the International agrees that it will not accept for membership, or represent, Plant Protection men.

The Company further takes the position that it will not effectuate the policies of the Act to grant representation (or require bargaining) in this case.

The Company further takes the position that the proposed unit here is not an appropriate unit, not an appropriate bargaining unit.

Furthermore, the Company denies that there is a question affecting commerce involved.

The contract mentioned by the respondent's counsel in the above statement is a contract between the respondent and "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, and its Local #174," and contains the following clause:

It is mutually agreed for the purpose of this agreement that the term "employee" shall not include foremen, assistant foremen, having the right to hire and fire, office timekeepers, time study men, clerical employees, plant protection employees or confidential salaried employees and that the Union will not solicit or accept the same for membership.

With respect to this contract, it is the undisputed evidence that although the contract is dated April 1, 1943, it was actually entered into at sometime after the hearing in the above mentioned representation proceeding, which was held on May 14, 1943. The undersigned does not find any merit in the above contentions of the respondent.

³ At the hearing the respondent admitted that at sometime between July 16 and July 20, 1943, it had received a copy of the Board's certification, dated July 16, 1943.

not care to so bargain until such time as a final decision is rendered on the various points which we raised at the hearing on the proposed certification. Very truly yours,

FEDERAL MOTOR TRUCK COMPANY,
[s] T. R. LIPPARD, *President*.

The undersigned finds that the respondent on July 20, 1943, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce, among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Amalgamated Plant Protection Local No. 114, UAW-CIO is a labor organization, within the meaning of Section 2 (5) of the Act.
2. All plant-protection employees of the respondent engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.
3. Amalgamated Plant Protection Local No. 114, UAW-CIO was on July 3, 1943, and at all times thereafter, has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.
4. By refusing on about July 20, 1943, and at all times thereafter, to bargain collectively with the Union as above stated as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.
5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Federal Motor Truck Company, and its officers, agents, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Plant Protection Local No. 114, UAW-CIO as the exclusive representative of all its plant protection employees engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection and all supervisory employees;

(b) Engaging in any like or related act or conduct interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Amalgamated Plant Protection Local No. 114, UAW-CIO as the exclusive representative of all of its employees in the aforesaid appropriate unit;

(b) Post immediately in conspicuous places at its plants in Detroit, Michigan, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 19, 1943—any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C. an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement or exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

JOHN H. FADIE,

Trial Examiner.

Dated November 23, 1943