

In the Matter of CHRYSLER MOTOR PARTS CORPORATION *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO) LOCAL 76

Case No. 20-R-1024.—Decided March 23, 1944

McCutchen, Thomas, Matthew, Griffiths & Greene, by Messrs. Burnham Enersen and Gerald H. Trautman, of San Francisco, Calif., for the Company.

Mr. Frank Slaby, of Oakland, Calif., and Gladstein, Grossman, Sawyer and Edises, of San Francisco, Calif., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), Local 76, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Chrysler Motor Parts Corporation, San Leandro, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gerald P. Leicht, Trial Examiner. Said hearing was held at San Francisco, California, on February 23, 1944. The Company and the Union appeared and participated. All parties 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. At the hearing the Company moved for dismissal of the petition. The Trial Examiner reserved ruling on the motion, which is hereby denied. All parties were afforded an opportunity to file briefs with the Board.¹

¹ The stenographic transcript of testimony has been corrected in certain respects pursuant to a stipulation of the parties.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Chrysler Motor Parts Corporation, a subsidiary of Chrysler Motor Parts Division, which is a subsidiary of Chrysler Motors Corporation, is engaged at San Leandro, California, in the purchase of parts and equipment from the parent company and from other vendors, and their resale to purchasers in the States of California, Arizona, Nevada, Oregon, Utah, Washington, and Montana. Both the purchases and sales exceed in value \$100,000 a year.

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

II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), Local 76, 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 refused to grant recognition to the Union as the exclusive bargaining representative of the Company's office employees.

The Company asserts that a contract between it and the Union constitutes a bar to this proceeding since by its terms the Union is recognized as the exclusive bargaining representative of all of the Company's employees, excluding, among others, the office employees; that the Union has consequently by implication, if not expressly, undertaken not to represent the office employees, at least until the contract expires. The contract was executed in April 1940. While it limits by certain exclusions the unit in which the Union is recognized, there is nothing in the contract which might be construed as an undertaking not to represent the employees included in the excluded categories in a separate bargaining unit.² We find that the contract does not constitute a bar to this proceeding.³

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.⁴

² Cf. *Matter of General Motors Corporation*, 51 N. L. R. B. 1366; *Matter of Packard Motor Car Company*, 47 N. L. R. B. 932.

³ In addition, the Union and the Company have been in the process of negotiating a new agreement since about January 11, 1944, although the prior agreement will not expire until a new one is concluded.

⁴ The Field Examiner reported that the Union submitted 24 membership application cards and that there are 32 persons in the alleged appropriate unit.

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 composed of all office employees, excluding supervisory employees⁵ and the confidential secretary to the superintendent. The Company apparently takes the position that an office employee unit is here inappropriate. Also, it would exclude from any such unit the hourly pay-roll accounts receivable clerk, and the secretary to the plant manager, to the plant accountant and office manager, to the procurement supervisor, and to the order supervisor, the material schedule maker, the credit clerk and cashier, the material analyst and the coding, telephone, telegraph, and PBX operator on the ground that they are confidential employees.

The appropriateness of a unit composed of office employees requires no discussion.⁶ In any such appropriate unit the employees, of course, may be represented by whatever bargaining agency they choose.⁷

The hourly pay-roll and accounts receivable clerk and the secretaries have access to confidential information and personnel and supervisors' records dealing with personnel, personnel relations, and other matters. At the hearing the Union indicated that it was willing to have these categories of employees excluded from the unit. We shall exclude them.⁸

The material schedule maker is in fact a material analyst. The material analysts analyze schedules and govern the flow of materials. They have no information concerning labor relations. The credit clerk and cashier has information of all dealers' and customers' credit ratings, and handles cash in connection with local sales, but appears to have no access to or any connection with labor relations information or records. Although the analysts and the credit clerk and cashier have access to other information which the Company considers to be confidential, that in itself is insufficient to exclude them from the right to bargain collectively. We shall include the analysts and the credit clerk and cashier in the unit.

⁵ These include the plant manager, the plant accountant and office manager, the procurement supervisor, the order supervisor, the IBM supervisor, the IBM group leader, and the assistant office manager.

⁶ See *Matter of The Babcock & Wilcox Co.*, 52 N. L. R. B. 900; *Matter of Chrysler Corporation*, 36 N. L. R. B. 157; *Matter of Simmonds Aeroaccessories, Inc.*, 42 N. L. R. B. 179; *Matter of Phoenix Iron Co.*, 38 N. L. R. B. 1320. Office and clerical employees may under proper circumstances be included in a unit with other workers. See above cases.

⁷ See *Matter of The Babcock & Wilcox Co.*, 52 N. L. R. B. 900.

⁸ See *Matter of Creamery Package Mfg. Co.*, 24 N. L. R. B. 108, *Matter of St. Johns River Shipbuilding Company*, 52 N. L. R. B. 12; *Matter of General Motors Corporation*, 52 N. L. R. B. 649; *Matter of Oliver Farm Equipment Co.*, 53 N. L. R. B. 1078; *Matter of Consolidated Vultee Aircraft Corporation*, 54 N. L. R. B. 103.

The coding, telephone, telegraph, and PBX operator runs the switchboard and the teletype instrument. The Company asserts that she has access to labor relations matters since many of the Company's labor relations matters are handled over the telephone, the teletype, and the telegraph. It is not this operator's duty to listen in on telephone conversations. Such action on her part would be punishable by discharge. We see no reason to assume that the operator will engage in such improper activities. Her access to telegraphed and teletyped messages which might carry confidential information concerning personnel matters does not appear to be so extensive as to require her exclusion from the unit.⁹ We shall include her in the unit.

We find that all office employees of the Company, including the material analysts and the credit clerk and cashier, and the coding, telephone, telegraph, and PBX operator, but excluding the hourly pay-roll and accounts receivable clerk, the secretary to the superintendent, to the plant manager, to the plant accountant and office manager, to the procurement supervisor, and to the order supervisor, and further excluding those supervisory officials, the assistant office manager, the IBM supervisor, the IBM group leader, and all or 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 employees 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.¹⁰

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 Chrysler

⁹ See *Matter of American Smelting and Refining Co.*, 47 N. L. R. B. 871.

¹⁰ The Union seeks certification on the record. The Company opposes it. In accordance with our usual practice, we shall direct an election. See *Matter of Armour & Company*, 13 N. L. R. B. 567; and *Matter of The Cudahy Packing Company*, 13 N. L. R. B. 526.

Motor Parts Corporation, San Leandro, California, 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 Twentieth 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 International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), Local 76, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.