

IN the Matter of DETROIT GASKET AND MANUFACTURING COMPANY and LOCAL 174, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS UNION OF AMERICA (UAW-CIO)

Case No. 7-R-1659.—Decided March 23, 1944

Mr. Max Rosenberg, for the Board.

Cook, Smith, Jacobs and Beake, by Mr. Grant L. Cook, and *Mr. Glen R. Miller*, of Detroit, Mich., for the Company.

Mr. Nicholas J. Rothe, of Detroit, Mich., for the CIO.

Mr. Leonard F. Donaldson, of Detroit, Mich., for the Association.

Mr. William Strong, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 174, International Union, United Automobile, Aircraft & Agricultural Implement Workers Union of America (UAW-CIO), herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Detroit Gasket and Manufacturing Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Howard Myers, Trial Examiner. Said hearing was held at Detroit, Michigan, on February 21, 1944. The Company, the CIO, and Detroit Gasket Employees Association, herein called the Association, appeared and participated.¹ 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. The Company and the Association moved for dismissal of the petition. The Trial Examiner reserved ruling for the

¹ Although at one point in the hearing, counsel for the Company stated that he appeared only specially for the purpose of making a motion to dismiss the petition, the Company thereafter participated fully in the proceeding.

Board. For reasons stated more fully below, the motions are denied.² 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

The Company, a Michigan corporation, is engaged at Detroit, Michigan, in the manufacture, sale, and distribution of metal, cork, and other gaskets and insulation materials. During 1943 the Company purchased raw materials valued at approximately \$10,000,000, about 75 percent of which was shipped to the plant from points outside the State of Michigan. During the same period, the total value of the Company's finished products was approximately \$5,000,000, about 40 percent of which was shipped to points outside that State.

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

II. THE ORGANIZATIONS INVOLVED

Local 174, International Union, United Automobile, Aircraft & Agricultural Implement Workers Union of America (UAW-CIO), affiliated with the Congress of Industrial Organizations, and Detroit Gasket Employees Association are labor organizations admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to the C. I. O. as the exclusive bargaining representative of certain the Company's employees.

At the hearing the Company and the Association asserted that a contract between the Company and the Association constitutes a bar to this investigation of representatives, for the reason that timely notice of its claims had not been given by the CIO.³ The CIO wrote to the Company on November 24, 1943, stating its recognition demands, and the Company admittedly received the letter on November 30, 1943. The contract in question was executed on April 2, 1943, is retroactive to January 1, 1943, and provides that it is to continue in effect until December 31, 1943, and for yearly terms thereafter until written notice of desired cancellation is given by either party 30 days prior to the annual renewal date. At the hearing, the Company and the Association claimed that the 30-day provision contained in the contract was

² See Section III, *infra*

³ Cf. *Matter of Mill B Inc.*, 40 N. L. R. B. 346, and *Matter of Owens-Illinois Pacific Coast Co.*, 36 N. L. R. B. 990.

an error, and that the true intent of the parties had been to include a 60-day notice provision, and pointed to their previous contracts containing a 60-day clause as evidence of their true intention. The Company and the Association moved for reformation of the contract; the Trial Examiner properly denied the motion. We are here concerned with the question of whether under the circumstances the contract presents a bar to a present determination of representatives, rather than the actual intent of the parties to the contract. The record discloses that the CIO had sought an investigation of representatives in April 1943 and in July 1943 was apprised of the existence of the contract and of its 30-day notice provision. The CIO thereupon withdrew its petition. A copy of the contract containing the 30-day clause was also posted by the Company on the bulletin board in the plant, in October 1943. In the light of these facts and of the CIO's timely notification of its representation claims prior to the 30-day period, we see no reason to assume that had the CIO been aware of the necessity to repeat its representation claims 60 days before the anniversary date of the contract, it would have failed to take that crucial step. The parties to the contract cannot now be heard to complain, since the CIO relied on the express terms of the agreement which they themselves reduced to writing. We find that the contract does not constitute a bar to this proceeding.

We also find no merit in the Company's objection to organizational efforts of employees and to the holding of elections under the Act during the war, and we deny the Company's motion on those grounds for dismissal of the petition.⁴ No election has been held among the Company's employees since November 1941. Our experience persuades us that the exercise by employees of self-organizational and collective bargaining rights under the Act tends to further, rather than retard effective production for the war effort.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.⁵

⁴The Company complains in the main that the CIO engaged in improper organizational methods, including the malicious slander of the Company and threats, coercion and intimidation of the employees, producing a countercampaign by the Association, all of which had the effect of harassing the Company and the employees and interfering with the war effort. In support of its contentions in this respect, the Company offered no evidence, except certain circulars which it claims were distributed to its employees by the CIO. The Trial Examiner rejected these circulars for the reason that they were incompetent, irrelevant and immaterial. However, copies of the circulars, attached to the Company's motion papers, are before us. While we believe that the Trial Examiner properly rejected these proffered exhibits, it is evident, and we conclude, that they fail to sustain the Company's assertions, and disclose no organizational activity on the part of the CIO requiring dismissal of the petition.

Responsive circulars were distributed by the Association, none were offered in evidence, however.

⁵The Field Examiner reported that the CIO submitted 224 authorization cards all of which bore apparently genuine original signatures, and that approximately 500 employees

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

We find, in substantial agreement with a stipulation of the parties, that all hourly rated employees at the Detroit plant of the Company, excluding office employees, full-time plant clerical employees, full-time restaurant employees, timekeepers, plant-protection employees, watchmen, and all 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.⁶

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.⁷

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 Detroit Gasket and Manufacturing Company, Detroit, Michigan, an election by secret ballot shall be conducted as early as possible, but not later than thirty

are in the appropriate unit. The Association submitted no evidence of its designation, except its closed-shop contract with the Company.

The Company objects to the Field Examiner's statement that although requested to do so, the Company failed to submit its pay roll in connection with the inquiry by the Field Examiner into the CIO's representation interest in the employees in the unit, and states further that there is no showing that the persons named on the CIO's cards are employees of the Company. A copy of the pay roll was produced at the hearing. Under all the circumstances here present, we conclude that the CIO has shown an interest sufficiently substantial to warrant our proceeding further in this matter.

⁶ This unit appears to be substantially the same as that recognized between the Company and the Association in their collective agreements.

⁷ The Unions desire to appear on the ballot as "International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO)" and "Detroit Gasket Employees Association (DGEA)." The requests are hereby granted.

(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 the 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 they desire to be represented by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), or by Detroit Gasket Employees Association (DGEA) for the purposes of collective bargaining, or by neither.