

In the Matter of THE TOLEDO STAMPING & MANUFACTURING COMPANY  
and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AG-  
RICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL #12 (CIO)

*Case No. 8-R-1334.—Decided March 30, 1944*

*Mr. Alan B. Loop*, Toledo, Ohio, for the Company.

*Mr. Edward Lamb*, by *Mr. David A. Guberman*, of Toledo, Ohio,  
for the CIO.

*Mr. Earl S. Streeter*, of Toledo, Ohio, for the MESA.

*Mr. Irving Rogosin*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local #12 (CIO), affiliated with the Congress of Industrial Organizations, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of The Toledo Stamping & Manufacturing Company, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Arthur Stark, Trial Examiner.<sup>1</sup> Said hearing was held at Toledo, Ohio, on December 21, 1943. At the commencement of the hearing, the Trial Examiner granted motions of the Mechanics Educational Society of America, Locals No. 3 and 4 (CUA), herein called the MESA, to intervene. The Company, the CIO and the MESA 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. A motion by the MESA to dismiss the petition on several grounds was referred by the Trial Examiner to the Board for appropriate ruling. For rea-

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<sup>1</sup>The name of the Company, as well as that of the petitioning union, is here stated as corrected in the record.

sons hereinafter indicated we deem it unnecessary to rule on this motion. 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 Toledo Stamping & Manufacturing Company is an Ohio Corporation, having its only plant and office at Toledo, Ohio, where it is engaged in the manufacturing of metal stampings. The principal raw material used is steel. During the fiscal year ending June 30, 1943, the value of the principal raw material used was \$378,690, of which approximately 95 percent was purchased outside the State of Ohio. The value of the Company's finished products for the same period was \$927,084, approximately 95 percent of which was shipped to points outside the State of Ohio. The Company employs approximately 175 persons exclusive of its officers.

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

#### II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local #12 (CIO), affiliated with the Congress of Industrial Organizations, and Mechanics Educational Society of America, Locals No. 3 and 4 (CUA), affiliated with the Confederated Unions of America, are labor organizations admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

It was stipulated by the parties that on or about November 8, 1943, the CIO requested the Company to grant it recognition as the exclusive collective bargaining representative of its employees, and that the Company thereafter refused to grant such recognition until the CIO has been certified by the Board.

On April 22, 1941, the Company and the MESA entered into a contract for a term of 1 year with a provision for an extension for an additional period of 1 year unless written notice of termination was given by either party within 30 days of the original expiration date. No such notice was given and the contract was automatically extended for a period of 1 year. On July 21, 1941, an addendum to the contract was executed by the parties, granting an increase in hourly rates. A subsequent memorandum, executed by the parties on March

3, 1942, further increased the hourly rate of employees covered by the contract. The original contract expired in accordance with its terms on April 22, 1943. Although the contract made no provision for further renewal beyond that date, and there is nothing in the record to indicate that the parties had expressly agreed orally to extend the terms of the contract, the Company and the MESA maintain that they have continued to operate thereunder since the expiration date.<sup>2</sup>

On October 15, 1943, the MESA, through its secretary, in a letter addressed to the Company, requested that the agreement of April 22, 1941, be rewritten, and submitted certain provisions which it desired to have incorporated into the new contract. Thereafter, on November 8, 1943, and before a new contract had been negotiated, the petitioner notified the Company by letter that it claimed to represent a majority of its employees, requested exclusive recognition as collective bargaining agent, cautioned the Company against entering into a new contract with any other organization, and advised of the filing of the petition in this proceeding.

In view of the foregoing, we find that the contract is no bar to this proceeding.

We are, however, constrained to dismiss the petition on the ground that the petitioner's *prima facie* showing of membership among the Company's employees in the special circumstances here presented, affords no proper basis upon which this Board would be warranted in directing an election.

At the hearing it developed that there was a dispute between the parties as to the propriety of including within the bargaining unit one Dean, the Company's chief inspector who, the MESA contended, is a supervisory employee. The record clearly establishes that Dean is a supervisory employee having authority to recommend hiring, as well as to recommend transfers, promotions, or demotions of employees. Dean was called as a witness by the CIO to testify with respect to matters bearing on the issue of his supervisory status. In the course of his cross-examination he admitted, in effect, that he had sponsored the CIO's membership drive and that his name appeared upon "a majority" of the cards submitted by the CIO to the Board's agent in support of its petition.<sup>3</sup>

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<sup>2</sup> Even assuming, as the MESA contends, and contrary to our finding, that the contract continued in full force and effect by reason of the fact that no notice of termination had been given by either party, it would have continued to operate for a period of indefinite duration, and would, hence, be no bar to this proceeding, in the face of petitioner's notice to the Company

<sup>3</sup> In addition to testifying that he was a member of the CIO, Dean stated that applications "were handed out, signed and turned in"; that he was "more or less" active in the organization of the CIO at the plant; and that his "signature" was "on a majority" of the applications, but that his name had been signed to them by "so many of those that signed up."

Although this evidence was adduced notwithstanding the Trial Examiner's proper ruling<sup>4</sup> that no inquiry would be permitted with respect to the authenticity of the CIO's application cards as reported on by the Board's Field Examiner,<sup>5</sup> or with respect to any alleged unfair labor practice of the Company, we will not disregard the plain purport of Dean's admissions. The Board will not knowingly accord a place on the ballot in an election to an organization which is incapable of serving as the bona fide bargaining representative of employees.<sup>6</sup> For similar reasons, we must decline here to direct an election upon the petition of a labor organization whose claim to represent the employees affected by the petition is evidenced by application or designation cards secured with the assistance of a supervisory employee of the Company.

We shall, accordingly, dismiss the petition, without prejudice to the CIO's right to seek an investigation and determination of representatives when it can produce satisfactory *prima facie* evidence of its designation as collective bargaining representative of the employees of the Company, secured without the assistance of any supervisory employees.<sup>7</sup>

#### ORDER

Upon the basis of the above findings of fact and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of The Toledo Stamping & Manufacturing Company, Toledo, Ohio, filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local #12 (CIO), affiliated with the Congress of Industrial Organizations, be, and it hereby is, dismissed.

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<sup>4</sup> See *Matter of Amos-Thompson Corporation*, 49 N. L. R. B. 423, *Matter of Atlas Powder Company, Zapon Division*, 43 N. L. R. B. 757, and cases therein cited.

<sup>5</sup> The Field Examiner reported that the CIO submitted 216 authorization cards, of which 103 contained printed signatures, and 88 bore apparently genuine original signatures. The names of these 88 persons appearing on the cards were listed on the Company's pay roll of December 1, 1943, which contained the names of 239 employees in the appropriate unit; 2 of the cards were dated October 1943, and 86 were undated.

<sup>6</sup> *Matter of Douglas Aircraft Company, Inc.*, 53 N. L. R. B. 486; *Matter of Phelps Dodge Corporation United Verde Branch*, 6 N. L. R. B. 624.

<sup>7</sup> Subsequent to the hearing, the MESA filed charges with the Regional Office alleging in substance that the Company, through its chief inspector, Dean, had illegally assisted the CIO in its membership campaign. After investigation of these charges, the Regional Director refused to issue a complaint, inasmuch as the Company had entered into a settlement agreement by the terms of which it agreed to post a notice repudiating any statement made by Dean in support of or opposition to any union.