

In the Matter of GENERAL MOTORS CORPORATION (CLEVELAND DIESEL ENGINE DIVISION) and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (CIO)

Case No. 8-R-1418.—Decided April 17, 1944

Messrs. Henry M. Hogan and Harry S. Benjamin, Jr., of Detroit, Mich., for the Company.

Mr. Max W. Johnstone, of Akron, Ohio, and *Mr. Clifford W. Boldt*, of Cleveland, Ohio, for the Union.

Mr. Joseph E. Gubbins, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of General Motors Corporation (Cleveland Diesel Engine Division), Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Arthur Stark, Trial Examiner. Said hearing was held at Cleveland, Ohio, on March 6, 1944. 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. At the hearing, the Company moved to dismiss the petition on the ground that the unit sought by the Union is inappropriate. For reasons appearing hereinafter, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

General Motors Corporation is a Delaware corporation with its principal offices located at New York City and Detroit, Michigan.

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Cleveland Diesel Engine Division, an unincorporated division of the General Motors Corporation, and the only division of the Company involved herein, operates four plants at Cleveland and Brooklyn Village, Ohio, where the Company is engaged in the production and manufacturing of war materials. In excess of 50 percent of the value of the raw materials used in processing and manufacturing operations in the afore-mentioned plants comes from sources outside the State of Ohio. In excess of 50 percent of the value of the finished products of the afore-mentioned plants is shipped to points outside the State of Ohio.

The Company admits that it 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, 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 recognize the Union as the collective bargaining representative for certain employees of the Company unless and until the Union is certified by the Board.

A statement made by the Trial Examiner at the hearing indicates that the Union represents a substantial number of employees in the unit which it alleges is appropriate.¹

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 is petitioning for a unit comprised of all plant-protection employees at the Company's four plants in the Cleveland area, including sergeants, and excluding the chief, lieutenants, and clerical employees. The Company agrees generally with the scope of the unit sought by the Union; however, it urges the exclusion of sergeants on the ground that they are supervisory, administrative, and managerial employees. The Company argues that, on several occasions in the

¹ At the hearing, the Trial Examiner stated on the record that the Union submitted 56 authorization cards, bearing the names of patrolmen and sergeants listed on the Company's pay roll of March 1, 1944, containing the names of 73 employees in the unit alleged by the Union to be appropriate. Of the 73 employees listed on the aforesaid pay roll, 7 were sergeants; of the cards submitted by the Union 7 bore the names of sergeants.

past, the Union agreed to exclude sergeants from collective bargaining units established at other of the Company's plants similar in composition to the one sought here, and that such history of collective bargaining should be determinative of the controversy in the instant proceeding.

In support of its contentions, the Company claims that sergeants are obligated to acquaint patrolmen with their duties and responsibilities, frequently examine patrolmen, *inter alia*, with regard to their knowledge of working techniques, and make work progress records of the results of these examinations. It also claims that the sergeant's appraisal of a patrolman's development, appearance, and knowledge of his job, as reflected by the grade placed by the sergeant upon his work progress record, is a determining factor in the patrolman's promotion.

The record shows that the duties and functions of employees of the plant-protection department are those usually associated with such employees. The plant-protection department is under the supervision of the chief, who is assisted in his duties during the first and second shifts by the two lieutenants. The principal duties of the sergeants are instructing and examining patrolmen in plant-protection techniques, directing traffic, substituting for absent patrolmen, and informing patrolmen of routine orders which are issued by the chief.

With respect to the Company's contention that sergeants have supervisory, administrative, and managerial status, the Company admits, and the record shows that the chief is the only employee in the plant-protection department with authority to hire and discharge employees. It is also admitted by the Company that sergeants have no authority to discipline patrolmen or to make recommendations which could affect the status of these employees. Moreover, so far as the record discloses, sergeants do not possess administrative discretion, nor is any degree of managerial authority delegated to them.

It appears that in the preparation of work progress records, sergeants do not have access to the Company's confidential files, and that sergeants are instructed not to make any recommendation with respect to the patrolmen whom they examine. It further appears that these records contain only factual information and are made for the sole purpose of apprising the chief and the lieutenants of each patrolman's knowledge of his work.

From the foregoing facts, we are of the opinion that sergeants do not fall within our usual definition of supervisory employees, and are neither administrative nor managerial employees. We shall include them in the unit.

We find that all plant-protection employees in the Company's four plants at Cleveland and Brooklyn Village, Ohio, including sergeants,

but excluding the chief, lieutenants, clerical employees, and all supervisory employees who have 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.

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 General Motors Corporation (Cleveland Diesel Engine Division), Cleveland, Ohio, 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 Eighth 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 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 or not they desire to be represented by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.