

In the Matter of ANTIOCH FOUNDRY DELCO-REMY DIVISION OF GENERAL MOTORS CORPORATION and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, C. I. O.

*Case No. 9-R-1290.—Decided April 18, 1944*

*Mr. Henry M. Hogan and Messrs. Harry S. Benjamin, Jr., and Richard E. Helms, of Detroit, Mich., for the Company.*

*Mr. Henry Fiering and Mr. John D. Thomas, both of Dayton, Ohio, for the UE.*

*Mr. Robert H. Wead, of Xenia, Ohio, for the Independent.*

*Miss Margaret M. Farmer, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio & Machine Workers of America, C. I. O., herein called the UE, alleging that a question affecting commerce had arisen concerning the representation of employees of Antioch Foundry Delco-Remy Division of General Motors Corporation, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Yellow Springs, Ohio, on March 10, 1944. The Company, the UE, and Independent Union of Antioch Foundry Workers, herein called the Independent, 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. At the beginning of the hearing and again at the close, the Independent moved to dismiss the petition on the ground that the petition had incorrectly stated the date of the Independent's contract with the Company as January 17, 1942, and that the contract of October 8, 1942, now in force was a bar to the proceedings. The Company also joined in this motion at the end of the hearing. Said motions, referred to the Board by the Trial Examiner for disposition, are 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. The Company's request for oral argument is hereby denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

General Motors Corporation, a Delaware corporation with its principal business at New York City and Detroit, Michigan, functions through several unincorporated divisions, of which one is Delco-Remy Division. The Company herein is the Antioch Foundry, a unit maintained and operated by Delco-Remy Division at Yellow Springs, Ohio. It is presently engaged almost exclusively in the manufacture and processing of goods for the war effort. More than 50 percent in value of the goods and materials used by the Company in the manufacture and processing of its products comes from sources outside the State of Ohio. More than 50 percent of the Company's finished products eventually reaches sources outside the State of Ohio.

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

#### II. THE ORGANIZATIONS INVOLVED

United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, and Independent Union of Antioch Foundry Workers, unaffiliated, are labor organizations admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On January 17, 1942, the Independent and the Company signed a collective bargaining contract. On October 8, 1942, this contract was superseded by a second. Both contracts contained the following modification and termination provision:

This Agreement shall continue for one year from date and from year to year thereafter, unless terminated by either party, or changed by consent of both parties as hereinafter provided. To terminate this Agreement either party shall give the other party sixty days' written notice. If either party desires to modify or change this Agreement, it shall give written notice of the proposed change or modification at least sixty days prior to the expiration date thereof. The other party within twenty days after receipt of said notice shall either accept or reject the proposal or request a conference to negotiate it.

Neither the Independent nor the Company gave notice of termination or of a desire to modify the contract prior to October 8, 1943. On December 15, 1942, prior to the termination of the first contract, the UE notified the Company of its claim to represent a majority of the Company's employees and on January 15, 1943, filed a petition with the Board for investigation and certification of representatives. This petition was subsequently withdrawn. On September 11, 1943, the UE again notified the Company of its claim to majority representation and on October 7, 1943, filed a second petition with the Board for an investigation and certification of representatives. This petition was also subsequently withdrawn. On November 16, 1943, the UE again notified the Company of its claim to majority representation and on November 18, 1943, filed a third petition with the Board for an investigation and certification of representatives. The present proceedings are predicated upon this third petition.

The Company and the Independent contend that the contract of October 8, 1942, is a year to year contract, that it was automatically renewed as of October 8, 1943, and that, since the UE did not present its claims to majority representation of the Company's employees prior to August 8, 1943, the last date upon which, under the terms of the contract, modifications could be proposed by either of the contracting parties, the contract is a bar to an investigation and determination of representatives.

We find the contentions of the Independent and the Company to be without merit. Although the proviso that "if either party desires to modify or change this agreement, it shall give written notice of the proposed change or modification at least sixty days prior to the expiration date thereof" limits the discussion of the modification of the contract terms to the period immediately preceding the yearly renewal date, the provision that "to terminate this Agreement either party shall give the other party sixty days' written notice" clearly makes the contract one of indefinite duration. It is therefore no bar.<sup>1</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that UE represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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<sup>1</sup>*Matter of Toyad Corp.*, 52 N. L. R. B. 1241; *Matter of Phelps Dodge Corp.*, 40 N. L. R. B. 1159; *Matter of LaPlante Choate Manufacturing Company*, 29 N. L. R. B. 40; *Matter of Brightman Nut & Manufacturing Company*, 30 N. L. R. B. 663

<sup>2</sup>The Field Examiner reported that the Union submitted 58 membership cards all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll of February 6, 1944, which contained the names of 117 employees in the appropriate unit, and that the cards were all dated between September 1943 and January 1, 1944. The Independent introduced evidence that it was actively functioning in the plant. It did not introduce evidence of present membership but stood upon its contract.

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 parties are in agreement as to what constitutes an appropriate unit and we find their desires to be reasonable. In accordance with their wishes, and our general policy we find that all production and maintenance employees and mechanical employees in engineering department shops in Antioch Foundry Delco-Remy Division of General Motors Corporation<sup>3</sup> excluding employees of sales, accounting, personnel, and industrial relations departments; those employees whose work is of a confidential nature, time-study men, plant-protection employees, maintenance patrolmen or fire patrolmen, all clerical employees; chief engineers and shift operating engineers in plants, designing (drawing boards), production, estimating and planning engineers, draftsmen, and detailers; physicists, chemists, metallurgists, artists, designer-artists, and clay plaster modelers; timekeepers, technical school students; indentured apprentices, and those technical or professional employees who are receiving training; kitchen and cafeteria help; superintendents and assistant superintendents, general foremen, foremen and assistant foremen, 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,<sup>4</sup> constitute a unit appropriate for the purposes of collective bargaining in respect to rate of pay, wages, hours of work, and other conditions of employment.

#### 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

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<sup>3</sup> The unit described herein is, according to testimony at the hearing, the standard production and maintenance unit generally employed in General Motors bargaining contracts and is the unit covered by the contract of October 8, 1942, referred to in Section III, above.

<sup>4</sup> The parties agreed and the record shows that so-called "group leaders" are not supervisory employees. They do not, therefore, fall into the category of excluded employees.

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 Antioch Foundry Delco-Remy Division of General Motors Corporation, Yellow Springs, 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 Ninth 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 United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, or by Independent Union of Antioch Foundry Workers, for the purposes of collective bargaining, or by neither.