In the Matter of MARVEL-SCHEBLER DIVISION BORG-WARNER CORPORATION *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Case No. 7–R–1645.—Decided April 29, 1944

Mr. Stanley H. Fulton, of Detroit, Mich., and *Mr. E. T. Andrix*, of Flint, Mich., for the Company.

Maurice Sugar and *Jack N. Tucker*, by *Mr. Jack N. Tucker*, of Detroit, Mich., for the CIO.

Joseph A. Padway and *I. B. Padway*, by *Mr. I. B. Padway*, of Washington, D. C., and *Mr. Howard Thompson*, of Detroit, Mich., for the AFL.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION
AND
ORDER

STATEMENT OF THE CASE

Upon petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Marvel-Schebler Division, Borg-Warner Corporation, Flint, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Flint, Michigan, on February 2, 1944. The Company, the CIO, and International Union, United Automobile Workers of America, A. F. L., herein called the AFL, appeared, participated, and 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. 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

Borg-Warner Corporation, an Illinois corporation, operates its Marvel-Schebler Division in Flint, Michigan, where it is engaged at a single plant in the production, assembly, sale, and distribution of gasoline carburetors and other war products. The principal raw materials used by the Company in the manufacture of its products consist of semifabricated parts of cast iron and aluminum, and screw machine parts. During the first 9 months of 1943 the value of the raw materials used at the Flint plant was in excess of $100,000, of which approximately 25 percent was shipped to the plant from points outside the State of Michigan. During the year 1943 the value of the plant's finished products was also in excess of $100,000, of which approximately 80 percent was shipped from the plant to points outside the State of Michigan.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership employees of the Company.

International Union, United Automobile Workers of America is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

Effective as of April 5, 1937, the Company and the AFL entered into a collective bargaining agreement which provided, *inter alia*, that in the event neither party gave notice to the other in writing of a desire to terminate or amend the contract, it would be automatically renewed from year to year. Successive contracts were entered into on October 24, 1938, on November 1, 1939, and on January 6, 1941. Each of the contracts contained an automatic renewal clause. On May 31, 1942, the 1941 contract was automatically renewed in the absence of any notice by either party of a desire to terminate. Thereafter, upon the solicitation of the AFL, negotiations were initiated for a substantial alteration of the contract. After an ensuing disagreement had been carried to the National War Labor Board, herein called the W. L. B., the Company and the AFL on October 2, 1942, entered into a supplementary Memorandum of Agreement which made certain

changes in the 1941 contract, as renewed, including the duration of agreement clause. This latter clause provided that the term of the contract would extend until October 5, 1943, and be subject to automatic renewal unless either party gave written notice of a desire to terminate at least thirty (30) days prior to the anniversary date of the contract, and contained the additional provisions that "either party may request amendment of the agreement by giving thirty (30) days notice prior to the anniversary date, said request for amendment not to have the effect of terminating the agreement," and that "the wage question may be reopened by either party after six (6) months from October 5, 1942 . . ."

In the summer of 1943, the AFL reopened the wage question and presented certain grievances to the Company. Once again, a disagreement ensued between the parties to the contract. In the meanwhile, the last day under the contract for giving notice of a desire to terminate, September 5, 1943, passed without such notice having been given. On September 9, 1943, the AFL mailed a letter to the Company expressing a desire "to negotiate certain modifications and amendments" of the contract. The Company took the position that this notice was not timely, as the contract has been automatically renewed on September 5, 1943. The dispute between the Company and the AFL was submitted to the W. L. B. on September 24, 1943. The W. L. B. panel then held a hearing on November 4 and on November 18, 1943. Between these dates, on November 12, the CIO first gave notice to the Company of its representation claim. The Company did not reply to this notice. The CIO then filed its petition with the Board on November 20, 1943. On December 6, 1943, the W. L. B. panel issued its report concerning the dispute between the Company and the AFL.

The Company and AFL now contend that the 1941 contract, as modified by the 1942 Memorandum of Agreement, was automatically renewed on September 5, 1943, prior to any notice of the claims of the CIO. Consequently they argue that the renewed contract is a bar to a present determination of representatives under the well-settled doctrine of the *Mill B* decision.[1] However, the CIO, in effect, attempts to distinguish that case from the instant proceeding on the basis of the somewhat different factual situations involved. Thus, the CIO points to the AFL's efforts to negotiate modifications and amendments of the contract subsequent to its renewal date, and to the ultimate recourse to the W. L. B. This course of action, it is urged in substance, amounted to negotiations for a new contract during which no agreement was in force, and consequently, the CIO's claim to representation,

[1] See *Matter of Mill B, Inc., division of Irwin & Lyons, partners, doing business under the assumed name of Irwin & Lyons*, 40 N. L. R. B 346.

having been communicated to the Company in the midst of these negotiations, was timely.

It is apparent that this case raises some novel questions. We believe, however, that answers can be found in a reexamination of the underlying principles of the *Mill B* doctrine. In that case we pointed out that in representation proceedings labor organizations are merely the agents of the employees in bargaining units. Once the authority of these agents to act for the employees has been properly established under Section 9 (a) of the Act, a contract negotiated by one of them in a representative capacity has, with respect to all its terms and conditions, the same binding effect upon an employer and the employees as any contract between private parties, provided its terms and conditions conform so generally with collective bargaining customs in the industry that its execution cannot be said to be outside the scope of the agency. Provisions in collective bargaining agreements for automatic renewal in the absence of 30 or 60 days' notice to terminate given prior to the anniversary date are conventional clauses that fall under this category, and should employees fail to give notice of a desire to change bargaining agents before such clauses take effect, they, as well as their employer, are bound by the automatic renewal of the contract.

In the present proceeding, the employees might have given notice of a desire to change representatives prior to September 5, 1943, the automatic renewal date of the contract. They failed to do so. Therefore, taking the contract at its face value, it would appear that on September 5, 1943, it was renewed, and that the Company and the employees were bound by its terms and conditions until October 5, 1944. In this posture, the instant case would come squarely within the *Mill B* doctrine, and we would have no course other than to dismiss the petition.

The real contention of the CIO appears to be, however, that the language in the contract should not be taken at face value. Its argument is that the parties themselves did not regard the automatic renewal provision as being binding, since within 4 days after the renewal date the AFL took steps to modify the contract. It is to be noted, however, that the legal effect of a contract is not impaired by the desire of one party to repudiate or modify it. Thus, in this instance, the Company stood upon its legal rights and refused the AFL's request to make modifications and amendments. Since the Company had a legal right to refuse to modify or amend the contract, and did so refuse, we cannot say that the mere unilateral attempt of the AFL to alter an existing legal obligation gave the Company's employees an avenue of escape from the renewed contract.

This record does not indicate that the situation has been altered by the submission of the dispute to the W. L. B., since under the decisions of that agency a contract, which has become legally binding, is given full force and effect.[2]

One feature of the contract between the Company and the AFL which has caused us some concern is the clause providing that either party may request amendments upon 30 days' notice prior to the agreement's anniversary date and that such requests are not to have the effect of terminating it. At first glance, it might seem that such a provision is contrary to public policy in that, literally construed, it would mean that the labor organization signing the contract might remain the bargaining representative in perpetuity. Upon reflection, however, we do not believe that this clause could have this effect, for it cannot alter the well established doctrine that the employees by filing notice in timely fashion can change their bargaining representative before the automatic renewal provision becomes effective.

In accordance with the above findings, we find that the *Mill B* doctrine is applicable herein and that, therefore, the contract, as renewed on September 5, 1943, constitutes a bar to a present investigation and certification of representatives.

We find that no question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) of the National Labor Relations Act. We shall, therefore, dismiss the petition, but without prejudice to the CIO's right to file a new petition at a reasonable time prior to September 5, 1944, the next automatic renewal date of the contract.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Marvel-Schebler Division, Borg-Warner Corporation, Flint, Michigan, filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) be, and it hereby is, dismissed without prejudice to the latter's right to file a new petition at a reasonable time before September 5, 1944.

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[2] *In re Consolidated Shipbuilding Corporation (Morris Heights, N. Y.)* 14 W. L. R IX (March 8, 1944) Case No. 111–3462–D.