

IN THE MATTER OF PRESSED STEEL CAR COMPANY, INCORPORATED, ARMOR
TANK DIVISION and UNITED CONSTRUCTION WORKERS, AFFILIATED
WITH UNITED MINE WORKERS OF AMERICA

Case No. 13-R-2292.—Decided May 9, 1944

*Messrs. James C. Brown and A. J. Kuhn, of Chicago, Ill., for the
Company.*

*Messrs. Frank Barnhart and Walter M. Brock, of Hammond, Ill.,
and Messrs. H. C. Howell, William Andersen and Edwin A. Bresnahan,
of Chicago, Ill., for UCW-UMW.*

*Meyers & Meyers, by Mr. Ben Meyers, of Chicago, Ill., for UAW.
Mr. Joseph E. Gubbins, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Construction Workers, affiliated with United Mine Workers of America, herein called the UCW-UMW, alleging that a question affecting commerce had arisen concerning the representation of employees of Pressed Steel Car Company, Incorporated, Armor Tank Division, Chicago, Illinois, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Chicago, Illinois, on March 31 and April 1, 1944. The Company, the UCW-UMW, and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the C. I. O., herein called the UAW, 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 Trial Examiner reserved ruling upon the motion of the UAW to dismiss the petition on the ground that the UCW-UMW did not show that it represented a sufficiently substantial number of employees in the alleged appropriate unit to raise a question concerning representation. For reasons

¹ The name of the Company appears herein as amended at the hearing.

hereinafter stated, 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

Pressed Steel Car Company, Incorporated, is a Pennsylvania corporation with its principal office located at Pittsburgh, Pennsylvania, authorized to transact business in the State of Illinois. Armor Tank Division, the sole operation of the Company involved herein, is located at Hegewisch, Illinois, and is engaged in the manufacture of tanks and other war materials. During the year 1943, the Company purchased for use at its Armor Tank Division raw materials of a value in excess of \$1,000,000, of which approximately 75 percent was purchased from sources outside the State of Illinois. During the same period, net sales of the Company at the Armor Tank Division were in excess of \$1,000,000, of which 90 percent represented the value of products shipped to points outside the State of Illinois.

The Company concedes that, with respect to its operations at the Armor Tank Division, it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Construction Workers, is a labor organization affiliated with the United Mine Workers of America, admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

On January 19, 1944, the UCW-UMW notified the Company by letter that it represented many of the Company's employees and that it planned to file with the Board a petition for an investigation and certification of representatives. The Company failed to reply to the letter. The Company takes the position that at the time it could not recognize the UCW-UMW as the bargaining representative of its employees because of a contract it had with the UAW covering the employees sought to be represented by the UCW-UMW.

The contract was an exclusive recognition agreement dated June 24, 1943, effective for a period of 1 year from March 1, 1943, subject to automatic renewal in the event that neither party gave notice of a desire to terminate or modify it 30 days prior to its expiration date. It also contained a maintenance of membership provision. Timely notice having been given by the UAW to the Company, the contract expired by its terms on March 1, 1944. Neither the Company nor the UAW contends that the contract is a bar to the present proceeding. However, the UAW urges that the showing of representation made by the UCW-UMW² is not sufficient to raise a question concerning representation of the Company's employees.

Despite the UAW's position, we are of the opinion and find that the UCW-UMW has made a sufficient showing of representation of employees in the unit hereinafter found to be appropriate, particularly in view of the maintenance of membership clause in the recent contract between the Company and the UAW.³

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

In its petition the UCW-UMW requested a unit comprised of all Armor Tank Division production and maintenance employees, not on a salaried basis, including hourly paid subforemen, and excluding office and clerical employees, guards, and supervisory employees.⁴ At the hearing, the UCW-UMW was apprised of the fact that the Company employs about 40 assistant foremen, some hourly paid, and others compensated on a salaried basis. The UCW-UMW then indicated that it desired to include the hourly paid assistant foremen. The Company and the UAW agree that the unit set forth in the petition is appropriate, but they contend that hourly paid assistant foremen should not be included for the reason that they are supervisory employees.

The record shows that a number of employees, who are leaders, are designated as subforemen on the Company's pay roll for the sole purpose of permitting them to enjoy certain insurance benefits. The

² A combination of reports made by the Field Examiner and the Trial Examiner shows that the UCW-UMW submitted 951 authorization cards bearing names of persons whose names appear on the Company's pay roll of January 23, 1944. The cards are dated as follows: 132 in 1943; 395 in 1944; and 424 undated. There are approximately 3,142 employees in the unit alleged by the UCW-UMW to be appropriate.

³ The UAW did not produce any evidence of representation but relied upon its contract as evidence of its interest in the proceeding. See *Matter of Sayles Finishing Plants, Inc.*, 49 N. L. R. B. 532.

⁴ This is substantially the same unit found to be appropriate by the Board in a prior proceeding (46 N. L. R. B. 262) involving the same parties.

record further shows that these leaders do not fall within our usual definition of supervisory employees. Since the parties have agreed to include these employees, we shall place them within the unit.

With regard to the assistant foremen, the undisputed testimony of the Company's superintendent of labor relations reveals that they perform no duties involving manual work, that they have from 3 to 30 employees under their supervision, that they can discipline such employees; and that their recommendations with respect to these employees are sufficiently effective to cause changes in their working status. We find that all assistant foremen, salaried and hourly paid, are supervisory employees, and as such, we shall exclude them from the unit. We shall also exclude delivery chauffeurs, inasmuch as all parties agreed to the exclusion of such employees.

We find that all production and maintenance employees of the Company at its Armor Tank Division, not on a salaried basis, including hourly paid subforemen or leaders, but excluding office and clerical employees, guards, delivery chauffeurs, hourly paid and salaried assistant foremen, and all other 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.⁵

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 Pressed Steel Car Company, Incorporated, Armor Tank Division, Chicago, Illinois, an election by secret ballot shall be conducted as early as possible, but

⁵ The UCW-UMW requested that it be designated upon the ballot as "Local 237, U. C. W., affiliated with the U. M. W. of A.," and the UAW requested that it be designated upon the ballot as "Local 166, UAW-CIO." Both requests are hereby granted.

not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth 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 they desire to be represented by Local 237, U. C. W., affiliated with U. M. W. of A., or by Local 166, UAW-CIO, for the purposes of collective bargaining, or by neither.