In the Matter of INTERNATIONAL HARVESTER COMPANY, FARMALL WORKS *and* UNITED FARM EQUIPMENT AND METAL WORKERS OF AMERICA, C. I. O.

Case No. 13–R–2259.—Decided May 13, 1944

Messrs. Robert E. Dickman and *W. J. Reilly*, of Chicago, Ill., for the Company.

Meyers & Meyers, by *Mr. Ben Meyers*, of Chicago, Ill., for the C. I. O.

Mr. David Sigman, of Milwaukee, Wis., and *Mr. Douglas J. Hanna*, of Davenport, Iowa, for the A. F. L.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Farm Equipment and Metal Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of International Harvester Company, Farmall Works, Rock Island, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jack G. Evans, Trial Examiner. Said hearing was held at Davenport, Iowa, on April 17, 1944. The Company, the C. I. O., and Federal Labor Union #22657, A. F. L., herein called the A. F. L., 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 reserved ruling upon the motion of the A. F. L. to dismiss the petition. For reasons hereinafter set forth, said 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 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

International Harvester Company, a New Jersey corporation with principal offices in Chicago, Illinois, is engaged in the manufacture, sale, and distribution of trucks, farm implements, and various war products at several plants in various parts of the United States. The present proceeding involves only the Company's Farmall Works at Rock Island, Illinois. In the operation of the Farmall Works during 1943, the Company used raw materials valued in excess of $1,000,000, more than 5 percent of which was received from points outside the State of Illinois. During the same period, the finished products produced at the Farmall Works exceeded $1,000,000 in value, of which 95 percent was shipped to points outside the State of Illinois.

The Company concedes, and we find, that it is engaged in commerce at its Farmall Works within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Farm Equipment and Metal Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Federal Labor Union #22657, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about December 30, 1943, the C. I. O. advised the Company that it represented a majority of the employees at the Farmall Works, and requested recognition as their exclusive bargaining representative. The Company rejected the request on the ground that it was under a contract with the A. F. L. covering the aforesaid employees.

On May 29, 1942, the A. F. L. and the Company entered into a collective bargaining agreement covering all production and maintenance employees (with certain exceptions) at the Farmall Works. The agreement contains a maintenance-of-membership clause,[1] and provides that it shall remain in effect for the duration of the war, but not less than 1 year, and "thereafter until thirty (30) days shall have elapsed following the giving of written notice by one party to the

[1] The maintenance-of-membership clause was included in the agreement pursuant to an Order of the National War Labor Board. NDMB Cases Nos. 4, 4–A, and 89, consolidated (April 15, 1942).

other of a desire for changes or termination." The A. F. L. contends that this agreement constitutes a bar to the present proceedings. We find no merit in this contention. It will be noted that inasmuch as more than 1 year has elapsed since its execution, the contract is now one of indefinite duration. We have repeatedly held that such a contract constitutes no bar to a representation proceeding instituted after that contract has been in effect for a year or more.[2] Accordingly, we find that the instant contract constitutes no bar to a present determination of representatives.

The A. F. L. further contends that the petition should be dismissed because of an alleged representation made by the C. I. O. to the National War Labor Board in 1942 to the effect that it would not attempt to organize the employees in the Company's Farmall Works. In 1941, we certified the C. I. O. as the exclusive bargaining representative of four seperate units of production and maintenance employees at four plants of the Company.[3] In the same year, we certified the A. F. L. in similar units at two other plants of the Company,[4] one of which is the Farmall Works, the sole plant involved herein. Thereafter, the A. F. L. and the C. I. O. entered into seperate negotiations with the Company for the purpose of consummating collective bargaining agreements covering the aforesaid units. The negotiations reached an impasse and a dispute was certified to the National War Labor Board.[5] On April 15, 1942, the National War Labor Board issued its decision,[6] ordering, *inter alia*, the inclusion of maintenance-of-membership clauses in the contracts between the Company and the several unions involved. Thereafter, contracts were executed incorporating such clauses. The A. F. L. asserts that the National War Labor Board granted maintenance-of-membership clauses on the assurance by each of the unions that, in the interest of maintaining the stability of labor relations at the Company's several plants, it would not seek to organize any group of the Company's employees then represented by another union. The institution of the present proceedings, the A. F. L. claims, constitutes a violation by the C. I. O. of its pledge to the National War Labor Board, and is conduct which this Board ought to penalize by dismissing the instant petition.

In effect, the A. F. L. is proposing that this Board enforce an agreement which would deny employees the privilege of selecting a par-

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[2] See *Matter of The Trailer Company of America*, and cases cited therein, 51 N. L. R. B. 1106

[3] Decisions reported in 33 N. L. R. B. 347 (West Pullman Works); 33 N L. R B 509 (East Moline Works); 34 N. L. R. B. 323 (McCormick Works); and 35 N. L. R. B. 445 (Rock Falls Works).

[4] Decisions reported in 33 N L. R. B 546 (Milwaukee Works, and 34 N L R. B 321 (Farmall Works).

[5] Other unions, not involved herein, were also parties to the certified dispute.

[6] Cited in footnote 1, *supra*.

ticular labor organization as their representative because that organization has agreed not to represent them. In our opinion, such an agreement is inconsistent with the express provisions of the Act and cannot, therefore, be given effect. Section 7 of the Act provides that "Employees shall have the right . . . to bargain collectively through representatives of their own choosing. . . ." This right cannot be bargained away by a labor organization.[7] Nor do we believe, as the A. F. L. asserts, that the stability of the employer-employee relationship at the Farmall Works would be impaired by the conduct of an election at this time. On the contrary, our experience has demonstrated that there is nothing more likely to undermine stability than a policy which denies to employees the right to select a new bargaining representative after the passage of a reasonable time. In this case, nearly 3 years have elapsed since the employees last expressed their choice of a bargaining representative.

A statement of a Regional Attorney for the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.[8]

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 stipulated, and we find, that all production and maintenance employees at the Farmall Works of the Company, excluding salaried employees, supervisory employees on hourly rates above the rank of working group leaders, factory clerical employees, office clerical employees, indentured apprentices, student executives, fire and watch employees (except production and maintenance employees who act as volunteer firemen), pattern makers and pattern maker apprentices, and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in

[7] See *Matter of Packard Motor Car Company*, 47 N. L. R. B. 932, *Matter of Briggs Manufacturing Company*, 49 N. L. R. B 57.

[8] The Regional Attorney reported that the C. I. O. submitted 2,228 application-for-membership cards; that the names of 1,838 persons appearing on the cards were listed on the Company's pay roll of February 1, 1944, which contained the names of 4,161 employees in the appropriate unit; and that the cards were dated from December 1943 to April 1944. The A. F. L. relied upon its contract to establish its interest in this proceeding.

The Trial Examiner rejected the A. F. L.'s offer to prove that a number of the application-for-membership cards submitted by the C. I. O. in support of its interest herein are not authentic. We have heretofore affirmed this ruling, for, as we have frequently stated, the examination and evaluation of these cards is an administrative matter, wholly within the discretion of the Board, and for this reason is not subject to attack by parties to the proceeding. See *Matter of American Finishing Company*, footnote 4, and cases cited therein, 54 N. L. R. B. 996.

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.[9]

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can be resolved by means of an election by secret ballot. The Company urges, in its brief, that all employees within the appropriate unit who are in the armed forces of the United States be permitted to vote by mail. Since, as we fully stated in *Matter of Mine Safety Appliances Co., Callery Plant, Callery, Pennsylvania*, 55 N. L. R. B., No. 215, it is administratively impracticable to provide for mail balloting of employees on military leave who are unable to appear at the polls and since a safeguard has been established for their interests, only those employees in the armed forces of the United States who present themselves in person at the polls will be permitted to vote.

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 International Harvester Company, Farmall Works, Rock Island, Illinois, and 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 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

[9] This is the same unit found appropriate in a previous Board decision involving the Company's Farmall Works (*Matter of International Harvester Company, Farmall Works*, 32 N. L. R. B. 25), and incorporated in the current agreement between the Company and the A. F. L.

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 those employees 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 Farm Equipment and Metal Workers of America, C. I. O., or by Federal Labor Union #22657, A. F. L., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY, concurring:

After examining the record in this case, I concur with my colleagues in the view that we have no other course open to us but to direct an election. Since their conclusion is based in part, however, upon some decisions which I think are questionable,[1] I feel that I should express my views separately.

The only important issue in this case arises out of the possible impact of an order of the War Labor Board, dated April 15, 1942,[2] in which the International Harvester Company was ordered to execute contracts in its various plants incorporating maintenance-of-membership provisions. In four of these plants, pursuant to certification of this Board, the contracting party was the same C. I. O. union which is the petitioner in this case. In the other two plants, including the one involved here, the intervening union, referred to in the majority opinion as the A. F. L., was the contracting party. According to certain evidence offered by the A. F. L., the petitioning union at the time of the issuance of the War Labor Board's order agreed not to try to represent as bargaining agent employees in any of the plants where the intervening union had previously been certified. The Trial Examiner rejected the greater part of this offer or proof and our decision in effect sustains his ruling.

It has never been my opinion that the provisions of the National Labor Relations Act prevent this Board from giving binding effect to a voluntary agreement by a union not to represent certain designated classes of employees.[3] In this case, however, the making of such an agreement was denied by a representative of the petitioning union. Consequently, we should have to admit evidence of what went on behind the scenes at the War Labor Board to ascertain whether the alleged commitment had in fact occurred, since the decision of that agency on its face does not reveal the existence of such an under-

[1] See *Matter of Packard Motor Company*, 47 N. L. R. B. 932; *Matter of Briggs Manufacturing Company*, 49 N. L. R. B. 57.

[2] See footnote 1, majority opinion, *supra*.

[3] See dissenting opinions in *Packard Motor Company, supra*, and *Federal Motor Truck Company*, 54 N. L. R. B. 984.

standing. It would seem to be outside our province to examine into the unpublished proceedings of another administrative agency.

Moreover, if the alleged understanding was an implied condition of the War Labor Board's order, the method of its enforcement would seem to lie within the discretion of that agency. If the petitioning union is indeed guilty of a breach of the conditions upon which it obtained certain privileges and rights from the hands of the War Labor Board, I know of nothing in the law which would prevent the parties aggrieved by such breach from filing a motion with that agency to set aside in whole or in part the order of April 15, 1942.