

In the Matter of TRACKSON COMPANY and INTERNATIONAL UNION,
UNITED AUTOMOBILE WORKERS OF AMERICA, A. F. L., LOCAL 806

Case No. 13-R-2386.—Decided May 25, 1944

Lemfrom, Tighe, Englehard & Peck, by *Mr. L. B. Lemfrom*, and *Mr. Armand Froehlich* and *Mr. L. S. Lentz*, of Milwaukee, Wis., for the Company.

Mr. Carl Griepentrog, of Milwaukee, Wis., and *Mr. Anthony Gruszka*, of South Milwaukee, Wis., for the A. F. L.

Mr. James T. Ryan, and *Mr. Claude Salinzinger*, of Milwaukee, Wis., for the Independent.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile Workers of America, A. F. L., Local 806, herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Trackson Company, Milwaukee, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Russell Packard, Trial Examiner. Said hearing was held at Milwaukee, Wisconsin, on May 1, 1944. The Company, the A. F. L., and Independent Local 3333, 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Company made a motion to dismiss the petition and, in the alternative, to postpone any election herein until after all of its personnel in the armed services return to work. The Trial Examiner reserved ruling for the Board. For reasons stated more fully in Section III, below, the motions are denied.¹ All parties were afforded an opportunity to file briefs with the Board.

¹ See *Matter of Mine Safety Appliances Co., etc.*, 55 N L R B 1190.

56 N. L. R. B., No. 164.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company a Wisconsin corporation operating three plants in Milwaukee, Wisconsin, is engaged in the manufacture of gun mounts and equipment. During 1943, raw materials in excess of \$1,000,000 were purchased by the Company, of which more than 75 percent was obtained from sources outside the State of Wisconsin. During the same period, finished products of the Company were valued in excess of \$4,000,000, of which more than 90 percent was shipped to points outside that State.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile Workers of America, Local 806, affiliated with the American Federation of Labor, and the Independent, Local 3333, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition of the A. F. L. as the exclusive bargaining representative of certain of the Company's employees.

The Independent and the Company assert that a prior certification by the Board of the Independent constitutes a bar to this proceeding. In June 1943 the Independent won an election among the employees in the appropriate unit.² The A. F. L. filed Objections to the conduct of the election. Nevertheless on June 9, 1943, the Company and the Independent executed a 1-year renewal of a prior contract between them, which has been in existence since June 1942. The Independent was thereafter certified by the Board on August 14, 1943. No extension or modification of the June 1943 contract was effected by the parties subsequent to the issuance of the Board's certification. It is evident that the Company and the Independent did not consider themselves under any disability with respect to collective bargaining by reason of the delay in the issuance of the certification, and their bargaining relationship between the election and certification in 1943 was neither impeded nor impaired.

² *Matter of Trackson Company*, 49 N. L. R. B. 1041.

As a general rule, we do not entertain a new petition within 1 year from a prior certification. Where a contract for a reasonable term has been executed with a certified representative, in the interest of stability we refuse to disturb the contractual relations until the initial period of the contract is about to expire. Where, however, as here, the parties renew a contract after an election but prior to certification, and where the contracting union is thereafter certified as the exclusive representative, the term of the renewed contract rather than the date of certification becomes the controlling factor in our determination as to whether another election should be held. We therefore find that our certification of August 14, 1943, is not a bar to this proceeding. Since the June 1943 contract is about to expire, we find that it also does not constitute a bar to a present determination of representatives.³

The Company also seeks indefinite postponement of any election herein until its employees in the armed services have returned to work. We cannot agree with that request. The instant investigation is intended to ascertain the present bargaining representative for the purpose of enabling collective bargaining to proceed without undue delay and in order to prevent possible interruptions in the operations of the Company, which is engaged in vital war work. In accordance with our usual practice, all employees of the Company in the armed forces who present themselves at the polls are entitled to cast a ballot. We insure to other employees in the armed forces a voice in the selection of a collective bargaining representative, upon the return to their employment of such members of the servicemen as to constitute a substantial percentage of the employees in the appropriate unit in which we may have certified a collective bargaining representative, we shall afford them an opportunity to affirm or change the bargaining agent selected in their absence. We reject, consequently, the Company's request for the indefinite postponement of the election herein.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. L. represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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

We find, in substantial agreement with a stipulation of the parties, that all production and maintenance employees of the Company at its

³ See e. g. *Matter of Thompson Products, Inc.*, 47 N. L. R. B. 619.

⁴ The Field Examiner reported that the A. F. L. submitted 244 membership application cards and that there are about 700 employees in the appropriate unit.

three Milwaukee, Wisconsin, plants including non-militarized watchmen, and leadmen, but excluding executive, office and clerical employees, engineering department employees, and all supervisory employees with 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.⁵

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 Trackson Company, Milwaukee, Wisconsin, 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 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 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 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 International Union, United Automobile Workers of America, Local 806, affiliated with the American Federation of Labor, or by Independent Local 3333, for the purposes of collective bargaining, or by neither.

⁵ This unit is substantially the same as that which is covered by the Independent's contracts and which we found appropriate in the prior case. See *Trackson* case, footnote 2, *supra*.