

In the Matter of TOLEDO STAMPING & MANUFACTURING COMPANY and
INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICUL-
TURAL IMPLEMENT WORKERS OF AMERICA, LOCAL #12 (CIO)

Case No. 8-R-1498.—Decided June 7, 1944

Messrs. Alan B. Loop and R. M. Sawhill, of Toledo, Ohio, for the Company.

Messrs. Edward Lamb, David A. Guberman, and Cyrus Martin, of Toledo, Ohio, for the CIO.

Messrs. George Pilkiwicz and Henry G. Dreyer, of Toledo, Ohio, for the MESA.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local #12 (CIO), herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Toledo Stamping & Manufacturing Company, Toledo, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis Plost, Trial Examiner. Said hearing was held at Toledo, Ohio, on May 2, 1944. The Company, the CIO, and Mechanics Educational Society of America, (CUA), herein called the MESA, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Toledo Stamping & Manufacturing Company is an Ohio corporation, having its only plant and office at Toledo, Ohio, where it is en-

gaged in the manufacture of metal stampings. The principal raw material used is steel. During the fiscal year ending June 30, 1943, the value of the principal raw material used was \$378,690, of which approximately 95 percent was purchased outside the State of Ohio. The value of the Company's finished products for the same period exceeded \$900,000, approximately 95 percent of which was shipped to points outside the State of Ohio. The Company employs approximately 175 persons exclusive of its officers.

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

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local #12 (CIO), affiliated with the Congress of Industrial Organizations, and Mechanics Educational Society of America (CUA), affiliated with the Confederated Unions of America, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

At the hearing the parties stipulated that on or about April 1, 1944, the CIO advised the Company that it represented a majority of the employees within an alleged appropriate bargaining unit and requested recognition as their exclusive bargaining representative, and that the Company refused to accord the CIO such recognition because of the Decision and Order issued by the Board on March 30, 1944, in *Matter of The Toledo Stamping & Manufacturing Company*.¹

In the cited case the Board dismissed the petition for investigation and certification of representatives filed by the CIO because of the fact that one Dean, the Company's chief inspector, who, as the record clearly established, was a supervisory employee, admitted that he had sponsored the CIO's membership drive. In dismissing the prior petition the Board said, "We shall, accordingly, dismiss the petition without prejudice to the CIO's right to seek an investigation and determination of representatives when it can produce satisfactory *prima facie* evidence of its designation as collective bargaining representative of the employees of the Company, secured without the assistance of any supervisory employees." The evidence submitted by the CIO in the instant case in support of its representation claim consists of a petition dated in April 1944, signed by 172 persons, 163 of whose

¹ 55 N. L. R. B. 865.

names appear on the Company's pay roll of April '8, 1944.' This petition reads as follows:

We, the undersigned employees of the Toledo Stamping and Manufacturing Company in Toledo, Ohio desire to express our opposition to the decision of the . . . Board . . . in Case No. 8-R-1334. We desire to have the . . . C. I. O. as our collective bargaining agent and as of this date reiterate their designation of representation.

In accordance with my legal rights, I hereby designate the International Union, United Automobile Aircraft and Agricultural Implement Workers of America, Local No. 12 as my agent for collective bargaining with my employers.

Neither the Company nor the MESA questions the authenticity of the signatures appearing on the above-described petition nor the method by which the signatures were procured. The instant case is based upon a new petition for investigation and certification of representatives filed by the CIO subsequent to the dismissal of its prior petition and is apparently supported by new evidence, secured without the assistance of any supervisory employees, which indicates that a substantial number of employees within the unit it alleges to be appropriate have designated it as their collective bargaining representative.

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 DETERMINATION OF REPRESENTATIVES

Contentions of the parties

The CIO contends that all production and maintenance employees of the Company, excluding office employees, and supervisory employees with authority to hire and discharge, constitute an appropriate bargaining unit. The MESA contends for two separate appropriate units, one to be comprised of all employees in the tool and die department of the Company's plant, including tool and die makers, apprentices, and learners; the other to be comprised of all remaining production and maintenance employees, excluding supervisory employees and office workers. The Company takes no position with respect to the appropriate unit.

Bargaining history

The record indicates that the MESA has been recognized by the Company as exclusive bargaining representative of the production

and maintenance employees since about 1936. It further appears that on April 22, 1941, the Company and the MESA entered into a union-shop contract for a term of 1 year with a provision for an extension for an additional period of 1 year unless written notice of termination was given by either party within 30 days of the original expiration date. No such notice was given and the contract was automatically extended for a period of 1 year from April 22, 1942. No new contract or written agreement to extend the original contract was thereafter entered into by the contracting parties. Thus, in accordance with its express terms, the contract as extended expired on April 22, 1943.

Prior to the execution of the aforesaid union-shop contract a majority of the tool and die department employees of the Company were members of an American Federation of Labor union and were not represented by the MESA. The tool and die department employees joined the MESA shortly after the execution of the above-mentioned contract. The record is not clear as to whether there was or is one shop committee for production and maintenance workers and another for the tool and die department employees. The MESA maintains two locals in the Toledo, Ohio, area; one (Local 3) for production workers and the other (Local 4) for skilled workers. The tool and die department employees are members of Local 4. Both Locals have a common secretary, Earl S. Streeter. Also, both Locals are named in the contract as parties thereto. The contract's recognition clause states, in part, "The Company agrees to recognize the MESA as sole bargaining *agents for all employees*" (italics supplied). It excepts from the union-shop provision "foremen, assistant foremen, supervisors of all departments and office employees." The contract enumerates the five departments in the plant, namely, (1) tool and die, (2) pressroom, (3) shearroom, (4) assembly, packing, shipping, inspection and miscellaneous, and (5) maintenance and millwright. Wage scales appear under two headings, namely, "production departments" and "tool and die department." Under the latter heading appears the following clause:

\$1.00 per hour minimum for tool and die makers.

It is understood that the management will discuss the matter with the committee in the die room and agree who the die makers are and which ones qualify for this minimum guarantee.

All other provisions such as hours of employment, overtime, vacations, and other conditions of employment, are set out generally for all employees.

The CIO contends that collective bargaining has been conducted by the MESA on a plant-wide basis and that a single shop committee has handled all plant grievances including those of tool and die department employees.

Conclusion

Although the record contains some evidence in support of the CIO's contention, in this situation; considering the inconclusive history of collective bargaining and the conflicting contentions of the parties, we shall permit the scope of the bargaining unit or units to be determined, in part, by the desires of the employees involved as reflected by the means of separate elections.²

We are of the opinion that the employees in the tool and die department, subject to certain named exclusions, may appropriately constitute a separate bargaining unit or be merged in the industrial unit requested by the CIO. As stated in Section III, *supra*, the CIO has submitted sufficient evidence of interest with respect to its proposed unit to warrant placing it on the ballots in the elections which we shall direct. The MESA has participated in collective bargaining for the Company's employees under the above-mentioned contract and therefore has demonstrated a sufficient interest to warrant placing it on the ballots in the elections hereinafter directed.

There remains for consideration the composition of the voting groups.

The parties are in substantial agreement with respect to the inclusions and exclusions. The Company employs two unmilitarized watchmen whom the parties agree to include in the larger production and maintenance unit. We shall include them in the larger of the two voting groups. There shall be excluded from each voting group, in addition to others specifically mentioned therein, all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. The respective voting groups shall be as follows:

(1) All employees in the tool and die department of the Company's plant, including tool and die makers, apprentices, and learners, to determine whether they desire to be represented by the MESA, or by the CIO, for the purposes of collective bargaining, or by neither; and

(2) All remaining production and maintenance employees of the Company, including watchmen, but excluding office employees, to determine whether they desire to be represented by the CIO, or by the MESA, for the purposes of collective bargaining, or by neither.

We shall make no final determination as to the appropriate unit or units pending the results of the elections. Those eligible to vote in the elections which we shall direct, shall be the employees of the Company described in the voting groups above who were employed during the pay-roll period immediately preceding the date of the Direction

² See *Matter of Basic Refractories Incorporated*, 55 N. L. R. B. 391; *Matter of Basic Magnesium Incorporated*, 55 N. L. R. B. 380; and *Matter of Erie Concrete & Supply Co., Ship Building Division of Erie, Pa.*, 55 N. L. R. B. 1124.

of Elections herein, subject to the limitations and additions set forth therein.

DIRECTION OF ELECTIONS

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 Toledo Stamping & Manufacturing Company, Toledo, Ohio, elections 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 Eighth 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 voting groups described below 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 employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections and further excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

(1) All employees in the tool and die department of the Company's plant, including tool and die makers, apprentices, and learners, to determine whether they desire to be represented by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local #12 (CIO), or by Mechanics Educational Society of America (CUA), for the purposes of collective bargaining, or by neither;

(2) All remaining production and maintenance employees of the Company, including watchmen, but excluding office employees, to determine whether they desire to be represented by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local #12 (CIO), or by Mechanics Educational Society of America (CUA), for the purposes of collective bargaining, or by neither.