

In the Matter of BLACKMER PUMP COMPANY and LOCAL 828, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Case No. 7-R-1648.—Decided June 16, 1944

Mr. George S. Norcross and Mr. N. J. Harkness, of Grand Rapids, Mich., for the Company.

Mr. Russell White and Mr. Arthur Brunges, of Lansing, Mich., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 828, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Blackmer Pump Company, Grand Rapids, 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 Grand Rapids, Michigan, on May 9, 1944. The Company and the Union 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. 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

The Company, a Michigan corporation, manufactures rotary power and hand-driven pumps and other articles at Grand Rapids, Michi-

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gan. During 1943, the Company used in excess of \$250,000 worth of raw materials, approximately 90 percent of which was shipped to the Grand Rapids plant from points outside the State of Michigan. During the same period the Company's sales exceeded \$5,000,000, approximately 90 percent of which represented sales made to customers located outside of the State of Michigan.

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

II. THE ORGANIZATION INVOLVED

Local 828, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its office and clerical employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 agree that an appropriate unit should include all clerks, typists, stenographers, and telephone operators of the Company, and exclude secretaries to executives and all supervisory employees. The Union would also include bookkeepers, timekeepers, and pay-roll clerks. The Company would exclude them, on the grounds that they are "confidential" employees and exercise "management" functions.

The bookkeepers handle receipts of payments and maintain necessary records and accounts, records of shipments and of their prices, pay-roll and wage records, bank balance records, prepare checks, and perform other related work. Pay-roll clerks and timekeepers check time cards for pay-roll purposes and furnish information thus obtained to the

¹The Trial Examiner reported that the Union submitted 9 membership application cards, that the names of 7 persons appearing on the cards were listed on the Company's pay roll of December 6, 1943, which contained the names of 23 employees in the appropriate unit.

cost department for cost allocation purposes, and perform other usual functions associated with that category of work.²

The Company states that the work of the bookkeepers, pay-roll clerks, and timekeepers is of a confidential nature. It asserts also that it must rely upon the honesty, integrity, and accuracy of these employees, with reference to wage payments, and points especially to the fact that the bookkeepers, pay-roll clerks, and timekeepers are doing work directly related to the expenditure of company funds, that they thereby exercise management functions, and that the Company must have direct supervision and control over such employees. The duties of the bookkeepers, pay-roll clerks, and timekeepers of this Company appear to be no different from duties performed by employees in those categories elsewhere. All bookkeepers, pay-roll clerks and timekeepers perform functions directly connected with the expenditures of funds. We disagree with the Company's contention that such employees perform management functions requiring the denial to them of bargaining rights under the Act. Moreover, nothing in our experience leads us to conclude that the exercise of rights under the Act by employees is incompatible with their loyal, full, and honest performance of duties. The remedy for inefficiency, disregard or neglect of duty, collusion or other improper practices by employees lies implicitly in the power of the employer to discipline and discharge. We find nothing in this record requiring denial of collective bargaining rights to the bookkeepers, pay-roll clerks, and timekeepers of the Company.

We find that all clerks, typists, stenographers, telephone operators, bookkeepers, pay-roll clerks, timekeepers, and checkers, excluding secretaries to executives, 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.

V. THE DETERMINATION OF REPRESENTATIVES

The Company asserts that two of the bookkeepers, Eldene Preston and Ada Hoben, supervise the work of others "to a limited extent." There are three bookkeepers, whose duties we described in greater detail in the preceding Section, in the Company's employ. In the performance of such duties, Preston and Hoben are at times assisted by other clerical employees, whom they instruct and "supervise . . . to see that the work is done properly." While a Company official testi-

² Those employees who are engaged in this type of work in the Company's offices are referred to by it interchangeably as pay-roll clerks and timekeepers, while those who perform their duties in the plant are referred to as timekeepers and as checkers.

fied to the conclusion that Preston and Hoben can effectively recommend the hire or discharge of employees, he also testified that he was not able to cite any specific instance of such action, but that he recalled Preston and Hoben having, on several occasions, stated as to certain clerks assisting them, that "these girls aren't competent" and that they should be replaced," and that the changes were thereafter made by the office manager, supervisor over the bookkeepers. The same official also testified later that changes in the status of employees were made upon recommendation of Preston and Hoben. It is evident, however, that Preston and Hoben are not supervisory employees and do not possess or exercise functions normally associated with and indicative of supervisory status. At best, Preston and Hoben may have suggested that certain clerical employees assigned to assist them at bookkeeping were not satisfactorily performing those tasks and should be replaced in those functions by others. There is nothing in the record to indicate that these temporary assistants were discharged from the Company's employ or that they suffered a change in their regular jobs as a result of Preston's or Hoben's dissatisfaction with their temporary performances at bookkeeping. We find that Preston and Hoben are not supervisory employees, that they are within the appropriate unit, and that they are eligible to participate in the election.

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 Blackmer Pump Company, Grand Rapids, Michigan, 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 Seventh 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 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 828, International Union; United Automobile, Aircraft and Agricultural Implement Workers of America, UAW, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.