

In the Matter of PESCO PRODUCTS Co. and INTERNATIONAL UNION,  
UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, LOCAL 363 (C. I. O.)

*Case No. 8-R-1487.—Decided June 20, 1944*

*Messrs. Robert O. Evans and Edward M. Whalley, of Cleveland, Ohio, for the Company.*

*Mr. Max W. Johnstone, of Akron, Ohio, and Mr. Herbert Pappin, of Cleveland, Ohio, for the Union.*

*Mrs. Platonia P. Kaldes, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 363 (C. I. O.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Pesco Products Co., herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Cleveland, Ohio, on May 4, 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. At the close of the hearing, the Company moved to dismiss the petition on the ground that the unit sought by the Union is not appropriate. The motion was referred to the Board. For the reasons hereinafter set forth the motion is 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. After the close of the hearing the parties entered into a stipulation to correct certain errors in the record; the stipulation is approved and the record is ordered corrected accordingly.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Pesco Products Co., a subsidiary of Borg-Warner Corporation, is engaged almost wholly in the manufacture of materials for the war effort. It operates two plants in the city of Cleveland, Ohio, referred to in the record as the Taft Avenue Plant and the Euclid Avenue Plant, where it manufactures pumps and aircraft accessories. The Company owns the Taft Avenue Plant and leases the Euclid Avenue Plant from Defense Plant Corporation.

The principal raw materials used by the Company in the course of its manufacturing operations are steel, aluminum alloys, brass, plastics, and rubber compositions. While about 90 percent of these raw materials is purchased by the Company in the State of Ohio, almost all of such raw materials originally come from outside the State of Ohio. Of the finished products manufactured by the Company, approximately 80 percent is destined for points outside the State of Ohio.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 363, 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 employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

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.

<sup>1</sup>The Field Examiner reported that the Union submitted 403 authorization cards, that he compared the cards with the Company's pay roll of March 26, 1944, which contains the names of 846 employees in the alleged appropriate unit; and that a comparison of the cards with the aforesaid pay roll showed that the Union represented 30 percent of the employees in the alleged appropriate unit.

## IV. THE APPROPRIATE UNIT

The Union contends that all production and maintenance employees of the Company's Taft Avenue Plant, including tool crib attendants, shipping and receiving clerks, and a trucker, but excluding supervisors, foremen, and other supervisory employees, plant-protection employees, office and clerical employees, planning department clerks, expeditors, timekeeping department employees, publications department employees, engineering department employees such as engineers, draftsmen, tracers, and blueprint operators, electrical laboratory employees, experimental laboratory employees, experimental machine shop employees, and dispensary employees, constitute an appropriate unit. The principal objection of the Company to the unit sought by the Union is that it sets apart, for collective bargaining purposes, Taft Avenue Plant employees from Euclid Avenue Plant employees. The Company contends that only a unit comprised of employees of both plants is appropriate.

The two plants here in question are located about 3½ miles apart. Originally all of the Company's operations were housed in the Taft Avenue Plant but, due to increased production in filling war contracts, the Company began operating the Euclid Avenue Plant to take care of the overflow. More than 1,400 people are employed at both plants, of which approximately 650 are employed in the Euclid Avenue Plant. Both plants manufacture the same product.

There is some support in the record for the Company's position that the two-plant unit is appropriate. Thus, both plants are managed through central administrative offices which, *inter alia*, establish wage rates, schedules, and job classifications, and keep production and other records for both plants. Likewise, each plant performs some of the manufacturing processes for the other. The Euclid Avenue Plant does carburizing and hardening of parts and some automatic machine work for both plants. The Taft Avenue Plant sometimes makes tools for both plants. Parts are fabricated in either plant for the other and material is transferred between the two plants when necessary. Finally, hours, base pay, and working conditions are substantially the same at both plants and employees of each plant serve on a common recreation committee.

On the other hand, there are many factors in the record which support the Union's present petition for a unit of Taft Avenue Plant employees. The Company maintains separate employment offices for each plant and a separate supervisory hierarchy consisting of a plant superintendent, a general foreman, and departmental foremen. Each plant manufactures complete production units, and there is practi-

cally no interchange of employees between the two plants.<sup>2</sup> While, as has been indicated above, there is some interchange of tools, material, and parts, the small amount of such interchange is indicated by the fact that one trucker handles all the transfers as part of his regular work. Despite the Company's centralized management and control, the Taft Avenue Plant is separable from the Euclid Avenue Plant so that collective bargaining confined to it would appear to be feasible. This feasibility was recognized by the Company in June 1943, when it agreed to a consent election in a unit of Taft Avenue Plant employees similar to that here requested by the Union. Moreover, while the Union attempted to organize the Euclid Avenue Plant from June to September 1943, the attempt was unsuccessful and the organizational drive which preceded the filing of the instant petition was confined solely to the Taft Avenue Plant. From the foregoing facts, we are of the opinion that the employees of the Taft Avenue Plant should not be deprived at this time of their right to bargain collectively under the Act, and we find, therefore, that they may comprise a unit appropriate for the purposes of collective bargaining.<sup>3</sup> Our present determination does not preclude a later finding that the two-plant unit is appropriate when organization has extended more fully to the Euclid Avenue Plant employees.

The unit sought by the Union is basically one composed of production workers, all of whom are hourly paid. The Company agrees to the inclusions and exclusions sought by the Union except that it would include in the unit, while the Union would exclude therefrom, hourly paid employees in the experimental laboratory and experimental machine shop,<sup>4</sup> both of which are hereinafter sometimes referred to collectively as the experimental departments.<sup>5</sup> Employees in these experimental departments are engaged primarily in the development of new products, in testing and criticizing new products and, to some extent, products in production,<sup>6</sup> and in work of a secret nature on present war products and the development of products and processes for the post-war period.<sup>7</sup> Much of the work these employees ordi-

<sup>2</sup> When the Euclid Avenue Plant was first opened in September 1942, a "nucleus" of approximately 75 employees was transferred to it from the Taft Avenue Plant. These transfers and a very few which have been made since that time are of a permanent nature. There have been no substantial transfers of a temporary nature.

<sup>3</sup> Cf. *Matter of Mine Safety Appliances Co., Callery Plant, Callery, Pa.*, 55 N. L. R. B. 1190.

<sup>4</sup> There are 25 hourly paid employees in the experimental laboratory and 22 in the experimental machine shop.

<sup>5</sup> While the experimental laboratory and the experimental machine shop are two separate departments, the work of each is closely allied.

<sup>6</sup> Production units must be built according to definite specifications. Whenever difficulties develop in producing in accordance with the specifications, production parts are sent to the experimental laboratory for building and testing the unit against the specifications, and criticizing and making suggestions relating to the operation of the unit.

<sup>7</sup> When the experimental machine shop employees have nothing else to do, the Company utilizes their time and machines for the production of small orders which would break into the production of larger orders if done in the regular machine shops.

narily perform is in the nature of engineering work. In fact, the experimental laboratory is under the direct supervision of the engineering department which the parties mutually agree should be excluded from the unit.

Geographically, the experimental departments are housed in a restricted area of the plant to which, for reasons of security, only employees with special badges are given access. Also housed in this restricted area are the electrical laboratory and the publications department, both of which the parties mutually agree should be excluded from the unit. Production workers are among those who do not have access to this restricted area.

It is noteworthy that, during the June 1943 consent election above mentioned, the Company agreed that employees in the experimental departments should not be permitted to cast ballots. Moreover, the Union has not attempted to organize employees in the experimental departments, nor is there any evidence that any of these employees desire to be represented by the Union. Under all the circumstances, we are of the opinion that employees in the experimental machine shop and experimental laboratory should be excluded from the unit.

We find that all production and maintenance employees of the Company's Taft Avenue Plant, including tool crib attendants, shipping and receiving clerks, and the trucker, but excluding plant-protection employees, office and clerical employees, planning department clerks, expeditors, timekeeping department employees, publications department employees, engineering department employees such as engineers, draftsmen, tracers, and blueprint operators, electrical laboratory employees, experimental laboratory employees, experimental machine shop employees, dispensary employees, supervisors, foremen, and all other 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

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 Re-

lations 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 Pesco Products Co., Cleveland, Ohio, 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 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 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 or not they desire to be represented by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 363, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.