

In the Matter of MORAINE PRODUCTS DIVISION GENERAL MOTORS CORPORATION and UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, LOCAL 696 and UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 752

*Case No. 9-RE-12.—Decided June 30, 1944*

*Messrs. Henry M. Hogan, Harry S. Benjamin, Jr., and Richard E. Helms, of Detroit, Mich., for the Company.*

*Mr. F. L. Innis, of Columbus, Ohio, Mr. R. J. Quinlan, of Dayton, Ohio, and Mr. N. L. Smokler, of Detroit, Mich., for the UAW.*

*Mr. David Scribner, of New York City, and Messrs. Henry Fiering and C. W. Kenny, of Dayton, Ohio, for the UE.*

*Miss Frances Lopinsky, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Moraine Products Division General Motors Corporation, Dayton, Ohio, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of employees of the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Dayton, Ohio, on March 9, 1944. The Company, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 696, herein called the UAW, and United Electrical, Radio and Machine Workers of America, Local 752, herein called the UE, appeared and participated. At the beginning of the hearing, the UE moved the Board to dismiss the petition herein on the grounds that it involves a jurisdictional dispute between labor organizations affiliated with the same parent organization and that the Company has not met the prerequisites for the filing of an employer's petition according to the Rules and Regulations of the Board. The motion is hereby denied. 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 request of the Company and the UAW, and pursuant to a notice to all parties, a hearing was duly held before the Board in Washington, D. C., on June 13, 1944, for the purpose of oral argument. All parties were represented by counsel and participated in the hearing.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

General Motors Corporation is a Delaware corporation which maintains its principal business offices at New York City and Detroit, Michigan. The Company functions through several unincorporated divisions, one of which is the Moraine Products Division, which maintains and operates a plant at Dayton, Ohio. In excess of 50 percent of the value of the goods and materials used in the processing and manufacturing operations of the Moraine Products Division comes from sources outside the State of Ohio. In excess of 50 percent of the completed goods and materials manufactured by the Division eventually reaches points outside the State of Ohio. Practically all the products of the Division are sold or delivered to the United States Government or to the United Nations for use by the armed forces.

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

#### II. THE ORGANIZATIONS INVOLVED

United Automobile, Aircraft and Agricultural Implement Workers of America, Local 696, and United Electrical, Radio and Machine Workers of America, Local 752, are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On February 26, 1941, the UE was certified by the Board as the exclusive bargaining representative for all production and maintenance employees of the Company's Moraine Products Division, Dayton, Ohio.<sup>1</sup> On August 30, 1941, the UAW was certified by the Board as the collective bargaining representative for all production and maintenance employees and mechanical employees in engineering

<sup>1</sup> *Matter of General Motors, Moraine Products Division*, 29 N. L. R. B. 1086.

shops of the Company's Delco Brake Division, Dayton, Ohio.<sup>2</sup> On August 18, 1942, the Moraine Products Division was created as a result of the combination of the Delco Brake Division and the old Moraine Products Division. The Company continued to bargain with the UE and the UAW separately for the employees for whom each was respectively certified,<sup>3</sup> but contended from the time of the merger and still contends that one union should represent all the employees in the newly formed division. The UAW agrees with the Company and asserts that it represents a majority of the employees in the combined plants.

The UE asserts that two separate units, coextensive with the present jurisdictions of the two labor organizations, are appropriate for bargaining. It contends that inasmuch as it has asserted no interest in organizing the employees of the former Delco Brake plant, the Company is not presented with conflicting claims of two labor organizations that each represents a majority of the employees in the bargaining unit claimed to be appropriate,<sup>4</sup> and it is therefore in no position to file a petition with the Board. We find no merit in this contention. The Company is faced with conflicting claims of two labor organizations, not only as to which organization represents a majority of its employees, but also as to what unit or units, shall be accepted in determining the majority.

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 Delco Brake Division, hereinafter referred to as Plant No. 1, and the old Moraine Products Division, hereinafter referred to as Plant No. 2, were located adjacent to each other, being separated only by a fence. With the merger of the two divisions, sections of the fence were torn down and the two plants were connected by a covered passageway. Since the merger was partly to conserve management and supervisory personnel, many departments were consolidated. Thus, one general manager and one group of executives now operate the division. There is a common group of departments for accounting, pay roll, comptroller, sales, service, factory management, processing engineering, factory engineering, tool designing, and shipping and receiving. All

<sup>2</sup> *Matter of General Motors, Delco Brake Division*, 31 N. L. R. B. 525.

<sup>3</sup> Master contracts covering the two parts of the division, as well as other similar plants of the Company throughout the United States, expired in October 1943. New contracts are in process of being negotiated. The UE claims as a bar to this proceeding these master contracts and also a local supplement to the UE contract dated May 21, 1943, which has no termination date but is terminable upon 30 days' notice. Since the master contracts relied upon have terminated, and the supplement is terminable upon 30 days' notice, we reject the UE's contention.

<sup>4</sup> See Article III, Sec. 3, of the National Labor Relations Board's Rules and Regulations—Series 3.

employees are hired through one employment office. One plant-protection department serves the division. Inspection has been partly consolidated, and, except for janitors and certain other maintenance employees assigned to particular departments, one group of maintenance employees services the entire division. To support its contention that the plants should remain separated for purposes of collective bargaining, the UE urges the fact that immediate supervision of production employees has not been changed by the merger and that each plant has its own general foreman to whom all other foremen are responsible, and the further fact that with the exception of a small department in Plant No. 1, which manufactures the same product as is manufactured in Plant No. 2, the products of the two plants are dissimilar. Although the products of the plants are dissimilar, the operations performed by the employees of both plants are similar; so similar, in fact, that more than 200 transfers from one plant to the other, especially from Plant No. 1 to Plant No. 2 have been effected since the merger, and a small percentage of employees so transferred has later been retransferred to the plant of origin. These numerous transfers, the position of the maintenance employees whose work allows no consideration to the former separation of the plants, the centralization of hiring, the similarity of the operations being performed by all employees, and the administrative set-up, in our opinion overbalance the factors urged for the appropriateness of two separate units for the representation of the employees of the Company in the Moraine Products Division. Our former certifications concerning these employees have been rendered obsolete by the changes which have occurred in the two plants.<sup>5</sup>

We find that all production employees, including tool and die makers, maintenance employees and mechanical employees in engineering department shops of General Motors Corporation, Moraine Products Division, excluding, however, direct representatives of management such as officers and directors of the Corporation, employees of sales, accounting, personnel and industrial relations departments, superintendents and assistant superintendents, general foremen, foremen and assistant foremen, 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 (but not leaders), and those employees whose work is of a confidential nature, time-study men, plant-protection employees (but not maintenance patrolmen or fire patrolmen), all clerical employees, chief engineers and shift-operating engineers in power plants, designing (drawing board), production, estimating and planning engineers, draftsmen and detailers, physicists, chemists, metallurgists,

<sup>5</sup> See *Matter of General Motors Corporation, Oldsmobile Division*, 45 N. L. R. B. 11; *Matter of Todd-Bath Iron Shipbuilding Corporation, et al.*, 45 N. L. R. B. 1367.

artists, designer-artists and clay-plaster modelers, timekeepers, technical school students, indentured apprentices, and those technical or professional employees who are receiving training, kitchen and cafeterial help,<sup>6</sup> 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction. The parties request that their names appear on the ballot as U. A. W.-C. I. O. and U. E.-C. I. O., respectively. The request is hereby granted.

#### 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 Moraine Products Division; General Motors Corporation, Dayton, 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 Ninth 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 payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll 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 the U. A. W.-C. I. O., or by U. E.-C. I. O., for the purposes of collective bargaining; or by neither.

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<sup>6</sup> This is a composite description of the units as heretofore certified by the Board on the basis of stipulations entered into by the parties in the prior proceedings. The parties all agree, and the evidence shows, that leaders are not supervisory employees. There was no dispute as to the constituency of the unit or units which the Board might find appropriate.