

In the Matter of MICHIGAN BUMPER CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

*Case No. 7-R-1768.—Decided August 2, 1944*

*Warren, Norcross and Judd, by Mr. Lawson E. Becker, of Grand Rapids, Mich., for the Company.*

*Mr. D. R. Sherwood, of Grand Rapids, Mich., for the U. A. W.*

*Mr. Forest Cruse, of Cincinnati, Ohio, for the Polishers.*

*Mr. David V. Easton, 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 (UAW-CIO), herein called the U. A. W., alleging that a question affecting commerce had arisen concerning the representation of employees of Michigan Bumper Corporation, 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 June 27, 1944. The company, the U. A. W., and Local No. 7, Metal Polishers, Buffers, Platers & Helpers International Union, AFL, herein called the Polishers, appeared, participated, and 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

Michigan Bumper Corporation, a Michigan corporation, owns and operates a plant located at Grand Rapids, Michigan, in which it is

engaged in the manufacture of aviation parts, tank parts, amphibious tank parts, tank treads, chains, links, and jeep bumpers. During the first 6 months of 1944, the Company purchased raw materials valued at approximately \$130,000, of which about 60 percent was purchased outside the State of Michigan. During the same period the total sales of the Company approximated \$246,000, 55 percent of which represents the value of products shipped outside the State of Michigan.

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, Aircraft & Agricultural Implement Workers of America (UAW-CIO), is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Local No. 7, Metal Polishers, Buffers, Platers & Helpers International Union, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTIONS CONCERNING REPRESENTATION

The Company refuses to recognize the U. A. W. as the collective bargaining representative of certain of its employees until the U. A. W. is certified as such by the Board.

In 1936, the Company was engaged in the manufacture of bumpers and bumper parts, products entailing a large amount of buffing, polishing, and plating operations. Several of its employees were represented at that time by an unaffiliated labor organization. Because of dissatisfaction with this labor organization, many of the polishers, buffers, and platers became members of the Polishers. In 1938, the Company and the Polishers executed a collective bargaining agreement in which the Polishers was recognized as the exclusive bargaining representative of all employees of the Company with certain specified exceptions. Contracts providing for similar recognition were executed by these parties in 1939 and 1940, the latter being the last contract between them.

This last contract, executed on December 9, 1940, contains the following provision:

This agreement shall be in full force and effect for a period of twelve (12) months from its date and thereafter for succeeding periods of twelve (12) months, unless at least thirty (30) days before the expiration of any such period either the employer or the contracting employees through their Executive Shop Com-

mittee serve written notice to the other parties hereto to cancel and terminate this agreement.

The parties permitted this contract to renew in 1941, and again in 1942. However, on November 4, 1943, the Polishers addressed a letter to the Company in which it stated:

This is to inform you that our members employed at your plant desire to reopen our contract with your firm, for negotiation as to wages, etc.

The Company contends that the contract of December 9, 1940, was renewed in 1943 for an additional year, and thus constitutes a bar to a current determination of representatives, arguing that the letter of November 4 was, in fact, merely a notice of a desire to amend and not a notice of termination as required by the contract. We do not agree. Prior to the 30-day period contained in the automatic renewal clause of the contract, the Polishers notified the Company that it wished "to reopen" the agreement. Such action, in our opinion, constituted an effective notice to terminate the contract, forestalling the operation of the automatic renewal clause.<sup>1</sup> Accordingly, we find that the contract of December 9, 1940, is not a bar to a present determination of representatives.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the U. A. W. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</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 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

Both the Company and the U. A. W. contend that all employees of the Company at its Grand Rapids plant, excluding office and factory clerical employees, plant-protection employees, timekeepers, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in

<sup>1</sup> Although the Polishers, in its brief, agrees with the position taken by the Company, the record indicates that this is a comparatively recent interpretation by the Polishers of its action, for a letter dated February 21, 1944, written by a representative of the Polishers International Union to an officer of the local stated ". . . as you know the old contract ended on December 9, 1943." That the contract was terminated by the Polishers in 1943 is also evidenced by the fact that a new contract incorporating the changes desired by the Polishers was submitted by it to the Company sometime after January 9, 1944.

<sup>2</sup> The Field Examiner reported that the U. A. W. submitted 63 designations which "checked" with the Company's pay roll of May 29, 1943, and that the proposed unit contained 78 employees.

The interest of the Polishers in this proceeding is established by its collective bargaining relationship with the Company.

the status of employees, or effectively recommend such action, constitute an appropriate unit.<sup>3</sup> The Polishers, at first agreeing to the propriety of the aforesaid unit, takes the position that all employees of the Company engaged as polishers, buffers, platers, and helpers constitute a separate unit. It further contends that this unit should include employees previously engaged by the Company in such categories, but who are no longer employed due to the Company's operational changes, arguing that such employees are actually "temporarily laid-off" employees who will be reinstated when the Company resumes its normal peacetime operations.

As previously indicated, the Company is normally engaged in the production of bumpers and bumper parts, but is now engaged in the manufacture of parts used directly in the war effort. These operations do not require the services of buffers and polishers, as did its previous processes, and, at the present time, the Company employs five platers and no buffers or polishers.

In support of its contention that buffers, polishers, platers, and helpers constitute a separate unit, the Polishers adduced evidence indicating that it first represented only employees engaged in these categories, and thereafter included the remaining employees of the Company within its bargaining unit. However, it is clear from the record that, since 1938, the buffers, platers, polishers, and helpers were represented as part of the more comprehensive unit. Furthermore, it is also apparent that the proposed craft unit has largely disappeared. In view of the fact that the craft group sought by the Polishers has largely ceased to exist, and considering the long and apparently satisfactory history of collective bargaining upon the basis of an industrial unit, we are of the opinion that the unit proposed by the Polishers is, at this time, inappropriate.

Nor do we agree with the Polishers that employees previously engaged by the Company as polishers, buffers, platers, and helpers, but no longer in its employ, are "temporarily laid-off" employees. While it is true that the Company maintains the names of these employees on its seniority roster and perhaps fully intends to reemploy them when it resumes normal operations, these employees have not been engaged by the Company for approximately 2 years, and play no part in its present manufacturing operations. We shall not include such persons within the bargaining unit.

We find that all employees of the Company at its Grand Rapids plant, excluding office and factory clerical employees, plant-production employees, timekeepers, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, dis-

<sup>3</sup> This is substantially the same unit covered by the contract between the Polishers and the Company.

cipline, 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 Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Michigan Bumper Corporation, 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 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, Aircraft & Agricultural Implement Workers of America (UAW-CIO), affiliated with Congress of Industrial Organizations, or by Local No. 7, Metal Polishers, Buffers, Platers & Helpers International Union, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.