

In the Matter of GREEN BAY DROP FORGE COMPANY and UNITED FARM
EQUIPMENT AND METAL WORKERS OF AMERICA, CIO

Case No. 13-R-2478.—Decided August 19, 1944

Mr. F. N. Trowbridge, of Green Bay, Wis., for the Company.
Meyers & Meyers by *Mr. H. E. Baker*, of Chicago, Ill., for the CIO.
Padway & Goldberg by *Mr. David Previant*, of Milwaukee, Wis.,
for the AFL.
Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by United Farm Equipment and Metal Workers of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Green Bay Drop Forge Company, Green Bay, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Russell Packard, Trial Examiner. Said hearing was held at Green Bay, Wisconsin, on July 7, 1944. The Company, the CIO and International Brotherhood of Blacksmiths, Drop Forgers & Helpers of America, Local 93, AFL, herein called the AFL, appeared and participated.¹ 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 hearing the AFL moved for the dismissal of the petition, alleging that the CIO made no showing of interest among the employees of the Company and that an AFL contract with the Company is a bar a present determination of representatives. For reasons hereinafter given, the motion is granted.² The Trial Examiner's rulings made at the hearing are free

¹ United Automobile Workers of America, C. I. O., also served with notice, did not appear.

² We find no merit in the AFL's contention that the CIO made no showing of interest in the plant. Although the CIO's cards were not checked against the Company's pay roll, they were sufficient to satisfy the Board that a hearing should be held.

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

Green Bay Drop Forge Company, a Wisconsin corporation, operates a drop forge plant at Green Bay, Wisconsin, where it is engaged in jobbing drop forge products. The Company maintains a machine shop and manufactures precision machinery. Raw materials used by the Company are steel bars, fabricated metal sheets and forgings. During the 12-month period preceding the hearing, it purchased raw materials in excess of \$100,000 in value, approximately 50 percent of which was received from sources outside the State of Wisconsin. During the same period, its sales were in excess of \$500,000, of which more than 50 percent represented products manufactured and shipped to points outside the State of Wisconsin.

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

II. THE ORGANIZATIONS INVOLVED

United Farm Equipment and Metal Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Blacksmiths, Drop Forgers & Helpers of America, Local 93, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

In 1933, the Company recognized the AFL as the exclusive bargaining representative of its employees. From 1933 until 1935, the Company and the AFL operated under an oral agreement which was reduced to writing in 1935,³ but was not signed by either party. On August 11, 1941, the parties executed⁴ a memorandum ratifying, confirming, and approving the 1933 agreement together with all subse-

³ This agreement was entitled "Shop Rules" but contained provisions for the regulation of working conditions, seniority, grievances procedure, and other elements which normally characterize a collective bargaining agreement.

⁴ The AFL representative's signature appeared on the memorandum under the word "approved." However, the Rules imposed certain obligations on the AFL, and in our opinion, the AFL by "approving" the Rules thereby bound itself.

quent agreements entered into between them up to and including the date of the memorandum, and providing that the ratification should "for all intents and purposes bind said corporation as effectively as if said agreement and subsequent agreements or amendments thereto shall have been signed and sealed by said corporation."

Among the agreements covered by the said memorandum were the following, relating to vacation policy, termination date, and interim negotiation of wages:

The Company is willing to consider once each year, in the spring of the year, the allowance of some form of vacation with pay to the men. Each year will be considered separately, no preceding experience to be used as a criterion. The Board of Directors will arrive at their determination each year upon the basis of the condition of the Company financially and industrially for the year the request is made.⁵

Rule 14

(a) Rule 13 is changed to read as follows: This agreement is in effect as of March 1, 1937, and shall remain in effect until March 1, 1938, and for renewal periods of one (1) year thereafter unless notice is filed by either party in writing of a desire for a change or modification, thirty days prior to expiration of any such period.

(b) Starting February 1, 1938, meetings will be held during the month of February to establish rate schedules to apply as of March 1st, 1938. (This procedure will follow each year.)

(c) By arrangements with the committee during the months of June and July the management will cooperate with the committee in quoting new business to secure information relative to the possible increased prices that would permit rate advances during the starting contract periods.⁶

In accordance with their usual practice, the parties to the contract, in March 1944, began negotiations on the subject of a vacation schedule for 1944. Agreement was reached on May 21, 1944, and was submitted to the War Labor Board for approval. The War Labor Board approved the vacation schedule on June 24, 1944. Also, in accordance with their established practice, though not strictly in conformance with the contract,⁷ the parties began negotiations for a new wage scale in September 1943. Agreement on a wage scale was reached in November 1943 and approved by the War Labor Board on May 10, 1944.

⁵ Letter written by the Company to the AFL June 17, 1938.

⁶ Rules as revised February 6, 1936.

⁷ The parties, without amending Rule 14 (b) and (c) carried on the studies and the negotiations provided for therein without adhering to the dates set by the contract for such discussions.

On May 25, 1944, the CIO requested recognition as the exclusive bargaining representative of the employees of the Company. The Company asked the CIO to establish proof of its contention that it represented a majority of the employees of the Company. The AFL contends that its contract is a bar to a present determination of representatives, claiming that by operation of Rule 14 (a) of its contract with the Company, the contract was renewed on or about February 1, 1944, for a term of a year from March 1, 1944; that the negotiations concerning wages and vacations did not operate to nullify the automatic renewal clause as contended by the CIO; and that, even if the Board should find that the said clause was rendered inoperative, all negotiations had been completed and the contract if "opened" was "closed" before the CIO made its demand for recognition. At the hearing the Company agreed with the AFL's contention. We also agree.

Due to the exigencies of the Company's business, wage scales and vacation schedules must be renegotiated at intervals not necessarily coinciding with the contract term. Voluntary negotiations for amendment of a contract, where the parties do not undertake to alter the duration of the contract⁸ do not necessarily prevent the automatic renewal thereof pursuant to a provision providing for such renewal, especially where, as in the instant case, the negotiations concern matters which are subject to constant change, contemplated by and provided for in the contract itself. Moreover, if it could be said that the afore-mentioned negotiations did have the effect of nullifying the automatic renewal clause of the contract, the contract would nevertheless be a bar because, with exception of approval by the War Labor Board of the vacation schedule,⁹ all negotiations were closed¹⁰ prior to the time the CIO made its request for recognition, and the contract resulting from such negotiations did not prolong beyond the term of the original contract the period within which another organization is precluded from seeking a determination of representatives. Accordingly, we shall dismiss the petition of the CIO; however, such dismissal is without prejudice to the right of the CIO to file a petition a reasonable time prior to January 30, 1945, the next renewal date of the contract.

⁸ Cf. *Matter of Wichita Union Stockyards Co.*, 40 N. L. R. B. 369; *Matter of Memphis Furniture Manufacturing Company*, 51 N. L. R. B. 1447.

⁹ The pendency of the agreement respecting a vacation schedule before the War Labor Board is not, in our opinion, sufficient in itself to affect in any way the question of whether or not the contract is a bar.

¹⁰ The AFL and the Company constantly discuss upgrading certain individuals. We regard such discussions in the nature of the settlement of grievances, not as negotiations for amendment of a contract.

ORDER

Upon the basis of the foregoing findings of fact and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Green Bay Drop Forge Company, Green Bay, Wisconsin, filed by United Farm Equipment and Metal Workers of America, CIO, be, and it hereby is dismissed.

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