

In the Matter of BUFFALO ARMS CORPORATION *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO

Case No. 3-R-813.—Decided August 24, 1944

Mr. Peter J. Crotty, for the Board.

Mr. Edward D. Flaherty, of Buffalo, N. Y., for the Company.

Mr. David Diamond, Buffalo, N. Y., for the UAW-CIO.

Mr. Thomas J. McKenna, of Buffalo, N. Y., for the Association.

Miss Frances Lopinsky, 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 and Agricultural Implement Workers of America, UAW-CIO, herein called the UAW-CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Buffalo Arms Corporation, Cheektowaga, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William J. Isaacson, Trial Examiner. Said hearing was held at Buffalo, New York, on July 17, 1944. The Board, the Company, the UAW-CIO, and United Victory Workers Association, herein called the Association, 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 hearing the Association moved the dismissal of the petition on the ground that the Board has no jurisdiction herein. For reasons given in Section III, *infra*, 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.

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

57 N. L. R. B., No. 254.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Buffalo Arms Corporation, a Michigan corporation, is engaged at its plant at Cheektowaga, New York, in the manufacture of war materials. From January 1, 1944, to July 1, 1944, the Company used at its Cheektowaga, New York, plant raw materials of a value in excess of \$1,500,000, more than 30 percent of which represents shipments made to the said plant from points outside the State of New York. During the same period, the Company manufactured at its Cheektowaga plant finished products of a value in excess of \$3,000,000, more than 60 percent of which represents shipments to points outside the State of New York.

For the purpose of this proceeding, the Company admits that it is engaged in commerce within the meaning of the National Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

United Victory Workers Association is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 22, 1943, as a result of an election ordered and conducted by the Board,¹ the Association was certified as the exclusive bargaining representative of the employees of the Company. Thereafter, on June 25, 1943, the Company and the Association executed a contract for a term of 1 year, containing a 30-day automatic renewal clause. On May 19, 1944, the UAW-CIO informed the Company by letter that it represented a substantial number of its employees and requested a conference for the purpose of negotiating a collective bargaining contract. The Company ignored the request. On May 25, 1944, the UAW-CIO filed its petition with the Board.

In connection with its petition, the UAW-CIO submitted to a Board Field Examiner between 900 and 1,000 authorization cards as proof of its alleged representation of a substantial number of employees in the Company's plant. The Field Examiner, upon examination of the cards, selected 101 whose authenticity he thought open to question. After further investigation which established the falsity of several

¹ See *Matter of Buffalo Arms Company*, 46 N. L. R. B. 1176.

of the cards and cast doubt upon many others, the Field Examiner informed the UAW-CIO that the cards which it had submitted were insufficient to satisfy the Board that a hearing on the petition was warranted. However, upon being convinced that the false authorizations were submitted without the knowledge or consent of the UAW-CIO's representative, and being desirous of obtaining accurate information of the basis for the UAW-CIO's claim to representation, the Field examiner agreed to premise his report on UAW-CIO representation on new cards to be secured by that organization within a 10-day period. The UAW-CIO sent a letter to each of the persons whose names appeared on the cards first submitted to the Board, informing them that the Board had rejected the cards because "several . . . (of them) . . . were apparently signed by the same person," and requesting them to sign a second card and obtain signatures of other employees. On the tenth day the UAW-CIO submitted to the Field Examiner 917 authorization cards, the cards being all of one kind, different in size, color, and content from the cards first submitted. The Field Examiner, after carefully examining these cards, found them to bear apparently genuine signatures. There are approximately 2,000 employees in the appropriate unit.

The Company argues that since the request of May 19 alleged representation of only a substantial number of its employees, not a majority, it was of no effect. We find, however, that the request of May 19, 1944, was sufficient to put the Company on notice that the contracting union in the plant had an active rival, and thereby to preclude the Company from effectively barring the rival union by entering into a new contract or renewing an old one with the contracting union. The petition was further notice, timely given, having similar effect:

The Association contends that when the Field Examiner rejected the first batch of cards submitted by the UAW-CIO, he found, in effect, that the petition was fraudulent. It argues that consequently the petition was nullified, causing the automatic renewal clause of the contract to take effect, and that the contract therefore bars a present determination of representatives.² The Association further contends that the Board, by the alleged nullification, divested itself of jurisdiction in the matter, and that the Field Examiner violated the 14th Amendment of the United States Constitution by continuing the investigation after that time. We find no merit in these contentions. The submission of authorization cards is not, as the Association asserts, a supplement to the petition, so vitally affecting the petition that it stands or falls almost automatically upon the number and authenticity

² The Company agrees with this argument.

of the cards submitted. The submission of cards is an administrative expedient adopted by the Board to determine *for itself* whether or not a question concerning representation has arisen. It is a part of the Board's investigatory procedure upon which no time limits have been set. Variation from normal procedure for the purpose of ascertaining the truth by the best means at hand is no denial of due process of law. We find that the UAW-CIO has adequately demonstrated for the purposes of this proceeding that it represents a sufficient number of employees in the unit found to be appropriate to warrant the holding of an election; that the investigation which established this fact was properly conducted; and that the contract between the Company and the Association is no bar to a current determination of representatives.

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

In substantial accordance with the stipulation of the parties, we find that all production and maintenance employees of the Company's Cheektowaga, New York, plant, including shipping room employees, tool store clerks, tool control clerks who do not exercise supervisory authority, and employees of the receiving department, but excluding office and clerical employees, employees in the time-study, drafting and engineering departments, department clerks or personnel clerks, watchmen, all production clerks 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,³ constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DÉTERMINATION OF REPRESENTATIVES

We shall direct that the question concerning the 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.

The UAW-CIO requests that its name appear on the ballot as "UAW-CIO." The request is hereby granted.

³ This is substantially the same unit found appropriate by the Board in *Matter of Buffalo Arms Corp.*, 46 N. L. R. B. 1176.

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 Buffalo Arms Company, Cheetowaga, New York, 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 Third 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 they desire to be represented by UAW-CIO, or by United Victory Workers Association, for the purposes of collective bargaining, or by neither.

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