

In the Matter of CATERPILLAR TRACTOR Co. and EAST BAY UNION OF  
MACHINISTS, LOCAL 1304, U. S. A., C. I. O.

*Case No. 20-R-1108.—Decided August 31, 1944*

*Mr. A. E. McIntyre*, of San Leandro, Calif., for the Company.

*Mr. J. M. Sapiro*, of San Francisco, Calif., and *Mr. James P. Smith*,  
of Oakland, Calif., for the USA.

*Mr. E. R. White*, of Los Angeles, Calif., and *Mr. James F. Galliano*,  
of Oakland, Calif., for the IAM.

*Mr. Robert Silagi*, of counsel to the Board.

DECISION.

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by East Bay Union of Machinists, Local 1304, U. S. A., C. I. O., herein called the USA, alleging that a question affecting commerce had arisen concerning the representation of employees of Caterpillar Tractor Co., San Leandro, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gerald P. Leicht, Trial Examiner. Said hearing was held at San Francisco, California, on July 31, 1944. The Company, the USA, and International Association of Machinists, Lodge 284, herein called the IAM, 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. 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

Caterpillar Tractor Co. is a California corporation which operates plants at Peoria, Illinois, and San Leandro, California. It is solely

with the latter plant that this proceeding is concerned. At its San Leandro plant the Company manufactures fuel engine injectors for Diesel engines and special machine parts, almost all of which is used exclusively for war purposes. During the year 1943, the Company purchased raw materials which exceeded \$1,000,000 in value and consisted chiefly of iron, steel, copper, and brass. Over 50 percent of said raw materials was shipped to the San Leandro plant from points located outside the State of California. During the same period the Company manufactured products valued at approximately \$2,000,000, nearly all of which was shipped to points located outside the State of California.

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

## II. THE ORGANIZATIONS INVOLVED

East Bay Union of Machinists, Local 1304, United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Association of Machinists, Lodge 284, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

During the period from 1937 to 1942, the Company entered into several collective bargaining agreements with the IAM. On November 27, 1942, the parties entered into a contract which was to remain in effect for 1 year, and thereafter from year to year unless terminated by either party upon 30 days' written notice prior to the anniversary date. Pursuant thereto, the Company gave notice of its desire to change the contract and in November 1943, the parties commenced negotiations for a new contract. Failing to agree upon the terms of the new contract, on December 16, 1943, the matter was certified to the National War Labor Board, herein called N. W. L. B., on seven disputed issues. Toward the end of January 1944, a hearing was held before a panel of the Tenth Regional War Labor Board, during the course of which the IAM requested an interim order for the retention of the maintenance of membership clause that had been incorporated in its contract. No immediate decision was made thereon. On June 15, 1944, the USA filed its petition herein and 5 days later notified the Company that it protested the making of any contract until it could present evidence before the appropriate governmental agency that it was the lawfully constituted bargaining representative of the

Company's employees. On June 23 the Regional War Labor Board issued an interim order directing the continuance of the terms of the contract until the issues were decided on their merits. Five days later, on June 28, the N. W. L. B. ratified the interim order of the Regional War Labor Board. Thereafter, on July 5, the USA requested recognition as the majority bargaining representative of the Company's employees. This request was refused on the authority of the N. W. L. B.'s interim order. On August 2, the Regional War Labor Board finally issued its directive order deciding the disputed issues.

In its brief, the IAM moves for a dismissal of the petition on the ground that its contract with the Company and the subsequent proceedings before the N. W. L. B. constitute a bar to the present proceedings. The IAM stresses the fact that it voluntarily accepted the orderly procedure established by governmental authority, and therefore, the delays unavoidably consequent upon the following of this procedure should not work to its detriment. However, the Board has repeatedly held that the mere submission of a dispute to the N. W. L. B. for adjudication or the pendency of a case before that agency does not require the Board to delay or refuse to proceed to an immediate determination of a collective bargaining representative where otherwise a valid question concerning representation exists.<sup>1</sup> The IAM has had contractual relations with the Company for almost 7 years and has obtained for the employees the benefits of representation throughout that period. In this respect the IAM is not in the position of a newly certified representative which is entitled to a reasonable opportunity to act as the exclusive representative and secure for the employees the benefits of representation.<sup>2</sup> Furthermore, the parties reopened their contract in November 1943; thus, when the USA filed its petition herein and notified the Company of its intention to demonstrate its majority status, both of which events occurred prior to the issuance of the interim order by the N. W. L. B., a question concerning representation arose. In view of these circumstances, we find that neither the 1942 contract nor the subsequent orders of the N. W. L. B. constitute a bar to a present election.<sup>3</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that each union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>4</sup>

<sup>1</sup> See *Matter of Diamond Magnesium Company*, 57 N. L. R. B. 393, and cases cited therein.

<sup>2</sup> See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

<sup>3</sup> See *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268.

<sup>4</sup> The Field Examiner reported that the USA submitted 318 application for membership cards, 299 of which bore the names of persons appearing on the Company's pay roll of July 7, 1944, which contained the names of 1,098 employees in the appropriate unit.

The IAM submitted a membership list containing 503 names. These names were not checked against a pay roll, but of the 503 listed, 150 were the names of persons whose names also appeared on USA application for membership cards.

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 parties are agreed that the unit sought by the USA is substantially the same as the unit covered by the contract between the Company and the IAM. We find, therefore, that all production and maintenance employees of the Company but excluding all clerical and office employees, warehousemen, electricians, armed guards 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, 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 Caterpillar Tractor Co., San Leandro, California, 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 Twentieth 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 ex-

cluding 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 East Bay Union of Machinists, Local 1304, United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by International Association of Machinists, Lodge 284, 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.