

In the Matter of BRIGGS MANUFACTURING COMPANY and AMALGAMATED  
PLANT PROTECTION LOCAL UNION No. 114, UAW-CIO

*Case No. 7-C-1198.—Decided September 6, 1944*

*Mr. Fredrick P. Mett*, for the Board.

*Beaumont, Smith & Harris*, by *Mr. Percy J. Donovan*, of Detroit, Mich., for the respondent.

*Messrs. Maurice Sugar and H. L. Smokler*, by *Mr. H. L. Smokler*, for the Union.

*Mr. Marvin C. Wahl*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon an amended charge duly filed on August 4, 1943, by Amalgamated Plant Protection Local Union No. 114, UAW-CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint, dated August 5, 1943, against Briggs Manufacturing Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by Notice of Hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance (1) that all the plant-protection employees engaged by the respondent at its seven Detroit plants, including Sunday relief chiefs but excluding the head chief, the head chief's aides, the chiefs on the first, second, and third shifts at each plant, and the confidential clerks, constitute a unit appropriate for the purposes of collective bargaining; (2) that a majority of the employees in the aforesaid appropriate unit designated the Union as their representative for the purposes of collective bargaining at an election conducted by the Board on May 20

and 21, 1943; (3) that on June 1, 1943, the Board certified the Union as the exclusive representative of all employees in said unit for the purposes of collective bargaining; (4) that at all times since June 1, 1943, the Union has been the exclusive representative of all employees in said unit; (5) that at all times after June 1, 1943, the respondent, upon request, has refused and still refuses to recognize and bargain with the Union; and (6) that by such refusal, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and that such acts constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act.

On August 13, 1943, the respondent filed an answer and motion to dismiss, denying the appropriateness of the unit and the commission of any unfair labor practices, admitting its refusal to bargain and the proceedings of the Board leading to the Union's certification and moving that the complaint be dismissed. For the reasons hereinafter stated, the motion to dismiss the complaint is denied.

Pursuant to notice, a hearing was held on October 11, 1943, at Detroit, Michigan, before Gustaf B. Erickson, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. For the purpose of expediting the hearing all parties agreed to waive the issuance by the Trial Examiner of an Intermediate Report and the issuance by the Board of proposed findings of fact, proposed conclusions of law and proposed order, and stipulated that the record shall consist of the stipulation, the pleadings, the transcript of testimony taken at the hearing, and the entire record in the representation case.

Pursuant to notice, oral argument, in which the respondent and the Union participated, was held before the Board at Washington, D. C., on November 23, 1943. The respondent also filed a brief in support of its position. On May 8, and June 1, 1944, the parties supplemented the record by executing stipulations which are made a part of the record herein.

The respondent contends that the Board is precluded from proceeding in this case because of the limitations imposed upon the Board's use of its funds.<sup>1</sup> In support of its position, the respondent contends

<sup>1</sup> See the Act making appropriations for the Department of Labor, the Federal Security Agency, and the related Independent Agencies for the fiscal years 1944 and 1945. Public Law 135, 78th Cong, 1st Sess, Public Law 373, 78th Cong, 2nd Sess. The pertinent provision in the current Appropriation Act states

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof, between management and labor which has been in existence for three months or longer without complaint being filed . . .

that the charge in this case was filed more than 3 months after its execution of an agreement with the International Union and with the representatives of the production and maintenance employees at the plants here involved and known as Locals 742 and 212 of United Automobile, Aircraft and Agricultural Implement Workers of America, herein called Local 742 and 212, respectively; and that these agreements provided, among other things, that plant-protection employees would not be accepted as members. The agreement with Local 212 was to expire on November 13, 1943; and that with Local 742, on November 16, 1943. Each agreement contained a clause that it was to remain in effect until the foregoing dates "and from year to year thereafter, unless (30) days prior to [the respective terminal date] proposed amendments shall be submitted by either the Company or the Union."

The stipulation of May 8, 1944, shows that on October 13, 1943, Local 212 mailed written notice to the respondent of its desire to negotiate certain amendments; that pursuant to said notice the parties commenced negotiations for a new written agreement and meanwhile orally agreed to extend the 1942 agreement on a day-to-day basis; that in December 1943, a dispute arose because of the respondent's refusal to adhere to the maintenance of membership clause contained in the 1942 agreement; that this dispute, together with other disputes arising out of the negotiations, were certified to the National War Labor Board which on February 1, 1944, directed the parties to extend the agreement of November 13, 1942, until all issues in dispute have been settled; that the parties thereupon orally agreed to continue under the terms of the 1942 agreement. With respect to Local 742, the stipulation shows that prior to November 16, 1943, Local 742 duly gave written notice to the respondent of its desire to negotiate amendments to the agreement of November 16, 1942; that pursuant to such negotiations the parties, on December 30, 1943, executed a new agreement, subject to the ratification by the membership of Local 742; and that on January 19, 1944, Local 742 notified the respondent in writing that the membership had refused to ratify the provision wherein Local 742 agreed to exclude from membership plant-protection employees. The stipulation also shows that on March 17 and April 14, 1944, the Union again requested the respondent to bargain and that the respondent refused both requests.

It thus appears that Locals 212 and 742 gave the proper notice prior to the respective terminal date of the 1942 agreements so that the automatic renewal clauses contained therein never became operative, and the agreements expired by their terms on Novmbr 13 and 16, 1943,

respectively.<sup>2</sup> The agreement of the respondent and Local 212 to extend the 1942 agreement, first on a day-to-day basis and later pursuant to the directive of the National War Labor Board, was an oral agreement or oral renewal of the prior written agreement. The limitation upon the Board's use of its funds contained in the Appropriations Act applies only to complaint cases arising over written agreement or written renewals of said agreements.<sup>3</sup> The new agreement between the respondent and Local 742 was executed subject to the express condition that it be ratified by the membership of Local 742. Since this condition was not fulfilled, no written agreement came into being. There being no written agreement in existence, no question arises with respect to the limitations imposed by the Appropriations Act. We conclude that, both with respect to Local 212 and Local 742, the Appropriations Act is not a bar to the instant proceeding.

The board has considered the brief submitted by the respondent, and, insofar as the contentions therein are inconsistent with the findings of fact, conclusions of law, and order set forth below, finds them to be without merit.

Upon the entire record in the case and upon the respondent's brief and oral argument, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

Briggs Manufacturing Company is a Michigan corporation which owns and operates seven plants in the Detroit, Michigan, area, known as the Mack Plant, the Eight-Mile Plant, the Hamtramck Plant, the Connor Plant, the Outer Drive Plant, the Vernor Plant, and the Meldrum Plant, at which it is engaged in the manufacture of war materials. In the course and conduct of the operation of these plants, a large percentage of the raw materials used is purchased and shipped to the respondent from points outside the State of Michigan, and a substantial portion of the finished products manufactured by the respondent is transported to purchasers outside the State of Michigan.

The respondent does not dispute that it is engaged in commerce within the meaning of the Act.

### II. THE ORGANIZATION INVOLVED

Amalgamated Plant Protection Local No. 114, UAW-CIO is a labor organization which admits to membership employees of the respondent.

<sup>2</sup> See *Matter of Mill B, Inc*, 40 N L R B 346.

<sup>3</sup> See Opinion of Comptroller General of the United States, dated August 24, 1944, B-43670.

## III. THE UNFAIR LABOR PRACTICES

*A. The appropriate unit and representation by the Union of a majority therein*

On April 23, 1943, the Board issued a Decision and Direction of Election,<sup>4</sup> finding among other things that all plant protection employees engaged at the seven Detroit plants, including the Sunday relief chiefs, but excluding the head chief, the head chief's aides, the chiefs on the first, second, and third shifts at each plant, and the confidential clerks, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On May 20 and 21, 1943, an election was held pursuant to said Direction of Election. On June 1, 1943, the Board certified the Union as the representative of the employees in the unit heretofore mentioned, for the purposes of collective bargaining.

The respondent contends that the complaint should be dismissed because militarized plant protection employees do not constitute an appropriate unit for the purposes of collective bargaining and because the Union had agreed not to solicit or accept for membership plant protection employees. The same position was maintained by the respondent in the representation proceeding. The only additional evidence introduced at the hearing before the Trial Examiner in the instant case consists of two telegraphic communications received by the respondent from the United States Army, Colonel A. M. Krech, District Commander. The first communication, dated June 22, 1943, states:

An emergency is declared to exist at your plant on this 21st day of June, 1943. The property at your plant is vital to the successful prosecution of the War. Much of it belongs to the United States. The members of the Auxiliary Military Police at your plant have been charged by the War Department with the protection of the premises and of the property thereon. The War Department relies on them to perform this mission. These men are prepared for any emergency and will perform their duties with the same fidelity as those in the Military Service with whom they are associated. A commissioned officer of the Army of the United States is now in command of the Auxiliary Military Police at your plant.

The text of the second communication, dated July 8, 1943, is as follows:

The emergency declared by telegraphic order, by the Commanding Officer, District No. 1, Sixth Service Command, on June

<sup>4</sup> *Matter of Briggs Manufacturing Company*, 49 N. L. R. B. 57.

21st, 1943, is terminated as of July 6, 1943, in Wayne County, State of Michigan.

The personnel of your plant guard force, who are members of the Auxiliary Military Police, U. S. Army, are released from the command of the Plant Guard Training Officer assigned to your plant and are returned to your normal operating control.

We considered the respondent's contentions in the representation proceeding<sup>5</sup> and found them to be without merit. There is nothing in this record to lead us to a different conclusion.

We find, in accordance with our previous determination, that all plant protection employees employed at the respondent's Mack Plant, Eight-Mile Plant, Hamtramck Plant, Vernor Plant, Connor Plant, Outer Drive Plant, and Meldrum Plant, including the Sunday relief chiefs, but excluding the head chief, the head chief's aides, the chiefs on the first, second, and third shifts at each plant, and the confidential clerks, constitute, and at all times material herein constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. We further find that, on and at all times after June 1, 1943, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on June 1, 1943, and at all times thereafter has been, and is now, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

#### *B. The refusal to bargain*

In its answer to the Board's complaint the respondent admits the allegation that at all times since June 1, 1943, it has refused the Union's request to bargain. The stipulation of May 8, 1944, shows that the respondent failed to answer the Union's request of March 17, 1944, for a meeting "to iron out some difficulties"; and that in a letter dated April 19, 1944, the respondent refused to Union's request for recognition and a bargaining conference.

We find that the respondent, on or about June 1, 1943, March 17, and April 19, 1944, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

<sup>5</sup> 49 N. L. R. B. 57.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce, among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that the respondent has engaged in and is engaging in unfair labor practices, we will order it to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act. We have found that the respondent has refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit. We shall, therefore, order that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

## CONCLUSIONS OF LAW

1. Amalgamated Plant Protection Local No. 114, UAW-CIO is a labor organization, within the meaning of Section 2 (5) of the Act.
2. All plant protection employees of the respondent engaged at the respondent's Mack Plant, Eight-Mile Plant, Hamtramck Plant, Vernor Plant, Connor Plant, Outer Drive Plant, and Meldrum Plant, including the Sunday relief chiefs, but excluding the head chief, the head chief's aides, the chiefs on the first, second, and third shifts at each plant, and the confidential clerks, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.
3. Amalgamated Plant Protection Local No. 114, UAW-CIO was on July 1, 1943, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.
4. By refusing on about June 1, 1943, March 17, and April 19, 1944, and at all times thereafter, to bargain collectively with the Amalgamated Plant Protection Local No. 114, UAW-CIO as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

### ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Briggs Manufacturing Company, Detroit, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Plant Protection Local No. 114, UAW-CIO as the exclusive representative of all its plant protection employees engaged at the respondent's Mack Plant, Eight-Mile Plant, Hamtramck Plant, Vernor Plant, Connor Plant, Outer Drive Plant, and Meldrum Plant, including the Sunday relief chiefs, but excluding the head chief, the head chief's aides, the chiefs on the first, second, and third shifts at each plant, and the confidential clerks;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Amalgamated Plant Protection Local No. 114, UAW-CIO or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Amalgamated Plant Protection Local 114, UAW-CIO as the exclusive representative of all its plant protection employees engaged at the respondent's Mack Plant, Eight-Mile Plant, Hamtramck Plant, Vernor Plant, Connor Plant, Outer Drive Plant, and Meldrum Plant, including the Sunday relief chiefs, but excluding the head chief, the head chief's aides, the chiefs on the first, second, and third shifts at each plant, and the confidential clerks, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places at each of the Detroit, Michigan, plants above specified, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

MR. GERARD D. REILLY, dissenting:

I disagree with the holding in the instant case for the reasons stated in my dissenting opinion in the *Federal Motor Truck Company* case.<sup>6</sup> I believe that the principle of estoppel is applicable because of the Union's prior contract covering production and maintenance workers, in which the Union agreed that it would not solicit or accept for membership plant protection employees, *inter alia*.

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<sup>6</sup> 54 N. L. R. B. 984.