

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

Case No. 7-R-1765.—Decided September 7, 1944

Mr. Joseph C. Nickels, of Grand Rapids, Mich., for the Company.

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

Mr. Joseph Padway, by Messrs. *Robert A. Wilson* and *Lester Campbell*, both of Washington, D. C., for the Molders.

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 Light Alloys Corporation, Grand Rapids, Michigan, 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 International Molders and Foundry Workers Union of North America, Local 213, herein called the Molders, 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. On August 10, 1944, oral argument was held before the Board in Washington, D. C. The U. A. W. and the Molders appeared and participated; the Company, although duly served with notice of oral argument, did not appear.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Michigan Light Alloys Corporation, an Illinois corporation, is engaged in the manufacture of magnesium alloy castings. It operates a plant located in Grand Rapids, Michigan, with which we are concerned in this proceeding. During the calendar year 1943, the Company purchased materials for use at this plant valued at approximately \$300,000, of which about 40 to 50 percent originated from points outside the State of Michigan. During the same period, the total sales of the Company approximated \$1,000,000, of which about 10 percent was delivered to points 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.

International Molders and Foundry Workers Union of North America, Local 213, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated May 6, 1944, the U. A. W. requested recognition from the Company as the collective bargaining representative of certain of its employees. The Company did not reply to this request. Both the Company and the Molders contend that a collective bargaining agreement between them, dated May 5, 1944, constitutes a bar to a present determination of representatives.

Production operations at the Company's Grand Rapids plant commenced about the winter of 1943. Prior thereto and on November 25, 1942, the Company and the Molders executed a collective bargaining agreement in which the Company recognized the Molders as the exclusive representative of its non-salaried employees.¹ On June 14, 1943, a schedule of rates was put into effect by agreement

¹ This agreement was a 2-page document which provided merely for recognition of the Molders as the collective bargaining representative of the employees at the Grand Rapids plant, and recited that a later "comprehensive contract will supersede this agreement when plant gets under production."

between the Molders and the Company.² On July 15, 1943, the Company and the Molders executed a comprehensive collective bargaining agreement providing for recognition of the Molders as the collective bargaining agent of all employees of the Company, except salaried employees, supervisors, office workers, plant guards, and watchmen. This agreement also provides as follows:

ARTICLE IX

SEC. 1. This Agreement shall become effective *15th July 1943*, and remain in effect until *15th July 1944*, and shall be renewable from year to year thereafter.

SEC. 2. In the event that either party to this Agreement desires a change in this Agreement they shall notify the other party, in writing, of their desire to negotiate at least thirty (30) days in advance of the date on which it is desired to have negotiations begin. This written notice should specify the desired changes, or set forth reasons, for reopening negotiations and it shall be obligatory upon both parties to proceed with the negotiations of a new Agreement as quickly as possible.

SEC. 3. The thirty (30) day clause mentioned in section 2 above shall not become effective until six (6) months after the effective date of this Agreement.

The agreement set forth a minimum wage rate, but left open the question of "rate ranges" for later determination. Between October 1943 and February 1944 the Company and the Molders conducted negotiations with respect to "rate ranges," and, in February, submitted a proposed schedule of wages to the National War Labor Board. The National War Labor Board issued a Directive Order on April 13, 1944, establishing wage rates for the Company's employees. Subsequent to the issuance of the Directive Order, the Molders requested the Company to negotiate a new contract,³ which would incorporate the wage schedule set forth in the Directive Order, together with certain changes in several of the sections of the agreement of July 15, 1943. Formal notice of a desire to negotiate a new contract was served upon the Company in a letter dated May 2, 1944. On May 4, the parties reached an accord, and on May 5, a new contract was executed between them. This contract was signed by the Company and representatives

² This schedule is evidenced by a document entitled "Supplemental Provision to a Master Labor Agreement"; it recites that the rates attached to this document are to be considered a part of the "existing labor agreement" between the parties and shall be considered a part of any "subsequent labor agreement between the parties"

³ A company witness testified that the Company received oral notice to this effect on or about April 15, 1944.

of the Molders, including its bargaining committee, but was not submitted to the membership of the Molders for ratification, despite the fact that the membership had instructed the bargaining committee to do so. It provides for a term of 3 years.

As hereinabove indicated, the May 5, 1944 contract is raised as a bar to a current determination of representatives. While it is true that in the agreement of July 1943 the question of rate ranges was left open and was eventually submitted for final determination by the National War Labor Board, this fact is not indicative of a failure on the part of the Molders to obtain the benefits of collective bargaining for the employees under this contract. On the contrary, the July 1943 contract embodied the agreement of the parties on such substantive matters as hours, seniority, grievance procedure, discharge procedure, vacations, and the union shop. It was obviously effective as a bar to the claim of another organization until shortly before its terminal date. We are not persuaded, therefore, that, as asserted by the Molders, the 1944 contract was the first complete agreement between the Company and that organization.⁴

Insofar as the July 1943 agreement is concerned, the U. A. W.'s claim of representation was seasonably presented. Thus, absent the proceedings before the National War Labor Board, the 1944 contract would be ineffectual as a bar, inasmuch as it constituted a premature extension of the July 1943 agreement.⁵ Nor would a contrary conclusion be warranted in this posture of the case if it be assumed, as it was urged at oral argument by counsel for the Molders, that, by executing the 1944 contract, neither contracting party intended to foreclose the employees from exercising their right to choose a new collective bargaining representative, for were we to determine that the 1944 contract is a bar such foreclosure would nevertheless result.

Because of the National War Labor Board proceedings, however, counsel for the Molders contended at oral argument that the principle enunciated in the *Allis-Chalmers* case⁶ is applicable to this proceeding and a present determination of representatives is consequently precluded.

In the *Allis-Chalmers* case, the employer and the collective bargaining representative recently designated in an election conducted under Board auspices, were confronted with several serious issues which they could not resolve between themselves. They executed an "Extension

⁴ The Molders also asserted that it is a "newly-recognized" agent, entitled to a reasonable period in which to conduct a collective bargaining relationship with the Company. It is obvious that this contention is without merit, since the Molders was recognized as the bargaining agent of the Company's employees on November 25, 1942, 18 months prior to the execution of the 1944 contract.

⁵ *Matter of Memphis Furniture Company*, 51 N. L. R. B. 1447

⁶ *Matter of Allis-Chalmers Manufacturing Company*, 51 N. L. R. B. 306.

Agreement," and what was, in substance, a supplement thereto, providing that the terms of a preexisting contract with a previously certified representative continue until such time as the issues between them were resolved and incorporated in a new agreement, primarily to preserve the grievance procedure already established, and agreed to incorporate in their contract the determinations of the National War Labor Board with respect to similar issues in another proceeding before the agency. Implicit in their agreement, as the Board found, was the understanding that the contract term to be fixed by the National War Labor Board would be accepted. Prior to the settlement of the issues by the National War Labor Board, a third party filed a representation proceeding, which the Board refused to entertain at that stage.

The facts in this proceeding are not analogous. There was no disagreement between the parties upon any issue. The contract between them provided for a minimum wage rate, a fixed contract term, a notice period, and all other matters usual to a collective bargaining agreement. Even the matter of the disposition of wage ranges was agreed upon between them and the parties submitted to the National War Labor Board an agreed-upon schedule. Three months prior to the termination of the existing agreement between the parties, the National War Labor Board issued its Directive providing for a permanent wage scale. Instead of incorporating this Directive into the existing contract, and conducting their relationship in accordance with usual collective bargaining practice, the Molders and the Company, prior to the termination date of the July 1943 contract, executed a new agreement extending the contractual relationship between them for approximately 33 months. We are of the opinion that the U. A. W. was entitled to rely upon the terms set forth in the contract of July 1943, and to govern itself accordingly with respect to the time of making its rival claim to representation. This was the effect of our decision in the *Mill B* case.⁷ The doctrine of that case is predicated upon a custom so well recognized in the field of industrial relations that it would be a serious departure from this custom to limit such doctrine to cases in which proceedings before the National War Labor Board are not involved.

We believe that the considerations which impelled us to direct elections in the *Memphis Furniture Company* and the *Bethlehem Supply Company*⁸ cases are also present here. In the latter case, after finding that one intervening labor organization had enjoyed a collective bargaining history with the Company for approximately

⁷ *Matter of Mill B, Inc.*, 40 N. L. R. B. 346.

⁸ *Matter of Bethlehem Supply Company*, 56 N. L. R. B. 439. See also *Matter of Great Lakes Carbon Company*, 57 N. L. R. B. 115.

20 months, and another had had an even longer history of collective bargaining with the Company, we stated:

Were we to conclude that a determination of representatives is barred at present and the [intervenors] are . . . entitled to enter into a contract with the Company covering a future period, an unreasonable time will have elapsed between the date when the Company's employees last selected their bargaining representative⁹ and the date when they will be afforded an opportunity to express a new choice.

Accordingly, we find that the contentions of the Molders are without merit, and that no bar exists to a current determination of representatives.

Statements of the Regional Director and the Trial Examiner, introduced into evidence at the hearing, indicate that the U. A. W. represents a substantial number of employees in the unit hereinafter found appropriate.¹⁰

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 an agreement of the parties made at the hearing, we find that all employees of the Company at its Grand Rapids plant, excluding salaried employees, office workers, militarized plant guards and watchmen,¹¹ 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.

⁹ We note in the instant proceeding that there has never been an election among the employees of the Company.

¹⁰ The Regional Director reported that the U. A. W. submitted 186 authorization cards which contained the names of persons appearing upon a list of employees submitted by the Company on June 3, 1944. It appears from this list that the Company employed approximately 392 employees in the appropriate unit. The Trial Examiner reported that the U. A. W. submitted 21 additional authorization cards containing names appearing upon the list submitted by the Company on June 3, 1944.

The Molders relies upon its contracts with the Company for the establishment of its interest in this proceeding.

¹¹ The record indicates that the nine watchmen and guards employed by the Company are armed and militarized. The contract of May 5, 1944, between the Company and the Molders did not specifically exclude these employees, although the contract of July 15, 1943, did so. The Molders took the position at the hearing that if the plant guards and watchmen were not militarized it desired to have them included in the unit. However, the record is clear that these employees are militarized, and in accordance with our established policy, are not properly represented as part of an industrial unit. *Matter of Dravo Corporation*, 52 N. L. R. B. 332.

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 Light Alloys 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 the Congress of Industrial Organizations, or by International Molders and Foundry Workers Union of North America, Local 213, 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.