

In the Matter of MARVEL-SCHEBLER DIVISION, BORG-WARNER CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

Case No. 7-R-1802.—Decided September 21, 1944

Mr. Stanley H. Fulton, of Detroit, Mich., for the Company.

Sugar & Tucker, by *Mr. Jack N. Tucker* of Detroit, Mich., for the UAW-CIO.

Mr. Frank O. Boling, of Flint, Mich., and *Mr. I. B. Padway*, of Washington, D. C., for the UAW-AFL.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., herein called the UAW-CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Marvel-Schebler Division, Borg-Warner Corporation, Flint, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cecil Pearl, Trial Examiner. Said hearing was held at Detroit, Michigan, on August 17, 1944. At the commencement of the hearing the Trial Examiner granted a motion of International Union, United Automobile Workers of America, Local 156, AFL, herein called the UAW-AFL, to intervene. The Company, the UAW-CIO, and the UAW-AFL 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 opportunity to file briefs with the Board.

58 N. L. R. B., No. 87.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Borg-Warner Corporation is an Illinois corporation. We are here concerned with its Marvel-Schebler Division at Flint, Michigan, where it is engaged in the manufacture of gasoline carburetors and other war products. During the first 9 months of 1943 the Company purchased raw materials valued in excess of \$100,000, for use at its Flint plant, about 25 percent of which was shipped to it from points outside the State of Michigan. During the same period the Company manufactured products valued in excess of \$100,000, approximately 80 percent of which was shipped 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 and Agricultural Implement Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

International Union, United Automobile Workers of America, Local 156, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 5 and 14, 1944, the UAW-CIO requested the Company to recognize it as the exclusive collective bargaining representative of the employees at the Flint plant. The Company did not reply to these requests.

On January 6, 1941, the Company and the UAW-AFL entered into an exclusive bargaining contract. On October 2, 1942, the contract was amended to continue until October 5, 1943, and from year to year thereafter unless either party notified the other of a desire to terminate not less than 30 days prior to any annual expiration date. On November 19, 1943, the UAW-CIO filed a petition in Case No. 7-R-1645 requesting that it be certified as exclusive bargaining representative of the employees involved herein. On April 17, 1944, the Company amended its contract with the UAW-AFL and provided that the contract, as amended, should run until April 5, 1945, and from year to year thereafter unless either party thereto gave notice of a desire to terminate at least 30 days prior to any anniversary date. On April 29,

1944, the Board issued its decision in Case No. 7-R-1645,¹ finding that "the contract as renewed on September 5, 1943, constitutes a bar to a present investigation and certification of representatives * * *. We shall therefore, dismiss the petition, but without prejudice to the UAW-CIO's right to file a new petition at a reasonable time prior to September 5, 1944, the next automatic renewal date of the contract." The Company and the UAW-AFL contend that their contract, as amended on April 17, 1944, constitutes a bar to the instant proceeding.

It should be noted that the amendment of April 17, 1944, was entered into prior to the Board's decision of April 29, 1944, alluded to above, and at a time when the Company and the UAW-AFL were taking the position before this Board that there should be no election prior to the termination date of the October contract. To sustain the position now taken by the Company and the UAW-AFL would have the effect of disfranchising the employees forever of an opportunity to select their own collective bargaining representative. The Board, in its decision of April 29, 1944, specifically provided that the UAW-CIO should be afforded an opportunity to file a new petition at a reasonable time prior to September 5, 1944. The UAW-CIO filed its petition herein on July 5, 1944. Thus, the amendment of April 17, 1944, to the contract must necessarily be made subject to the above-quoted language of the Board in its decision. Moreover, the contract of April 17, 1944, constituted a premature extension of the October 2, 1942, agreement, as renewed for a year on September 5, 1943, and is therefore ineffectual as a bar under our well-settled precedents.² We find that the purposes of the Act would be effectuated by holding that the contract, as amended, is not a bar to a determination of representatives at this time.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the U. A. W.-C. I. O. represents a substantial number of employees in the unit hereinafter found to be appropriate.³

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

We find, in substantial agreement with a stipulation of the parties, that all employees at the Flint plant of the Company, excluding direct representatives of the Company, confidential clerks, time-study men,

¹ 56 N L R B 105

² See *Matter of Memphis Furniture Company*, 51 N L R B 1447

³ The Field Examiner reported that the UAW-CIO presented 173 authorization cards bearing the names of persons who appear on the Company's pay roll of July 5, 1944. There are approximately 570 employees in the appropriate unit. The UAW-AFL did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

office employees, plant-protection employees, superintendents, foremen, assistant foremen, and any other 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.⁴

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of 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 Marvel-Schebler Division, Borg-Warner Corporation, Flint, 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 any 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 and Agricultural Implement Workers of America, C. I. O., or by International Union, United Automobile Workers of America, Local 156, A. F. L., for the purposes of collective bargaining, or by neither.

⁴ This is the same unit that is provided for in the contract between the UAW-AFL and the Company.