In the Matter of MOTOR VALVE AND MANUFACTURING COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Case No. 7–C–1292.—Decided October 17, 1944

Mr. Harold A. Cranefield, for the Board.

Messrs. Cook, Smith, Jacobs & Beake, by *Mr. Glen R. Miller*, of Detroit, Mich., for the respondent.

Messrs. Maurice Sugar and *N. L. Smokler*, of Detroit, Mich., for the Union.

Mr. Mervin N. Bachman, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Seventh Region (Detroit, Michigan) issued its complaint, dated July 17, 1944, against Motor Valve and Manufacturing Company, Marine City, Michigan, 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 at all times since on or about January 24, 1944, the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit concerning rates of pay, wages, hours of employment, and other conditions of employment; and (2) that the respondent, by the foregoing

acts, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On August 9, 1944, the respondent filed an answer to the complaint, admitting the allegations respecting its business, the status of the Union as a labor organization, and the appropriateness of the unit for the purpose of collective bargaining, that it had refused to bargain with the Union, but setting up certain affirmative matter in defense of such refusal and denying that it had engaged in or was engaging in unfair labor practices. On August 24, 1944, the respondent, the Union, and counsel for the Board entered into a stipulation agreeing upon a statement of facts to serve as the basis of the Board's Decision and Order and expressly waived further hearing, the issuance of an Intermediate Report, or Proposed Findings of Fact, or other procedure before the Board. The stipulation provides as follows:

> IT IS HEREBY STIPULATED by and between Motor Valve and Manufacturing Company, hereinafter referred to as respondent, by Cook, Smith, Jacobs and Beake, its attorneys, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), hereinafter referred to as the union, by Maurice Sugar and Ned L. Smokler, its attorneys, and Harold A. Cranefield, Regional Attorney for the National Labor Relations Board, that the following statement of facts and exhibits attached hereto shall have the same force and effect as though witnesses had testified thereto and the said exhibits had been offered and received in evidence at such hearing.

I

1. Upon a charge duly filed by the union with the Regional Director for the Seventh Region of the National Labor Relations Board, hereinafter referred to respectively as the Regional Director and the Board, the Board, by the said Regional Director, issued its Complaint dated July 17, 1944, against respondent alleging inter alia that respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of subsections (1) and (5) of Section 8 and subsections (6) and (7) of Section 2 of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. A copy of the said Complaint together with a copy of the charge and of Notice of Hearing were duly served upon respondent and the union. Hearing upon the said Complaint, originally ordered to be held on August 1, 1944, was postponed from time to time by orders of the Regional Director. On August 11, 1944, respondent filed its Answer to the said Complaint wherein it denied that it has engaged or is engaging in any unfair labor practices whatsoever. The union and Harold

A. Cranefield, as attorney for the Board, expressly waive any objection that might lie by reason of respondent having filed its Answer more than ten days after service of the Complaint.

2. Each party hereto reserves the right to urge by way of argument to the Board and to any court which may acquire jurisdiction of the proceeding (and it is agreed that the Board may itself argue to any such court) that any fact herein stipulated is irrelevant or immaterial to a proper decision of the issues herein presented.

II

1. The parties hereto waive hearing upon the Complaint, waive intermediate report, proposed findings of fact and all other further procedures before and of the Board preliminary to decision, provided that respondent and the union may, within fifteen days after the date of this Stipulation file briefs with the Board (in accordance with the Rules and Regulations of the Board as to the number of copies and service of such briefs) and may apply to the Board for leave to argue this matter orally before the Board. (The Board is not committed hereby to allow such application or to hear such oral argument.) This Stipulation, the charge, Complaint and Notice of Hearing and respondent's Answer shall be filed with the Chief Trial Examiner of the Board in Washington, D. C., and together with the entire record of the Board in the matter of Motor Valve and Manufacturing Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), Case No. R-5648 (including, without limitation thereto, the petition, Notice of Hearing, transcript of proceedings before the Trial Examiner, exhibits received by the Trial Examiner, the Board's Decision and Direction of Election and the Board's Certification of Representatives), shall constitute the entire record in this proceeding. Upon the record as above constituted the Board may make findings of fact and conclusions of law and may enter its decision and appropriate order thereon, all of which, together with such other papers as may be properly filed after the date hereof, shall constitute the entire record in any proceedings instituted for the review or enforcement of the Board's decision and order in any United States court.

III.

1. Respondent is and was at all times mentioned herein a Michigan corporation engaged at a plant in Marine City, Michigan, in the manufacture of poppet valves for internal combustion engines, using as raw materials principally stainless steel and alloy steel

all of which is purchased outside the state of Michigan and shipping approximately 95% of its product outside the state of Michigan. In the usual and ordinary course of its business in recent times respondent's purchases of raw materials and supplies exceed $100,000 in value annually and its manufactured products are of a value exceeding $200,000 annually. Respondent is engaged in interstate commerce within the meaning of the Act.

IV

1. The union, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of subsection (5) of Section 2 of the Act and admits employees of respondent to membership therein.

V

1. In its Decision and Direction of Election in Case No. R–5648 the Board held and the parties hereto stipulate that all production and maintenance employees of respondent, excluding clerical employees, watchmen 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 subsections (2) and (b) of Section 9 of the Act.

2. On September 10, 1943, a majority of the employees in the bargaining unit as described above designated the union as their representative for the purposes of collective bargaining with respondent in an election by secret ballot held on said date pursuant to the Board's aforesaid Direction of Election in Case No. R–5648. Sixty-one employees were eligible to vote in the said election, of whom 58 voted. Of the 58 ballots cast, two were void, 31 were for representation by the union and 25 against. Thereafter, and on October 6, 1943, the Board issued and served upon respondent its Certification of Representatives, certifying the union as the representative for collective bargaining of all the employees in the aforesaid unit.

VI

1. Following the election of September 10, 1943, and before issuance of the Board's Certification of Representatives, respondent agreed, upon the union's request, to meet with the union at respondent's offices on October 12, 1943, at two o'clock in the afternoon of that day for the purposes of collective bargaining with

the union as representative of respondent's employees in the above described bargaining unit. Respondent's representatives, duly authorized to represent respondent and act for it in collective bargaining with the union, were present at the agreed place of meeting at the agreed time. No representative of the union appeared there. No previous notice had been given respondent by the union of an intention not to appear.

2. On October 13, 1943, Cook, Smith, Jacobs and Beake, being duly authorized thereto by respondent, wrote Bernard J. Young, a representative of the union duly authorized to act for the union in the matter of collective bargaining with respondent and the union's representative throughout the Board's proceedings in Case No. R–5648. The said letter was received by Bernard J. Young in ordinary course. A copy of the said letter is attached hereto marked "Exhibit A" and made a part hereof by reference.

3. The said Bernard J. Young made no specific reply to the letter which is Exhibit A nor did respondent or its representatives receive any specific response to said letter from any other representative of the union. The first further communication between respondent and the union after respondent's transmission of the letter which is Exhibit A was a conversation between Glen R. Miller of Cook, Smith, Jacobs and Beake, and the said Bernard J. Young upon the occasion of their meeting in the offices of the Department of Labor in Detroit, Michigan, late in October, 1943, in connection with another matter not involving respondent. On this occasion the said Glen R. Miller reasserted respondent's willingness to meet with the union for the purposes of collective bargaining and the said Bernard J. Young undertook to communicate with the said Miller within a few days thereafter and to propose a time and place for a meeting for the purpose of such bargaining.

4. The only further communications between respondent and the union prior to issuance of Complaint in this matter were by letter. Copies of all letters exchanged between respondent and the union together with copies of enclosures transmitted with such letters (except that Exhibit A, a copy of which was enclosed with Exhibit C is not duplicated as an additional exhibit and except that Exhibits D and E, copies of which were attached to Exhibit G, are not duplicated as additional exhibits) are attached hereto, marked respectively as Exhibits B, C, D, E, F and G. Each of the said letters (with the enclosures mentioned) was received in ordinary course by the addressee.

5. On January 24, 1944, there were in respondent's employ 53 of the 61 employees employed in the bargaining unit at the time of the election of September 10, 1943, and 26 employees within the

unit who had been employed after the said election. At the date of this stipulation 39 of the original 61 employees in the unit are in respondent's employ and 36 employees hired since September 10, 1943.

6. Respondent has refused at all times since January 24, 1944 and now refuses to bargain collectively with the representative of respondent's employees in the unit above described.[1]

On September 9, 1944, the respondent filed a brief, which the Board has considered. No request for argument before the Board was made.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Motor Valve and Manufacturing Company, a Michigan corporation, is engaged at its Marine City, Michigan, plant, in the manufacture of poppet valves for internal combustion engines, using as raw materials principally stainless steel and alloy steel, all of which is purchased outside the State of Michigan, and shipping approximately 95 percent of its finished product to points outside the State of Michigan. Its total annual purchases of raw materials and supplies exceed $100,000, and its products annually exceed $200,000 in value.

The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

The refusal to bargain collectively

1. The appropriate unit

The parties stipulated, and we find, that all production and maintenance employees of the respondent, excluding clerical employees, watchmen 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

[1] The exhibits referred to in the text of the stipulation are copies of correspondence between the parties which indicate their respective positions. For the purposes of our decision herein, we find it unnecessary to attach any of the exhibits referred to in the stipulation.

appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. Representation by the Union of a majority in the appropriate unit

The parties stipulated, and we find, that on September 10, 1943, pursuant to direction of the Board [2] an election was held in which a majority of the employees in the appropriate unit selected the Union as exclusive bargaining representative. The Tally of Ballots indicated that 61 employees were eligible to vote and that 58 voted, of whom 31 cast ballots for, and 25 against the Union. Two ballots were void. Thereafter, on October 6, 1943, the Board issued its certification of the Union as exclusive representative of the employees in the appropriate unit. We further find that since September 10, 1943, the Union has been the exclusive representative of all the employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The respondent contends that its refusal to bargain with the Union is justified for two reasons: the neglect of the Union to request initiation of negotiations until January 24, 1944, and the turnover among employees in the appropriate unit, which causes it to doubt that the Union is at present the representative of a majority of such employees.

Failure of a certified union to request immediate bargaining does not relieve an employer of his statutory obligation. We perceive nothing in the facts before us which would warrant a contrary position. As we have frequently found, a certification of representatives is operative for a reasonable period, normally 1 year, in the absence of unusual circumstances.[3] As to the second ground urged by the respondent, we are not persuaded that the certification, which was slightly more than 3 months old when the Union requested the respondent to bargain and the respondent refused, should now be held, when it is barely more than a year old, to be defeasible upon the showing made the respondent.[4]

[2] Case No. R-5648; 51 N. L. R. B. 1240.

[3] See *N. L. R. B.* v *Appalachian Electric Power Co.*, 140 F. (2d) 217 (C. C. A. 4), enf'g as mod. 47 N. L. R. B. 821, *N. L. R. B.* v *The Century Oxford Mfg. Corp.*, 140 F. (2d) 541, enf'g 47 N. L. R. B. 835, *N. L. R. B.* v *Botany Worsted Mills*, 133 F. (2d) 876 (C. C. A. 3); *N. L. R. B.* v *Valley Mould & Iron Corp.*, 116 F. (2d) 760, enf'g 20 N. L. R. B. 211; *N. L. R. B.* v *Grieder Machine Tool & Die Co.*, 142 F. (2d) 163 (C. C. A. 6), enf'g 49 N. L. R. B. 1325, *Matter of Aluminum Company of America, Newark Works*, 57 N. L. R. B. 913; *Matter of Bohn Aluminum and Brass Corp.* (*Plants 13 and Magnesium Fabricators*), 57 N. L. R. B. 1684, *Matter of Kentucky Utilities Company*, 58 N. L. R. B. 335.

[4] The stipulation shows that, as of its date, August 24, 1944, there were 39 of the original 61 employees in the unit and that 36 employees had been hired in the unit since September 10, 1943, the date of the election. At the date of the Union's request to commence bargaining negotiations, January 24, 1944, there were in the Unit 53 of the original 61 employees and 26 new employees hired after the election.

We find that on January 24, 1944, and at all times since that date, the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in the aforesaid appropriate unit, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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 certain unfair labor practices affecting commerce, we shall order it to cease and desist therefrom and to take certain affirmative action, which we find will 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 its employees in the aforesaid appropriate unit. We shall order that the respondent bargain collectively with the Union upon request.

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

CONCLUSIONS OF LAW

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the respondent, excluding clerical employees, watchmen 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.

3. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), affiliated with the Congress of Industrial Organizations, was on September 10, 1943, and at all times thereafter has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), affiliated with the Congress of Industrial Organizations, as the exclusive representative of its employees in the 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 pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Motor Valve and Manufacturing Company, Marine City, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its production and maintenance workers excluding clerical employees, watchmen, 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;

(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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes 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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), affiliated with the Congress of Industrial Or-

ganizations, as the exclusive representative of all its production and maintenance employees, excluding clerical employees, watchmen, 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 in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places throughout its plant at Marine City, Michigan, 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 took no part in the consideration of the above Decision and Order.