

In the Matter of UNITED MOTOR SERVICE, INC. (CONTRACTOR), OPERATING THE LIMA TANK DEPOT and UNITED STEELWORKERS OF AMERICA (C. I. O.)

Case No. 8-R-1620.—Decided November 18, 1944

Messrs. Henry M. Hogan, Harry S. Benjamin, Jr., and Richard E. Helms, of Detroit, Mich., for the Company.

Mr. Julius Holzberg, of Cincinnati, Ohio, and Messrs. P. P. Haubner and Chester A. Morgan, of Lima, Ohio, for the Steelworkers.

Mr. Paul Dunman, of Columbus, Ohio, for the UE.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America (C. I. O.), herein called the Steelworkers, alleging that a question affecting commerce had arisen concerning the representation of employees of United Motor Service, Inc., (Contractor), operating the Lima Tank Depot, Lima, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Lima, Ohio, on September 28, 1944. The Company, the Steelworkers, and United Electrical, Radio & Machine Workers of America (CIO), herein called the UE, 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. At the hearing, the UE moved the dismissal of the petition on the ground that the proceeding involves a jurisdictional dispute between two unions having the same parent organization. The motion is hereby denied. The Company moved the dismissal of the petition for the reasons: (1) the Steelworkers does not admit to membership the type of employees employed by the Company at Lima, Ohio, and (2) the unit sought by the Steelworkers is inappropriate. For reasons hereinafter stated, the motion is hereby denied. The Trial

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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

United Motor Service, Inc., a Delaware corporation, is a wholly owned subsidiary of General Motors Corporation, also a Delaware corporation. The company is engaged generally in selling, servicing, and warehousing of automobile parts and accessories, home radios, and electric motors. Under a contract with the United States of America, it operates a plant known as the Lima Tank Depot, located at Lima, Ohio. The Lima Tank Depot is engaged in the storing, packing and exporting for domestic shipment, preparing, assembling, completing and modifying of tanks, miscellaneous combat vehicles, spare parts and other ordnance material delivered at the Lima Tank Depot by the United States Government. An excess of 50 percent in value of the goods and material purchased and used by United Motor Service, Inc., in connection with the work performed at the Lima Tank Depot, comes from sources outside the State of Ohio. Upon completion of the work called for under its contract with the United States Government, the Company returns to the Government for shipment to distant nations such equipment, materials, and parts as may have been delivered to it.

We find that the operations of the Company affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America and United Electrical, Radio & Machine Workers of America, both affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to either union as the exclusive bargaining representative of its employees until it has been certified by the Board in an appropriate unit. The Company takes the position that the UE may be properly certified by the Board but that the Steelworkers cannot because the Steelworkers' jurisdiction does not cover the employees at the Lima Tank Depot. However, since there is no showing that the Steelworkers will not or cannot represent

equally all the employees in question, we find no merit in this contention.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Steelworkers represents a substantial number of employees in the unit hereinafter found appropriate.² A statement of the Trial Examiner made at the hearing, indicates that the UE also represents a substantial number of the said employees.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

Except as to the inclusion of operating employees in the railroad department of the Company, the parties are in complete accord that a plant-wide unit composed of production and maintenance employees of the Company at its Lima Tank Depot, with certain inclusions and exclusions hereinafter set forth, is appropriate for collective bargaining. The unions would include operating employees in the railroad department in the appropriate unit. The Company contends that they are not a functional part of the group comprising the ordinary production and maintenance employees and that their interests are so dissimilar from those of said employees that they should be excluded from the general unit and represented in a separate unit.

The Tank Depot covers an area of 168 acres. On these premises the Company maintains a railroad which has approximately 8½ miles of track. The Company employs 39 railroad operating employees or train crews, composed of conductors, engineers, and switchmen. Their primary duty is the operation of the motive power and switching of cars on the tracks of the Tank Depot. Although they sometimes make interplant deliveries within the yard, their chief function is to shuttle cars to and from the tracks of common carriers whose lines come to the yard. The record discloses that some of these employees have had previous railroad experience. Their rates of pay exceed those of ordinary production and maintenance employees. Interchange between them and production and maintenance employees

¹ The Company proved no intent on the part of the Steelworkers to deny membership to the employees of the Company, and in fact, the jurisdiction of that organization, as defined in its constitution, appears to be broad enough to include them.

² The Field Examiner reported that the Steelworkers submitted 1,155 authorization cards; that there are 3,850 employees in the appropriate unit; and that the cards were dated 13 percent in May 1944, 41 percent in June 1944, 17 percent in July 1944, 11 percent in August 1944, and 18 percent undated.

³ The Trial Examiner reported that the UE submitted 660 authorization cards; that there were 128 undated cards; that there were 385 cards dated between January and December 1943, and 147 cards between January and July 1944.

occurs infrequently. They operate under the supervision of a railroad supervisor who is directly under the supervision of the production manager. The record likewise discloses that the Tank Depot is a highly integrated plant under the direction and control of the plant manager who formulates all policies with respect to wages and labor relations. All employees are hired through a centralized personnel department. There has been no collective bargaining at the plant. Under the circumstances, since no labor organization is desirous of representing them in a separate unit, we shall include them within the unit hereinafter found appropriate.

We find that all production and maintenance employees, including all railroad department employees and mechanical employees in engineering department shops of the Lima Tank Depot operated by United Motors Service, Inc., Lima, Ohio, except employees of sales, accounting, purchasing, personnel and industrial relations departments, superintendents, assistant superintendents, supervisors and assistant supervisors, general foremen, foremen and assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action (but not leaders), and those employees whose work is of a confidential nature, time-study men, plant-protection employees, fire-protection employees, drivers of administrative passenger cars, all clerical employees, chief engineers and shift operating engineers in power plants, designing (drawing board), production, estimating and planning engineers, draftsmen and detailers, physicists, chemists, metallurgists, artists, designer-artists, timekeepers, technical school students, indentured apprentices, and those technical or professional employees receiving training, kitchen and cafeteria help, and temporary employees, 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 payroll 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 United Motor Service, Inc., (Contractor), Operating the Lima Tank Depot, Lima, Ohio, 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 Eighth 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 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 United Steelworkers of America (C. I. O.), or by United Electrical, Radio & Machine Workers of America (CIO), for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.