

In the Matter of PRESSED METALS OF AMERICA, INC. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO

Case No. 7-R-1819.—Decided November 18, 1944

Mr. John D. Leighton, of Port Huron, Mich., for the Company.
Maurice Sugar and Jack N. Tucker, by *Mr. Jack N. Tucker*, of Detroit, Mich., for the CIO.

Mr. Jerry Aldred, of Highland Park, Mich., for the AFL.

Mr. Harry Nathanson, 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 and Agricultural Implement Workers of America, UAW-CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Pressed Metals of America, Inc., Port Huron, 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 Port Huron, Michigan, on October 17, 1944. At the commencement of the hearing, the Trial Examiner granted a motion to intervene made by United Automobile Workers of America, Local 127, AFL, herein called the AFL. The Company, the CIO and the AFL 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. 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.

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

FINDING OF FACT

I. THE BUSINESS OF THE COMPANY

Pressed Metals of America, Inc., is a Delaware corporation. At its plant in Marysville, Michigan, it is engaged in the manufacture of
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war materials. In its operations the Company uses steel bars and coils as its principal raw material. During the past year the Company purchased raw materials in the approximate amount of \$1,000,000, of which approximately 60 percent was shipped to it from points outside the State of Michigan. For the same period the total value of its finished products was in the approximate amount of \$2,000,000, of which approximately 50 percent was shipped by it to points outside the State of Michigan.

The Company admits that it 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, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

United Automobile Workers, Local 127, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The AFL entered into a collective bargaining agreement with the Company effective as of August 3, 1943, the date of its certification by the Board, which provided, *inter alia*, that in the event neither party gave notice to the other in writing 30 days "before August 3, 1944" of a desire to terminate or amend, the contract would be automatically renewed from year to year.

On July 10, 1944, the AFL, by its president, addressed a letter to the Company stating, "This is to inform you that it is the desire of the Union to amend and modify our present Contract." By letter dated July 11, 1944, the Company replied, "In answer to your letter of July 10, the Company would like you to present the unions desired contract changes in letter form at your earliest convenience." The record discloses that there were discussions between AFL representatives and the Company concerning the dissatisfaction of employees with the methods fixed by the contract for computing vacation pay. These discussions commenced about 2 weeks to 30 days before the July 10 letter and, prior to July 20, resulted in the Company's submission to the AFL of its proposed new vacation plan. The AFL by letter dated July 17, 1944, called a membership meeting for July 20 to discuss, among other things, "the Company's interpretation of 'Vacation Pay'." On July 20 a meeting was held and the plan submitted by the Company was rejected. Also on July 20, 1944, the CIO requested recognition

as the exclusive bargaining representative of the Company's employees. The Company admitted at the hearing that there was an intention on its part to amend the contract in regard to vacations with pay and that it would have amended the contract in this respect but for the request for recognition which it received from the CIO.

Both the Company and the AFL contend that their contract was renewed on July 3, 1944, and constitutes a bar to a present determination of representatives. However, we are of the opinion that, by their actions, the AFL and the Company mutually waived the provision of the contract requiring that written notice be given 30 days before August 3, 1944, in order to prevent the contract from continuing in operation for another year, and, in effect, treated as timely the July 10 letter which was sent to the Company by the AFL. Consequently, we find that no bar exists to an immediate determination of representatives.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.²

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 accordance with the stipulation of the parties, that all hourly rated non-supervisory employees of the Company, including guards,³ but excluding 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.

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

¹ Cf. *Matter of C. H. Dutton Company*, 48 N. L. R. B. 27.

² The Field Examiner reported that the CIO submitted 152 application-for-membership cards, of which 148 bore apparently genuine original signatures of persons appearing on the Company's pay roll for the period ending August 20, 1944; that 147 cards were dated July 1944 and 1 was undated; and that said pay roll contained the names of 434 persons within the alleged appropriate unit.

The AFL relies on the 1943 contract to establish its interest in this proceeding.

³ The Company's guards are not militarized and were bargained for by the AFL under the terms of the 1943 contract

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 Pressed Metals of America, Inc., Port Huron, 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 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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, or by United Automobile Workers, Local 127, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.