

In the Matter of AMERICAN-MARSH PUMPS, INC., and MICHIGAN METAL
CRAFTSMEN, INC.

Case No. 7-R-1835.—Decided December 16, 1944

Mr. Edwin F. Steffen, of Lansing, Mich., for the Company.

Mr. Leonard F. Donaldson, of Detroit, Mich., and *Mr. Cwyler Coleman*, of Grand Rapids, Mich., for the Independent.

Mr. L. O. Thomas, of Washington, D. C., and *Mr. Carl Cederquist*, of Detroit, Mich., for the Machinists.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by Michigan Metal Craftsmen, Inc., an unaffiliated organization, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of American-Marsh Pumps, Inc., Battle Creek, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Battle Creek, Michigan, on October 17, 1944. The Company, the Independent, and Lodge 46, International Association of Machinists, herein called the Machinists, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the Company moved to dismiss this proceeding. Although the grounds urged in support of the Company's motion are not tenable, the Board dismisses the petition for the reasons that appear in Section III, below. 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.

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

59 N. L. R. B., No. 192.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

American-Marsh Pumps, Inc., is engaged in the manufacture of pumps at Battle Creek, Michigan. During the year 1942, the Company's purchases of raw materials, consisting principally of steel, exceeded one-half million dollars, of which approximately 90 percent was shipped to its plant from points outside Michigan. In the same year the Company's sales exceeded \$1,000,000, of which approximately 95 percent represented products shipped from the plant to points outside Michigan.

We find that the Company is engaged in commerce, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Michigan Metal Craftsmen, Inc., is an unaffiliated labor organization, admitting to membership employees of the Company.

Lodge 46, International Association of Machinists, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On September 2, 1943, the Board certified the Machinists as exclusive bargaining representative of production and maintenance employees at the Company's plant.¹ Thereafter, the Company and the Machinists conferred with respect to a contract covering these employees. On October 14, 1943, they entered into a stipulation, witnessed by the Commissioner of the United States Conciliation Service of the Department of Labor, to the effect that they had failed in direct negotiations before the Commissioner to settle certain matters in dispute between them, namely, wages, retroactive date, and vacations, and on October 18, 1943, signed a written contract, effective October 14, 1943, making no mention of wages or vacations, but incorporating in usual written form all agreed matters concerning working conditions at the plant.

The issues between the parties with respect to wages, retroactive date, and vacations were submitted to the War Labor Board, and a panel hearing upon the issues was conducted in December 1943. A panel report with recommendations followed on February 3, 1944. On March 31, 1944, the War Labor Board issued a directive order,

¹ 52 N. L. R. B. 391. On the same day the Board certified International Molders and Foundry Workers Union of North America, Local 51, as the exclusive bargaining representative of employees at the Company's foundry. Foundry employees are not directly concerned in the present proceeding.

setting up wage rates for designated job titles, making wage provisions retroactive to November 5, 1943, and providing for vacation privileges, and further directing the parties to negotiate questions relative to the proper grading of individuals within job classifications and to negotiate appropriate rates, lower than those set forth in the directive, for minors and aged and handicapped employees. The Company thereupon filed an appeal, protesting (1) the setting up of any wage rates except on the basis of previously established job descriptions at its plant and (2) the basis for computing vacation privileges. The War Labor Board subsequently amended its directive with respect to vacations, and the Company granted vacations to employees in accordance therewith.

On April 27, 1944, the Independent orally asked the Company for recognition as bargaining representative of its employees. The company refused on the ground that its contract with the Machinists, effective October 14, 1943, constituted a bar to such recognition.

On July 25, 1944, the Company requested that the National War Labor Board stay its appeal of the directive order issued on March 31, 1944, pending the making of job descriptions by the contracting parties, which had been directed by the War Labor Board, and on August 2, 1944, pending the completion of this work, requested a further stay of appeal, alleging that the Company would advise the National War Labor Board concerning the outcome of these negotiations. Thereafter, the Company and the Machinists set about working out job descriptions for employees working at the plant.

On August 11, 1944, the Independent again requested recognition as bargaining representative of the Company's employees and filed its original petition with the Board. On August 29, 1944, the Company replied to the letter of the Independent, stating that it would continue to recognize the Machinists as bargaining representative of its employees until the Board or another Government agency directed it to do otherwise. On the same day, the Company advised the Machinists that the Independent claimed to represent a majority of employees covered by the contract and that, although the contract between the Company and the Machinists, effective October 14, 1943, was subject to renewal "in accordance with its terms," the Company would not enter into further negotiations with the Machinists, "looking toward the renewal of said contract," until there had been a determination of the bargaining agency by the Board.

Between July 25, when the Company first requested a stay of its appeal of proceedings before the National War Labor Board, and October 17, the day of the hearing, herein, the Company and the Machinists had worked out job classifications, all of which had been rejected by the conciliator of the Department of Labor, to whom

they had been submitted for approval. Thereafter 38 of the 44 job classifications had been rewritten, but none of these had, at the time of the hearing, yet been approved by the conciliator or by the National War Labor Board.

The Machinists contends that the protracted and still pending proceedings before the War Labor Board with respect to wage conditions at the plant have delayed the completion of the contractual program initiated by the Machinists and thus denied to the Company's employees substantial enjoyment of their collective bargaining under the leadership of their recently certified bargaining representative. We find merit in this contention.²

The Company and the Machinists, after the latter's certification, committed to the form of a written contract matters concerning working conditions at the plant on which they were agreed, and they promptly referred to the War Labor Board matters on which they were in dispute. The wage issue, which was the principal subject of the directive order of March 31, 1944, involved not merely the determination of fixed increases in already established wage rates, but a complete wage program, bottomed on a comprehensive analysis of work performed by the Company's employees and the establishment of basic job classifications. The working out of these job classifications is thus a primary requisite to the establishment of wage rates to be applied to employees at the Company's plant. Under these circumstances, we find that the Machinists' resort to the War Labor Board, the long pendency before that agency of fundamental wage issues, and the present incomplete status of resulting negotiations between the Machinists and their employer, has denied to the Company's employees, without fault on the part of their bargaining representative, the settlement of the most vital element in their present bargaining program. To disturb the negotiations at this time may nullify the entire work. Thus, we do not believe that it will effectuate the policies of the Act to direct an immediate election.³ We shall therefore dismiss the petition filed by the Independent herein.⁴

² In support of its motion to dismiss this proceeding, the Machinists further urges that the written contract, effective October 14, 1943, became "automatically" renewed for a further term of 1-year before the petitioner made known its claim to represent the Company's employees. According to our construction, the contract continued indefinitely after the 1-year term, subject to cancellation on 60 days' written notice by either party. In any event the petitioner gave timely notice of its claim and filed its petition more than 60 days prior to October 14, 1944.

³ *Matter of Taylor Forge & Pipe Works*, 58 N. L. R. B. 1371, and cases cited therein.

⁴ During the course of the hearing, the Company, believing that it could resolve the issues between petitioner and the intervenor by such act, formally recognized the petitioner as the bargaining representative of its employees, and moved that the Board dismiss the proceeding on the ground that such recognition resolved the issues between the rival organizations. We cannot so evaluate the Company's act. Our dismissal of the petition filed by the Independent does not rest upon the ground that the Company's misguided recognition of the Independent has resolved any issue presented in this proceeding. The Act does not permit an employer to designate which of two rival labor organizations

ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of American-Marsh Pumps, Inc., Battle Creek, Michigan, filed by Michigan Metal Craftsmen, Inc., be, and it hereby is, dismissed.

shall be the representative of its employees. The basis of our dismissal in this proceeding is, as indicated above, our conviction that at this critical period a challenge to the representative status of the Machinists may disrupt the entire bargaining program by nullifying the effect of the pending War Labor Board proceedings and thus deny to the Company's employees the substantial benefits flowing from their negotiations during the past year.