

In the Matter of GENERAL MOTORS CORPORATION, DELCO PRODUCTS DIVISION, PLANT D and METAL POLISHERS, BUFFERS, PLATERS' & HELPERS INTERNATIONAL UNION, A. F. OF L.

Case No. 9-R-1590.—Decided December 22, 1944

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

Mr. Ray Kelsay, of Cincinnati, Ohio, for the A. F. of L.

Mr. Max W. Johnstone, of Akron, Ohio, and Mr. Ray Quinlan, of Norwood, Ohio, for the C. I. O.

Mr. Louis R. Mercado, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Metal Polishers, Buffers, Platers & Helpers International Union, A. F. of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of General Motors Corporation, Delco Products Division, Plant D, Cincinnati, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on October 27, 1944. The Company, the A. F. of L., and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, herein called the C. I. O.,¹ 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.

The record shows that the C. I. O. began organizing the Company's Plant D early in the spring of 1944 and filed a petition for representa-

¹The C. I. O. moved to intervene at the hearing. There was no objection and the Trial Examiner granted the motion.

tion of the Company's employees in May. The hearing² on the C. I. O.'s petition was held in July 1944, and the Board, in its decision in August, found a general production and maintenance unit (metal polishers were not specifically mentioned) to be appropriate and directed an election therein. At the time of the hearing on the C. I. O.'s petition, the six metal polishers³ employed by the Company were members of the A. F. of L., some of them for many years, and steps were being taken by the A. F. of L. preliminary to securing a contract with the Company as bargaining representatives of these polishers.⁴ The officials of the A. F. of L. and one of the polishers testified that they had no knowledge of the C. I. O.'s petition, the hearing thereon, or the Board's Direction of Election until September 6, 1944, when they filed the instant petition together with a motion to intervene in the proceedings based on the C. I. O.'s petition. The Board denied the A. F. of L.'s request for intervention, stating that its action was without prejudice to a later determination of the propriety of establishing the metal polishers as a separate bargaining unit.⁵ While the C. I. O. conducted an open drive to organize the plant, there is no credible evidence from which a fair inference can be drawn that either the A. F. of L. officials or any of the metal polishers knew of the prior proceedings before the Board. Upon the entire record, we find no merit in the motion of the C. I. O. to dismiss the petition for lack of timeliness, and we, accordingly, deny the motion.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

General Motors Corporation, a Delaware corporation, has its principal business offices in New York City and Detroit, Michigan. The Company owns plants in several States, and maintains the Delco Products Division, which operates several plants in Ohio. Only the plant at Cincinnati, Ohio, known as Plant D, is involved in this proceeding. In excess of 50 percent in value of the goods and materials used in the processing and manufacturing operations at Plant D comes from sources outside the State of Ohio; in excess of

² No Notice of the Hearing was given to the Metal Polishers, Buffers, Platers & Helpers International Union, A. F. of L.

³ A cut-back in the Government contract on which the Company was working and a subsequent reduction in work caused a reduction of the force of polishers from six to two.

⁴ The Union officials conferred with the Company's polishers concerning the terms of a proposed contract with the Company in the summer of 1944, later held a meeting where the provisions of the proposed contract were discussed and were in the process of preparing the contract for submission to the Company when they first learned in September that an election was to be held by the Board.

⁵ *Matter of General Motors Corporation, Plant D*, 57 N L R B 1491. The ballots of the metal polishers were impounded pending the disposition of the present petition.

50 percent of the completed products manufactured at Plant D is shipped to points outside the State of Ohio. Substantially all the products manufactured at Plant D are sold or delivered to the United States Government for use by the armed forces of the United Nations.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Metal Polishers, Buffers, Platers & Helpers' International Union, A. F. of L., affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the A. F. of L. as the exclusive bargaining representative of certain of its employees until the A. F. of L. has been certified by the Board in an appropriate unit. Pursuant to a Board directed election which the C. I. O. won in September 1944, the Board certified the C. I. O. as the exclusive representative of the Company's production and maintenance employees, but expressly excluded the metal polishers, stating that its action was without prejudice to a later determination in this proceeding of the propriety of establishing the metal polishers as a separate bargaining unit.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the A. F. of L. represents a substantial number of employees in the unit alleged by it to be appropriate.⁶

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; THE DETERMINATION OF REPRESENTATIVES

The A. F. of L. contends that the polishers and buffers constitute an appropriate craft unit. The C. I. O. and the Company contend

⁶ The Field Examiner reported that the A. F. of L. submitted two cards, both of which bore apparently genuine original signatures; that the names of the two persons appearing on the cards were listed on the Company's pay roll of October 23, 1944, which contained the names of two employees in the unit alleged to be appropriate; and that the cards were both dated October 1944. The C. I. O. relies on its certification by the Board as the exclusive bargaining representative of the general production and maintenance unit to show an interest in the proceedings.

that the polishers and buffers should be included in the general production and maintenance unit.

The Company's Delco Products Division, Plant D, is divided into 7 departments, 2 of which are electrical departments and are not involved in either this proceeding or in the prior proceedings on the C. I. O.'s petition (57 N. L. R. B., No. 237). The remaining 5 departments form a typical plant-wide unit of production and maintenance employees. The 2 polishers for which the A. F. of L. seeks a separate craft unit are employed in the Miscellaneous Machine Department, a production department in which the Company now employs 26 persons.⁷ The operations of this department start from forgings of raw materials and move through various operations and inspections to the final burring, polishing, and inspecting of the products, after which they are packed and shipped. The polishers operate polishing lathes and are required to work on only 13 machine parts at the present time.

The C. I. O. contends that one of the polishers holds the position of foreman. This contention is not borne out by the record. We find that his duties do not bring him within our usual definition of supervisory employees, and, accordingly, we shall include him within the unit alleged by the A. F. of L. to be appropriate.

In support of its position, the C. I. O. points to a history of collective bargaining in the industry and with the General Motors Corporation, citing *Matter of Delco Remy Division, General Motors Corporation*, 53 N. L. R. B. 110, 113. However, in the instant case the Company recently acquired Plant D from another firm. There is no history of collective bargaining involving this plant and there is evidence that the A. F. of L. undertook to ascertain the desires of the metal polishers and to prepare a contract for submission to the Company at about the same time that the C. I. O. commenced its organizational drive within the plant.⁸ From all of the circumstances in this case and from the entire record, we are of the opinion and find that the metal polishers are a distinct craft group which could either be part of the larger production and maintenance unit or function as a separate craft unit for the purposes of collective bargaining.⁹

⁷ These include the 2 metal polishers. As a result of the Government's cancellation of part of the contract on which the Company was working, the department had been reduced from 50 to 26 employees. Officials of the Company testified that the future production of the plant was entirely speculative and dependent upon future Government action.

⁸ The two metal polishers appear to be skilled craftsmen.

⁹ See *Matter of Bendix Production Division of Bendix Aviation Corporation*, 39 N. L. R. B. 81; *Matter of Tampa Florida Brewery, Inc.*, 42 N. L. R. B. 642; *Matter of Aluminum Co. of America*, 42 N. L. R. B. 772; *Matter of General Motors Corporation*, 52 N. L. R. B. 111; *Matter of Dodge Chicago Plant, Division of Chrysler Corporation*, 55 N. L. R. B. 634; *Matter of Goodyear Tire & Rubber Company*, 55 N. L. R. B. 918; *Matter of Cleveland Pneumatic Aerial, Inc.*, 55 N. L. R. B. 1269; *Matter of Caterpillar Military Engine Company*, 56 N. L. R. B. 1150; *Matter of General Electric Company (Lynn)*, 58 N. L. R. B. 57.

Accordingly, we shall make no final determination of the appropriate unit at this time, but shall first ascertain the desires of the employees themselves. In view of the absence of any question concerning representation among the employees in the general production and maintenance unit, we shall direct an election by secret ballot to be conducted among all metal polishers and buffers who were employed by the Company at its Delco Products Division, Plant D, Cincinnati, Ohio, during the pay-roll period immediately preceding the date of our Direction of Election herein, subject to the limitations and additions set forth therein, 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, to determine whether they desire to be represented by the A. F. of L. or by the C. I. O., for the purposes of collective bargaining, or by neither. Upon the results of this election will depend, in part, our determination of the appropriate unit. If a majority of the employees in the voting group select the A. F. of L. as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, a majority of the employees choose the C. I. O., then they will have thereby indicated their desire to be included in the general production and maintenance unit represented by the C. I. O.; in which event the petition will be dismissed.

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 General Motors Corporation, Delco Products Division, Plant D, Cincinnati, 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 Ninth 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 voting groups set forth 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, UAW-CIO, or by Metal Polishers, Buffers, Platers & Helpers International Union, A. F. of L., for the purposes of collective bargaining, or by neither.