

IN THE MATTER OF PACKARD MOTOR CAR COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO, LOCAL 190

*Case No. 7-R-1809.—Decided January 31, 1945*

*Mr. David Karasick*, for the Board.

*Mr. Carl R. Binns*, of Detroit, Mich., for the Company.

*Messrs. Maurice Sugar and Jack N. Tucker*, by *Mr. Jack N. Tucker*, of Detroit, Mich., for the Union.

*Miss Ruth E. Bliefeld*, 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, Local 190, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Packard Motor Car Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Walter Wilbur, Trial Examiner. Said hearing was held at Detroit, Michigan, on November 21, 22, 24, 25, 27, and 28, 1944. The Company and the Union 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 beginning of the hearing the Company filed a motion to dismiss the petition on the ground that the Union is estopped and debarred from seeking to represent the employees petitioned for herein because of a clause in its contracts with the Company relating to production, maintenance, and technical employees which states that the Union will not accept for membership certain classes of employees. For the reasons set forth in Section III and IV, below, this motion is hereby denied. 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:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Packard Motor Car Company is a Michigan corporation with its principal place of business at Detroit, Michigan. Only the Detroit plants of the Company are involved in this proceeding. The present production of the Company consists almost entirely of the manufacture of munitions for the armed services. The Company uses raw materials in the manufacturing processes amounting to over \$5,000,000, over 50 percent of which is shipped to the Company from sources outside the State of Michigan. Finished products amount to an annual dollar value in excess of \$5,000,000, approximately 90 percent of which is shipped 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 ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 190, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On June 28, 1944, the Union requested the Company, by letter, that it be recognized as the exclusive bargaining representative of certain salaried employees of the Company. The Company, by letter of July 14, 1944, refused to comply with this request, and the Union thereupon filed the petition in this proceeding.

The Company is presently operating under collective bargaining agreements with the Union covering production and maintenance employees, and technical employees. Each of these agreements contains the provision that "The Union will not accept for membership direct representatives of the management, such as superintendents, foremen, or supervisors in charge of any class of labor, time study men, . . ., confidential clerks, and salaried employees." The Company contends that the Union is bound by this provision and is thereby estopped from seeking to represent the employees presently petitioned for.

This contention was advanced by the Company in a previous case and was there found untenable.<sup>1</sup> We adhere to our view that em-

<sup>1</sup> *Matter of Packard Motor Car Company*, 47 N. L. R. B. 932; see also *Matter of Briggs Manufacturing Company*, 49 N. L. R. B. 57; *Matter of Federal Motor Truck Company*, 50 N. L. R. B. 214.

ployees may not be denied the privilege of selecting a particular labor organization as their representative because that organization has agreed in a contract with their employer not to represent them, since, in our opinion, such a contractual provision contravenes the express purpose and policy of the Act. The Company's motion to dismiss the petition because of this clause in its contract with the Union is therefore denied.

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

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 Union petitions for a unit consisting of all employees of the Company at its Detroit, Michigan, plants, except those in the units covered by the contracts between the Union and the Company, dated October 7, 1942,<sup>3</sup> and March 2, 1944,<sup>4</sup> plant protection employees, nurses,<sup>5</sup> and supervisory employees. This would comprise clerical workers and certain technical employees not otherwise covered by collective bargaining contracts. At the hearing the Union and the Company agreed that the employees listed in Appendix A, whose titles indicate that they are confidential employees, should be excluded. Subject to the contentions stated in its motion to dismiss the petition, and its objection to the inclusion of technical employees, hereinafter discussed, the Company agrees that the unit thus delineated is appropriate for bargaining. The Company, however, contends, as one of the bases for its motion to dismiss, that there is a wide dissimilarity of interest between the employees included in the other units represented by the Union and the employees petitioned for herein, and it argues that, although separate units would ostensibly be established, the petition seeks, in effect, to combine clerical and technical employees in the same unit with the production and maintenance workers. For

<sup>2</sup> The Field Examiner reported that the Union submitted 625 authorization cards, 473 of which bore the signatures of persons appearing on the Company's pay roll of September 22, 1944, which contained the names of 1,454 employees in the appropriate unit; and that 1 card was dated June 21, 1944, 61 were dated November 17, 1944, 1 card was dated November 20, 1944, and the rest were undated. The number of employees in the unit was changed by the agreements of the parties at the hearing, since the unit as stipulated upon at the hearing includes approximately 1,200 employees.

<sup>3</sup> This contract covers production and maintenance employees.

<sup>4</sup> This contract covers certain technical employees. See *Matter of Packard Motor Car Company*, 53 N. L. R. B. 875.

<sup>5</sup> Local 114 of the Union's parent organization, has a contract with the Company covering plant protection employees and Local 889 has a contract covering nurses.

the reasons stated in a number of other cases, we find this contention to be without merit.<sup>6</sup>

The Company further contends that the proposed unit is a catch-all, combining heterogeneous classifications of workers having no common functional characteristics, working conditions, or bases of compensation. The Union, in seeking to include technical and clerical employees in the same unit, in spite of the fact that there is an already established technical unit, urges that the proposed unit be deemed appropriate since it is a true residual group, including all employees of the Company not presently included in any of the other already established bargaining units.

The proposed unit includes approximately 1,200 employees, of which number 138 are listed as professional and technical employees. The technical and professional employees include production engineers, test engineers, service engineer analysts, professional and non-professional employees in the metallurgical department, editors of technical publications, mechanical illustrators, project engineers, and mathematicians employed in the engineering departments. The remaining employees are described in stipulations of the parties as clerical employees which apparently includes clerks, typists, stenographers, comptometer operators, I. B. M. operators, and miscellaneous office and clerical employees.

It is apparent from the stipulations of the parties concerning the duties of the 138 technical and professional employees that their qualifications, functions and interests differ greatly from those of the clerical employees. Since there is an already established unit of technical employees whose functions are more closely related to those of the technical employees involved herein, the inclusion of these employees in the unit consisting, in main, of clericals would create an anomalous situation. Such a determination might also place the technical employees in the position of being a minority group committed to bargain through a dominant majority which has wholly divergent interests. Accordingly, we shall exclude the technical employees from the unit herein found appropriate, and we shall not direct an election among them, since the question whether they may properly be included in the already established technical unit cannot be determined on this record. This action will not preclude the right of the Union to file a new petition regarding these employees.

It appears that the clerical employees constitute a homogeneous group, with similar working conditions, functions and interests and may properly constitute a separate bargaining unit.

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<sup>6</sup> See *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Packard Motor Car Company*, 53 N. L. R. B. 875.

We find that all salaried employees of the Company, excluding all employees in the units covered by the contracts between the Union and the Company dated October 7, 1942, and March 2, 1944, the employees listed in Appendix A, plant protection employees, nurses, 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, and further excluding the employees listed in Appendix B, 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 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 Packard Motor Car Company, Detroit, 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 any 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 or not they desire to be represented by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, Local 190, for the purposes of collective bargaining.

## APPENDIX A

(Employees excluded from the unit by stipulation of the parties)

1. All employees on the executive pay roll.
2. All employees on the exempt pay roll, *except* (a) employees in Department MAC, called Production Engineers in the "300" series; (b) Department MAK, called Test Engineers; (c) Departments MGJ and RGJ called Metallurgical Departments, and named employees E. A. Weithoff, Gavin Blockwood, and Ellis Ekeroth.
3. Labor Relations Employees Department RL.
4. Personnel employees, Department RM, *except* clerks in foremen's training school and employees in the "Work to Win" Department.
5. Time Study Department Employees, *except* clerks.
6. General ledger bookkeeping and overhead distribution sections in the Account Department.
7. Secretaries to (a) Executives on the executive pay roll, (b) Divisional Superintendents, and (c) Assistant Divisional Superintendents.
8. Salary pay roll clerks (clerks who make up salary pay rolls).

## APPENDIX B

(Figures in parentheses indicate number presently employed)

1. Production engineers (17).
2. Test engineers (16).
3. Service engineer analysts (6).
4. Professional employees in metallurgical department (38).
5. Non-professional (technical) employees in metallurgical department (35).
6. Editors of technical publications (12).
7. Mechanical illustrators (8).
8. Project engineers (3).
9. Mathematicians in the engineering department (3).

MR. GERARD D. REILLY, dissenting:

For reasons which I expressed in my dissenting opinions in *Matter of Packard Motor Car Company*, 47 N. L. R. B. 932, and *Matter of Federal Motor Truck Company*, 54 N. L. R. B. 984, I feel constrained to disagree with the holding in the instant proceeding.