

In the Matter of THE WHITE MOTOR COMPANY and FOREMAN'S ASSOCIATION OF AMERICA (INDEPENDENT), CHAPTER 102

Case No. 8-C-2031.—Decided October 14, 1947

Mr. Thomas E. Shroyer, for the Board.

Messrs. John H. Watson, Jr., and *Robert A. Wheeler*, of Cleveland, Ohio, for the respondent.

Mr. Lorin F. Hibbard, of Akron, Ohio, and *Mr. Harry Grams*, of Cleveland, Ohio, for the Union.

DECISION

AND

ORDER

On January 3, 1947, Trial Examiner William J. Scott issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had unlawfully refused to bargain with the Union as the collective bargaining representative of a unit of its supervisory employees previously found appropriate by the Board,¹ and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the respondent filed exceptions to the Intermediate Report, a supporting brief, and a request for oral argument. In view of our disposition of the case, the Board deems oral argument unnecessary and hereby revokes its previous action granting the respondent's request.

Since the issuance of the Intermediate Report herein, the National Labor Relations Act has been amended so as to exclude "any individual employed as a supervisor" from the definition of "employee" contained in the Act.² Supervisory employees are therefore now outside the coverage of the Act. We are therefore of the opinion, without considering the merits of the case, that it would not effectuate the policies of the Act, as amended, to require the respondent to take any remedial action in this case, which involves nothing except a refusal to bargain.³ Accordingly, we shall dismiss the complaint.

¹ *Matter of The White Motor Company*, 67 N L R B. 828. The Union won the election and was certified by the Board on June 17, 1946.

² Section 2 (3) and (11) of the Act, as amended.

³ *Matter of Westinghouse Electric Corporation*, 75 N L R. B. 1; *L. A. Young Spring & Woe Corporation v. N. L. R. B.*, 163 F. (2d) 905 (C. A.—D. C.).

ORDER

IT IS HEREBY ORDERED that the complaint against the respondent, The White Motor Company, Cleveland, Ohio, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. Thomas E. Shroyer, for the Board.

Messrs. John H. Watson, Jr., and *Robert A. Wheeler*, of Cleveland, Ohio, for the respondent

Mr. Lorn F. Hubbard, of Akron, Ohio, and *Mr. Harry Grams*, of Cleveland, Ohio, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by Foreman's Association of America (Independent), Chapter 102, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated November 7, 1946, against The White Motor Company, Cleveland, Ohio, herein called the respondent, alleging that the respondent had engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleges in substance, that the Union, having been duly chosen on or about May 23, 1946, by a majority of the employees in a unit of the employees of respondent defined therein and alleged to be appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, as their representative for purposes of collective bargaining, by virtue of Section 9 (a) of the Act, has been and is now the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to wages, hours of employment, rates of pay, and other conditions of employment; that on or about August 2 and 25, 1946, the Union requested the respondent to bargain collectively with it in respect to wages, hours of employment, rates of pay, and other conditions of employment as the exclusive representative of the employees in the unit; and that on said dates, respondent refused and ever since has continued to refuse to bargain collectively with the Union as such representative, and by such action has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

Upon due notice, a hearing was held at Cleveland, Ohio, on December 2, 1946, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union appeared and were represented. All parties participated in the hearing and 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 Board's case the respondent moved to dismiss the complaint. This motion was denied. Similar motions were made at the close of the Board's case, and also at the close of the evidence, upon which rulings were reserved. Those motions are hereby denied. Although afforded opportunity to do so, none of the parties has submitted briefs to the undersigned. The issues were argued orally at the close of the evidence.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

The White Motor Company is an Ohio corporation having its principal office and place of business in Cleveland, Ohio, where it is engaged in the manufacture, sale and distribution of motor trucks and busses. During 1945 the respondent purchased raw materials valued in excess of \$25,000,000, more than 50 percent of which was shipped from points outside the State of Ohio. During the same period its manufactured products were in excess of \$25,000,000, of which more than 50 percent was shipped to points outside the State of Ohio.

The undersigned finds that the respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Foreman's Association of America (Independent), Chapter 102, is an unaffiliated organization admitting to membership supervisory employees of the respondent. It exists for the purpose of acting as a collective bargaining representative for such employees. It is therefore found, contrary to the position asserted in the respondent's answer, that the Association is a labor organization as defined in Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain collectively*

1 The appropriate unit

On April 26, 1946, the Board, in a Decision and Direction of Election,¹ found that all foremen and assistant foremen employed in the following divisions of the Cleveland, Ohio, plant of The White Motor Company: General Service, Material Control, Works Manager, Non Current, Cab, Sheet Metal, Truck, Engine and Axle, Quality Control, Coach, Engineering, and Learners, including Fire Warden and Assistant Fire Warden in Industrial Relations, Assistant Planning Supervisor and Production Control Foreman (Block 13) in Material Control, Assistant (Block 24) in Works Manager, Supervisor of Tool Crib in Engine and Axle, Senior Inspectors in Quality Control, and Road Test Shop and Foreman Driver in Engineering; but excluding Production Control Foreman (Block 12) in Material Control and all supervisors in the following divisions: Export Sales, Sales, Government Service Parts, Purchasing, Controllers, Treasury, and Office of the Secretary, and all superintendents, general foremen, and supervisors above the rank of superintendent or general foreman, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

It is found that the above-described groups of employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.²

¹ *White Motor Company*, 67 N L R B 828

² At the instant hearing the respondent offered in evidence the transcript of certain testimony given by representatives or witnesses for the Foreman's Association of America in other Board proceedings in which the Association was seeking certification as a bargaining representative. This testimony dealt with acts and attitudes of certain supervisory employees who were members of the Association, in carrying on their union activity. This testimony was admitted into evidence at the instant hearing. In sum, the purpose of this evidence was to show an asserted irreconcilable conflict between the managerial status, so-called, of supervisory employees and union affiliation. The undersigned, however, finds no basis in this evidence for modification of the Board's unit findings.

2. The Union's majority

On May 23, 1946, pursuant to the Board's Decision and Direction of Election, an election was held under the direction and supervision of the Board's Regional Director, among the employees in the appropriate unit, to determine whether they desired to be represented by the Union for the purposes of collective bargaining. In this election a majority of the said employees voted for the Union.³ On June 17, 1946, no objections having been filed to the conduct of the election, the Board issued its Certification of Representatives, certifying that the Union was the exclusive bargaining representative of the employees in the appropriate unit.

It is found that on May 23, 1946, and at all times thereafter, the Union was, and is now, the exclusive representative of all the employees in the appropriate unit, within the meaning of Section 9 (a) of the Act, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

Under date of July 15, 1946, the Union, by letter addressed to the respondent, requested a meeting with the respondent for the purpose of bargaining collectively concerning the employees in the appropriate unit.

The respondent stipulated on the record herein that it did not reply to the above-mentioned letter and that on August 2, and again on August 25, 1946, it refused and has ever since refused to bargain collectively with the Union for the employees in said unit.

The respondent contends that foremen are a part of management and not employees within the meaning of the Act; "that even if foremen or other personnel constituting a part of management could legally be included within the unit, the Board under its powers under Section 9 (b) and (c) arbitrarily and erroneously placed within the unit here involved the persons defined and mentioned" in the alleged appropriate unit.

4. Conclusions as to refusal to bargain

The Board has considered similar contentions in the *Packard*⁴ case and found them to be without merit.

The undersigned concludes and finds on the basis of the foregoing that the respondent on August 2, 1946, and at all times thereafter has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit in respect to rates of pay, wages, hours of employment and other conditions of employment and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

³ Tally of Ballots showed that of approximately 130 eligible voters, 128 cast valid ballots, 116 for the Union, 12 against

⁴ See *Matter of Packard Motor Car Co.*, 64 N. L. R. B. 1212, aff'd 157 F. (2d) 80 (C. C. A. 6)

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Because of the basis of the respondent's refusal to bargain as indicated in the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, the undersigned will not recommend that the respondent cease and desist from the commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from the unfair labor practices found and from any other acts in any manner interfering with the efforts of the Union to negotiate for or represent the employees as exclusive bargaining agent in the unit herein found appropriate.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Foreman's Association of America (Independent), Chapter 102, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All foremen and assistant foremen employed in the following divisions of the Cleveland, Ohio, plant of The White Motor Company: General Service, Material Control, Works Manager, Non Current, Cab, Sheet Metal, Truck, Engine and Axle, Quality Control, Coach, Engineering, and Learners; including Fire Warden and Assistant Fire Warden in Industrial Relations, Assistant Planning Supervisor and Production Control Foreman (Block 13) in Material Control, Assistant (Block 24) in Works Manager, Supervisor of Tool Crib in Engine and Axle, Senior Inspectors in Quality Control, and Road Test Shop and Foreman Driver in Engineering; but excluding Production Control Foreman (Block 12) in Material Control and all supervisors in the following divisions: Export Sales, Sales, Government Service Parts, Purchasing, Controllers, Treasury, and Office of the Secretary, and all superintendents, general foremen, and supervisors above the rank of superintendent or general foreman, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Foreman's Association of America (Independent), Chapter 102, was, on May 23, 1946, and at all times thereafter has been the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on August 2, 1946, and at all times thereafter, to bargain collectively with Foreman's Association of America (Independent), Chapter 102, as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By said acts, the respondent has interfered with, restrained, and coerced its employees in said unit, in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, The White Motor Company, Cleveland, Ohio, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America (Independent), Chapter 102, as the exclusive representative of all foremen and assistant foremen employed in the following divisions of the Cleveland, Ohio, plant of The White Motor Company: General Service, Material Control, Works Manager, Non Current, Cab, Sheet Metal, Truck, Engine and Axle, Quality Control, Coach, Engineering, and Learners; including Fire Warden and Assistant Fire Warden in Industrial Relations, Assistant Planning Supervisor and Production Control Foreman (Block 13) in Material Control, Assistant (Block 24) in Works Manager, Supervisor of Tool Crib in Engine and Axle, Senior Inspectors in Quality Control, and Road Test Shop and Foreman Driver in Engineering; but excluding Production Control Foreman (Block 12) in Material Control and all supervisors in the following divisions: Export Sales, Sales, Government Service Parts, Purchasing, Controllers, Treasury, and Office of the Secretary, and all superintendents, general foremen, and supervisors above the rank of superintendent or general foreman, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any manner interfering with the efforts of Foreman's Association of America (Independent), Chapter 102, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Foreman's Association of America (Independent), Chapter 102, as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a written signed agreement;

(b) Post at its plant in Cleveland, Ohio, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Eighth Region (Cleveland, Ohio), in writing, within ten (10) days from the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report the respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board, may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington

25, D C, an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 203 39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

WILLIAM J SCOTT,
Trial Examiner.

Dated January 3, 1947.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with Foreman's Association of America (Independent), Chapter 102, as the exclusive representative of all supervisory employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment; and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All foremen and assistant foremen employed in the following divisions of our Cleveland, Ohio, plant: General Service, Material Control, Works Manager, Non Current, Cab, Sheet Metal, Truck, Engine and Axle, Quality Control, Coach, Engineering, and Learners; including Fire Warden and Assistant Fire Warden in Industrial Relations, Assistant Planning Supervisor and Production Control Foreman (Block 13) in Material Control, Assistant (Block 24) in Works Manager, Supervisor of Tool Crib in Engine and Axle, Senior Inspectors in Quality Control and Road Test Shop and Foreman Driver in Engineering; but excluding Production Control Foreman (Block 12) in Material Control and all supervisors in the following divisions: Export Sales, Sales, Government Service Parts, Purchasing, Controllers, Treasury, and Office of the Secretary, and all superintendents, general foremen, and supervisors above the rank of superintendent or general foreman.

We will not in any manner interfere with the efforts of the above-named Union to bargain collectively with us as the exclusive representatives of all our employees in the aforesaid described appropriate unit.

THE WHITE MOTOR COMPANY,

By _____
(Representative) (Title)

Dated _____