

IN the Matter of ADAMS MOTORS, INC., EMPLOYER *and* LODGE 1898 OF
THE INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER

Case No. 1-RC-689.—Decided December 29, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

Upon the entire record in this case, the Board finds:

1. The Employer, a Massachusetts corporation, is engaged in the service, sale, and distribution of automobiles, operating under a franchise given by the Dodge, Plymouth Division of the Chrysler Motor Corporation. All new cars and accessories attached to new cars sold by the Employer are shipped to it from points outside the Commonwealth of Massachusetts. During the first 6 months of 1948, the total income of the Employer amounted to \$556,000, of which \$451,000 was from sales of new cars and \$35,000 was from sales of used cars. Approximately \$31,000 was realized from sales of parts, most of which were bought from dealers within the Commonwealth of Massachusetts. Approximately \$4,000 was received from sales of tires, tubes, gasoline, and oil. All the Company's sales are made within the Commonwealth. The Service Department of the Employer, where all the employees in the unit sought by the Petitioner work, services for the most part local passenger cars, as well as a small percentage of trucks which are used within the Commonwealth.

At the hearing, the Employer moved to dismiss the petition herein on the ground that its business is essentially local in character and

*Chairman Herzog and Members Houston and Murdock.

that the Board should therefore decline to exercise its jurisdiction. The hearing officer referred this motion to the Board. We find, contrary to the contention of the Employer, that the Employer is engaged in commerce within the meaning of the Act and that jurisdiction must be exercised under recent precedents.¹

2. The Petitioner is a labor organization claiming to represent employees of the Employer.²

3. On September 13, 1948, the Petitioner requested recognition from the Employer as bargaining representative of its service department employees. On September 16, 1948, the Employer replied that it had filed a petition for certification of bargaining representatives with the Massachusetts Labor Relations Commission. Hearing on the Employer's petition was set for September 29, 1948, but was postponed at the request of the Union, and no State decision has issued. At the hearing herein, the Employer moved to dismiss the petition, on the ground that the Massachusetts Labor Relations Commission had prior jurisdiction. This motion was referred to the Board by the hearing officer. The Board has recently held³ that, despite its desire for the greatest possible comity with State boards, it lacks power under the present statute to divest itself of jurisdiction, in a proceeding in which a State board has assumed prior jurisdiction, except in conformity with Section 10 (a) of the amended Act.⁴ No agreement ceding juris-

¹ *Matter of Liddon White Truck Co.*, 76 N. L. R. B. 1181; (Chairman Herzog and Member Murdock, who dissented from the decision to exercise jurisdiction in that case, consider themselves bound thereby); *Matter of Puritan Chevrolet, Inc.*, 76 N. L. R. B. 1243.

² At the hearing the Employer moved to dismiss the petition, on the ground that the Petitioner is not a proper party to be placed on the ballot. The hearing officer referred this motion to the Board. The Employer introduced evidence to show that the Petitioner, an independent labor organization formerly affiliated with the American Federation of Labor, distributed to the employees of the Employer buttons indicating that it was still affiliated with the A. F. of L. The Petitioner's letterhead also contains the phrase "Affiliated with American Federation of Labor." The Employer argues that the Petitioner's use of these buttons and letterheads constituted deliberate misrepresentation and had the effect of confusing the Employer and its employees. We find that the petition is not thereby invalidated; furthermore, any confusion which may exist in the minds of the employees can best be dissipated, and the desires of the employees ascertained, by directing an election herein, with the ballot disclosing the Petitioner's present non-affiliation. The motion of the Employer is therefore denied.

³ *Matter of Kaiser-Frazer Parts Corp.*, 80 N. L. R. B. 1050, decided December 2, 1948.

⁴ This section provides:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

diction to the Massachusetts Labor Relations Commission has been consummated. The motion of the Employer is therefore denied.

We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks to represent a unit of employees in the Service Department of the Employer. The parties are in general agreement as to the composition of the unit, except that the Petitioner would exclude, and the Employer would include, the service foreman and the working foreman, and the Employer would exclude, and the Petitioner would include, the errand boy.

The service foreman receives customers when they first enter the Service Department of the Employer, and from their complaints and from his own inspection of the car or truck, determines what parts and repairs are necessary. He uses some tools in determining the source of the trouble, and occasionally makes minor repairs rather than send the work to the shop. The record shows that on occasion he may assign work to the various mechanics in the shop. He is paid a salary plus a commission on the parts he sells. Neither the service foreman nor the working foreman punches a time clock, nor are they paid for overtime. The working foreman works under the direct supervision of the service manager (who is excluded from the unit by agreement of the parties), assigning work to the six or seven mechanics in the department. His powers of direction are limited. Neither the service foreman nor the working foreman has authority to hire, discharge, promote, discipline, or lay off employees in the Service Department, or effectively to recommend such action. We find that the service foreman and the working foreman are not supervisors within the meaning of the Act, and we shall, accordingly, include them in the unit.⁵

The errand boy operates a service truck, and spends the greater part of his time picking up parts and accessories for the Parts Department from the Employer's sources of supply, located in and around the city of Boston. He acts as an assistant in the Parts Department when not occupied at his regular duties. In view of the exclusion of the Parts Department employees from the unit sought, we shall also exclude the errand boy from the unit.

We find that all employees of the Employer engaged in the servicing, repairing, and maintaining of automotive equipment, including automotive mechanics, auto electricians, body repairmen, washers, greasers, tiremen, helpers and apprentices, maintenance men, the service foreman, and the working foreman, but excluding executives,

⁵ Cf. *Matter of Dome Tractor Company*, 80 N. L. R. B. 24.

office and clerical employees, salesmen, parts men, errand boy, guards, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Lodge 1898 of the International Association of Machinists.