In the Matter of ALL METAL PICKLING CORPORATION, EMPLOYER [1] *and* LOCAL 408, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, PETITIONER [2]

Case No. 7–RC–539.—Decided August 25, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Harold L. Hudson, hearing officer. 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-member panel [Members Reynolds, Murdock, and Gray].

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

1. The Employer, a Michigan corporation, maintaining its office and principal place of business in Detroit, Michigan, is engaged in the operation of removing scale and rust from steel intended for use in the automobile manufacturing industry. The process is referred to as a "pickling" process. The particular pretreatment of the steel is considered to be indispensable to its fabrication. None of the steel processed is purchased or sold by the Employer. The steel is delivered by the customer upon consignment to the Employer and at all times remains the property of the customer. The Employer's principal customers are to be found in the automobile industry and includes such companies as General Motors, Chrysler Corporation, and Briggs Manufacturing Company. During the preceding year, the total value of the services rendered by the Employer to its customers amounted to approximately $700,000, of which 5 percent represented work performed for plants located outside the State of Michigan. During the same period, the Employer purchased supplies and equip-

[1] The name appears as amended at the hearing.

[2] The Petitioner indicated at the hearing that the petition was filed by Local 408, and that Local 408 was the labor organization whose name was to appear on the ballot if an election were ordered. The name of the Petitioner is amended accordingly.

ment replacements in excess of $200,000 in value, of which about 2 percent represented purchases from sources outside the State of Michigan. We find that the Employer is engaged in commerce within the meaning of the Act.[3]

2. The organizations involved claim to represent certain employees of the Employer.[4]

3. The Intervenor and the Employer contend that their existing contract is a bar to a present determination of representatives. The Intervenor and the Employer entered into a collective bargaining agreement, which by its terms was effective from April 1, 1949, to May 1, 1950, with annual renewal in the absence of a 30-day notice prior to its expiration date of an intent to terminate the agreement. This agreement followed the Employer's voluntary recognition of the Intervenor as bargaining agent. The agreement contained, in Article I thereof, a union-security provision which, in general terms, requires all employees at the time of their employment to agree to join the Intervenor and thereafter to become members in good standing within 30 days of the dates of their employment.[5] The Intervenor, however, has not been certified by the Board under Section 9 (e) (1) of the Act as being authorized to execute such union-security provision, which contains no clause postponing its application pending authorization under Board procedure. On May 19, 1949, the same parties executed a new agreement containing essentially the same provisions as the earlier agreement,[6] but omitting the provision dealing with union-security and specifically providing that it should replace the contract of April 1, 1949, in which a union-security provision had been inserted without adequate consideration of the consequences thereof. The petition herein was filed on April 12, 1949.

[3] *Matter of Vulcan Forging Company,* 85 N. L. R. B. 621; *Matter of New York Steam Laundry, Inc., et al.,* 80 N. L. R. B. 1597; *Matter of Pacific Moulded Products Company,* 76 N. L. R. B. 1140.

[4] Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, was permitted to intervene upon the basis of an existing contractual interest.

[5] The agreement of April 1, 1949, was not offered in evidence. The Employer admitted at the hearing that after the execution of this agreement, the parties discovered that a union-security provision could not be included in a collective bargaining agreement unless certain sections of the National Labor Relations Act were complied with; the Intervenor, on the other hand, testified that the union-security provision would not have been included in the agreement if the Intervenor had thought that the agreement would come before the Board.

[6] Article I of the new agreement states that the Employer recognizes the Intervenor as the bargaining agent for its employees. Apparently this provision was not contained in the April 1, 1949, agreement. The preamble of the earlier agreement, also found in the new agreement, lends itself to the inference that it was a "members only" contract, an inference which the Employer and Intervenor claim was not intended. Article I was, therefore, added to make clear the fact that the Intervenor was recognized as the bargaining agent for all employees of the Employer.

The contentions of the Intervenor and Employer are without merit. Because the agreement of April 1, 1949, contains, in accordance with the intent of the parties, an unauthorized, though inadequately considered, union-security provision, we find, for this reason, and without regard to other considerations, that the contract cannot serve as a bar to an election.[7] The agreement of May 19, 1949, having been executed after the filing of the petition herein, also cannot, under well-established principles, operate as a bar to a present determination of representatives.[8]

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. In accordance with the agreement of the parties hereto, we find that all employees of the Employer at its Detroit, Michigan, plant, excluding office and clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION [9]

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 Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, 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

[7] *Matter of C. Hager & Sons Hinge Manufacturing Company*, 80 N. L. R. B. 163; *Matter of Aluminum Ore Company*, 85 N. L. R. B. 121; *Matter of The A & M Woodcraft, Inc.*, 85 N. L. R. B. 322. Cf. *Matter of Schaefer Body, Inc.*, 85 N. L. R. B. 195.

In view of our decision herein, we find it unnecessary to pass on the question whether the agreement of April 1, 1949, would operate as a bar to an election if the union-security provision in question had in fact been "erroneously," that is, unintentionally, inserted in the agreement.

[8] *Matter of General Electric Company*, 82 N. L. R. B. 722.

[9] Any participant in the election herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

they desire to be represented, for purposes of collective bargaining, by Local 408, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, or by Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or by neither.