

IN THE MATTER OF AMERICAN BRAKEBLOK, DIVISION OF AMERICAN BRAKE
SHOE COMPANY and FOREMEN'S ASSOCIATION OF AMERICA, CHAPTER
#174

Case No. 7-R-2119.—Decided April 9, 1946

Winston, Strawn, and Shaw, by *Mr. Neal J. McAuliffe*, of Chicago, Ill., and *Mr. F. H. Smith*, of Detroit, Mich., for the Company.

Messrs. W. Allen Nelson and Carl Brown, of Detroit, Mich., for the Union.

Mr. James Zett, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Foremen's Association of America, Chapter #174, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Brakeblok, Division of American Brake Shoe Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Sylvester J. Phenev, Trial Examiner. The hearing was held at Detroit, Michigan, on October 16, 1945. 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. 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. At the hearing the Company moved to dismiss the petition for lack of jurisdiction. The Trial Examiner referred this motion to the Board, and for reasons stated hereinafter, the motion is denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

American Brakeblok is a division of American Brake Shoe Company, a Delaware corporation with its principal office at 230 Park 67 N. L. R. B., No 25.

Avenue, New York City. This particular division has been located in Michigan since January 1, 1928, and operates a plant at 4600 Merritt Avenue, Detroit, a warehouse at Vannoy, and the Michigan Central Railway Tracks at Wayne. It employs at its plant and warehouse, the only operations with which we are here concerned, about 600 persons. The division is a parts manufacturer of transportation equipment, including automotive brake lining materials, heavy duty friction blocks, and bearings and wheels of laminated plastic. The yearly value of raw materials purchased exceeds \$1,000,000, 75 percent of which is purchased outside the State of Michigan. The Company's finished products are in excess of \$1,000,000 in value annually, approximately 50 percent of which is shipped out of 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

Foremen's Association of America, Chapter #174, is a labor organization, unaffiliated, admitting to membership supervisory employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 25, 1945, the Union informed the Company that it represented a majority of the Company's supervisory employees and requested that the Company bargain collectively with it. At a conference between the parties within a few days thereafter, the Company declined to recognize the Union as the collective bargaining agent of its supervisory employees.

The Company argues that its supervisors are part of management, are not "workers," and therefore, are not employees within the meaning of the Act. This contention has been made on numerous occasions, painstakingly analyzed, extensively answered and rejected in a series of Court and Board decisions.¹ We find that, for the purposes of this proceeding, the supervisors herein considered are employees within the meaning of Section 2 (3) of the Act.

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.²

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.

¹ *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997, and cases cited therein

² The Field Examiner reported that the Union submitted 19 membership and authorization cards bearing apparently genuine, original signatures. Testimony at the hearing disclosed that there are approximately 25 employees in the appropriate unit.

IV. THE APPROPRIATE UNIT

The Union seeks a unit of department heads,³ foremen, and assistant foremen in the warehouse, production, inspection, maintenance, and power divisions, excluding the scientific, scheduling, plant protection and clerical divisions. The Company contends that any unit of its supervisors is inappropriate and declines to take any stand on the composition of the unit.

The Company in its brief and at the hearing contended that its supervisors are not "traffic cop" foremen,⁴ but are, rather, a vital part of management and therefore outside the protection of the Act. In attempting to distinguish its supervisors from those in issue in the *Packard* case, the Company contends that its foremen have power to (1) grade probationers for purposes of permanent employment, (2) discharge, (3) discipline through a temporary lay-off in conformity with company rules, (4) grant leave of absence, (5) reclassify permanent employees, and (6) formulate company policy through participation in foremen's, tool, and safety meetings.

At the hearing the Company's president and superintendent testified generally in support of these contentions, asserting that the Company operates its business in accordance with the principles of "Bottom-Up Management."⁵ Even these witnesses, however, admitted that the recommendations of the foremen in the situations enumerated above must await final disposition by higher authorities. The Company's general contention that its foremen are part of top management was to a large extent discredited by the detailed and persuasive testimony of three of the foremen themselves.⁶ In any event, the issues mooted by these opposing witnesses are immaterial, for as we held in the re-

³ Until shortly prior to the hearing, department heads were known as general foremen and at the hearing all three grades of supervisors were generally referred to as "foremen."

⁴ The reference is to characterization found in *Matter of Packard Motor Car Company*, 61 N L R. B. 4, and 64 N L R. B. 1212.

⁵ This system of management is one in which ideas from the bottom are encouraged and given full opportunity to infiltrate the upper reaches of the management hierarchy, and it is sufficiently unique to have rated recognition and study by the Harvard School of Business.

⁶ L. E. Bond, head of the Press Department and a foreman for his 17 years of continuous service with the Company, was the Union's principal witness at the hearing. He testified, *inter alia*, that the Company's management did not always support foremen in their recommendations of discipline and discharge. Among the episodes described in his testimony were the following: On one occasion, he was reprimanded by the superintendent for laying off a rank and file employee in accordance with company rules but without informing the superintendent. On another occasion, he laid off a man who returned to his job one-half hour later under authority of the personnel office. On one leave of absence application, Bond noted that he could not spare the applicant who, however, obtained his leave of absence. Thereafter, Bond unconditionally initialed leave of absence applications. Another foreman testified that some of his attempts to discipline employees were frustrated by the superintendent. New employees who must serve a probationary period of 60 days are presumably graded by the foremen with the aid of an elaborate grading schedule. Bond testified, however, that this schedule was never used. Another foreman testified that he did not grade probationers. Two foremen, present during Bond's testimony, testified briefly, adopted, and did not in any way qualify Bond's testimony.

cent *Young*⁷ and *Goodrich*⁸ cases, the responsibilities, duties, and authority of these *employees* are relevant only to the issue of proper grouping. Inasmuch as foremen are employees within the meaning of Section 2 (3) of the Act, they are entitled to be placed in some appropriate unit under Section 9 (b).

The group requested by the Union in this case comprises all supervisors in the grades of "foreman department head,"⁹ foreman and assistant foreman who perform production, maintenance, inspection, and shipping and receiving functions. There are 11 department heads, each of whom is in immediate charge of the operations of a single department, and responsible to the superintendent of production,¹⁰ who has over-all supervision of the 11 departments. Under the department heads in 6 departments are 16 foremen and assistant foremen, all of whom act as assistants to the department heads. All of these supervisors are salaried employees who have identical privileges regarding sick leave, time off, vacations, and the like. The department heads have greater authority than the foremen and the assistant foremen, regarding the recommending or effecting of hire, discharge, or discipline of rank and file employees, but the record indicates that they do not recommend the discharge or discipline of foremen or assistant foremen.¹¹ The Company's rank and file employees are represented by United Automobile, Aircraft and Agricultural Implement Workers of America, Local No. 174, U. A. W., C. I. O.¹² Under the grievance procedure established in the contract between the Company and that union, the department heads and their subordinate supervisors deal with aggrieved employees or shop stewards only in the initial stage, before a grievance is formally stated in writing and referred to the superintendent of production. We conclude, in the light of these facts and the entire record, that the supervisory employees whom the Union desires to represent constitute a homogeneous group, appropriate for bargaining.

We find that, all department heads, foremen, and assistant foremen in the Company's warehouse, production, inspection, maintenance, and power divisions but excluding the scientific, scheduling, plant protection, and clerical divisions, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

⁷ *Matter of L A Young Spring & Wire Corporation*, 65 N. L. R. B. 298.

⁸ *Matter of The B F Goodrich Company*, 65 N. L. R. B. 294.

⁹ See footnote 3, *supra*

¹⁰ The department heads in charge of the maintenance and construction, and the power departments are directly responsible to the plant engineer and his assistant, who, in turn, are responsible to the superintendent of production.

¹¹ On occasion, the department head will recommend wage increases for the foremen and assistant foremen upon their request, and at times, will recommend the promotion of a rank and file worker to the position of assistant foreman

¹² By mere coincidence the number of the Foremen's Chapter and of the U. A. W. Local are identical

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 American Brakeblok, Division of American Brake Shoe 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 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 or not they desire to be represented by Foremen's Association of America, Chapter #174, for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinion in *Matter of Packard Motor Car Company*,¹³ I am constrained to disagree with the majority opinion.

¹³ 61 N. L. R. B. 4, and 64 N. L. R. B. 1212