In the Matter of AMERICAN LOCOMOTIVE COMPANY *and* UNITED AUTOMOBILE WORKERS OF AMERICA (AFL)

Case No. 3–R–1168.—Decided May 10, 1946

Hardy, Stancliffe & Hardy, Esqrs., by *Mr. J. Donald Rawlings*, of New York City, for the Company.

Messrs. Kenneth Wells and *Paul E. Murray*, of Auburn, N. Y., for the A. F. L.

Messrs. Sidney H. Greenberg and *Bert Danquer*, of Syracuse, N. Y., for the C. I. O.

Mr. Conrad A. Wickham, Jr., of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by United Automobile Workers of America, A. F. L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of American Locomotive Company, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. The hearing was held at Auburn, New York, on March 13, 1946. The Company, the A. F. L., and the United Steelworkers of America, C. I. O., herein called the C. I. O., 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 hearing the C. I. O. moved to dismiss the petition. The motion is granted on the basis of the reasoning set forth in Section III, *infra*. 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

It was stipulated by and between the parties that the Company is a New York corporation operating a plant at Auburn, New York,

known as the Diesel Engine Division, wherein the Company is engaged in the manufacture and sale of diesel engines and parts for locomotives and other equipment. The Company imports substantial quantities of raw material, consisting principally of iron, steel castings, and miscellaneous parts and supplies. For the calendar year 1945 raw materials purchased exceeded $1,000,000 in value, of which over 50 percent was received from outside the State of New York. During the same period the Company sold finished products exceeding $1,000,000 in value, of which in excess of 50 percent was eventually sold and shipped to customers located outside the State of New York.

The Company admits, for the purpose of the present proceedings, that it is engaged in commerce within the meaning of the National Labor Relations Act, and we so find.

II. THE ORGANIZATIONS INVOLVED

United Automobile Workers of America is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Steelworkers of America is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the A. F. L. as the exclusive bargaining agent for its production and maintenance employees on the grounds that the C. I. O. is the certified bargaining representative until such time as the Board certifies another agent to serve in this capacity. The C. I. O. has moved to dismiss the petition on the ground that it is premature on the basis of the *Allis-Chalmers* case.[1]

The C. I. O. was first recognized as the bargaining agent of the Company's employees on December 11, 1944, as the result of a consent election.[2] On December 21, 1944, the C. I. O. and the Company executed a written agreement covering a temporary grievance procedure pending negotiation of a contract. Being unable to agree on certain issues, including wages and union security, and after resort to conciliation had proved unsuccessful, a written agreement was executed on March 27, 1945, incorporating the grievance procedure previously established and setting forth the various items in dispute. It was provided that the items in dispute should be certified to the

[1] *Matter of Allis-Chalmers Manufacturing Company*, 50 N L R B. 306.
[2] Case No. 3–R–906.

National War Labor Board and that its directive should be incorporated in the agreement. The agreement was to continue in effect for a period of 1 year and contained an automatic renewal clause.

The disputed issues were referred to the War Labor Board on April 10, 1945. On September 17, 1945, the Regional War Labor Board issued a directive granting certain of the C. I. O.'s requests, but denying, among other things, the request for a 17-cent per hour increase in wages. The directive, however, was accompanied by a "V–1" letter, intended by the Regional Board to be incorporated therein, which recommended resumption of collective bargaining on the wage issue in accordance with the President's Executive Order of August 18, 1945.[3] Shortly thereafter, the C. I. O., having voted to incorporate the Regional Board's rulings into the existing contract, attempted to negotiate the wage issue with the Company on the basis of a Nation-wide demand in the steel industry for a $2 per day wage increase. The Company, however, had meanwhile appealed to the National War Labor Board (on what issues the record does not clearly disclose),[4] and apparently preferred to await results, for no negotiations took place at this time.

The C. I. O. thereupon filed a strike notice under the War Labor Disputes Act, and pursuant thereto, on November 28, 1945, a strike vote was conducted under the auspices of this Board which resulted in favor of conducting a strike. On December 18, 1945, the National War Labor Board issued its directive substantially affirming the Regional Board, and officially incorporating the policy set forth in the latter's "V–1" letter by reference to the Executive Order mentioned above. This directive was received by the parties on January 3, 1946, following which negotiations were resumed, the Company and the Union parrying a 10-cent versus an 18-cent wage increase.[5] No agreement having been reached by January 21, 1946, the Company's employees went on strike, as did steelworkers throughout the Nation. On February 1, 1946, the present petition was filed. Negotiations continued, however, as of the time of the hearing.

We are of the opinion that the *Allis-Chalmers* doctrine is applicable to the present situation. The principal delay in the negotiations here

[3] Executive Order 9599 This Order states: "The National War Labor Board . . . (is) . . . authorized to provide that employers may, through collective bargaining with duly certified or recognized representatives of the employees involved . . . make wage or salary increases without the necessity of obtaining approval therefor . . ."

[4] Other items in dispute included union security and check-off, temporary transfer and overtime wage rates, seniority and procedure in discharge cases

[5] We are unable to agree with our dissenting colleague that the wage issue thus negotiated was "entirely new" The referral back by the War Labor Board seems to us to have contemplated further negotiations upon an existing issue That the amount of the C I O's demand had changed does not alter the basic nature of the issue which was negotiated.

was caused by the parties' use of the orderly procedures afforded them by the Government for the settlement of wartime disputes. It appears that they were diligent in resorting to these processes. The Executive Order following the termination of the war made no immediate change in the situation. It merely authorized the National War Labor Board to provide for the settlement of wage disputes through collective bargaining without its approval.[6] Until the War Labor Board issued a definitive statement as to what its policy would be, and when it would take effect, the atmosphere surrounding bargaining relationships was clouded. Even though the parties in this case were, in effect, advised by the Regional Board to bargain their wage dispute, the determination of the other contract issues involved in the Company's appeal awaited final action by the National Board until December. Thus, for a period of more than 8 months out of the 16 which have now elapsed since its informal certification, the C. I. O. was powerless to complete negotiation of a comprehensive contract because of the pendency of proceedings before the governmental agency constituted to settle wartime disputes.[7] Under these circumstances, we believe that the February 1 petition was filed before the C. I. O. had had adequate opportunity to realize for the Company's employees the benefits of its certification. Accordingly, we conclude that the policies of the Act would not be effectuated by directing an election at this time, and we shall dismiss the petition.

ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition in Case No. 3–R–1168, filed by United Automobile Workers of America, affiliated with the American Federation of Labor, for investigation and certification of representatives of employees of American Locomotive Company, Auburn, New York, be, and it hereby is, dismissed.

MR. GERARD D. REILLY, dissenting:

I am constrained to dissent from the conclusions of my colleagues in this case. It is my opinion that the doctrine enunciated by this Board in the *Allis-Chalmers* case, footnote 1, *supra*, is not applicable in these circumstances. While it is true that the Union and the Company here submitted their differences to the War Labor Board, the issues which went to that Board had, at the time of the hearing in this case,

[6] See ftn 3, *supra*.

[7] See *Matter of Truscon Steel Company*, 66 N L R. B 204; *Matter of Craddock-Terry Shoe Corporation*, 67 N L R B. 105.

been supplanted by an entirely new wage issue which had never previously been under consideration. It is therefore obvious that the time occupied by proceedings before the War Labor Board had in no way delayed the negotiations now in progress. For this reason I would not extend still further the already lengthy period during which the Company and the Union have been bargaining, and would receive the petition of the A. F. of L.