

In the Matter of INTERNATIONAL HARVESTER COMPANY, EMPLOYER *and*
CLAUDE B. FLEMING, AN INDIVIDUAL, PETITIONER *and* INTERNATIONAL
ASSOCIATION OF MACHINISTS, INTERVENOR

Case No. 16-RD-6.—Decided April 21, 1948

Mr. Frank B. Scharer, of Chicago, Ill., for the Employer.

Mr. C. B. Fleming, of Amarillo, Tex., for the Petitioner.

Mr. L. M. Fagan, of Fort Worth, Tex., and *Mr. E. C. Yaeger*, of San Antonio, Tex., for the Intervenor.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Amarillo, Texas, on February 3, 1948, before Elmer Davis, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed,

Upon the entire record in the case, the National Labor Relations Board¹ makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

International Harvester Company is a New Jersey corporation whose general offices are located in Chicago, Illinois. It is engaged in the manufacture of trucks, farm equipment, refrigeration and industrial power equipment in several States, and operates branch houses and distributing points for its products in most States of the Union. Its branch house, located in Amarillo, Texas, which alone is involved here, serves as a wholesale and retail outlet for the Employer's products which are shipped to the Amarillo branch from the Employer's plants outside the State. In the past year the value of products handled at the Amarillo branch exceeded one million dollars.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of Board Members Houston, Murdock, and Gray

II. THE PARTIES INVOLVED

The Petitioner, an employee of the Employer, asserts that the Union is no longer representative of the Employer's employees as defined in Section 9 (a) of the Act.

The Union, a labor organization, was established on December 3, 1946, in Case No. 16-R-2072, as the exclusive bargaining representative of the Employer's employees as a result of a consent election.

III. THE QUESTION CONCERNING REPRESENTATION

On December 3, 1946, as noted above, the Union became the exclusive bargaining representative of the Employer's employees as a result of a consent election. On January 13, 1947, the Employer executed an exclusive collective bargaining agreement with the Union for the term of 1 year, with a provision for renewal from year to year thereafter, unless notice to modify or terminate was given by either party at least 30 days prior to the terminal date of the contract. The Union contends that this contract is a bar to the instant proceeding.

In resolving the issue of "contract-bar" in decertification cases, the Board applies the same rules as have been, and still are, applied with respect to petitions for investigation and certification of representatives.² Inasmuch as the instant petition was filed on November 20, 1947, before the effective date of the automatic renewal clause, the contract executed on January 13, 1947, would not be a bar to a *certification* proceeding.³ We accordingly find that the contract is similarly no bar to the instant *decertification* proceeding.

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.

We find no merit in the Union's contention that Section 8 (d) (1) of the amended Act provided that all existing renewable contracts are automatically renewed unless notice to terminate or modify them is given 60 days prior to their termination date. Section 8 (d) (1) of the amended Act defines one aspect of the obligation to bargain collectively, but automatic renewal of an existing contract does not result from failure to meet this obligation.

IV. THE APPROPRIATE UNIT

We find that all mechanics, apprentices, helpers, and any other persons employed by the Employer at its Amarillo, Texas, branch, using the tools of the trade, excluding the service station foreman, service

² *Matter of Snow and Nealley Company*, 76 N. L. R. B. 390.

³ *Matter of Drewry's Limited, U. S. A., Inc.*, 74 N. L. R. B. 31.

station assistant foreman, and all other supervisors, guards, and professional employees, as defined in the amended Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.⁴

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with International Harvester Company, Amarillo, Texas, 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 Sixteenth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, 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, 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 this election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by the International Association of Machinists for the purposes of collective bargaining.

MEMBER GRAY took no part in the consideration of the above Decision and Direction of Election.

⁴ All the parties agreed that the unit established in the consent election of December 1946 was appropriate. The description of the unit has been changed slightly to conform with the provisions of the amended Act.