

deliberate refusal on its part to participate in the arrangements because it wished primarily to postpone any election. In these circumstances, it may not now complain that it was thereby prejudiced.

(5) The final objection rests on alleged improper conduct by the Employer and by the Petitioner after the close of the balloting. We reject this objection because later conduct could not have affected the results of the election.

As the tally of ballots shows that the Petitioner has secured a majority of the valid votes cast, we shall certify it as the bargaining representative in the unit heretofore found appropriate.

Certification of Representatives

It is hereby certified that International Union of Electrical, Radio & Machine Workers, CIO, has been designated and selected by a majority of the Employer's production and maintenance employees at its New York City plant, including laboratory assistants, but excluding office employees, foremen, and all other supervisors as defined in the Act, as their representative for purposes of collective bargaining, and that pursuant to Section 9 (a) of the Act, the aforesaid organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

GILBERT MOTOR SALES, INC. *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO) AND ITS LOCAL No. 408. *Case No. 7-CA-581. November 26, 1951*

Decision and Order

On August 14, 1951, Trial Examiner Eugene F. Frey issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Inter-

¹ 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 [Chairman Herzog and Members Reynolds and Styles].

mediate Report, the exceptions, the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Gilbert Motor Sales, Inc., Detroit, Michigan, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and its Local No. 408 as the exclusive representative of all its employees in the appropriate unit aforesaid with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) In any manner interfering with the efforts of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and its Local No. 408 to bargain collectively with Respondent on behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and its Local No. 408, as the exclusive bargaining representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its place of business in metropolitan Detroit, Michigan, copies of the notice attached hereto and marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including

² In addition to the cases cited by the Trial Examiner with respect to jurisdiction, see *N. L. R. B. v. M. L. Townsend*, 185 F. 2d 378 (C. A. 9), enforcing 81 NLRB 739, cert. denied 341 U. S. 909.

³ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL bargain collectively, upon request, with INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO) and its LOCAL No. 408, as the exclusive representative of all employees in the bargaining unit described below, with respect to wages, rates of pay, hours of employment, or other terms or conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our employees, excluding office and clerical employees, new and used car salesmen, administrative and professional employees, watchmen, superintendents, service managers, shop foremen, and all supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of the above-named union to bargain collectively with us, or refuse to bargain with said union, as the exclusive representative of all our employees in the bargaining unit set forth above.

GILBERT MOTOR SALES, INC.,
Employer.

By _____
(Representative) (Title)

Dated _____

This notice must remain posted for 60 consecutive days from the date hereof and must not be altered, defaced, or covered by any other material.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and its Local

No. 408 (herein collectively called the Union), the General Counsel for the National Labor Relations Board (herein called General Counsel and the Board), by the Regional Director for the Seventh Region (Detroit, Michigan), issued a complaint on June 21, 1951, against Gilbert Motor Sales, Inc. (herein called the Respondent), alleging that Respondent is engaged in commerce within the meaning of the Act, and that Respondent has refused at all times since October 18, 1950, to bargain collectively with the Union, a labor organization previously certified by the Board as the exclusive bargaining representative of all employees of Respondent in an appropriate unit described below, in violation of Section 8 (a) (5) and (1) of the Act. Copies of the charge, complaint, and notice of hearing thereon, were duly served upon Respondent and the Union. The answer of Respondent challenged the jurisdiction of the Board, denying that it was engaged in commerce within the meaning of the Act; it admitted its refusal to bargain with the Union, but denied the commission of any unfair labor practices, claiming that the Board erred in previous representation proceedings in determining that Respondent was engaged in commerce. As a further defense, Respondent alleged that in a prior election conducted by the Board on July 20, 1949, a majority of its employees had voted against affiliation with the Union, that within a year after said election the Union filed another petition for representation (Case No. 7-RC-960), on which the Board held a hearing July 14, 1950, and issued its Decision and Direction of Election on August 4, 1950, and that the latter proceeding was premature and the decision of the Board therein was void.

Pursuant to notice, a hearing was held at Detroit, Michigan, on July 23, 1951, before the undersigned Trial Examiner. The General Counsel and Respondent were represented by counsel,¹ participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to present oral argument and file briefs and proposed findings of fact and conclusions of law; both parties presented oral argument but waived the filing of briefs. Respondent's motions at the opening and close of General Counsel's case to dismiss the complaint on jurisdictional grounds were denied. Respondent offered no testimony at the hearing.

Upon the entire record in the case (all the proofs being documentary and no oral testimony having been adduced), I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Michigan corporation, is a Ford dealer maintaining and operating an authorized Ford automobile sales and service business at River Rouge, in the Detroit, Michigan, metropolitan area. It operates its business under the usual sales agreement with the Ford Motor Company of Detroit, Michigan. During the 6-month period ending December 31, 1949, Respondent made purchases amounting to \$798,021.27, and total sales amounting to \$842,362.80. All of its purchases, except \$85 worth, were made from Ford Motor Company plants in Michigan, and all of its sales were made within the State of Michigan. With the exception of variations in dollar amounts, which are not stated in the record, Respondent's purchases and sales during 1950, and up to the time of the hearing, were in substantially the same proportion and of the same types as in the above period. The vehicles and parts sold by Respondent are manufactured by Ford Motor Company, a large indus-

¹ The Union did not appear at the hearing.

trial organization which is engaged extensively in interstate commerce. The Ford operations in Michigan consist largely of the assembly of finished products from many parts manufactured outside the State, and the sale of those products by franchised dealers, including Respondent, is the final act or terminus in the long route these products and their constituent parts have traveled in interstate commerce. The sale of Ford products by local dealers directly affects Ford's operations; a breakdown in any portion of its industrial complex would have an inevitable effect on interstate commerce. A franchised automobile dealer, such as Respondent, functions as an essential element in a Nation-wide system devoted to the manufacture and distribution of automobiles, and is an integral part of a multistate enterprise. These findings are based on the allegations of the complaint, as admitted in part by Respondent's answer, and the records and decisions of the Board in Case No. 7-RC-960 and *Johns Brothers, Inc., et al.*, 84 NLRB 294, in both of which Respondent was a party, and of which I take judicial notice. In both cases, the Board found, and I now find on the basis thereof and the above facts, contrary to Respondent's contention, that Respondent was and is engaged in commerce within the meaning of the Act.²

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and its Local No. 408 is a labor organization admitting to membership therein employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The appropriate unit, and the Union's majority status*

This case arises out of the Union's petition for certification as the statutory collective bargaining representative of employees of Respondent, filed May 15, 1950, in Case No. 7-RC-960. After the usual investigation under Section 9 (c) of the Act, the Board, on August 4, 1950, issued its Decision and Direction of Election (unpublished) in which it found that all employees of Respondent at its River Rouge, Michigan, establishment, excluding office and clerical employees, new and used car salesmen, administrative and professional employees, watchmen, superintendents, service managers, shop foremen, and all other supervisors as defined in the Act, constituted a unit appropriate for purpose of collective bargaining within the meaning of Section 9 (b) of the Act. The Board had previously found the same unit to be appropriate as to each employer, including Respondent, in *Johns Brothers, Inc., supra*. Respondent having offered no evidence herein to controvert that finding, I therefore find on the basis of the Board's previous decision that the unit described above is appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

After an election held on September 1, 1950, the Board issued its Supplemental Decision on October 31, 1950, finding that a majority of the employees in the above unit had voted for the Union, and certifying the Union as the exclusive bargaining representative of all such employees, pursuant to Section 9 (a) of the Act. There being a conclusive presumption that the Union's status continues for at least a year after its certification,³ I find that the Union has been since October 31, 1950, and now is the exclusive representative of all Respondent's

² See also *Baxter Bros.*, 91 NLRB 1480; *Jefferson Lincoln Mercury Inc., et al.*, 90 NLRB 1911; *Conover Motor Company*, 93 NLRB 867; *The Strang Garage Company*, 93 NLRB 900; *Ken Rose Motors, Inc.*, 94 NLRB 868.

³ *Toolcraft Corporation*, 92 NLRB 655.

employees in the unit aforesaid for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment, within the meaning of Section 9 (a) of the Act.

B. *The refusal to bargain*

The record shows, Respondent admits, and I find, that on October 18 and November 3, 1950, the Union requested Respondent to bargain with it as the statutory representative of its employees in the unit aforesaid, and that Respondent has at all times since October 18, 1950, refused to bargain with the Union upon the ground that it is not legally obligated to bargain because it is not engaged in commerce within the meaning of the Act.

The only issue raised by Respondent is that of interstate commerce. That issue was fully litigated in the representation proceeding, Case No. 7-RC-960, and resolved against Respondent. The record indicates that its present refusal to bargain is solely for the purpose of securing a review of the Board's decision of that issue in the prior proceeding.⁴ In its answer and during the hearing, Respondent attacked the jurisdiction of the Board upon the additional ground that the proceedings and decision in Case No. 7-RC-960, upon which the complaint is based, were defective, null, and void, in that they were initiated by a petition prematurely filed by the Union on May 15, 1950, within a year after the election of July 21, 1949, held in Cases Nos. 7-RC-143, etc. (involving *Johns Brothers, Inc. et al.*) in violation of Section 9 (c) (3) of the Act. The same contention was raised by Respondent in the representation proceeding and rejected by the Board, upon the ground that the 12-month period fixed by that section of the Act runs from the date of the first election, and in the second case the election could not be held until more than 12 months after the previous election (the Board's direction of election being dated August 4, 1950). See *General Electric Company*, 89 NLRB 726.⁵

Inasmuch as Respondent has offered no proofs herein, and its basic objections on jurisdictional grounds have been rejected by the Board in the prior proceedings, I find that Respondent has failed and refused since October 18, 1950, to bargain collectively with the Union as the exclusive representative of Respondent's employees in the appropriate unit aforesaid, and has thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them by Section 7 of the Act, in violation of Section 8 (a) (5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in Section III, above, occurring in connection with the operations of Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

⁴ See *Pittsburgh Plate Glass Company v. N. L. R. B.*, 313 U. S. 146, 154.

⁵ Respondent also objected at the hearing to any consideration of the record and decision in *Johns Brothers, Inc.*, in this case, on the ground that a local union other than Local No. 408 had initiated the proceedings in that case. This objection is without merit, because Respondent here was a party in the prior case, as well as in Case No. 7-RC-960. In both cases, the Board found that Respondent was engaged in commerce. Since that was the fundamental issue in those cases, as it is here, the Board's prior decisions are binding on the Trial Examiner, in the absence of newly discovered evidence which might lead to a different conclusion. It has long been the policy of the Board, sanctioned by the courts, that in cases involving an alleged refusal to bargain the Board will not reconsider issues disposed of in earlier representation proceedings unless there is evidence which was unavailable at the time of the earlier proceedings. *Continental Oil Company*, 95 NLRB 358.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I will recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having also found that Respondent has refused to bargain collectively with the Union, I will recommend that Respondent bargain collectively with the Union, upon request, as the exclusive representative of its employees in the appropriate unit.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and its Local No. 408 is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of Respondent at its River Rouge, Michigan, establishment, excluding office and clerical employees, new and used car salesmen, administrative and professional employees, watchmen, superintendents, service managers, shop foremen, and all supervisors as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and its Local No. 408 was on October 31, 1950, and has been at all times thereafter, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on October 18, 1950, and at all times thereafter, to bargain collectively with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and its Local No. 408, as the exclusive representative of all employees in the aforesaid appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]

GAGNON PLATING AND MANUFACTURING COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 750. *Case No. 30-CA-84. November 26, 1951*

Decision and Order

On April 27, 1951, Trial Examiner Henry J. Kent issued his Intermediate Report in the above-entitled proceeding, finding that the 97 NLRB No. 20.