

General Electric Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Petitioner. Case 28-RC-1748

October 31, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on May 27 and 28, 1968, before Paul E. Weil, Hearing Officer of the National Labor Relations Board. Thereafter, all the parties filed briefs with the Board.

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-member panel.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case including the briefs filed by all the parties, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner and Intervenor are labor organizations which claim to represent certain employees of the Employer.¹

3. No 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.

The Petitioner filed this petition January 19, 1968, seeking an election in a unit of production and maintenance employees at the Employer's jet engine parts manufacturing plant at Albuquerque, New Mexico. The Employer and Intervenor moved to dismiss the petition on the ground that it is barred by their collective-bargaining agreement signed August 1, 1967, effective from December 1, 1967, until November 30, 1969, covering the employees in question.

The American Car and Foundry Company formerly occupied most of this plant where it was engaged, under contract with the Atomic Energy Commission, in the fabrication of parts for weapon systems. It employed approximately 2,400 employees, 1,100 of whom were production and maintenance employees who have been represented, under successive collective-bargaining agreements, by the Intervenor since it was certified by the Board in 1956. The most recent agreement was effective from July 18, 1965, until

July 20, 1968. A separate portion of the plant was occupied by Dow Chemical Company.

The Atomic Energy Commission decided on December 8, 1966, to phase out its contract and began searching for a firm interested in using the facilities and also the employee complement in order to minimize any dislocation or hardship within the community as a result of the phase-out.

The Employer, at its Evendale, Ohio, plant was engaged in, among other things, the manufacture of jet engines under contract with the U.S. Air Force, for which it needed additional manufacturing capacity. The Petitioner was certified as the collective-bargaining representative of the employees at the Employer's Evendale plant on November 4, 1949, and, with its Local 647, has been the contract representative of such employees since that time.

On March 26, 1967, the Atomic Energy Commission, American Car, the Air Force, and the Employer agreed that the American Car phase-out would be completed on December 1, 1967, at which time the Air Force would take over the plant and contract with the Employer to use the facilities in the manufacture of jet aircraft engine parts for the Air Force. Thereafter, as the Commission's work was phased out, the Employer subcontracted some of its Air Force work to be performed by American Car at the Albuquerque facility.

Early in May 1967, the Intervenor called upon the Employer to recognize it as the collective-bargaining agent of the Albuquerque employees. On May 22, 1967, the Employer granted recognition, and negotiations for a new collective-bargaining agreement ensued.

While negotiations between the Employer and the Intervenor were being conducted, the Petitioner learned that some of the Employer's Evendale, Ohio, work was to be transferred to Albuquerque, and, on June 8, 1967, requested the Employer to bargain concerning the transfer of such work. Beginning on June 14, 1967, and on several subsequent occasions until July 3, meetings were held by the Petitioner, its Local 647, and the Employer at which time the parties discussed the transfer of work from Evendale to Albuquerque.

On July 6, 1967, the Petitioner filed a petition (Case 9-AC-11) to amend its certification for the Evendale plant to include the Albuquerque employees, and a charge (Case 9-CA-4333) alleging violations of Section 8(a)(2) and (5) by the Employer for bargaining with the Intervenor at Albuquerque before any employees were hired, and refusing to bargain in good faith with the Petitioner.

As indicated above, the Employer and the Intervenor, on August 1, 1967, entered into a collective-

intervened on the basis of its contracts covering the employees involved.

¹ International Association of Machinists and Aerospace Workers of America, AFL-CIO, Local Lodge 794, herein called the Intervenor, 173 NLRB No. 83

bargaining agreement covering the Albuquerque employees, to be effective from December 1, 1967, until November 30, 1969. On August 14, 1967, the Petitioner filed 8(a)(1) and (2) charges (Case 28-CA-1568) against the Employer. On December 1, 1967, the Employer took over that portion of the Albuquerque plant operated by American Car, and the 173 production and maintenance employees remaining on its payroll, all of whom were engaged, at that time, in manufacturing jet engine parts for the Air Force under the American Car subcontract with the Employer. Dow Chemical took over the work remaining under American Car's contract with the Atomic Energy Commission, and the portion of the plant occupied by Dow was sealed off. On December 4, 1967, the Petitioner withdrew the charges in Case 9-CA-4333 and the petition in Case 9-AC-11. On January 11, 1968, the Regional Director issued a complaint in Case 28-CA-1568, and on March 5, 1968, the Acting Regional Director consolidated that case with Case 28-CA-1654, in which charges had also been filed by the Petitioner, and issued an amended complaint alleging that the Employer unlawfully assisted the Intervenor by recognizing and entering into a contract with it at a time when the Intervenor was not the majority representative of the Albuquerque employees, before a representative complement had been hired, and when the Petitioner herein was claiming representation. The Petitioner filed the petition herein on January 19, 1968, and on April 29, 1968, the Regional Director approved the withdrawal of charges, and dismissed the complaint, in Cases 28-CA-1568 and 1654.

The Petitioner contends that the August 1, 1967, agreement between the Employer and the Intervenor cannot constitute a bar because the Employer had no employees at the time the contract was executed, the parties had notice of the Petitioner's claim to represent the employees before the contract was signed, and because a settlement agreement entered into by the Employer and the Intervenor on the same day contains a dues-checkoff provision which is unlawful on its face. All of these arguments are based on the Petitioner's contention, contrary to the Employer and the Intervenor, that no successor relationship exists between the Employer and American Car.

The Board has held, with court approval, that a successor relationship obligating the successor to bargain with the representative of the predecessor's employees exists where the employing industry remains substantially the same.²

The Petitioner contends that Dow Chemical Com-

pany is the successor to American Car because after December 1, 1967, it completed the remainder of the work to be performed at this plant under the American Car contract with the Atomic Energy Commission that had not been transferred to other facilities of the Commission. However, Dow Chemical employees had been performing work of an unidentified nature at this plant when American Car was operating there, and after the Employer took over the American Car portion of the plant, Dow's employees continued to perform that work in the same portion of the plant as before. As the record does not indicate the nature or extent of the American Car work completed by Dow, or the number of American Car employees, if any, hired by Dow, we cannot determine whether or not Dow is a successor of American Car. In any event, even if Dow were also a successor, that fact would not be of controlling significance in determining the issue of the Employer's status as a successor employer to American Car which is before us in this case.

The Petitioner also contends that the nature of the Employer's operations differs significantly from that of American Car. We find no merit in this contention. The record shows that the inventory at this plant has at all times belonged to the United States Government. In accord with memorandum agreements entered into between the Commission and the Air Force, and the Commission and the Employer, in June 1967, the plant property and equipment owned by the Commission and operated by American Car became the property and equipment of the Air Force to be operated by the Employer. There were 300 to 400 machines valued at \$100,000 each, and the only change made by the Employer was the addition of coolant equipment costing \$2,500 to \$3,000 to each of 25 machines.³

In accord with a "settlement agreement" entered into on August 1, 1967, between the Employer and the Intervenor, the Employer offered employment to individuals employed by American Car in the bargaining unit on the basis of its need for the particular individual. Although there was a substantial reduction of the number of employees in the bargaining unit during the transition period, this factor is not determinative.⁴ Moreover, all the employees who were in the American Car unit on November 30 became employees of the Employer on December 1, and no employees were transferred into the unit from other plants of the Employer.⁵ As American Car foremen were employed by the Employer, there was no change in first-line supervision. In addition, American Car's

² *Ideal Laundry Corporation*, 172 NLRB No. 138, and cases cited therein.

³ Neither the absence of a direct contract relationship between American Car and the Employer, nor the Employer's limited machinery modifications is conclusive as to successorship. See *Glenn Goulding d/b/a Fed-Mart*, 165 NLRB No. 22; *Ideal Laundry Corporation*, *supra*.

⁴ See *Rohltk, Inc.*, 145 NLRB 1239, fn. 11; *Johnson Ready Mix Co.*, 142 NLRB 437.

⁵ The employee complement increased from 173 on December 1, 1967, to 207 as of January 19, 1968, the date the petition herein was filed, and to 386 as of May 27, 1968, the date of the hearing.

director of manufacturing became the Employer's manager of manufacturing operations.

As indicated above, American Car was engaged in the fabrication of components for weapons systems. The unit work consisted of forming, welding, machining, finishing, assembly, and painting. The Employer is engaged in the fabrication of components for aircraft jet engines. At the time the Employer took over the plant, the American Car work had been phased out and the employees were doing jet engine work, which required the same tolerances. In many instances the same component that was on a machine on November 30 was still on the same machine on December 1, and the same man was running the machine, working for the same supervisor, using the same instructions. The unit classifications remained essentially the same, with only minor changes in some of the job descriptions, such as a change from electrician to electrician A, machine repairman to machine repair A, and tool and diemaker to toolmaker. Work shifts remained unchanged, but some changes were effected in the sick leave plan and in pension and insurance benefits.

In view of all the circumstances set forth above, including the fact that all the employees hired by the Employer when it took over the Albuquerque operations were former employees of American Car and the fact that they are engaged in essentially the same work, we find that the employing industry remained substantially the same, and that the Employer is therefore a successor to American Car.⁶

The Petitioner contends that the August 1, 1967, collective-bargaining agreement between the Employer and the Intervenor is a prehire contract which, under *General Extrusion Company, Inc.*, 121 NLRB 1165, does not bar an election. Since we find a successor relationship in this case, we do not find that the agreement is of an objectionable "prehire" nature. The Board has held that in a successor situation, as in the instant case, the employees already have selected a bargaining representative, while in an objectionable prehire situation, the employees have not designated a bargaining representative and would be deprived of their opportunity to do so if the prehire agreement were to be found a valid bar to an election.⁷

The Petitioner further contends that by virtue of its petition in case 9-AC-11 and its charge in Case 9-CA-4333, filed on July 6, 1967, the parties were put on notice of its claim to represent the employees

at the Albuquerque plant before the agreement between the Employer and the Intervenor was executed on August 1, 1967. We find no merit in this contention. Neither the Petitioner's unfair labor practice charges against the Employer nor its petition to extend its certification as representative of a unit of Evendale employees to the Albuquerque plant were indicative of a substantial representative interest among the Albuquerque employees. Moreover, both the charges and the petition were withdrawn. No employees in the bargaining unit were transferred from Evendale to Albuquerque, and there is no other evidence in the record that the Petitioner had any representation among the Albuquerque employees at the time the August 1 collective-bargaining agreement was executed.⁸

The Petitioner also contends that the collective-bargaining agreement between the Employer and the Intervenor cannot bar the petition because the "settlement agreement" also executed on August 1, 1967, provides that General Electric Company will honor all dues checkoff authorizations "presently in the name of" American Car which the Intervenor delivers to it. The Petitioner's contention is based on the theory that this provision is unlawful on its face because it does not conform to the requirements of Section 302(c)(4) of the Act in that General Electric Company is not "the employer" as contemplated therein, or a successor employer. However, we have found above that General Electric Company is a successor to American Car. Moreover, the Board does not consider a collective-bargaining agreement ineffective as a bar to an election because of a checkoff provision which fails to spell out the requirements of Section 302(c)(4).⁹ The checkoff provision, therefore, is not unlawful on its face, and the Board will not admit extrinsic evidence in a representation proceeding to establish its alleged unlawful nature.¹⁰

We find that the agreement of August 1, 1967, between the Employer and the Intervenor constitutes a bar to an election, as the petition filed on January 19, 1968, was not timely with respect thereto.¹¹

Accordingly, we shall grant the motions of the Employer and Intervenor to dismiss the petition.¹²

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

⁶ *Western Freight Association*, 172 NLRB No. 46; *Hackney Iron & Steel Co.*, 167 NLRB No. 84, enfd. in part 395 F.2d 639 (C.A.D.C.).

⁷ *Western Freight Association*, supra.

⁸ *Rheingold Breweries, Inc.*, 162 NLRB No. 32, and *Allied Super Markets, Inc.*, 167 NLRB No. 48, cited by the Petitioner, are not applicable in the circumstances of this case.

⁹ *Gary Steel Supply Company*, 144 NLRB 470.

¹⁰ See *Paragon Products Corp.* 134 NLRB 662; *St. Louis Cordage Mills, Division of American Manufacturing Company, Inc.*, 168 NLRB No. 135.

¹¹ *Deluxe Metal Furniture Company*, 121 NLRB 995; *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000.

¹² In view of our finding herein, we find it unnecessary to rule on the other grounds for the motions to dismiss.