

**Western Stamping Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Case 7-CA-8566**

July 23, 1971

**DECISION AND ORDER**

BY MEMBERS FANNING, BROWN, AND  
KENNEDY

Upon a charge filed on March 17, 1971, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), herein called the Union, and duly served on Western Stamping Corporation, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on April 14, 1971, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on February 26, 1971, following a Board election in Case 7-RC-9514 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about March 4, 1971, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On April 26, 1971, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On May 3, 1971, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, characterized as a Motion for Judgment in the Pleadings. Subsequently, on May 17, 1971, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause characterized as

opposition to the General Counsel's Motion for Judgment on the Pleadings.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**RULING ON THE MOTION FOR SUMMARY  
JUDGMENT**

In its answer to the complaint and in its opposition to the General Counsel's motion submitted as a response to the Notice To Show Cause, the Respondent denies that the Union is the exclusive majority bargaining representative of the employees in the appropriate unit stipulated in Case 7-RC-9514 and further denies that the Board validly certified the Union in that representation case. It therefore opposes the grant of the General Counsel's Motion for Summary Judgment. We find no merit in the Respondent's position.

The election in Case 7-RC-9514 was conducted on September 19, 1969, pursuant to a Stipulation for Certification Upon Consent Election. The tally of ballots showed that of approximately 289 eligible voters, 258 cast valid ballots of which 126 were for, and 124 against, the Union, 8 were challenged and 2 ballots were void. Both the Respondent and the Union filed timely objections to conduct affecting the results of the election. The Regional Director, however, deferred action upon the objections pending investigation and resolution of the eight challenged ballots which were sufficient to affect the election results. As the preliminary investigation revealed that the challenges raised substantial and material issues of fact requiring resolution at a hearing, the Regional Director, on November 26, 1969, directed the holding of a hearing on these issues.

After the hearing in which both the Respondent and the Union participated, the Hearing Officer, on February 25, 1970, issued and served upon the parties his Report and Recommendations on Challenges in which he recommended that the challenges to six ballots be sustained<sup>2</sup> and the challenges to the two remaining ballots be overruled and that these two ballots be opened and counted and a revised tally of ballots issued. Thereafter, the Respondent filed timely exceptions to the Hearing Officer's recommendations.

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 7-RC-9514, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938, enf. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151; *Intertype Co v. Penello*,

269 F. Supp. 573 (D.C. VA., 1967); *Follett Corp.*, 164 NLRB 378, enf. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

<sup>2</sup> Five of the challenged voters were found to be supervisors while the sixth challenged voter was the son of the Respondent's president and principal stockholder.

On June 26, 1970, the Board issued its Decision, Direction, and Order,<sup>3</sup> adopting the Hearing Officer's recommendations because the exceptions raised no factual issues, directing that the two ballots be opened and counted and a revised tally of ballots issued, and further directing that, if the revised tally showed that the Union received a majority of the valid votes cast, the Regional Director investigate the Respondent's objections. The revised tally showed that of approximately 289 eligible voters, 258 cast valid ballots of which 127 were for, and 125 against, the Union, and that the challenges to 6 ballots were sustained and 2 ballots were void. After issuance of the revised tally, the Regional Director granted the Union's request to withdraw its objections. The Respondent, however, filed additional timely objections to the revised tally alleging that the Board erroneously and unlawfully refused to count the six ballots whose challenges had been sustained.

After investigating the objections, the Acting Regional Director issued, on July 17, 1970, a report recommending that the Respondent's objections to the revised tally be overruled as they raised issues which had been previously determined by the Board. He also directed a hearing on the Respondent's objections to conduct affecting the results of the election on grounds of material and substantial issues of fact, including credibility resolutions, which could best be resolved by a hearing. On August 4, 1970, the Board issued a Supplemental Order adopting, in the absence of exceptions, the Acting Regional Director's recommendations.

On August 28, 1970, a hearing was held on the Respondent's objections which, in substance, alleged: (1) the Union engaged in deliberate trickery and misrepresentations in its preelection campaign; (2) before the election, the Union circulated false and misleading information about the Respondent; (3) the Union threatened employees and offered them unlawful inducements to vote for the Union; (4) while the employees were voting, conditions occurred or were permitted to exist which prevented employee free choice; (5) because of the Union's failure to identify itself as the sponsor of campaign literature, the employees were unable to evaluate properly the Union's campaign propaganda; and (6) the Union allegedly advised prounion employees to get antiunion voters drunk so they could not vote in the election.

On November 9, 1970, the Hearing Officer issued his Report and Recommendations on Objections in which he recommended that the objections be overruled in their entirety and that a certification of representative be issued. The Respondent filed timely exceptions with the Board. On February 26, 1971, the

Board issued its Supplemental Decision and Certification of Representative<sup>4</sup> affirming the Hearing Officer's rulings, particularly those pertaining to an alleged due process issue, and adopting his findings and recommendations and the Respondent's remaining exceptions raised no material or substantial issues of fact which would warrant reversal of the Hearing Officer's findings and recommendations. Accordingly, the Board certified the Union as the exclusive representative in the stipulated appropriate unit.

In its opposition to the General Counsel's Motion for Summary Judgment, the Respondent also contends that because its answer denies the legal conclusion that the Union is or has been the exclusive employee representative for the purpose of collective bargaining and also because its answer does not admit the Union made a request for bargaining or that the Respondent had refused such request, the necessary allegations to sustain the grant of the General Counsel's motion have not been established. We find no merit in these contentions. As noted above, the issue as to the Union's status as exclusive certified bargaining representative has been previously litigated and determined by the Board in the underlying representation case and cannot properly now be raised in this unfair labor practice proceeding. Further, the Respondent's answer admits the factual allegations of the complaint to the effect that it received a letter from the Union requesting a meeting for the purpose of commencing collective-bargaining negotiations and that it refused to accede to this request until there had been judicial review of the Union's allegedly invalid certification. The Respondent therefore admits the fact of a request and refusal to bargain while continuing to attack the validity of the Union's certification which, as indicated above, had previously been litigated and determined by the Board in the underlying representation case and cannot properly now be raised in this proceeding. Since there are no disputed material issues of fact, there exists no impediment to the grant of the General Counsel's motion. We shall, accordingly, grant the Motion for Summary Judgment.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>5</sup>

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege

<sup>3</sup> Not published in the bound volumes of Board decisions.

<sup>4</sup> Not published in bound volumes of Board decisions.

<sup>5</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

At all times material herein, the Respondent, a Michigan corporation with principal office at 2203 West Michigan, Jackson, Michigan, is engaged in the manufacture of toys at its plants located at 2203 West Michigan, Jackson, Michigan, 2410 West Main, Jackson, Michigan, and 13251 Allman Road, Concord, Michigan.

During the year ending December 31, 1970, a representative period, the Respondent, in the course and conduct of its business operations, purchased and caused to be transported and delivered at its Jackson plants soft metals and other goods and materials valued in excess of \$50,000, which were transported and delivered to its Jackson plants directly from points located outside the State of Michigan. During this same period, the Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed at its Jackson, Michigan, plants toy products valued in excess of \$50,000 of which products valued in excess of \$50,000 were shipped from said plants directly to points outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Representation Proceeding*

##### 1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining

purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Respondent at 2203 West Michigan, Jackson, Michigan, 2410 West Main, Jackson, Michigan, and 13251 Allman Road, Concord, Michigan, including truckdrivers; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

##### 2. The certification

On September 19, 1969, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 7, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on February 26, 1971, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

#### B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about March 2, 1971, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about March 4, 1971, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since March 4, 1971, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning 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 its operations described in section I, above, have a close, intimate, and substantial relationship 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.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## CONCLUSIONS OF LAW

1. Western Stamping Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Respondent at 2203 West Michigan, Jackson, Michigan, 2410 West Main, Jackson, Michigan, and 13251 Allman Road, Concord, Michigan, including truckdrivers; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 26, 1971, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 4, 1971, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has

engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

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

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

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Western Stamping Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed by the Respondent at 2203 West Michigan, Jackson, Michigan, 2410 West Main, Jackson, Michigan, and 13251 Allman Road, Concord, Michigan, including truckdrivers; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

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

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Jackson and Concord, Michigan, plants copies of the attached notice marked "Appendix."<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon

<sup>6</sup> In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD"

shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below,

with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by the Respondent at 2203 West Michigan, Jackson, Michigan, 2410 West Main, Jackson, Michigan, and 13251 Allman Road, Concord, Michigan, including truck-drivers; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WESTERN STAMPING  
CORPORATION  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313-226-3200.