

In the Matter of CITY AUTO STAMPING COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL No. 12

Case No. R-203.—Decided August 11, 1937

Auto Parts Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* where other considerations determinative of appropriate unit are evenly balanced, decisive factor is the desire of the employees involved; determination of dependent upon results of elections—*Elections Ordered—Certification of Representatives.*

Mr. Peter DiLeone for the Board.

Mr. Leroy E. Eastman, of Toledo, Ohio, for the Company.

Mr. Clyde E. Kiker, of Toledo, Ohio, for U. A. W. A.

Mr. Ray Kelsay, of Indianapolis, Ind., for the Polishers Union.

Mr. Joseph B. Robison, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

On May 24, 1937, International Union, United Automobile Workers of America, Local No. 12, herein called the U. A. W. A., filed with the Regional Director for the Eighth Region (Cleveland, Ohio), a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of the City Auto Stamping Co., Toledo, Ohio, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 3, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to a notice of hearing duly issued and served by the Regional Director upon the Company, the U. A. W. A., and Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 2, herein called the Polishers Union, a labor organization named in the petition as claiming to represent those of the Company's employees who are employed as polishers, a hearing was held in Toledo,

Ohio, on July 9, 1937, before Charles E. Persons, the Trial Examiner duly designated by the Board. At the hearing the Board, the Company, and the U. A. W. A. were represented by counsel; and the Polishers Union was represented by its vice president. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties.

Pursuant to notice, a hearing was held before the Board on July 19, 1937, in Washington, D. C., for the purpose of oral argument. The U. A. W. A. and the Polishers Union were represented by counsel.

The Board has reviewed the rulings of the Trial Examiner on motions and objections directed to the issues raised by the petition and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

City Auto Stamping Co. was incorporated in Ohio in 1929, and is engaged in the manufacture of automobile body stampings, such as fenders and radiator shells. Its factory, its principal office, and the offices of its two independently operated subsidiaries are all located in Toledo, Ohio. The total number of its employees varies, having been as high as 1243 and as low as 774 during the first six months of 1937. On June 30, 1937, the last date for which exact figures are available, the total pay roll numbered 844.¹

Raw materials purchased by the Company are delivered at its plant. Its products are delivered at the plants of the buyers. Shipments are made by boat, rail, and independently owned trucks, and occasionally, under unusual circumstances, by the Company's own trucks. The Company manufactures entirely on specifications laid down by its customers, and sells none of its product on the open market. Under the Company's arrangements with its customers, it contracts to supply as many of a given part as may be needed for a particular automobile model. The wide variations in employment noted above are a result of this form of dealing, since the seasonal fluctuations of the automobile industry penetrate to the automobile parts plants in an accentuated form.

The total value of purchases made by the Company in 1936 was \$1,816,000, of which \$646,000, or 36 per cent, was made outside of

¹ Board's Exhibit No. 4.

Ohio, in such states as Indiana, Kentucky, West Virginia, and New York. The only raw material of importance used was sheet steel. The total value of the Company's products in 1936 was \$3,500,000, of which less than one per cent remained in Ohio, most of the balance being shipped to four customers in Detroit, Michigan.²

II. THE ORGANIZATIONS INVOLVED

A. *The petitioning union*

The U. A. W. A. is a labor organization affiliated with the Committee for Industrial Organization. Local No. 12 admits to membership all of the employees of the Company who are engaged in production except supervisory employees. Foremen and assistant foremen are associate members.

B. *The Polishers Union*

Metal Polishers, Buffers, Platers and Helpers International Union is a labor organization affiliated with the American Federation of Labor. Local No. 2 admits to membership all of the employees of the Company who are engaged in polishing and buffing, and also men doing similar work at other plants in Toledo, Ohio.

III. THE QUESTION CONCERNING REPRESENTATION

A. *The background of organization at the Company's plant*

The Polishers Union has had signed contracts with the Company for its members since March 7, 1934. The first one was in effect until September 7, 1934, and subsequent contracts have been executed for annual periods. The last was executed in September 1936, and runs until September 1, 1937, and thereafter until terminated on 30 days notice. There may have been other labor organizations at the plant prior to 1936, but that does not clearly appear.

Some time in the fall of 1936, the U. A. W. A. started organizing the plant and on October 26, 1936, it entered into a written contract with the Company, for its own members, which contract runs until October 26, 1937, and thereafter until terminated on 30 days notice. Apparently at that time the U. A. W. A. had not attempted to include the polishers, for the list of wage scales in the contract does not include a scale for the polishers.

During the succeeding months there was a swing among the polishers toward the U. A. W. A. Early in March 1937, at a meeting of the Polishers Union, a large number of the polishers, including all

² All of these facts are taken from the testimony of an official of the Company who appeared in response to a subpoena issued by the Board.

three members of the shop committee, were suspended for non-payment of dues. There is evidence that the actual reason for the suspensions was membership in the U. A. W. A., but the Polishers Union claims that it has no rule against membership in two unions and that several of its members at the present time are still in good standing despite membership in the U. A. W. A.

The suspended shop committee was thereupon elected to represent the polishers in the U. A. W. A., and at least one of them appears to be on the shop committee of that union at the present time. On April 24, 1937, the Polishers Union called a meeting of its members at the plant. A witness for the U. A. W. A. testified that only those who were thought to be members were notified of this meeting and that less than a majority of the polishers working at the plant were included. At this meeting a new committee was elected.

B. The physical set-up of the Company's plant

There are several departments at the Company's plant, one of which is devoted to polishing.³ The materials in the course of production move through the various departments, and a tie-up of any would shut down the whole plant. Polishing is done in a clearly defined area, separate from the rest of the departments. The number of polishers employed fluctuates greatly. During January 1937, it fell from 76 to 55 and since that month it has never been higher than 56 and has at times fallen as low as 26. There are 72 names on the Company's seniority list for the polishers.

There is very little evidence as to the degree of skill required for polishing at the Company's plant, but it is safe to assume that this work demands somewhat above the average amount of experience.

C. The present situation

The U. A. W. A. submitted a petition,⁴ circulated about two months prior to the date of the hearing, and signed by 24 men whose names appear on the polishers' seniority list, which is to the effect that the signers joined the U. A. W. A. voluntarily. In general these men are the older employees in the department. Their names appear high on the seniority list. The Polishers Union submitted a petition⁵ signed by 41 men whose names also appear on the list, although for the most part with less seniority. This petition was circulated immediately before the hearing and states generally the position of the Polishers Union in this proceeding as well as the fact that the

³ The Polishers Union includes both polishers and buffers. These two operations are treated as one at the Company's plant. Throughout this opinion, polishing may be taken to include buffing.

⁴ U. A. W. A.'s Exhibit No. 2.

⁵ Polishers Union Exhibit No. 3

signers desire to be represented by that union. There are no duplications between these two petitions. However, the U. A. W. A. claims that it has ten or 12 supporters who did not sign its petition and the Polishers Union makes a similar claim as to two men. As there are only seven men who signed neither petition, there is obvious conflict between these two claims. It is also clear that not all of the signers of these two petitions are now employed at the plant. On June 30, 1937, the latest date for which exact figures are available, there were only 30 polishers working. The testimony indicates that between 45 and 50 were working at the time of the hearing. The Polishers Union witness testified that at that time only 22 of the 41 signers of its petition were working.

IV. THE APPROPRIATE UNIT

The U. A. W. A. claims that the entire plant constitutes a single unit appropriate for the purposes of collective bargaining. The Polishers Union contends that the men in the polishing department constitute a separate unit. The situation presented is similar to that described and discussed in *The Matter of The Globe Machine and Stamping Co. and Metal Polishers Union, Local No. 3, International Association of Machinists, District No. 54, Federal Labor Union 18788, and United Automobile Workers of America*, Cases Nos. R-178-180, decided this day. As in that case, both contentions are supported by evidence, the considerations are evenly balanced, and the record affords little aid on what is there spoken of as the determining factor, namely, the desires of the men. The nature of the evidence on this point differs in this case from that of the evidence in the *Globe* case, but the claims made by the two unions are here, as there, conflicting and close. We will therefore order an election to be held separately for the men engaged in polishing. We will also order an election for the employees of the Company engaged in production and maintenance, exclusive of the polishers and of clerical and supervisory employees.

On the result of these elections will depend the determination of the appropriate unit for the purpose of collective bargaining. If a majority of the men in both groups of employees elect to be represented by the U. A. W. A., both groups together will constitute a single unit. Otherwise we will find that there are two appropriate units.

V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question of representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to

trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE EXISTING CONTRACTS

Certain questions have arisen with regard to the effect of the existing contracts with the two unions which were signed in September and October, 1936. The first of these is with regard to the effect of the contracts on the holding of elections, and the second is with regard to certain claims of seniority.

Both of the contracts in question name the contracting union as the representative of its members only. It is therefore unnecessary to decide what the effect on the holding of an election would be if the contracts purported to name the exclusive bargaining agent for the employees or a group of the employees of the Company. The Polishers Union contends that the existence of its contract renders unnecessary any certification of representatives of the polishers by the Board. However, this contract, by its terms, may be terminated by 30 days notice after September 1. Nothing in its terms, therefore, can prevent the representatives of a majority of the polishers, duly certified by the Board, from negotiating with the Company as the exclusive bargaining agent of the polishers. The continued acceptance or modifications of the terms of the contract will become one of the subjects of these negotiations.

The question of seniority arises as follows: All of the contracts with the Polishers Union have provided generally that the Company should follow the principles of seniority in hiring and laying off polishers. The Company's system of seniority has been a very enlightened one. In order to be placed on the seniority list, a man need work only seven days for the Company. This is a rather short probation period, as the Company itself now recognizes. Any man who is on the seniority list remains on after a lay-off until he is called back to work and fails to appear. Thus a worker does not lose his rating merely by reason of his working, for a time, elsewhere. If he is not working at the time he is called, he may return to the Company's plant, even though he has worked elsewhere since the date of his last lay-off. His interest in his old job is recognized until he actually refuses reemployment.

In the last contract with the Polishers Union, a clause was inserted giving to the three members of the shop committee for that union the right to head the seniority list during their term of office, regardless of their actual rating. The U. A. W. A. contract, signed a month or two later, provides for departmental seniority, and has a similar provision for the nine members of its shop committee. The question has arisen as to whether the three members of the Polishers

Union committee elected on April 24, 1937, are entitled to paramount seniority. For the present, the Polishers Union contract is still in effect according to its terms, and consequently it should be adhered to. As noted above, the continued existence of the present seniority clause in the two contracts after the certification of exclusive bargaining agents by the Board can be made the subject of agreement between the Company and such agents.

VII. CONDUCT OF THE ELECTIONS

The question has arisen as to the eligibility to vote in the election to determine representatives of the polishers. All of those who appear on the seniority list of the Company, even though they may at the time of the election be employed elsewhere, have a reason to anticipate returning to their work at the Company's plant. They have therefore an interest in any negotiations toward fixing the terms of the employment of the Company's polishers and hence an interest in determining the representatives who are to conduct these negotiations. We find that all those whose names appear on the Company's seniority list for its polishing department are eligible to vote in the election to determine the representatives of the polishers for the purposes of collective bargaining.

No question was raised as to eligibility of the other employees in the plant. Since there is nothing to show that a different rule should apply as to this election, we find that all those whose names appear on the Company's seniority list for the balance of the production work in the plant are eligible to vote in the election to determine representatives for the purposes of collective bargaining. If, however, no such seniority list is available, eligibility will be determined, in accordance with our usual rules, by the pay roll of the Company for the week including May 24, the date of the petition.

CONCLUSION OF LAW

On the basis of the above findings of fact, the Board makes the following conclusion of law:

Questions concerning commerce have arisen concerning the representation of the employees of City Auto Stamping Co., within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with City Auto Stamping Co., elections by secret ballot shall be conducted within 15 days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among

a. All of the men whose names appear upon the seniority list of City Auto Stamping Co. for the polishing department, to determine whether they desire to be represented by International Union, United Automobile Workers of America, Local No. 12, affiliated with the Committee for Industrial Organization, or by the Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 2, affiliated with the American Federation of Labor, for the purposes of collective bargaining; and

b. All of the employees of City Auto Stamping Co. engaged in production, except the polishers and those engaged in a clerical or supervisory capacity, whose names appear on the seniority list, or, if such a list is unavailable, on the pay roll for the week including May 24, 1937, to determine whether or not they desire to be represented by International Union, United Automobile Workers of America, Local No. 12, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTIONS

August 24, 1937

On August 11, 1937, the National Labor Relations Board, herein called the Board, issued a Direction of Elections in the above-entitled case, the elections to be held within 15 days from the date of the Direction. Thereafter the Board was advised that the Company was operating with a skeleton force of between 150 and 200 men out of its usual total of nearly 1000, and that it would resume normal operations by the last week in August.

All of the parties having agreed to a postponement of the elections until the end of August 1937, we hereby amend the Direction of Elections issued on August 11, 1937, by striking therefrom the words "within 15 days from the date of this Direction," and substituting therefor the words, "within ten days after September 1, 1937."

Mr. EDWIN S. SMITH took no part in the consideration of the above Amendment to Direction of Elections.

[SAME TITLE]

SUPPLEMENTAL DECISION
AND
CERTIFICATION OF REPRESENTATIVES

September 30, 1937

STATEMENT OF THE CASE

On May 24, 1937, International Union, United Automobile Workers of America, Local No. 12, herein called the U. A. W. A., filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of City Auto Stamping Company, Toledo, Ohio, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 3, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to notice duly served upon the Company, the U. A. W. A., and Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 2, herein called the Polishers Union, a labor organization named in the petition as claiming to represent those of the Company's employees who are engaged as polishers, a hearing was held in Toledo, Ohio, on July 9, 1937, before Charles E. Persons, the Trial Examiner duly designated by the Board. On August 11, 1937, the Board issued a Decision and Direction of Elections, which provided that two elections be held.

In its decision, the Board made no finding as to the appropriate unit for the purposes of collective bargaining with the Company. The U. A. W. A. had contended that all of the production employees of the Company constituted a single appropriate unit. The Polishers Union contended, however, that the Company's polishers constituted a separate appropriate unit. The Board stated that since either contention could be sustained, it would direct that a separate election be held for the polishers, and would decide the issue on the basis of the preferences indicated by the employees in the elections. It therefore directed that an election by secret ballot be held among the Company's polishers to determine whether they desired to be represented by the U. A. W. A. or the Polishers Union for the purposes

of collective bargaining. It also ordered that an election by secret ballot be held among the rest of the production employees of the Company to determine whether or not they desired to be represented by the U. A. W. A. The Board stated,¹ "On the result of these elections will depend the determination of the appropriate unit for the purpose of collective bargaining. If a majority of the men in both groups of employees elect to be represented by the U. A. W. A., both groups together will constitute a single unit. Otherwise we will find that there are two appropriate units."

Under the original Decision and Direction of Elections, eligibility to vote in the election for the polishing department was to be based on the Company's eligibility list for that department. On August 23, 1937, the U. A. W. A. protested this part of the Direction and petitioned for a rehearing of the case and a modification or other change in the Decision and Direction of Election.² On August 25, 1937, the Board denied this petition.

Pursuant to an Amendment of the Direction of Elections made on August 24, 1937, postponing the date thereof, secret ballots were conducted on September 8, 1937. Full opportunity was accorded to all parties to this investigation to participate in the conduct of this secret ballot and to make challenges.

On September 8, 1937, the agents of the Board who conducted the ballots certified that a count of the ballots cast showed:

<i>Polishers</i>	
Total number eligible.....	71
Total number of ballots cast.....	70
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of challenged ballots.....	0
Total number of ballots cast for the U. A. W. A.....	37
Total number of ballots cast for the Polishers Union.....	33

Production workers, exclusive of polishers

Total number eligible.....	1,117
Total number of ballots cast.....	429
Total number of blank ballots.....	0
Total number of void ballots.....	3
Total number of challenged ballots.....	0
Total number of ballots cast for the U. A. W. A.....	403
Total number of ballots cast against the U. A. W. A.....	23

On September 13, 1937, the Acting Regional Director caused to be served on the parties to the proceeding his Intermediate Report on the conduct of the ballots. No objection with respect to the conduct

¹ See Section IV of the Findings of Fact in the original decision.

² Although there is no provision in the Act or the Rules and Regulations for such a petition, it was given full consideration.

of the ballots was filed to the Intermediate Report, and it was forwarded by the Acting Regional Director to the Board in Washington, D. C.

Upon the entire record in the case the Board makes the following:

SUPPLEMENTAL FINDING OF FACT

In order to insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that all the employees of the Company engaged in production, except those engaged in a clerical or supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining.

SUPPLEMENTAL CONCLUSION OF LAW

Upon the basis of the above finding of fact and upon the entire record in the case, the Board makes the following conclusion of law:

All of the employees of City Auto Stamping Company engaged in production, except those engaged in a clerical or supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that International Union, United Automobile Workers of America, Local No. 12, has been designated and selected by a majority of the employees of City Auto Stamping Company engaged in production, except those engaged in a clerical or supervisory capacity, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, International Union, United Automobile Workers of America, Local No. 12, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to wages, rates of pay, hours of work, and other conditions of employment.