

In the Matter of FISHER BODY CORPORATION and UNITED AUTOMOBILE
WORKERS OF AMERICA, LOCAL 76¹

In the Matter of CHEVROLET MOTOR CORPORATION and UNITED AUTO-
MOBILE WORKERS²

Cases Nos. R-642 and R-643.—Decided June 23, 1938

Automobile and Parts Manufacturing Industry—Employer: parent corporation and wholly owned subsidiary—*Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit; rival organizations; employer's refusal to recognize union as exclusive representative—*Unit Appropriate for Collective Bargaining:* employees at three plants who are paid by the hour, excluding clerical workers not employed in production departments and employees having solely supervisory or administrative positions; single unit embracing two divisions of parent corporation and one division of wholly owned subsidiary; functional coherence; organization of business—*Evidence:* testimony relative to coercion, by persons not signing union membership cards, proper, with regard to the issue as to whether an election should be held—*Election Ordered*

Mr. John P. Jennings, for the Board.

Mr. Henry M. Hogan, of New York City, and *Fitzgerald, Abbott & Beardsley*, by *Mr. Milton W. Dobrzensky*, of Oakland, Calif., for General Motors Corporation; Fisher Body Oakland Division, General Motors Corporation; Chevrolet Oakland Division, General Motors Corporation; and General Motors Sales Corporation.

Gladstein, Grossman & Margolis, by *Mr. Ben Margolis*, of San Francisco, Calif., for the United.

Mr. Paul C. Huybrecht and *Mr. Matt J. Nicholas*, of Oakland, Calif., for Local 1360.

Miss Margaret B. Bennett, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 14, 1937, International Union, United Automobile Workers of America, Local No. 76, herein called the Union, filed with

¹ Title as corrected by amendment at the hearing: In the Matter of Fisher Body Oakland Division, General Motors Corporation and International Union, United Automobile Workers of America, Local No. 76.

² Title as corrected by amendment at the hearing: In the Matter of Chevrolet Oakland Division, General Motors Corporation and Oakland Parts Division, General Motors Sales Corporation and International Union, United Automobile Workers of America, Local No. 76.

the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Fisher Body Corporation, Oakland, California, 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 December 6, 1937, the United filed a similar petition with respect to the employees of Chevrolet Motor Corporation, at 69th Avenue and Foothill Boulevard, Oakland, California. On February 15, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for appropriate hearings upon due notice, and, acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that the cases be consolidated for purposes of hearing.

On March 9, 1938, the United filed an amended petition, consolidating the two previous petitions and alleging that the persons referred to in the petitions as being employed by Fisher Body Corporation and by Chevrolet Motor Corporation at 69th Avenue and Foothill Boulevard, Oakland, California, were employed by General Motors Corporation acting through those corporations.

On March 17, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the United, the General Motors Corporation, the Fisher Body Corporation,³ the Chevrolet Motor Corporation,³ and upon National Automobile Workers, Local 1360,⁴ herein called Local 1360, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on March 28, 29, and 30, 1938, at Oakland, California, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. At the beginning of the hearing, the United, without objection, was permitted to file a second amended petition, which covered, in addition to the aforesaid employees, employees of "General Motors Corporation acting through the Chevrolet Motor Corporation" at 107th Avenue and East 14th Street.

On March 29, 1938, the United, again without objection, was permitted to file another amended petition alleging that a question affecting commerce had arisen concerning the representation of employees of General Motors Corporation acting through the Chevrolet Oakland Division, General Motors Corporation, and the Fisher Body

³ As noted hereinafter, the alleged corporations are in fact divisions of General Motors Corporation. The notices erroneously termed them corporations.

⁴ Erroneously entitled in the petition: National Auto Workers, Local 1360.

Oakland Division, General Motors Corporation, herein called Fisher Body, both at 69th Avenue and Foothill Boulevard, and acting through Chevrolet Oakland Division, General Motors Corporation, and Oakland Parts Division, General Motors Sales Corporation, herein called Parts Division, both at 107th Avenue and East 14th Street; and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. Chevrolet Oakland Division, General Motors Corporation is herein called Chevrolet. For the purpose of distinguishing between Chevrolet's plant at 69th Avenue and Foothill Boulevard and its plant at 107th Avenue and East 14th Street, these plants are herein called respectively Chevrolet 69th Avenue and Chevrolet 107th Avenue. After the filing of this last amended petition, General Motors Sales Corporation appeared by counsel and waived notice. The Board, General Motors Corporation, Fisher Body, Chevrolet, General Motors Sales Corporation, and the United were represented by counsel. Local 1360 was represented by its agents. All parties participated in the hearing and had full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the end of the case for the United, counsel for General Motors Corporation, Fisher Body, Chevrolet, and General Motors Sales Corporation moved that the petitions, as amended, be dismissed, upon the grounds that no competent proof had been offered to show that the United is a labor organization, or that the person who signed the petitions and amended petitions as an officer of the United was an officer, or that the petitions had been authorized by the United, or that any meetings of the United had ever been held or any officers of the United elected, and upon the further grounds that although the evidence showed that persons who were not members of the United had designated it to represent them for purposes of collective bargaining, there was no evidence establishing the United's authority to act for other than its own members, or showing that the United had jurisdiction over the employees referred to in the petitions; that no constitution or bylaws of the United had been introduced; and that the constitution of International Union, United Automobile Workers of America showed that the United had no jurisdiction over employees at Parts Division. This motion was denied by the Trial Examiner, and the ruling is hereby affirmed. During the course of the hearing the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. Except as indicated in Section VI, the rulings are hereby affirmed.

Upon the entire record in both cases, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS INVOLVED

General Motors Corporation is a Delaware corporation engaged in the manufacture and assembly of automobiles, auto parts and accessories, household appliances, and diesel engines. Its principal business offices are in New York City and Detroit, Michigan, and its manufacturing and assembly plants are in California, Connecticut, Georgia, Indiana, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Tennessee, Washington, and Wisconsin.

Fisher Body Division, General Motors Corporation manufactures and assembles automobile bodies. It has plants for stamping sheet metal parts for Fisher bodies at Cleveland, Ohio; Detroit, Flint, Pontiac, and Grand Rapids, Michigan; a tool and die plant at Detroit, Michigan; a lumber plant at Seattle, Washington; and a service parts plant at Detroit, Michigan. Its assembly plants are at Detroit, Pontiac, Lansing, and Flint, Michigan; Tarrytown and Buffalo, New York; Kansas City and St. Louis, Missouri; Janesville, Wisconsin; Norwood, Ohio; Atlanta, Georgia; Baltimore, Maryland; and Oakland, California.

Fisher Body Oakland Division assembles bodies for Chevrolet passenger cars and delivers all of its finished product to Chevrolet Oakland Division, General Motors Corporation. About 88.83 per cent in value of the materials used by Fisher Body Oakland Division come from other units of General Motors Corporation outside of the State of California, about 2.57 per cent in value from other sources outside of California, and about 8.6 per cent in value from other sources in California. Most of the materials received from outside of California are transported by common carrier.

Chevrolet Motor Division, General Motors Corporation manufactures and assembles Chevrolet motor vehicles. It has assembly plants at Flint, Michigan; Buffalo and Tarrytown, New York; Kansas City and St. Louis, Missouri; Janesville, Wisconsin; Atlanta, Georgia; Baltimore, Maryland; and Oakland, California; and export boxing plants at Tarrytown, New York; and Bloomfield, New Jersey. It has a motor manufacturing plant and a pressed metal plant at Flint, Michigan; a gear and axle plant, a forge plant, and a spring and bumper plant at Detroit, Michigan; a miscellaneous small parts plant at Bay City, Michigan; a transmission plant at Toledo, Ohio; an iron foundry and a service plant at Saginaw, Michigan; a transmission and forge plant at Muncie, Indiana; a transmission, a forge, and a bumper plant at Saginaw, Michigan; a commercial body plant at Indianapolis, Indiana; and a motor and axle plant at Tonawanda, New York.

Chevrolet Oakland Division is the Chevrolet assembly unit of Chevrolet Motor Division at Oakland, California. About 57.6 per cent in value of the materials used at this unit are obtained outside of California, 48 per cent coming from General Motors Corporation units in other States. All of the passenger bodies, except cabriolets, used by Chevrolet Oakland Division are obtained from Fisher Body Oakland Division, and constitute about 30 per cent in value of all the productive materials used by Chevrolet Oakland Division. The cabriolets are secured in Cleveland, Ohio. All the finished products of Chevrolet Oakland Division are distributed and sold by General Motors Sales Corporation, through Parts Division. About 39 per cent in value of the cars and about 23 per cent of the service parts and accessories manufactured by Chevrolet Oakland Division and sold by General Motor Sales Corporation are sold outside of California. Nearly all of the materials purchased and the finished products sold outside of California are transported by common carrier.

General Motors Sales Corporation is a Delaware corporation having its principal offices at New York City and Detroit, Michigan. All of its stock is owned by General Motors Corporation. It is engaged in the business of distributing and selling products manufactured by General Motors Corporation, and has places of business in 38 States of the United States.

It was stipulated at the hearing that General Motors Sales Corporation is engaged in interstate commerce.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile Workers of America, Local No. 76, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production and maintenance employees at Fisher Body, Chevrolet, and Parts Division, except office workers and supervisory employees with authority to hire and fire.

National Automobile Workers, Local 1360, is a labor organization affiliated with the International Association of Machinists, a labor organization affiliated with the American Federation of Labor, admitting to its membership all production employees at Fisher Body, Chevrolet, and Parts Division, except employees doing clerical work or having purely supervisory duties.

III. THE QUESTION CONCERNING REPRESENTATION

Since February 1937, the United has had an agreement with General Motors Corporation, covering its members only, which has been in effect at Fisher Body and Chevrolet and also at Parts Division.

The United claims to represent a majority of the employees of these divisions. It has been refused recognition, however, as the representative for purposes of collective bargaining of all of the employees in these divisions and alleges that General Motors Corporation has engaged in negotiations with Local 1360. Local 1360 does not claim that it represents a majority of the employees in any of these divisions and did not present any testimony or adduce any evidence concerning its membership. It contends, however, that an election should be held so as to insure a free choice of representatives by the employees.

We find that a question has arisen concerning representation of employees of General Motors Corporation at Fisher Body and Chevrolet and of General Motors Sales Corporation at Oakland Parts Division.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of General Motors Corporation at Fisher Body and Chevrolet and of General Motors Sales Corporation at Parts Division, 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.

V. THE APPROPRIATE UNIT

Fisher Body and Chevrolet 69th Avenue occupy the same building. Fisher Body uses two floors and Chevrolet one floor in one wing. In another wing, they share a floor. The rest of the building is used by Chevrolet.

In Fisher Body, passenger bodies are assembled along a line of conveyors broken at intervals. At one of these breaks, the Fisher Body conveyor line ends and the Chevrolet 69th Avenue line begins, both lines being on one floor, with no other indication of separation between them. To bodies assembled by Fisher Body, Chevrolet 69th Avenue adds the other parts necessary to complete Chevrolet passenger cars. The process is continuous from the beginning of the assembly of the bodies until the completion of the assembly of the finished cars, and an interruption of work because of a mechanical defect at any point interrupts the whole process. Fisher Body and Chevrolet 69th Avenue both operate according to a schedule of production and prices prescribed by General Motors Corporation in Detroit. In slack seasons a period of approximately 2 days

exists between the time Fisher Body lays off its first man and Chevrolet 69th Avenue lays off its last man working on cars having Fisher Bodies, this being the approximate length of time required to complete the assembly of one car.

Chevrolet and Fisher Body do not have contracts governing their dealings with each other, their business transactions being determined by the schedules supplied by General Motors Corporation. They do, however, purchase separately, and keep separate accounts, Chevrolet settling its account with Fisher Body monthly by check. They have separate offices, pay rolls, and managers, but each manager has a pass to the part of the 69th Avenue building occupied by the other division, and is subject to instructions from General Motors Corporation officials. Fisher Body employees are permitted to use the Chevrolet 69th Avenue parking lot and a Chevrolet entrance at certain times of the day. Fisher Body and Chevrolet 69th Avenue employ the same doctor for their respective employees, to whose office in Fisher Body Chevrolet employees go for care. Both are covered by General Motors Corporation group-insurance plan.

In the past there have been a few transfers between the two divisions without loss of seniority. In one case a paint-repair crew was transferred from the Chevrolet to the Fisher Body pay roll, although the men remained in the Chevrolet section of the floor without any change in the nature or locus of their work or any break in service.

Chevrolet 107th Avenue and Parts Division also occupy a single building, but their respective sections of the building are separated by a wall. Chevrolet 107th Avenue assembles trucks. Parts Division is a warehouse for Chevrolet, Pontiac, Buick, and Oldsmobile parts, which parts are sold to various dealers. Upon order from Parts Division, Chevrolet 107th Avenue paints and assembles some of the parts sold by Parts Division.

Chevrolet 69th Avenue, Chevrolet 107th Avenue, and Parts Division have the same manager and the same personnel director. From time to time employees are transferred between these divisions without loss of seniority. Employees at Chevrolet 69th Avenue have greater seniority than employees at Chevrolet 107th Avenue. At times of lay-off, Chevrolet 69th Avenue employees, because of their greater seniority, take the places of Chevrolet 107th Avenue employees. Similarly, Chevrolet 107th Avenue employees supplant Parts Division employees.

Fisher Body, Chevrolet, and Parts Division all use identical safety rules instruction books.

The United contends that all employees at Fisher Body, Chevrolet and Parts Division who are paid on an hourly basis, except clerical workers not employed in production departments and employees having solely supervisory or administrative duties, constitute a single unit appropriate for purposes of collective bargaining. General Motors Corporation and General Motors Sales Corporation suggest that Fisher Body, Chevrolet, and Parts Division are separate business units, but do not urge the appropriateness of any specific unit or units for purposes of collective bargaining. Local 1360 opposes the single unit proposed by the United; but it is not clear what units it prefers. At one point it appears to advocate three units: (1) all production employees, except those having clerical or purely supervisory duties, at Fisher Body and Chevrolet 69th Avenue; (2) all such employees at Chevrolet 107th Avenue; and (3) all employees, except those having clerical or solely supervisory duties, at Parts Division. Elsewhere in the record it appears to recommend splitting these three units into craft groups. Local 1360 introduced no evidence and advanced no argument in support of its opposition to a single unit or its preference for several units. Nor is there any evidence indicating the extent of its membership in any proposed unit. In fact, the representative of Local 1360 stated at the hearing that he did not know how many members Local 1360 had in the plants under consideration or whether it had any members at all in Parts Division.

Local 1360 has no bargaining history at Fisher Body, Chevrolet, or Parts Division; and no craft groups have ever been organized in any of these divisions. For some time preceding May 1937 there was an organization among the employees at Fisher Body, known as Fisher Body Employees Association. Since February 11, 1937, however, as indicated in Section III above, a contract between the United and General Motors Corporation, setting up a procedure for the settlement of grievances, has governed the relationship between members of the United and the management at Fisher Body, Chevrolet, and Parts Division. The contract now in effect is terminable upon 30 days' notice in writing by either party. In line with the procedure established by the contract, a grievance committee has been functioning at Fisher Body on behalf of members of the United employed at that division, and another committee has been active at Chevrolet and Parts Division. About May 1937 Local 1360 was organized at Fisher Body and Chevrolet, and possibly at Parts Division, although this is not clear from the record. Since that time some negotiations between General Motors Corporation and Local 1360 appear to have been had, but the nature of these negotiations has not been established. As indicated in Section III above, the United has requested recognition as the sole representative for purposes

of collective bargaining of the employees at Fisher Body, Chevrolet, and Parts Division, but this request has been refused.

We find that all of the employees of General Motors Corporation at Fisher Body and Chevrolet and of its wholly owned subsidiary, General Motors Sales Corporation, at Parts Division who are paid by the hour, excluding clerical workers not employed in production departments and employees having solely supervisory or administrative positions, constitute a single unit appropriate for purposes of collective bargaining.

VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing, counsel for the companies checked membership cards submitted in evidence by the United against peak pay-roll records of December 31, 1937, for employees paid on an hourly basis, except clerical workers not employed in production departments and those having supervisory positions, and against the records of March 25, 1938. Local 1360 expressly waived the right to be present. This check showed the following:

Pay roll as of December 31, 1937

	<i>Number of Employees</i>	<i>Unchallenged Signatures</i>
Fisher Body-----	1017	644
Chevrolet-----	1008	609
Parts Division-----	86	76
Total-----	2111	1329

Pay roll as of March 25, 1938

	<i>Number of Employees</i>	<i>Unchallenged Signatures</i>
Fisher Body ⁵ -----	521	371
Chevrolet-----	659	486
Parts Division-----	79	69
Total-----	1259	926

⁵ Pay-roll records of Fisher Body as of March 25, 1938, refer to the employment period ending March 19, 1938.

The representative of Local 1360 argued at the hearing that these cards were obtained by misrepresentation because the charter granted to the United by International Union, United Automobile Workers of America stated that that union was affiliated with the American Federation of Labor, herein called the A. F. of L., whereas, when the cards were signed, it was in fact affiliated with the C. I. O. This charter was issued while International Union, United Automobile Workers of America was affiliated with the A. F. of L. Subsequently that union became affiliated with the C. I. O. No evidence was offered to show that any one signing a card of the United was misled into thinking that the United was affiliated with the A. F.

of L. rather than with the C. I. O.; and the cards which were introduced in evidence made no reference to the A. F. of L. We find therefore, that this contention is unsupported by the evidence.

Local 1360 also argues that an election should be held and Local 1360 placed on the ballot, because, it is alleged, some of the cards introduced by the United were signed as a result of coercion. At the hearing, the Trial Examiner excluded the testimony of a witness for Local 1360, after an offer of proof to the effect that the witness had been beaten up because he refused to join the United, on the ground that the offer of proof did not refer to any cards introduced in evidence by the United. The Trial Examiner offered to permit any person signing a card to testify that he was coerced into signing, but stated that testimony relative to coercion by persons not signing cards would not be allowed. Subsequently the Trial Examiner stated that Local 1360 would be permitted to discuss further its offer of proof on this matter; but the representative of Local 1360 had left the hearing. We are of the opinion that the ruling of the Trial Examiner was incorrect. The testimony of persons not signing cards might be of such nature as to show that persons who signed cards were coerced. We feel that such evidence is proper with regard to the issue as to whether an election should be held. After the hearing, Local 1360 filed several affidavits with the Board, alleging that committeemen and other members of the United had procured members by the use of violence. Under these circumstances, we will not certify the United but we will order an election by secret ballot to determine whether or not a majority of the employees in the appropriate unit wish to be represented by the United or by Local 1360, or by neither. Those eligible to vote in the election shall be employees in the appropriate unit who were on the pay roll dated March 25, 1938, and who have not since quit or been discharged for cause. The pay roll dated March 25, 1938, has been chosen because it is the most recent one introduced in evidence, because several months have passed since the filing of the first petition, and because the pay roll dated December 31, 1937 is a peak, rather than a normal, pay roll.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of General Motors Corporation at Fisher Body Oakland Division and Chevrolet Oakland Division, Oakland, California and of its wholly owned subsidiary, General Motors Sales Corporation, at Oakland Parts Division Oakland, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All of the employees of General Motors Corporation at Fisher Body Oakland Division and Chevrolet Oakland Division and of General Motors Sales Corporation at Oakland Parts Division who are paid by the hour, excluding clerical workers not employed in production departments and employees having solely supervisory or administrative positions, constitute a unit appropriate for purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

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, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation ordered by the Board to ascertain representatives for purposes of collective bargaining with General Motors Corporation at Fisher Body Oakland Division and Chevrolet Oakland Division and with General Motors Sales Corporation at Oakland Parts Division an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth 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 the employees of General Motors Corporation at Fisher Body Oakland Division and Chevrolet Oakland Division and General Motors Sales Corporation at Oakland Parts Division, who are paid by the hour and who appear on the pay roll dated March 25, 1938, excluding clerical employees not employed in production departments and employees having solely supervisory or administrative positions and those who have since quit or been discharged for cause, to determine whether they desire to be represented by International Union, United Automobile Workers of America, Local No. 76, affiliated with the Committee for Industrial Organization, or by National Automobile Workers, Local 1360, affiliated with the International Association of Machinists, affiliated with the American Federation of Labor, for purposes of collective bargaining, or by neither.