

In the Matter of HUDSON & TERRAPLANE SALES CORP. and LOCAL 259,  
INTERNATIONAL UNION UNITED AUTOMOBILE WORKERS OF AMERICA

*Case No. R-802.—Decided July 5, 1938*

*Automobile Sales Agency—Investigation of Representatives:* controversy concerning representation of employees: majority status disputed by employer; employer's refusal to grant recognition of union—*Unit Appropriate for Collective Bargaining:* all manual employees; no controversy as to—*Representatives:* proof of choice: comparison of pay roll with union membership cards—*Certification of Representatives:* upon proof of majority representation.

*Mr. Albert Ornstein,* for the Board.

*Mr. Herbert G. McLearn,* of New York City, for the Company.

*Mr. Joseph Tauber* by *Mr. Alexander E. Racolin,* of New York City, for the Union.

*Mr. David Rein,* of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On March 28, 1938, Local 259, International Union United Automobile Workers of America, affiliated with the Committee for Industrial Organization, herein called the Union, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Hudson & Terraplane Sales Corp., New York City, 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 April 25, 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 an appropriate hearing.

On May 20, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union. Pursuant to the notice, a hearing was held on May 25, 1938, at New

York City before Mapes Davidson, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and objections to the admission of evidence. The Board has reviewed these rulings 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 BUSINESS OF THE COMPANY

The Company is a corporation organized under the laws of the State of Michigan and authorized to do business in the States of New York, New Jersey, and Connecticut. It maintains its principal office and place of business in New York City, where it is engaged in the wholesale and retail sale and distribution of automobiles. The Company sells the products of the Hudson Motor Company. It purchases about 5,000 cars annually from the Hudson Motor Company, Detroit, Michigan. The Company sells about 90 per cent of these cars to wholesale dealers who, for the most part, are located in New Jersey and Connecticut. The remaining 10 per cent of the cars are sold by the Company at retail in New York City and about 20 per cent of these retail sales are made to residents outside the State of New York. The majority of the cars sold to wholesalers are shipped direct to the wholesale dealers from the Hudson Motor Company in Detroit. In addition, the Company sells about 800 used cars a year, about 20 per cent of which are sold in New Jersey and Connecticut. The Company has a showroom at 1730 Broadway, but maintains its principal place of business at 310 West 68th Street, where it operates a service station for the preparation of cars and the sale of parts and accessories.

#### II. THE ORGANIZATION INVOLVED

Local 259, International Union United Automobile Workers of America, is a labor organization affiliated with the Committee for Industrial Organization. The Union admits to membership automobile workers employed in the automobile industry, and includes within its membership, workers employed by the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company conferred with the Union on behalf of its members, but refused to recognize it as the exclusive bargaining agency for all

the manual employees of the Company and at the hearing denied that the Union represented a majority of these employees.

We find that a question has arisen concerning the representation of employees of the Company.

#### 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 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.

#### V. THE APPROPRIATE UNIT

It was agreed by the Union and the Company that an appropriate bargaining unit should include all the manual employees of the Company, excluding salesmen and supervisory and clerical employees. The parties agreed at the hearing that the term "manual employees" included all the employees in the Parts Department and Service Department of the Company at 310 West 68th Street, and porters employed at 1730 Broadway. It was also agreed that manual employees embrace parts clerks or parts salesmen, service salesmen, stock clerks, receiving clerks, and shipping clerks.

We find that all the manual employees of the Company constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing it was agreed that there were 53 employees in the appropriate unit. The Union introduced into evidence 53 cards signed by employees applying for membership in the Union. The shop steward for the employees of the Company testified that he had witnessed the signatures of all but two or three of these cards. Seven of the individuals who had signed cards were no longer employed by the Company and one other had been expelled by the Union. This left 45 cards which, when checked with the names on a list of employees furnished by the Company, corresponded with 45 names on that list. The sales manager of the Company stated that a number of the employees had expressed to him their dissatisfaction with the Union, but none of these employees were produced as wit-

nesses. Nor did the Company challenge the validity of any of the signatures, although the cards were available for that purpose and could have been compared with the signatures of the employees stated by counsel for the Company to be in the possession of the Company. The evidence shows that a majority of the employees in the appropriate unit have designated the Union as their bargaining representative.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining and we will so certify.

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 Hudson & Terraplane Sales Corp., New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the manual employees of Hudson & Terraplane Sales Corp. constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Local 259, International Union United Automobile Workers of America, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) 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 and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Local 259, International Union United Automobile Workers of America, has been designated and selected by a majority of the manual employees of Hudson & Terraplane Sales Corp., New York City, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Local 259, International Union United Automobile Workers of America, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.