

In the Matter of NORTHERN AIRCRAFT PRODUCTS DIVISION, THE AVIATION CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 27 (CIO)

Case No. 8-R-1194.—Decided October 28, 1943

Pruitt and Grealis, by *Mr. Francis J. Naphin*, of Chicago, Ill., for the Company.

Messrs. James R. Crowley, Sydney Friedlander, James Brennan and Harry S. Hyatt, all of Toledo, Ohio, for the CIO.

Mr. Earl S. Streeter, of Toledo, Ohio, for the MESA.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local No. 27 (CIO) herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Northern Aircraft Products Division, The Aviation Corporation, Toledo, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis Plost, Trial Examiner. Said hearing was held at Toledo, Ohio, on September 16, 1943. The Company, the CIO, and Mechanics Educational Society of America, Local No. 4 (CUA), herein called the MESA, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Northern Aircraft Products Division, The Aviation Corporation, a Delaware corporation, operates a plant at Toledo, Ohio, where it is engaged in the manufacture of precision aircraft parts for use by the armed forces of the United States. The Toledo plant, the only operation here involved, is owned by the Defense Plant Corporation and leased to the Company.

Conversion of the plant buildings to their present use began in December 1942. Production of precision aircraft parts began in February 1943, and the first finished products were shipped in March 1943. The Company estimates that during the year 1943, it will buy and bring to the Toledo plant from points outside the State of Ohio, raw materials which will consist largely of castings and forgings valued at more than \$100,000. It estimates that during the same period, it will ship from its Toledo plant to points outside the State of Ohio, finished products valued at more than \$250,000.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 27, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Mechanics Educational Society of America, Local No. 4, affiliated with the Confederated Unions of America, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about April 7, 1943, the CIO requested recognition by the Company as the exclusive bargaining representative of the Company's employees. The Company refused to grant such recognition on the ground that the CIO's request was inappropriate at that time because the Company had not yet employed 50 percent of its total anticipated personnel.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the CIO and the MESA repre-

sent substantial numbers of employees in the alleged appropriate units.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The CIO contends that all production and maintenance employees of the Company, including maintenance mechanics, maintenance machinists, tool-room employees, tool grinders, tool inspectors and machine repair employees, but excluding process engineers, tool designers, draftsmen, plant engineers, plant protection employees, personnel department employees, foremen, assistant foremen, all supervisory employees, timekeepers and office employees constitute an appropriate bargaining unit. The Company agrees that if an election is ordered, the unit sought by the CIO is appropriate. The MESA contends that there should be a separate appropriate unit consisting of all tool and die makers,² tool inspectors, tool grinders, machine repair machinists, and machine repair mechanics. There is no history of collective bargaining at the plant on any basis whatever.

The plant is operated as a single, integrated production unit, the various departments each contributing its share to the production of the completed product. Clearly, therefore, an industrial unit would be appropriate. The evidence also indicates, however, that the unit proposed by the MESA could also be appropriate. With the exception of the machine repair mechanics, who work out of a separate room on the second floor, all of the employees in the unit proposed by the MESA are attached to the tool room, which is located on the fourth floor of the building. Although the tool makers make some of the tools used by the production employees, none of them does actual production work. Their duties consist entirely of the maintenance of the tools and machines used by the production workers. All of these employees are required to serve a 4-year apprenticeship before they are considered fully qualified to perform their work.³ Furthermore,

¹ The Field Examiner reported that the CIO submitted 99 authorization cards bearing apparently genuine original signatures of persons whose names were listed on the Company's pay roll of July 9, 1943, which contained the names of 207 employees in the unit which the CIO alleges to be appropriate.

The MESA submitted 11 cards, all of which bore apparently genuine original signatures of persons whose names were listed on the Company's pay roll of July 9, 1943, which contained the names of 14 employees in the unit which the MESA alleges to be appropriate.

² The parties agreed at the hearing that there were no die makers in the Company's employ.

³ The Company introduced evidence that it plans to employ in the tool making division a number of machine operators. The evidence indicates that these employees will not be particularly skilled, but will do routine work similar to that of other production employees in the plant. If the Company actually does employ such employees, they will be

we have on several occasions recognized the propriety of a unit such as is here sought by the MESA.⁴ Before making a final determination of the appropriate unit or units, we shall first ascertain the desires of the employees involved.

The Company began operations in February 1943, with about 27 employees. Thereafter the personnel increased at a rate of from 25 to 40 persons per month until September, when the pay roll decreased by about 15 employees. The decrease, however, resulted from changes of certain tool designs. At the time of the hearing there were 223 employees in the over-all production and maintenance unit, 22 per cent of the anticipated total personnel. The Company estimates that the pay roll will reach 50 percent of its anticipated total in approximately 6 months. Thus it appears that there are presently employed substantially less than 50 percent of the total anticipated complement of employees and that the present personnel is expected to more than double in less than a year. Under such circumstances it is our practice, if there is a substantial and representative group of workers presently employed, as the evidence indicates is true in the instant case, to proceed with a present determination of representatives. We shall, therefore, direct an election herein. We shall, however, entertain a new petition for investigation within a period of less than a year, although not before the expiration of 6 months, following any certification which may result from the instant proceedings, upon proof by the petitioning union (1) that the number of employees is more than double the number eligible to participate in the elections hereinafter directed, and (2) that the petitioning labor organization represents a substantial number of employees in the expanded unit.⁵

We shall direct that the question concerning representation which has arisen be resolved, in part, by elections by secret ballot among the following groups of employees:

(1) All tool makers, tool inspectors, tool grinders, machine repair machinists and machine repair mechanics in the employ of the Company, excluding supervisory employees with authority to hire, discipline, promote, discharge, or otherwise effect changes in the status of employees or effectively to recommend such action, to determine whether they desire to be represented by the CIO or by the MESA;

(2) All production and maintenance employees of the Company, excluding process engineers, tool designers, draftsmen, plant engineers, plant-protection employees, personnel department employes,

excluded from any unit of skilled employees which we may find to be appropriate in substantial conformance with the request of the MESA

⁴ *Matter of American Propeller Corporation*, 43 N. L. R. B. 518; *Matter of The Electric Auto-Lite Company*, 9 N. L. R. B. 147; *Matter of Standard Cap & Seal Company*, 10 N. L. R. B. 466; *Matter of Willys Overland Motors, Inc.*, 9 N. L. R. B. 924.

⁵ *Matter of Aluminum Company of America*, 52 N. L. R. B. 1040.

timekeepers, office employees, foremen, assistant foremen, all other supervisory employees with authority to hire, discipline, promote, discharge, or otherwise effect changes in the status of employees, or effectively to recommend such action, and also excluding all employees described in the preceding paragraph, to determine whether or not they desire to be represented by the CIO.

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, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Northern Aircraft Products Division, The Aviation Corporation, Toledo, Ohio, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) 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, Sections 10 and 11, of said Rules and Regulations, among the employees in the following groups, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election:

(1) All tool makers, tool inspectors, tool grinders, machine repair machinists and machine repair mechanics, in the employ of the Company at its Toledo, Ohio, plant, excluding foremen, assistant foremen and all other supervisory employees with authority to hire, discipline, promote, discharge, or otherwise effect changes in the status of employees, or effectively to recommend such action, to determine whether they desire to be represented by Mechanics Educational Society of America, Local No. 4, affiliated with the Confederated Unions of America, or by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local No. 27, affiliated with the Congress of Industrial Organizations, for the purpose of collective bargaining, or by neither; and among

(2) All production and maintenance employees of the Company at its Toledo, Ohio, plant, excluding process engineers, tool designers,

draftsmen, plant engineers, plant-protection employees, personnel department employees, timekeepers, office employees, foremen, assistant foremen, all other supervisory employees with authority to hire, discipline, promote, discharge, or otherwise effect changes in the status of employees, or effectively to recommend such action, and also excluding all employees in the categories listed in the preceding paragraph, to determine whether or not they wish to be represented by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local No. 27, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.