

In the Matter of FAIRCHILD ENGINE AND AIRPLANE CORPORATION (AIR-
CRAFT DIVISION) and U. A. W.-C. I. O.

Case No. 5-R-1352.—Decided November 4, 1943

Lane, Bushong and Byron, by Messrs. William P. Lane, Jr., and Paul S. Cleaveland, of Hagerstown, Md., for the Company.

Mr. Frank J. Bender, of Baltimore, Md., and Mr. E. J. Moran, of Hagerstown, Md., for the UAW-CIO.

Mr. William R. Cameron, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon amended petition duly filed by U. A. W.-C. I. O., herein called the UAW-CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Fairchild Engine and Airplane Corporation (Aircraft Division), Hagerstown, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert A. Levett, Trial Examiner. Said hearing was held at Hagerstown, Maryland, on September 30, 1943. The Company and the UAW-CIO 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 opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Fairchild Engine and Airplane Corporation, a Delaware corporation, is engaged in the manufacture, sale and service of aircraft engines and airplanes at Hagerstown, Maryland, and Farmingdale,

Long Island. We are here concerned with the Fairchild Aircraft Division located in and about Hagerstown, Maryland. During the year 1942 the Company purchased raw materials, consisting principally of wood, aluminum, and other metals, amounting in value to more than \$1,000,000, of which more than 50 percent was obtained from points outside the State of Maryland. During the same period the Company sold finished products amounting in value to more than \$2,000,000, of which more than 50 percent was shipped to points outside the State of Maryland. The Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

U. A. W.-C. I. O.¹ is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

In July 1943, the UAW-CIO requested the Company to recognize it as the sole collective bargaining representative of the Company's plant-protection employees. Thereafter the Company and the UAW-CIO conferred, and efforts were made to secure a consent election agreement. The Company, however, would not enter into such an agreement, and refused to recognize the UAW-CIO as representative of the plant-protection employees, giving as the reason therefor that it could not do so without the consent of the Internal Security Branch of the United States Army Air Forces.

A statement of the Field Examiner, introduced in evidence at the hearing, indicates that the UAW-CIO represents a substantial number of employees in the unit consisting of militarized plant-protection employees, hereinafter found to be appropriate, and also among the firemen and guards.²

We find that questions affecting commerce have 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.

¹ The Union is so designated in the petition filed in this proceeding. The Board takes notice, however, that this designation refers to International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations.

² The Field Examiner reported that the UAW-CIO submitted 224 application and authorization cards, 18 being undated and 206 dated from December 1942 through September 1943, a majority being dated in July 1943, of which all appeared to bear genuine original signatures and 202 are the names of persons whose names are on the Company's payroll list for the period ending August 13, 1943, containing 277 names within the unit claimed by the UAW-CIO to be appropriate. Among the 202 names corresponding to names on said pay roll, 15 were the names of persons whose names are listed on said pay roll as firemen or guides, there being a total of 15 such names on said pay roll.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The UAW-CIO seeks a unit composed of all the Company's plant-protection employees, including guards, guardettes, guides and firemen, and including corporals and sergeants, but excluding officers of and above the rank of lieutenant and the chief and assistant chief of firemen. The Company contends that the proposed unit is not appropriate in that militarized and non-militarized plant-protection employees should not be joined in a single unit.

The record discloses that the guards and guardettes are armed, uniformed, and have been sworn in as members of the auxiliary military police. The firemen and the guides wear appropriate uniforms, but are neither armed nor militarized. It is the policy of the Board, in view of the added duties and obligations of militarized plant-protection employees, not to join such employees and those who have not assumed similar military obligations in the same collective bargaining unit.³ No sufficient reason appears in the instant case for departure from our established practice. We shall, therefore, exclude the firemen and guides from the militarized plant-protection unit.

We find that all guards and guardettes employed by the Company at its Hagerstown, Maryland, plant or plants, including corporals and sergeants but excluding officers of and above the rank of lieutenant and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

With regard to the firemen and guides, the UAW-CIO further contends that if they are not found by the Board to constitute an appropriate part of the plant-protection unit containing militarized plant-protection employees, they should be merged with the existing unit of production and maintenance employees of which the UAW-CIO is already the collective bargaining representative.⁴ The Company, however, opposes this contention, maintaining that neither the firemen nor the guides may appropriately be made part of the unit of production and maintenance employees.

The record discloses that there are approximately 10 firemen, who are in charge of the Company's fire-fighting equipment. The guides, of whom there are 5, are female employees who act as messengers and

³ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Foote Bros. Gear and Machine Corporation*, 52 N. L. R. B. 861.

⁴ On July 22 and 23, 1942, a consent election under Board auspices was held among the Company's employees in a production and maintenance unit. The UAW-CIO was successful in that election and on October 12, 1942, entered into a collective bargaining contract with the Company, which the record indicates is still in force.

also as official escorts between the reception room and points in the plant to which visitors are permitted to go. We have frequently held that non-militarized plant-protection employees may be joined with other employees in a general production and maintenance unit.⁵ No sufficient reason here appears why the firemen and guides may not be so joined. We shall, however, permit the preference of the firemen and guides to determine whether or not they shall be added to the existing unit of production and maintenance employees, and to that end shall order a self-determination election. If at such election these employees select the UAW-CIO, they will have thereby indicated their desire to be included in a unit with the production and maintenance employees, and the UAW-CIO may accordingly bargain for them as a part of such unit.

We shall direct that separate elections by secret ballot be held among (1) the employees in the militarized plant-protection unit hereinabove found appropriate, and (2) the firemen and guides, excluding the chief and assistant chief of firemen and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

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 Fairchild Engine and Airplane Corporation (Aircraft Division), Hagerstown, Maryland, separate 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 Fifth 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, (1) among the employees in the militarized plant-protection unit found appropriate in Section IV, above, and (2) among the firemen and guides, excluding the chief

⁵ See *Matter of The Hagerstown Rubber Company*, 52 N. L. R. B. 891; *Matter of Pass and Seymour, Inc.*, 51 N. L. R. B. 1135; *Matter of The Brown Paper Mill Company, Inc.*, 45 N. L. R. B. 1227; *Matter of Gluck Brothers, Inc.*, 45 N. L. R. B. 1159; *Matter of MacAndrews & Forbes Company*, 39 N. L. R. B. 699.

and assistant chief of firemen and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, who were employed during the pay-roll period immediately preceding the date of this Direction, including any 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 any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by the U. A. W.-C. I. O. for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.