

In the Matter of BENDIX AVIATION CORPORATION (PHILADELPHIA DIVISION) and UNITED AIRCRAFT WORKERS COUNCIL, INDEPENDENT UNION and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Case No. 4-RE-16.—Decided November 24, 1943

Mr. E. H. Cassels, of Chicago, Ill., *Mr. A. S. Ormsby*, of Teterboro, N. J., and *Mr. Ray G. Kremer*, of Philadelphia, Pa., for the Company.

Mr. Louis H. Wilderman, of Philadelphia, Pa., and *Mr. A. F. Yokel*, of Washington, D. C., for the I. A. M.

Messrs. Saul C. Waldbaum, *Carl Bersing*, and *Peter D. Besch*, of Philadelphia, Pa., for the UE.

Messrs. Stanley W. Root, *Harold J. Freed*, and *S. L. Kirk*, of Philadelphia, Pa., for the Independent.

Mr. Melvin Crisenfeld, of New York City, and *Mr. Merlin D. Bishop*, of Philadelphia, Pa., for the UAW-CIO.

Miss Melvern R. Krelow, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Bendix Aviation Corporation (Philadelphia Division), Philadelphia, Pennsylvania, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of employees of the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert H. Kleeb, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on October 21, 1943. The Company, International Association of Machinists, affiliated with the American Federation of Labor, herein called the I. A. M., United Aircraft Workers Council, Independent Union, herein called the Independent, United Automobile Aircraft & Agricultural Implement Workers of America, C. I. O., herein called the UAW-CIO, and United Electrical, Radio & Machine Workers of America, C. I. O., herein called the UE, appeared, participated, and were afforded full oppor-

tunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.¹ During the hearing the UE and the UAW-CIO moved to dismiss the petition. The Trial Examiner reserved ruling. For reasons hereinafter set forth, the motions are hereby denied. 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

Bendix Aviation Corporation is a Delaware corporation with a division in Philadelphia, Pennsylvania, where it is engaged in the manufacture and sale of directional and navigational instruments and starters for aircraft. The Philadelphia Division is the only division involved in this proceeding. The Company purchases raw materials consisting of carbon and alloy steels, aluminum, copper, brass, tin, zinc, magnesium, silver, gold, platinum, diamonds, and sapphires, of which 65 percent is shipped to the Division from points outside the Commonwealth of Pennsylvania. During the fiscal year ending September 30, 1943, the Company's gross business at the Philadelphia Division exceeded \$60,000,000. Practically all of the Company's finished products at the Philadelphia Division are for military establishments and are delivered to depots throughout the United States. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Automobile, Aircraft & Agricultural Implement Workers of America, and United Electrical, Radio & Machine Workers of America are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

United Aircraft Workers Council, Independent Union, is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The American Aircraft Workers, herein called the A. A. W., has for several years bargained for the production and maintenance employees

¹ The American Aircraft Workers, although named in the petition, did not appear at the hearing for reasons hereinafter discussed.

of the Company. The first collective bargaining contract between the Company and the A. A. W. was executed on June 6, 1941, the last on June 10, 1942, which expired June 10, 1943. At the expiration of the 1942 contract, the Company advised the A. A. W. that it had information that other labor organizations were actively attempting to organize its employees, and that it had a reasonable doubt as to whether the A. A. W. then represented a majority of its employees. The Company, accordingly, refused to enter into a new contract with the A. A. W., and suggested that the A. A. W. file a petition with the Board. On June 15, 1943, the A. A. W. filed a petition with the Board, which it withdrew 3 days later. Before the withdrawal, however, the I. A. M. notified the Board of its interest. On July 13, 1943, the Company filed a petition. It withdrew this petition, however, on August 7 because of a minor technicality, and on the same date filed the instant petition, predicated its right to file it on the continuing claim of the A. A. W., and the claim of the I. A. M. expressed in a letter to the Company dated August 5, 1943.² On October 3, 1943, the A. A. W. affiliated itself with the UE, and on October 6, 1943, informed the Company by letter of its affiliation, and further advised "that all prior requests by this organization on behalf of the American Aircraft Workers claiming to represent a majority of your employees and asking for collective bargaining, are hereby withdrawn." A copy of this letter was filed with the Regional Office on October 8. Immediately upon the affiliation of the A. A. W. with the UE, certain members of the A. A. W., who opposed such affiliation, formed the Independent and actively solicited membership among the employees of the Company. On October 6, 1943, the Independent advised the Company by letter that it represented a majority of the Company's employees and requested a conference. On October 8, the Company notified the Independent that the Board was being advised of the Independent's claim, and on the same date filed the Independent's letter with the Regional Office. On October 13, 1943, the Regional Director issued a Notice of Hearing on the Company's petition.

The UE and the UAW-CIO, in moving for dismissal of the petition, contended, *inter alia*, that in the filing of the petition and the ensuing Notice of Hearing there had not been compliance with the provisions of Article III, Sections 2 (b) and 3 of the Board's Rules and Regulations. Section 2 (b) relates to the requirements necessary for an employer to file a petition.³ Unquestionably, at the time the petition

² In its letter to the Company, the I. A. M. claimed to represent a majority of the Company's employees.

³ Section 2 (b) states that a petition when filed by an employer shall contain, *inter alia*, a brief statement setting forth that a question or controversy affecting commerce has arisen concerning the representation of employees in that two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the Company's employees in a unit claimed by the competing labor organizations to be appropriate.

in the instant proceeding was filed all the requirements of such section had been met; the Company was confronted with the conflicting claims of the I. A. M. and the A. A. W. At the time the Regional Director issued the Notice of Hearing, the requirements of Section 3 likewise had been complied with.⁴ While the A. A. W. had withdrawn its claim prior to the issuance of the Notice of Hearing, the Independent had simultaneously notified the Company of its alleged majority, and the Company was, therefore, still confronted with conflicting claims of majority representation. Furthermore, the UE, at the hearing, announced its intention of filing a petition,⁵ in effect contending that it also represented a majority of the Company's employees. Thus, at the time the petition was filed, at the time the Notice of Hearing was issued, as well as at the time of the hearing, two or more labor organizations had presented to the Company conflicting claims that each represented a majority of the employees in the bargaining unit claimed to be appropriate. We find, therefore, that the essential requirements of Article III, Sections 2 (b) and 3 were complied with.

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 parties agree that all production, maintenance, inspection, set-up, powerhouse, stockroom, toolroom, tool crib, trucking, material moving, receiving, shipping, salvage, stockchasing, inside expediting, and dispatch employees of the Company at its Philadelphia Division, excluding all administrative, executive, supervisory (such as foremen, foreladies, their assistants and those who have the right to hire and discharge or who may recommend such action) employees, all office, clerical, sales, accounting, personnel and engineering department employees, training instructors, production estimating, tool design and methods engineers, outside expeditors and subcontracting department employees, chemists, metallurgists, cooperative students, time-study, job evaluation, professional, plant-protection (including fire patrol), and cafeteria employees constitute an appropriate unit. A dispute has arisen, however, with respect to timekeepers and counters. The UE, the I. A. M., and the UAW-CIO would include them in the unit, whereas the Company and the Independent would exclude them from the unit.

⁴ Section 3 provides, in part, that after a petition has been filed, "if it appears to the Regional Director that an investigation should be instituted he shall institute such investigation by issuing a Notice of Hearing, provided that the Regional Director shall not institute an investigation on a petition filed by an employer unless it appears to the Regional Director that two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the bargaining unit or units claimed to be appropriate."

⁵ The UE filed a petition with the Board on October 23, 1943.

There are at present approximately 157 timekeepers and counters employed by the Company. Although the counters and timekeepers are scattered throughout the plants comprising the Division, they report to the accounting department. The principal duty of the counters is to keep records of each employee's output. They report their figures to the timekeepers, who then compile lists which serve as a basis for computing each employee's earnings. Although the Company admits that these employees do not exercise any supervisory functions, nor do they have an authority to make recommendations, it contends that they are employees with confidential responsibility to management and should not be in the same bargaining unit with, nor have the same representative as, the production and maintenance employees. We have heretofore found that employees with similar duties to those of the timekeepers and counters here involved, absent a clear showing of managerial functions or confidential duties which refer to labor relations, do not perform duties warranting deprivation of their rights to self-organization and collective bargaining.⁶ On the other hand, we are of the opinion, and find, that since the duties of the counters and timekeepers are largely clerical they should not be included in the production and maintenance unit hereinafter found appropriate. We shall exclude them.⁷

We find that all production, maintenance, inspection, set-up, powerhouse, stockroom, toolroom, tool crib, trucking, material moving, receiving, shipping, salvage, stockchasing, inside expediting, and dispatch employees of the Company, at its Philadelphia Division, excluding all office, clerical, sales, accounting, personnel and engineering department employees, training instructors, tool design and methods engineers, production estimating employees, outside expeditors and subcontracting department employees, chemists, metallurgists, cooperative students, timekeepers and counters, time-study, job evaluation, professional, plant-protection (including fire patrol), and cafeteria employees, administrative, executive, and all 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.

⁶ See *Matter of United Aircraft Products, Inc.*, 41 N. L. R. B. 501.

⁷ See *Matter of American Propeller Corporation*, 43 N. L. R. B. 518; *Matter of Yale & Towne Mfg. Co.*, 44 N. L. R. B. 1259; *Matter of California Central Fibre Corporation*, 44 N. L. R. B. 1226; *Matter of Julien P. Friez & Sons, Division Bendix Aviation Corp.*, 47 N. L. R. B. 43; *Matter of National Tool Company*, 51 N. L. R. B. 897; *Matter of Republic Aviation Corporation, Indiana Division*, 51 N. L. R. B. 1287; *Matter of Aluminum Company of America*, 51 N. L. R. B. 1295; *Matter of Atmospheric Nitrogen Corporation*, 52 N. L. R. B. 342.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein.⁸

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 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 Bendix Aviation Corporation (Philadelphia Division), Philadelphia, Pennsylvania, an election 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 Fourth 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 unit found appropriate in Section IV, above 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 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 they desire to be represented by International Association of Machinists, affiliated with the American Federation of Labor, or by United Aircraft Workers Council, Independent Union, or by United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., or by American Aircraft Workers, Local 114, of the United Electrical, Radio & Machine Workers of America, C. I. O., for the purposes of collective bargaining, or by none.

⁸ The UE requested that it be designated on the ballot as "American Aircraft Workers, Local 114, of the United Electrical, Radio & Machine Workers of America, C I O." The request is hereby granted.