

In the Matter of **KELLETT AIRCRAFT CORPORATION** and **UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)**

*Case No. 4-R-1234.—Decided November 29, 1943*

*Mr. Kenneth Souser and Mr. Robert Gibbon, of Philadelphia, Pa., for the Company.*

*Mr. Samuel Schervone, of Philadelphia, Pa., for the Union.*

*Mr. Jack Mantel, of counsel to the Board.*

**DECISION**  
**AND**  
**DIRECTION OF ELECTION**

**STATEMENT OF THE CASE**

Upon a petition duly filed by United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Kellett Aircraft Corporation, herein called the Company,<sup>1</sup> 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 20, 1943. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company made a motion to dismiss the petition on the grounds that (1) a question concerning representation does not exist because the Union had not made sufficient showing of membership, and (2) the unit petitioned for is inappropriate. For reasons appearing below, this motion is denied. 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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<sup>1</sup> The name of the Company was erroneously designated as Kellett Autogiro Corporation in the petition and formal papers, all of which were corrected by amendment at the hearing.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

Kellett Aircraft Corporation is a Delaware corporation, with its principal place of business in Philadelphia, Pennsylvania, where it is engaged in the manufacture of rotating wing aircraft and fixed wing aircraft parts; it is engaged 100 percent in war production. During 1942, raw materials valued at approximately \$2,000,000 were used by the Company, of which in excess of 95 percent was shipped to its plant at Philadelphia from points outside the Commonwealth of Pennsylvania. For the same period, the Company's finished products were valued at approximately \$5,000,000, of which in excess of 95 percent was shipped from its plant to points outside the Commonwealth of Pennsylvania.

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

### II. THE ORGANIZATION INVOLVED

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

### III. THE QUESTION CONCERNING REPRESENTATION

On August 20, 1943, the Union requested recognition as the exclusive bargaining representative of the Company's plant-protection employees. The Company refused this request.

A statement of the Trial Examiner, introduced into evidence, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>2</sup>

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 Union contends that a unit consisting of all plant-protection employees, including corporals and sergeants, but excluding staff sergeants, lieutenants, and the captain constitute an appropriate unit.

<sup>2</sup>The Regional Director reported that on October 4, 1943, the Union's designations amounted to 35.6 percent of the employees in the appropriate unit. While a further check made by the Trial Examiner, approximately 2 weeks later, on the date of the hearing, indicated that the Union's percentage of designations had dwindled somewhat, due to a rapid turnover in personnel, we find that the Union's decreased showing of representation under such circumstances remained substantial.

The Company, while not contending that a unit of plant-protection employees is inappropriate, maintains that corporals and sergeants should be excluded because of their supervisory duties.

All plant-protection employees of the Company are auxiliary military police. Corporals and sergeants are paid on an hourly basis as are the privates, but receive substantially more per hour than the privates. The Company has five plants scattered over a large area, and the corporals and sergeants spend practically all of their time visiting the various posts and instructing new guards in their duties. It is not possible to have a sergeant on each of the three shifts; therefore, in many instances the corporals are in direct charge of a shift. Corporals and sergeants have authority to recommend promotions and pay raises for privates and to discipline them for any misconduct or breach of duties. In view of the foregoing, we find that corporals and sergeants are supervisory employees and we shall exclude them from the unit.

We find that all plant-protection employees of the Company, excluding corporals, sergeants, staff sergeants, lieutenants, the captain, 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.

#### 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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 3, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Kellett Aircraft Corporation, 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 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, to determine whether or not they desire to be represented by United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), for the purposes of collective bargaining.