

In the Matter of REPUBLIC AVIATION CORPORATION and LOCAL UNION No. 25, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILIATED WITH AFL

In the Matter of REPUBLIC AVIATION CORPORATION and UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO

Cases Nos. 2-R-4279 and 2-R-4357, respectively.—Decided January 12, 1944

*Mr. Joseph Lorenz*, of Mineola, N. Y., for the I. B. E. W.

*Mr. Benjamin Rubenstein*, of New York City, and *Mr. Clifford V. Fay*, of Farmingdale, N. Y., for the U. A. W.

*Donovan, Leisure, Newton & Lumbard*, by *Messrs. J. Edward Lumbard, Jr.*, and *Paul Quinn*, of New York City; *Mr. John J. Ryan*, of New York City, and *Messrs. A. L. Kress and Morgan Monroe*, of Farmingdale, N. Y., for the Company.

*Mr. Seymour J. Spelman*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon petition and amended petition duly filed, respectively, by Local Union No. 25, International Brotherhood of Electrical Workers, AFL, herein called the IBEW, and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, herein called the UAW, alleging that questions affecting commerce had arisen concerning the representation of employees of Republic Aviation Corporation, Farmingdale, New York, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before James C. Paradise, Trial Examiner. The hearing was held in New York City on December 2 and 6, 1943. The Company, the IBEW, and the UAW 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 reserved ruling upon the

motion of the Company to dismiss the petition of the UAW on the ground that the latter's *prima facie* showing of representation was insufficient. For reasons appearing in Section III, *infra*, we hereby deny said motion. 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

Republic Aviation Corporation is a Delaware corporation having its principal office in Wilmington, Delaware. We are here concerned with its plant located in Babylon Township, Suffolk County, New York, where it is engaged in the manufacture and sale of military aircraft. During the 12-month period to April 15, 1943, the Company purchased raw materials valued in excess of \$100,000, approximately 50 percent of which was shipped to it from points outside the State of New York. During the same period, the value of the finished products manufactured at the plant in Babylon Township exceeded \$100,000, approximately 50 percent of which was shipped to points outside the State of New York. The Company concedes, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Local Union No. 25, International Brotherhood of Electrical Workers, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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

#### III. THE QUESTIONS CONCERNING REPRESENTATION

At the hearing, the IBEW and the Company stipulated that, prior to the hearing, the IBEW requested the Company to recognize it as the exclusive bargaining representative of the maintenance electricians at the Babylon Township plant, and that the Company refused to grant such recognition prior to certification by the Board. At the hearing, the UAW made a similar request with respect to production and maintenance employees, and the Company again refused to afford recognition without a certification by the Board.

Statements of the Regional Director and the Trial Examiner, introduced in evidence at the hearing, indicate that the IBEW and the UAW each represents a substantial number of employees in the unit it claims to be appropriate.<sup>1</sup>

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.

#### IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The UAW seeks to represent a unit comprised of all production and maintenance employees of the Company at its Babylon Township plant, including timekeepers, truck drivers, matrons, group leaders and employees in the Experimental Shop, but excluding tool designers, clerical employees in both the office and plant, plant-protection employees (including guards and fire patrolmen), professional employees, part-time employees, inspectors, cafeteria employees, trainees in the Company's training school, radio technicians and radio tower operators in the Hangar and Flight Test Department, and all supervisory employees having the authority to hire and discharge or effectively to recommend hiring or discharging or changes in the status of employees. The Company is in general agreement with the UAW's proposed unit, but contends that matrons, timekeepers, armorers, group leaders, and employees in the Experimental Shop should be excluded.

The IBEW requests a separate unit comprised of maintenance electricians, which includes master electricians, electricians, helpers, and lamp changers. The Company is opposed to a separate unit of maintenance electricians, and the UAW, although it expressed no opposition, would include these employees in its broader production and maintenance unit.

<sup>1</sup>The Regional Director reported that the IBEW submitted 48 authorization cards, of which 41 bore the apparently genuine original signatures of employees on the Company's pay roll of October 15, 1943, which contained the names of 58 employees in the alleged appropriate unit. A subsequent check against the Company's pay roll of November 30, 1943, shows that 37 of the IBEW cards were apparently signed by employees in the alleged appropriate unit which then contained 68 employees. The Regional Director reported further that the UAW submitted 5,516 authorization cards, 3,100 of which were undated, while the balance, for the most part, bore dates since March 1943. Testimony adduced by the UAW at the hearing indicates that most of the undated cards were signed since the spring of 1943. The Trial Examiner stated that the large number of UAW cards and the fact that the pay roll was broken down into 29 departments made a check of all the UAW cards against the pay roll administratively impracticable. Accordingly, a check was made of 1,782 cards (approximately one-third of the total), selected at random. Of these cards, 1,347 (or 76 percent) bore the apparently genuine signatures of employees on the pay roll. Applying this percentage to the 5,516 cards submitted, it was estimated by the Trial Examiner that 4,192 bore the names of employees listed upon said pay roll, which contained a total of 11,205 names. Under the circumstances, the spot-check technique employed was reasonable and, in the presence of the other facts stated above, the indicated UAW showing (37½ percent of all employees) is sufficient to raise a question concerning the representation of the employees.

*The unit proposed by the I. B. E. W.:* The unit contended for by the IBEW is limited to maintenance electricians in the Equipment Maintenance Department, as distinguished from electricians engaged in production. This proposed unit comprises 68 employees in the following classifications: master electricians, electricians, helpers, and lamp changers. Except for the 7 or 8 lamp changers, whose duties consist of removing and replacing electrical lamps and reflectors as required throughout the plant, the maintenance electricians are a skilled group. It appears, however, that the IBEW customarily includes lamp changers in its bargaining units, and that apprentices or superannuated electricians are frequently assigned to this work. The lamp changers operate under the supervision of a lamp-changing foreman, while the remaining maintenance electricians are supervised by electrical foremen. Both the lamp-changing foreman and the electrical foremen are responsible to the electrical supervisor. All of the employees in this proposed unit perform maintenance electrical tasks throughout the plant.

In the absence of any history of collective bargaining among the Company's employees at its Babylon Township plant, and in view of the fact that the maintenance electricians are, for the most part, a skilled and functionally coherent group of employees, frequently represented by craft organizations, we believe that these employees may, if they so desire, form a separate bargaining unit. It is also clear, however, that they might appropriately be included in the broader production and maintenance unit advocated by the UAW and the Company. Under these circumstances, we make no finding with respect to the appropriate unit at this time, for our determination of the unit issue with respect to these employees will depend in part on the desires of the employees themselves, to be expressed in the elections hereinafter directed.<sup>2</sup>

*Unit proposed by U. A. W.:* As stated above, the Company agreed in general with the production and maintenance unit proposed by the UAW. The parties are in disagreement, however, with respect to the following groups of employees:

*Timekeepers:* The Company desires the exclusion of timekeepers. These employees are not engaged in production work, but are assigned to the various departments of the plant to see that each employee checks in and out on his clock card, to make regular tours of the departments checking on attendance and on the orders upon which employees are working for cost accounting purposes, to compute hours worked for the pay-roll department, and to report employees who are absent from their posts for unduly long periods during the day.

<sup>2</sup> See *Matter of Douglas Aircraft Company, Inc.*, 53 N. L. R. B. 486.

Since the proposed unit is confined to production and maintenance employees, and, by agreement of the parties, excludes plant and office clerical employees, we shall exclude the timekeepers since it appears that their work is principally clerical in nature.<sup>3</sup>

*Matrons:* The UAW seeks to include matrons who are carried on the Company's pay roll in the building service department in which are also found janitors, sweepers, and laborers. The matrons are assigned to the women's wash and rest rooms and have the responsibility of seeing that the women do not loiter or smoke in those places. They have no duties with respect to the maintenance of the rest rooms, which are taken care of by other maintenance employees. Matrons note the badge numbers of women employees who violate the Company rules and report the infractions to the Industrial Relations Department. The facts show that the duties of matrons are monitorial and therefore more closely akin to those of the guards and fire patrolmen, who are excluded by agreement of the parties, than they are to those of production and maintenance employees. We shall therefore exclude matrons from the voting group.

*Armorers:* The Company is opposed to the inclusion of armorers on the ground that their duties require a higher technical skill than those of other production and maintenance employees. The armorers work in the Hangar and Flight Test Department, testing the guns on finished planes to determine the concentration of fire; if the fire concentration is incorrect, they make certain adjustments on the gun. It is not clear from the record that these employees possess a special or highly technical skill, but, even if this were true, it would not justify their exclusion, for there are many classifications of highly skilled employees, such as tool and die makers, pipe fitters, and production electricians, whose inclusion in the unit is not contested. The armorers form an integral part of the working force and we shall therefore include them in the voting group.

*Employees in the Experimental Shop:* Department 90 of the Company's plant is the Experimental Shop where employees are engaged in building and developing new type planes for the United States Army. The Company desires the exclusion of these employees on the grounds that (1) they are more highly skilled than other production and maintenance employees and (2) their work is of a confidential nature.

The record does not support the assertion that the work in this department requires a degree of skill or training which distinguishes it, in any material way, from that required in other production departments. The classifications of employees in the Experimental Shop

<sup>3</sup> See *Matter of United Aircraft Products, Inc.*, 41 N. L. R. B. 501; *Matter of Republic Aviation Corporation, Indiana Division*, 51 N. L. R. B. 1287.

are for the most part identical with those in the rest of the plant, and indeed it appears that the more experienced and proficient production employees are frequently assigned to this department. Moreover, as indicated above, the Company has agreed to the inclusion in the unit of many other highly skilled groups. We likewise find no merit in the contention that the confidential nature of the work in this department requires the exclusion of these employees, for, as we have declared in previous decisions, "we perceive no necessary conflict between self-organization for collective bargaining and the faithful performance of duty."<sup>4</sup> We shall include employees in the Experimental Shop.

*Group leaders:* These employees, approximately 25 in number, supervise the work of groups of 4 to 10 employees and also spend a substantial part of their time doing manual work. They receive from 5 to 15 cents per hour more than their subordinates, and although they have no authority to hire, discharge or discipline, they may recommend discipline and, indeed, have the responsibility to do so. Their recommendations are made to the group foremen who in turn make recommendations to the foreman, who has the authority to act. According to uncontradicted testimony, recommendations of group leaders are given "very serious consideration" and are "compelling." On the basis of these facts, we conclude that the group leaders are supervisory employees, and accordingly we shall exclude them from the voting group.<sup>5</sup>

*Part-time employees:* The Company has a small group of employees, recruited because of manpower shortages, who work 3 days per week. They work regularly at the same rates of pay as the full-time employees, and the Company makes no distinction between them and the other employees, except with respect to the amount of time which they work. The facts indicate that these part-time employees have a sufficient interest to warrant their inclusion in the unit, notwithstanding the UAW's contrary claim. We so find.

*Concluding findings:* Aside from the question of the inclusion of maintenance electricians and the other categories discussed above, the parties are in agreement with respect to the composition of the production and maintenance unit. We shall make no final determination respecting the appropriate unit or units, pending the outcome of the elections hereinafter directed. We shall direct that separate elections be held among the employees in each of the voting groups set forth below, who were employed during the pay-roll period

<sup>4</sup> See *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881, and *Matter of Johns-Manville Products Corporation*, 45 N. L. R. B. 33; *Matter of Colonial Broach Company*, 53 N. L. R. B. 846.

<sup>5</sup> According to uncontradicted testimony, employees classified as tool leaders occupy the same supervisory level as group leaders. Accordingly, we shall exclude them.

immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction:

(1) All maintenance electricians employed at the Company's Babylon Township plant, including master electricians, electricians, helpers, and lamp changers, but excluding all supervisory employees having the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, to determine whether they desire to be represented by the IBEW, the UAW, or neither; and

(2) All remaining production and maintenance employees at the Company's Babylon Township plant, including truck drivers, part-time employees, armorers, employees in the Experimental Shop, but excluding timekeepers, matrons, group leaders, tool leaders, tool designers, clerical employees in both the office and plant, plant-protection employees (including guards and fire patrolmen), professional employees, inspectors, cafeteria employees, trainees in the Company's training school, radio technicians and radio tower operators in the Hangar and Flight Test Department, and all supervisory employees having the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action,<sup>6</sup> to determine whether or not they desire to be represented by the UAW.

Upon the results of the elections in said groups will depend in part, our determination of the appropriate unit or units. If a majority of the maintenance electricians select the IBEW, they will function as a separate unit. If, however, a majority of said employees select the UAW, they will form a part of the broader production and maintenance unit.

### 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 Relation 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 Republic Aviation Corporation, Farmingdale, New York; elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Second

<sup>6</sup> We find, in accordance with the agreement of the Company and the UAW, that storekeepers, senior stationary engineers and the chief power engineer in the power plant are supervisory employees.

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 groups of employees described below who were employed by the Company at its Babylon Township plant during the pay-roll period immediately preceding the date of this Direction of Elections, including employees who did not work during the 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 employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections:

(1) All maintenance electricians employed at the Company's Babylon Township plant, including master electricians, electricians, helpers, and lamp changers, but excluding all supervisory employees having the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, to determine whether they desire to be represented by Local Union No. 25, International Brotherhood of Electrical Workers, AFL, or by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, for the purposes of collective bargaining, or by neither; and

(2) All remaining production and maintenance employees at the Company's Babylon Township plant, including truck drivers, part-time employees, armorers, employees in the Experimental Shop, but excluding timekeepers, matrons, group leaders, tool leaders, tool designers, clerical employees in both the office and plant, plant-protection employees (including guards and fire patrolmen), professional employees, inspectors, cafeteria employees, trainees in the Company's training school, radio technicians and radio tower operators in the Hangar and Flight Test Department, and all supervisory employees having the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether or not they desire to be represented by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, for the purposes of collective bargaining.