

In the Matter of ECLIPSE AVIATION—PIONEER INSTRUMENT DIVISION,  
BENDIX AVIATION CORPORATION and AIRCRAFT WORKERS UNION OF  
NEW JERSEY, INC.

*Case No. 2-R-4340.—Decided January 22, 1944*

*Cassels, Potter & Bentley*, by *Mr. E. H. Cassels*, of Chicago, Ill.,  
*Mr. Andrew Ormsby*, of Teterboro, N. J., and *Mr. David Irving, Jr.*,  
of Paterson, N. J., for the Company.

*Mr. George F. Losche*, of Hackensack, N. J., and *Mr. Armand R.*  
*Dufour*, of Hasbrouck Heights, N. J., for the Union.

*Mr. Robert Silagi*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon an amended petition duly filed by Aircraft Workers Union of New Jersey, Inc., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Eclipse Aviation—Pioneer Instrument Division, Bendix Aviation Corporation, Teterboro, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cyril W. O'Gorman, Trial Examiner. Said hearing was held at Hackensack, New Jersey, on November 29, 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 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, a Delaware corporation, maintains its principal office in South Bend, Indiana, and carries on its operations

through 11 divisions located throughout the country. This proceeding is concerned solely with the division known as the Eclipse Aviation—Pioneer Instrument Division which has its main office in Teterboro, New Jersey. Said division is engaged in the manufacture of aircraft instruments and accessories. During the year prior to November 1, 1943, the division purchased raw materials consisting chiefly of magnesium and steel, valued in excess of \$1,000,000, 90 percent of which was shipped to it from points located outside the State of New Jersey. During the same period of time the division's sales of finished products exceeded \$1,000,000 in value, of which approximately 90 percent was shipped to points outside the State of New Jersey. The division is completely engaged in the manufacture of materials for war purposes.

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

## II. THE ORGANIZATION INVOLVED

Aircraft Workers Union of New Jersey, Inc., an unaffiliated labor organization, admits to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

Pursuant to a consent election agreement entered into by the Company, the Union, and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO),<sup>1</sup> an election was held on June 8, 1943, which the Union won. Thereafter, the Company and the Union commenced negotiations for a collective bargaining agreement. Although the consent election agreement excluded timekeepers from the list of employees eligible to vote in the election, the Union nevertheless demanded that timekeepers be added to the agreed unit. Upon the Company's refusal to negotiate any contract except upon the basis of the agreed unit, the Union filed its petition herein seeking to have the timekeepers added to the unit agreed upon in the consent election. On November 15, 1943, the parties executed a contract covering the employees in the agreed unit, the Union, however, reserving its rights with respect to representing the timekeepers by advising the Company that the status of timekeepers would be held in abeyance pending the determination of the Board.

A statement of a Board agent introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

<sup>1</sup> UAW-CIO was not represented at the present proceedings.

<sup>2</sup> The Regional Director reported that the Union submitted 71 application-for-membership cards, 65 of which bore apparently genuine original signatures and corresponded with the names of persons listed on the Company's pay roll of October 27, 1943, which contained the names of 106 employees in the appropriate unit. The cards are variously dated between January 1942 and October 1943.

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

As indicated above, the parties signed a contract on November 15, 1943, covering all hourly paid employees of the Company, but excluding, among others, all clerical employees, employees of the accounting department, and timekeepers. The Union seeks to expand its contract unit of production and maintenance employees by including timekeepers therein. Alternatively, should the Board find that timekeepers are not properly a part of said unit, the Union seeks to represent them in a separate unit. The Company opposes the inclusion of the timekeepers in the broad production and maintenance unit, but has no objection to the establishment of a separate unit on their behalf.

The Company employs approximately 100 timekeepers who are scattered throughout the various plants comprising the division. Timekeepers work in close association with counters. Both types of employees keep records showing the time each production employee spends in the plant and the volume of production, as well as other records showing the time at which work was commenced and finished on certain jobs. Some of these records are made by the timekeepers and others are made from records submitted to the timekeepers by the counters. Timekeepers ordinarily remain at their desks while counters circulate throughout the plant. In general, counters make up the initial records pertaining to the quantity of items produced and the time necessary to produce them, while timekeepers collate such material. In certain plants of the division, no counters are employed and the timekeepers at those places perform all the work relating to keeping time and records of production. Whenever a vacancy exists in a timekeeper's position, it is usually filled by promoting a counter. Although both timekeepers and counters are on the accounting department pay roll and both are hourly paid, counters are included in the present contract unit, whereas timekeepers are excluded. For a period of about 2 years prior to November 15, 1943, timekeepers had been included in the Union's contracts covering production and maintenance employees. The Company insists upon its present position because it claims that a complete agreement between the parties with respect to the exclusion of timekeepers had been reached after full discussion at the time the consent election agreement was signed. The Company further points to the fact that of the dozen separate divisions which it operates throughout the country, only one functions under a contract in which timekeepers are included in the

production and maintenance unit. In addition, the Company relies upon several recent cases<sup>3</sup> before the Board involving certain of its other divisions wherein timekeepers were excluded from units established for production and maintenance employees. In view of the fact that timekeepers are a borderline group who have been frequently excluded from units of production and maintenance employees,<sup>4</sup> and who are generally excluded from such units in the other divisions of this Company, we see no reason to alter the disposition of this category of employees affected by the consent election agreement. We shall, therefore, establish a separate unit for the timekeepers.

We find that all timekeepers of the Company, at its Eclipse Aviation—Pioneer Instrument Division, excluding the chief timekeeper, assistant chief timekeeper,<sup>5</sup> and any 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 pay-roll 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 Eclipse Aviation—Pioneer Instrument Division, Bendix Aviation Corporation, Teterboro, New Jersey, 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

<sup>3</sup> See *Matter of Julien P. Fricze and Sons, Division Bendix Corp.*, 47 N. L. R. B. 43; *Matter of Bendix Aviation, Ltd.*, 52 N. L. R. B. 1182; and *Matter of Bendix Aviation Corporation (Philadelphia Division)*, 53 N. L. R. B. 869.

<sup>4</sup> See *Matter of General Motors Corporation (Eastern Aircraft Division, Baltimore Plant)*, 52 N. L. R. B. 954; *Matter of General Motors, Eastern Aircraft, Trenton Division*, 51 N. L. R. B. 1366; *Matter of Todd Shipyards Corporation (Hoboken Division)*, 51 N. L. R. B. 1211, and *Matter of United Aircraft Products, Inc.*, 41 N. L. R. B. 501.

<sup>5</sup> The parties agree and we find that the supervisory employees mentioned above should be excluded from the unit.

for the Second 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 or not they desire to be represented by Aircraft Workers of New Jersey, Inc., for the purposes of collective bargaining.

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