

In the Matter of GOODYEAR AIRCRAFT CORPORATION, ARIZONA DIVISION  
and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE NO.  
49, AFL

*Case No. 21-R-2172.—Decided January 24, 1944*

*O'Melveny & Meyers*, by *Mr. W. B. Carman*, of Los Angeles, Calif.,  
and *Messrs. W. T. Clayton* and *F. R. Vihel*, both of Litchfield Park,  
Ariz., for the Company.

*Mr. James C. Jones*, of Phoenix, Ariz., for the IAM.

*Mr. Glenn L. Moller*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Machinists, District Lodge No. 49, AFL, herein called the IAM; alleging that a question affecting commerce had arisen concerning the representation of employees of Goodyear Aircraft Corporation, Arizona Division, Litchfield Park, Arizona, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Phoenix, Arizona, on December 8, 1943. The Company and the IAM 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 an 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

Goodyear Aircraft Corporation, a Delaware corporation, operates a plant at Litchfield Park, Arizona, known as the Arizona Division, where it is engaged in modifying airplanes and also in constructing

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parts for planes which are used in the prosecution of the war. During the period from January 1, 1943, to October 31, 1943, the Company purchased materials valued in excess of \$3,000,000, over 90 percent of which was shipped to the Litchfield Park plant from points outside the State of Arizona. During the same period all the Company's finished products, valued at more than \$8,000,000, were shipped from the Litchfield Park plant to points outside the State of Arizona.

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

We find, contrary to the contention of the Company in its brief, that International Association of Machinists, District Lodge No. 49, affiliated with the American Federation of Labor, is a labor organization in which employees of the Company participate.<sup>1</sup>

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the IAM as the exclusive bargaining representative of the Company's guards, contending that guards are not employees within the meaning of the Act and that, in any event, guards cannot constitute an appropriate bargaining unit.

A statement of a Field Examiner, for the Board, introduced into evidence at the hearing and a supplemental statement by the Trial Examiner at the hearing indicate that the IAM represents a substantial number of employees in the unit hereinafter found 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.

<sup>1</sup> Because no local of the International Association of Machinists has as yet been established for the Company's employees, and because the cards submitted by the petitioner designate the International, rather than District Lodge No. 49, as the bargaining representative of the signatory employees, the Company argues that the petitioner is not "a labor organization acting on behalf of employees" within the meaning of Article III, Section 1 of National Labor Relations Board Rules and Regulations, Series 3. We find no merit in the Company's contention. District Lodge No. 49, the petitioner herein, is a body of the International Association of Machinists which organizes and represents locals within its geographical jurisdiction. Clearly, it is a labor organization within the meaning of Section 2 (5) of the Act. See *Matter of American Furniture Company*, 4 N. L. R. B. 710; *Matter of General Shoe Corporation*, 5 N. L. R. B. 1005, 1007; *Matter of Hamilton Realty Corporation*, 10 N. L. R. B. 858; *Matter of Frigidaire Division, General Motors Corporation*, 39 N. L. R. B. 1108.

<sup>2</sup> The Field Examiner reported that the IAM submitted 18 authorization cards bearing apparently genuine original signatures of persons listed on the Company's pay roll of November 4, 1943, which contained the names of 51 employees in the appropriate unit. The Trial Examiner reported that the IAM submitted to him at the hearing 2 additional authorization cards bearing apparently genuine signatures of persons listed on the same pay roll.

## IV. THE APPROPRIATE UNIT

The IAM contends that all guards in the employ of the Company at its Litchfield Park plant, including sergeants, but excluding, supervisory employees with authority to hire and discharge, constitute an appropriate bargaining unit. The Company contends that no unit of guards is appropriate, claiming that guards are not employees within the meaning of the Act; that, aside from the question of their status, they cannot constitute an appropriate bargaining unit because they are supervisory employees and representatives of management; and that they cannot be represented by the IAM because that organization is already the bargaining agent for the other employees of the Company.

The duties and functions of the plant-protection department are to protect the employees from internal hazards, such as sabotage and espionage, to interpret and enforce company rules and to protect Government and Company property both within and outside the plant. Guards are sworn in as auxiliary military police, are armed and uniformed and are stationed or posted at some 14 different locations throughout the plant area.<sup>3</sup> The guards check and require identification of all persons entering and leaving the plant, prevent unauthorized persons from entering restricted areas, guard secret equipment, and preserve order among the employees. When a guard finds an employee violating company rules, he may report the violation to the shift lieutenant. Such a report could result in the discharge of the guilty employee. He may, if necessary, oust an employee from the plant. In the event of a major emergency, the guards are in complete charge of the entire plant. They can stop production under such circumstances, in order to prevent damage to persons or property.

The Company's brief admits that its contentions herein have been raised in previous cases and specifically overruled by the Board. It is urged, however, that the facts in the instant case are different from those in the earlier cases, justifying a contrary decision, and that, in any event, the Board should overrule its previous decisions. We find nothing in the instant case to distinguish it from previous cases involving units of militarized plant guards and we are not persuaded that our previously established position should be changed. We find that the guards may constitute an appropriate bargaining unit.<sup>4</sup>

<sup>3</sup> The Company maintains a warehouse several miles from the plant in Phoenix, Arizona, and a guard is regularly stationed there. This warehouse is considered to be part of the plant.

<sup>4</sup> *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Maryland Drydock Company*, 50 N. L. R. B. 363.

The remaining issues concern the inclusion or exclusion of certain categories of alleged supervisory employees; shift lieutenants, sergeants, and two special assistants. The two special assistants, Kimmis and Abbott, perform confidential and supervisory functions, and the parties agree to their exclusion from the unit. The Company contends that shift lieutenants and sergeants, are supervisory employees and should therefore be excluded from the appropriate unit. The IAM contends that only those supervisory employees who have authority actually to hire or discharge should be excluded, and that lieutenants and sergeants do not have such authority. The shift lieutenants are in charge of all guards on their respective shifts. Their duties are entirely supervisory, including the assignment of duties to guards, disciplining their subordinates when necessary, and making recommendations with reference to hire and discharge. The lieutenants will be excluded from the unit. The sergeants, on the other hand, appear to possess much less supervisory authority than lieutenants. Although their regular duties are set forth in the record, the only evidence of their alleged supervisory status is the fact that they "may assign guards to meet requirements on that shift when immediate requests are made on that shift, wherever a guard is needed for any reason." The mere authority to assign or lay out work is not, in itself, sufficient to justify exclusion from the appropriate unit of an employee possessing such authority. Leadmen, who perform the same function in the production departments of the plant, were included in the unit of production and maintenance employees, with the consent of the Company. The record fails to show that sergeants possess such supervisory responsibilities as to disqualify them from being part of the unit. We shall include the sergeants in the appropriate unit.

We find that all militarized plant guards in the employ of the Company at its plant at Litchfield Park, Arizona, including guards stationed at the Phoenix warehouse, and including sergeants, but excluding the two special assistants,<sup>5</sup> lieutenants, the captain, 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 em-

<sup>5</sup> As noted above there are two special assistants, Kimmis and Abbott, employed at the time of the hearing.

ployees 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 Goodyear Aircraft Corporation, Arizona Division, Litchfield Park, Arizona, 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 Twenty-first 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 election, to determine whether or not they desire to be represented by International Association of Machinists, District Lodge No. 49, affiliated with the American Federation of Labor, for the purposes of collective bargaining.