

In the Matter of BELL AIRCRAFT CORPORATION *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO)

Case No. 3-R-710.—Decided February 23, 1944

Dudley, Stowe & Sawyer, by *Mr. Horace C. Winch*, of Buffalo, N. Y., for the Company.

Mr. David Diamond, of Buffalo, N. Y., for the Union.

Mr. Leon Novak, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft and 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 Bell Aircraft Corporation, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on January 24, 1944. The Company and the Union appeared and participated.¹ 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 an opportunity to file briefs with the Board.²

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bell Aircraft Corporation is a New York corporation, which, at its Niagara Frontier Division, with which we are here concerned, is en-

¹The International Association of Machinists, AFL, which subsequent to the filing of a petition herein, had indicated its interest in this proceeding, appeared at the hearing and stated that it did not desire to participate.

²Subsequent to the hearing the Company filed a motion to correct the record in certain minor respects. The motion is hereby granted.

gaged in the manufacture of airplanes. During the year 1943, the Company purchased raw materials, to be used at the Niagara Frontier Division, valued in excess of \$1,000,000, a substantial portion of which was shipped to the Company from points outside the State of New York. During the same period, the Company sold finished products valued in excess of \$1,000,000, a substantial portion of which was shipped by it to points outside the State of New York.

The Company admits, for the purposes of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and 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

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the Company's militarized plant-protection employees, contending, in effect, that such employees 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 Board agent,² introduced into evidence at the hearing, indicates, contrary to the contention of the Company, that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

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 all militarized guards in the employ of the Company at its Niagara Frontier Division, including sergeants, but excluding lieutenants and captains, constitute an appropriate bargaining unit. The Company contends that guards cannot constitute an appropriate bargaining unit because (1) they are representatives of management and (2) they cannot be represented by the Union because that organization is already the exclusive bargaining representative of the Company's production and maintenance em-

³ The Field Examiner's report shows that the Union submitted 216 cards and that the names of 184 persons appearing on the cards were listed on the Company's pay roll of December 15, 1943, which contained the names of 596 employees in the appropriate unit.

employees in a unit from which guards were specifically excluded by agreement of the parties. We find no merit in the Company's contention.⁴

The remaining issue concerns the inclusion or exclusion of sergeants. The Union seeks to include these employees in the appropriate unit. The Company, contending that they exercise supervisory authority, seeks to exclude them. The record indicates that sergeants are in charge of approximately 7 guards, to whom they convey the instructions of the lieutenants, and whose posts they inspect from time to time, to ascertain whether they are at their stations. In the event of infractions on the part of guards, sergeants are charged with the duty to report them to a lieutenant. While they do not have the authority to hire or discharge, sergeants occasionally make recommendations concerning proposed disciplinary action. Under the circumstances, we find that sergeants have substantial supervisory authority. We shall, therefore, exclude the sergeants from the unit hereinafter found appropriate.

We find that all militarized guards employed by the Company at its Niagara Frontier Division, excluding sergeants, lieutenants and captains, and all or 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction. The Union requests that it be designated on the ballot as UAW-CIO. We hereby grant this request.

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 Bell Aircraft Corporation, Buffalo, New York, an election by secret ballot shall be

⁴ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322

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 Third 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 UAW-CIO, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.