

In the Matter of WINTER AND COMPANY and UNITED AERONAUTICAL
WOOD WORKERS LOCAL NO. 101, CIO

Case No. 2-R-4499.—Decided March 29, 1944

Messrs. William L. Schwartz and Philip Warshaw, of New York City, for the Company.

Mr. Harry Weinstock, of New York City, for the Union.

Miss Kate Wallach, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Aeronautical Wood Workers, Local No. 101, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Winter and Company, New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jerome I. Macht, Trial Examiner. Said hearing was held at New York City, on March 2, 1944. 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 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

Winter and Company is a New York corporation having its plant and general offices at New York City. The regular business of the Company is the manufacture of pianos, but since 1942 the Company has been engaged in the manufacture, sale, and distribution of aircraft parts for gliders. The principal raw materials and unfinished

products used are lumber, glue, varnish, and lacquer. During the past year the Company purchased raw materials and unfinished products valued at approximately one-half million dollars, of which 90 percent was shipped to the Company from points outside the State of New York. During the same period the Company sold products valued at approximately \$1,300,000, of which 90 percent was shipped from its plant to points outside the State of New York.

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

II. THE ORGANIZATION INVOLVED

United Aeronautical Wood Workers Local No. 101, 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 its employees until the Union has been certified by the Board in an appropriate unit.

A statement of the Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 requests a unit of all production and maintenance employees, including watchmen, porters, yardmen, carpenters, leadmen, inspectors, elevator operators, and draftsmen, but excluding the chief inspector, engineers, fireman, millwright, clerical employees, militarized guards, foremen, and supervisors. The Company, contends, however, that yardmen, elevator operators, repairmen, porters, packers, and watchmen, all of whom are classified generally as maintenance employees, and inspectors, should be excluded from the unit.

Maintenance employees.—The yardmen unload the lumber from the freight car and take it to the plant where the elevator men

¹ The Field Examiner reported that the Union submitted 129 application cards, all of which bore apparently genuine original signatures; that the names of 129 persons appearing on the cards were listed on the Company's pay roll of February 10, 1944, which contained the names of 183 employees in the appropriate unit, and that 8 of the cards were dated January 1943, 87 January 1944, 13 (no year given); 21 were undated.

distribute it to the different floors for further operations. The repairmen are in charge of all defects in the lighting system, disturbances in the machinery, and other incidental repair work necessary to maintain continuous production. The porter's task is to keep the plant clean during working hours. The packers prepare the finished products for shipment. The non-militarized watchmen guard the premises at night. With the exception of the watchmen, these above-named maintenance employees perform their duties during regular working hours in close cooperation with the production employees. They receive hourly pay and overtime at substantially the same rate and enjoy the same privileges as do the production employees. Inasmuch as the work of the foregoing maintenance employees is closely allied to that of the production employees, we shall include them in the unit.²

Inspectors.—The Company requests that the inspectors be excluded from the unit on the ground that they are responsible for the quality of work produced by the production employees, and have the right to reject articles which do not conform to the specifications set for them; that the inspectors furthermore can and do recommend transfers of employees from one department to another, which brings them into the class of supervisory employees. We do not agree with the contentions of the Company. The inspectors do not supervise production employees in the sense that they have the power to hire, discharge, or recommend such action; they are only concerned with the quality of the work produced. Whenever shifting of personnel is deemed advisable the inspectors make recommendations to the chief inspector, who, in turn, takes the matter up with either the foreman or the superintendent. It is the Company's policy to shift workers to different jobs rather than penalize them for poor workmanship. The inspectors receive substantially the same hourly rate of pay as do some of the production employees and they work the same number of hours. Since their work brings them in close contact with the production employees, and since their interests are similar to those of the production employees, we shall include them in the unit.³

We find that all production and maintenance employees, including watchmen, porters, yardmen, carpenters, leadmen, inspectors, elevator operators, and draftsmen, but excluding the chief inspector, engineers, fireman, millwright, clerical employees, militarized guards, foremen, and supervisors, with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively

² See *Matter of Leland-Gifford Co.*, 51 N. L. R. B. 1349.

³ See *Matter of McDonnell Aircraft Corporation*, 49 N. L. R. B. 897; *Matter of Howard Aircraft Corp.*, 51 N. L. R. B. 386; *Republic Aviation Corp.*, 51 N. L. R. B. 1287; *Consolidated Vultee Aircraft Corp.*, 54 N. L. R. B. 579; *Laister-Kauffmann Aircraft Corp.*, 52 N. L. R. B. 155.

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

The Union desires the Board to use the pay-roll date of the week preceding the hearing because the Company is contemplating a decrease in personnel due to impending changes in operations. We see no reason, however, to depart from our usual practice. Accordingly, 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 Winter and Company, New York City, 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 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 United Aeronautical Wood Workers Local No. 101, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.