

In the Matter of RYAN AERONAUTICAL Co. and UNITED AUTOMOBILE,
AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
LOCAL 146, CIO

Case No. 21-R-2219.—Decided April 8, 1944

Sloane & Steiner by *Mr. H. C. Sloane*, of San Diego, Calif., for the Company.

Mr. Cyril V. O'Halloran, of Los Angeles, Calif., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Automobile, Aircraft, and Agricultural Implement Workers of America, Local 146, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ryan Aeronautical Co., San Diego, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Maurice J. Nicoson, Trial Examiner. Said hearing was held at San Diego, California, on February 18, 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

Ryan Aeronautical Co., a California corporation having its principal office and place of business at San Diego, California, is engaged in the manufacture and sale of aircraft and aircraft parts for both commercial and military use. During its fiscal year November 1,

1942, to October 31, 1943, the Company purchased raw materials valued in excess of \$1,000,000, a substantial portion of which was secured outside the State of California, and sold airplanes and airplane parts valued in excess of \$1,000,000, the greater part of which was sold and shipped to points outside that State, or to the United States Government.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Automobile, Aircraft, and Agricultural Implement Workers of America, Local 146, CIO, 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 plant protection employees.

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 alleged to be 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 UNITS

The Union seeks a unit composed of all plant protection employees of the Company, including sergeants but excluding clerical employees and supervisory employees with authority to hire and discharge.² The Company does not contest the Union's contentions.

While all guards are uniformed and perform substantially similar duties, some of the guards are armed and are members of the Auxiliary Military Police, while others are neither armed nor militarized. The parties apparently would include all guards in one unit. As we pointed out in the *Dravo* case,³ militarized plant protection personnel have greater duties and obligations than non-militarized personnel and are subject to some control by the military establishments. We there

¹ The Field Examiner reported that the Union submitted 28 membership application cards, all of which bore apparently genuine original signatures; that the names of 25 persons appearing on the cards were listed on the Company's pay roll for November 29 to December 3, 1943, which contained the names of 51 employees in the alleged appropriate unit.

² The pay roll lists the category of "receptionists." These are uniformed and a part of the plant protection system. We shall treat them as a constituent part of the guards group.

³ *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

established separate units of militarized and non-militarized plant protection employees. We see no reason for merging the two groups here, and the same reasons which impelled us to separate them in the *Dravo* case lead us to a like conclusion here.

The guards operate in three shifts each under the supervision of a captain and a lieutenant. In addition there are sergeants on each shift who are on general patrols, have no regularly assigned posts but operate under all conditions throughout the plant, and check each post where guards are stationed. They apparently have charge of squads at times. At the entrance gate sergeants have authority to grant or deny admittance to persons seeking entry into the plant. All orders are handed down to the guards through the various officers, including the sergeants. While sergeants do not have the right to hire or discharge, they can recommend to the captains or chief the transfer, removal, hire, or discharge of guards.⁴ Their recommendations are, however, subjected to investigation by the captains, lieutenants, and the chief, who have authority to hire and discharge. Upon the evidence before us we conclude that sergeants fall within our usual definition of supervisory employees. We shall exclude them as well as the chiefs, captains, and lieutenants from the unit.

We find that all militarized plant protection employees, excluding clerical employees and all 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.

We find also that all non-militarized plant protection employees, excluding clerical employees and all 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 units 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.

⁴ The Union would not exclude employees having authority to recommend hire or discharge.

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 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 Ryan Aeronautical Co., San Diego, California, 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 units 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 United Automobile, Aircraft, and Agricultural Implement Workers of America, Local 146, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.