In the Matter of BENDIX PRODUCTS DIVISION, BENDIX AVIATION CORPORATION *and* BENDIX LOCAL 9, UAW-CIO

Case No. 13-R-2281.—Decided May 17, 1944

Messrs. Cassels, Potter & Bentley, by *Mr. W. S. Warfield*, of Chicago, Ill., for the Company.

Mr. Harry J. Rodgers, and *Mr. William F. Harrington*, both of South Bend, Ind., for the Union.

Mr. Joseph W. Kulkis, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Bendix Local 9, UAW-CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Bendix Products Division, Bendix Aviation Corporation, South Bend, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Russell Packard, Trial Examiner. Said hearing was held at South Bend, Indiana, on April 14, 1944. The Company and the Union 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

Bendix Products, a division of Bendix Aviation Corporation, a Delaware corporation, has its principal office and place of business at South Bend, Indiana, where it is engaged in the manufacture and sale of airplane parts and related items. During the year 1943, the Company received from points outside the State of Indiana raw ma-

terials valued in excess of one million dollars. During the same period the Company shipped to points outside the State of Indiana finished products valued in excess of one million dollars.

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

Bendix Local 9, UAW, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Union requested the Company to recognize it as the exclusive bargaining representative of the employees within the alleged appropriate unit. The Company refused to accord the Union such recognition unless and until certified by the Board.

A statement of the Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees within the unit hereinafter found 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 UNIT; THE DETERMINATION OF REPRESENTATIVES

The Union seeks a unit comprising all hourly rated tool designers employed in Department 23 of the Company, excluding chief designers-group leaders. The Company agrees generally with the appropriateness of the foregoing unit. The Union, however, desires that if an election is held among the tool designers which results in selection of the Union as their representative, the tool designers be made part of the larger production and maintenance unit which the Union now represents.[2] The Company opposes such consolidation.

The tool designers in Department 23 are responsible for the drafting of designs for new jigs, fixtures, and tools, work in groups of 6 to 10 men under the supervision of group leaders, and receive up to $1.77 per hour; their work is creative, technical, and highly skilled.

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[1] The report of the Field Examiner shows that the Union submitted 51 cards, all of which bear names appearing on the March 12, 1944, pay roll of the Company, which contains the names of 63 persons within the alleged appropriate unit.

[2] See *Matter of Bendix Products Corporation*, 3 N. L. R B 682, wherein the Board certified the Union as bargaining agent for all of the employees of Bendix Products Corporation who are paid on an hourly basis, including apprentices, factory clerks and time checkers, and excluding other clerical workers and supervisory employees.

In view of the divergence in skill and rate of pay between the tool designers and other employees in the general production and maintenance unit, we are of the opinion, and find, that the tool designers as a group could properly function as a separate bargaining unit [3] or as part of the larger production and maintenance unit already represented by the Union. Accordingly, we shall permit the preference of the tool designers to determine, in part, whether or not they shall be added to the existing unit of production and maintenance employees, and to that end shall order an election. If at such election these employees select the Union they will have thereby indicated their desire to be included in a unit with the production and maintenance employees, and the Union may accordingly bargain for them as a part of such unit.

The parties are in further disagreement with respect to the supervisory status of five group leaders, whom the Company would exclude and the Union would include within the voting group. The record discloses that the Company employs in its Department 23 a number of employees, known as group leaders, who supervise and direct the work of the tool designers in the department. They assign work, check over designs prepared by men under their supervision and help the latter in the solution of technical problems. According to uncontradicted testimony adduced on behalf of the Company, the group leaders do no actual work themselves, and can make recommendations concerning the discharge and discipline of employees working under them. They also make recommendations with respect to the granting of wage increases to employees under their supervision. All group leaders are paid 10 cents an hour more than the highest paid employee working under them. The record discloses, however, that the group leader of the die cast design division at this time does not have anyone under his supervision due to the change-over to war work. All necessary work in the die cast design division is prepared by this one employee. In view of the foregoing, we find that the group leaders fall within our usual definition of a supervisory employee, and accordingly, we shall exclude them from the voting group. The group leader in the die cast division, however, will be eligible to vote and will be deemed included in the unit, if the designers select the Union, so long as he does not perform supervisory duties.

We shall direct that an election by secret ballot be held among all hourly rated employees of the Company's Department 23, employed as tool designers, but excluding group leaders, chief designers-group leaders, and all other supervisory employees with authority to hire,

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[3] See *Matter of Frigidaire Division General Motors Corporation*, 48 N L R B 1404; *Matter of Curtiss-Wright Corporation (Airplane Division, Louisville, Kentucky)*, 52 N. L. R B 805

promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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 representation for the purposes of collective bargaining with Bendix Products Division, Bendix Aviation Corporation, South Bend, Indiana, 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 Thirteenth 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 all hourly rated employees of the Company's Department 23, employed as tool designers, but excluding group leaders, chief designers-group leaders, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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 election, to determine whether or not they desire to be represented by Bendix Local No. 9, UAW-CIO, for the purposes of collective bargaining.

[*See infra*, 56 N. L. R. B. 1805, for Amendment to Decision and Second Direction of Election.]