

In the Matter of AIRWING PRODUCTS, INC. and INDEPENDENT MACHINE  
OPERATORS AND HELPERS UNION

Case No. 2-R-4328.—Decided May 25, 1944

*Kurzman & Frank*, by *Mr. Isidore Minkin* and *Mr. Harvey G. Glugatch*, both of New York City, for the Company.

*Liebowitz & Schuman* by *Mr. Herman Perlmutter*, of New York City, for the Independent.

*Mr. Saul Lasher*, of New York City, for the A. F. L.

*Mr. Max M. Goldman*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Independent Machine Operators and Helpers Union, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Airwing Products, Inc., New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David H. Werther, Trial Examiner. Said hearing was held at New York City on April 14, 1944. At the hearing the Trial Examiner granted a motion to intervene made by Metal Production and Novelty Workers Union, Local 28-A, affiliated with the American Federation of Labor, herein called the A. F. L. The Company, the Independent, and the A. F. L. 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

Airwing Products, Inc., a New York corporation, is engaged in the manufacture of aircraft parts and ladies' compacts in New York City.

During the last 12 months, the Company purchased raw materials consisting principally of brass and steel, exceeding \$10,000 in value, approximately 10 percent of which was shipped to it from points outside the State of New York. During the same period, the Company sold more than \$250,000 worth of finished products, approximately 70 percent of which was shipped by it 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 ORGANIZATIONS INVOLVED

Independent Machine Operators and Helpers Union is an unaffiliated labor organization admitting to membership employees of the Company.

Metal Production and Novelty Workers Union, Local 28-A, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On October 4, 1943, the Independent wrote to the Company requesting a conference for the purpose of negotiating a collective bargaining agreement. The Company declined to hold a conference and refused to recognize the Independent as the exclusive bargaining agent of its employees, indicating that its contract with the A. F. L. had expired on July 20, 1943, but that it was negotiating a new contract with that organization. Thereafter, the Independent filed its petition in the instant case.

The contract referred to above was entered into after the A. F. L. won a consent election among the Company's production and maintenance employees on June 22, 1942. It covered the usual subjects of collective bargaining and fixed the relationship between the Company and the A. F. L. for a period of 1 year commencing July 20, 1942. About 5 days prior to the expiration of this contract, the Company and the A. F. L. commenced negotiating a new contract. They had several conferences and on about September 1, 1943, enlisted the aid of the United States Conciliation Service. On September 8, an oral accord having been reached on all issues but three—wages, vacations, and compensation for unauthorized strikes, or walk-outs—they submitted these issues to the National War Labor Board. At the time the Company and the A. F. L. also agreed orally that any contract which they would enter into would be retroactive to the expiration date of their prior contract and that in the interim the terms and conditions established by the expired contract would apply. The National War Labor Board conducted a hearing on the unsettled

issues between the parties, but indicated that it would hold its determination in abeyance pending the Board's decision in the instant proceeding. The A. F. L. contends, in effect, that a bar exists to a current determination of representatives because of the foregoing facts.

The Board has held that a newly recognized or certified representative is entitled to a reasonable opportunity to obtain the benefits of representation, as evidenced by a collective bargaining contract, and that where delay in obtaining such a contract is caused by resort to the orderly processes of governmental agencies, the Board will not proceed with a new investigation and determination of representatives.<sup>1</sup> We do not consider that the instant case is governed by that holding. For a year the A. F. L. was the exclusive bargaining representative of the Company's production and maintenance employees. During that period it obtained, under its contract, many substantial benefits for these employees.<sup>2</sup> Consequently, we are of the opinion that the negotiations between the parties and the pending proceedings before the National War Labor Board do not bar the instant proceeding.<sup>3</sup> We also conclude that the oral interim accord, standing alone, does not operate to preclude a present determination of representatives.<sup>4</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Independent represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</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.

#### IV. THE APPROPRIATE UNIT

We find, substantially in accordance with an agreement of the parties, that all production and maintenance employees of the Company, including the porter, but excluding office and clerical employees, the toolmaker, the assistant supervisor, 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

<sup>1</sup> See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306

<sup>2</sup> See *International Harvester Company*, 55 N. L. R. B. 497.

<sup>3</sup> See *Bethlehem Supply Company*, 56 N. L. R. B. 439

<sup>4</sup> See *Matter of Ecor, Inc.*, 46 N. L. R. B. 1035.

<sup>5</sup> The Field Examiner reported that the Independent submitted 12 authorization cards; that the names of all the persons appearing on the cards were listed on the Company's pay roll of November 8, 1943, which contained the names of 15 employees in the appropriate unit; and that the cards were all undated. The A. F. L. relies on its contract as evidence of its interest in this proceeding.

## 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.<sup>6</sup>

## 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 the 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 Airwing Products, Inc., 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 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 they desire to be represented by Independent Machine Operators and Helpers Union, or by Metal Production and Novelty Workers Union, Local 28-A, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

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<sup>6</sup> The A. F. of L. requests that the eligibility date be July 20, 1943. There appears, however, to be no reason for departing from our usual practice.