

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

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

Cases Nos. 3-R-766 and 3-R-774, respectively.—Decided June 13, 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. Max M. Goldman, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), herein called the Union, alleging that questions affecting commerce had arisen concerning the representation of employees of Bell Aircraft Corporation, Wheatfield, New York, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on May 2, 1944. The Company and the Union appeared and participated. The Company moved to dismiss the petition in Case No. 3-R-774 on the ground that the unit requested by the Union is inappropriate, and the Trial Examiner referred the motion to the Board. For reasons stated hereinafter, the motion is hereby granted. 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. On May 12, 1944, the Company filed a motion with the Board to correct the record in certain respects. The

56 N. L. R. B., No. 242.

Union having been afforded an opportunity to object to the motion on or before May 19, 1944, and having failed to do so, the motion is granted.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bell Aircraft Corporation, a New York corporation, is engaged in the manufacture of aircraft at its Niagara Frontier Division which is solely involved in this proceeding. During the year 1943, the Company purchased raw materials, to be used at the Niagara Frontier Division, valued in excess of \$1,000,000, of which more than 51 percent 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, of which more than 51 percent 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 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 IN CASE NO. 3-R-766; THE ALLEGED QUESTION CONCERNING REPRESENTATION IN CASE NO. 3-R-774

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its timekeepers in Case No. 3-R-766, and certain of its laboratory workers in Case No. 3-R-774, until the Union has been certified by the Board.

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 hereinafter found appropriate in Case No. 3-R-776.¹

We find, with respect to Case No. 3-R-766, 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.

Since, however, we hereinafter determine that the unit sought by the Union in Case No. 3-R-774 is inappropriate, we find, in regard to

¹ The Field Examiner reported that the Union in Case No. 3-R-766 submitted 117 designation cards, that there are 186 employees in the unit petitioned for; and that the cards were dated as follows: 43 in 1943, 63 in 1944, and 11 undated.

that case, that no 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 IN CASE NO. 3-R-766; THE ALLEGED APPROPRIATE UNIT IN CASE NO. 3-R-774

The parties have stipulated in Case No. 3-R-766 that all timekeepers employed by the Company at its Niagara Frontier Division, excluding those employees who occupy a rank higher than that of lead timekeeper, constitute an appropriate bargaining unit. They are in disagreement, however, concerning the status of the lead timekeepers, the Union contending that they should be included, and the Company that they should be excluded from the unit as supervisory employees.

The Company employs between 20 and 25 lead timekeepers and between 185 and 200 timekeepers at its Niagara Frontier Division. The lead timekeepers are in charge of groups consisting of between 3 and 7 timekeepers. They are responsible for the work of the employees of their respective groups, advising them as to procedure, assigning them to their work, and ascertaining whether their tasks are properly executed. The lead timekeepers effectively recommended discipline and merit raises for the timekeepers under their supervision. We are of the opinion that the lead timekeepers fall within our customary definition of supervisory employees, and we shall, therefore, exclude them from the unit.²

We find that all the timekeepers employed by the Company at its Niagara Frontier Division, excluding lead timekeepers and those employees occupying a rank higher than that of lead timekeeper, 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.

In Case No. 3-R-774 the Union seeks a unit of the Company's Niagara Frontier Division laboratory workers employed in department 16 and stationed in the Main Street and Elmwood Avenue plants, and would exclude the other laboratory workers of department 16 stationed at the Niagara Falls plant. The Company moved to dismiss the petition, asserting: (1) that the laboratory workers have confidential duties and are consequently so close to management that they cannot form a unit appropriate for the purposes of collective bargaining, and (2) in the event the Board rejects that contention, only a unit of all the laboratory workers in its Niagara Frontier Division is appropriate.

² See *Suerry Gyroscope Company, Inc.*, 55 N. L. R. B. 997.

Although some of the laboratory employees perform work on war products which is considered secret, it does not appear that the duties of these employees identify them with management or that they acquire, in the course of such duties, knowledge of matters pertaining to labor relations. Therefore, we find no merit to the Company's contention that the laboratory workers are precluded from engaging in collective bargaining.³

The Company employs laboratory workers in departments 16, 34, and 67, at its Niagara Frontier Division. They are all under the general supervision of the chief division engineer, and they perform research, testing, and inspection functions for the Company. Their qualifications and working conditions are comparable. As indicated above, the Union seeks a unit of only some of the laboratory employees in department 16 and would exclude all others in that department, although the remainder perform substantially the same role in the Company's operations. In addition, the Union would exclude laboratory employees in departments 34 and 67 of the Niagara Frontier Division, who perform functions closely analogous to those performed by department 16 employees.⁴ It appears that in Case No. 3-R-766 the Union seeks to bargain with the Company for the timekeepers in the entire Niagara Frontier Division. Moreover, on another occasion the Board found, and it was the Union's position, that the guards employed throughout that Division constitute an appropriate unit.⁵ We are of the opinion that the employees sought by the Union form only part of a homogenous group of Niagara Frontier Division laboratory workers and do not in themselves constitute an appropriate unit. Consequently, we shall dismiss the petition in Case No. 3-R-774.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions 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.

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

³ See *Republic Aviation Corporation*, 54 N. L. R. B. 539.

⁴ The laboratory workers in department 16 do mechanical research and materials testing, those in department 34 test the functional parts of the finished airplane; and those in department 67 test the flight instruments.

⁵ 54 N. L. R. B. 1578.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Bell Aircraft Corporation, Wheatfield, New York, 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 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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of the Bell Aircraft Corporation, Wheatfield, New York, filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, in Case No. 3-R-774 be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision, Direction of Election and Order.