

In the Matter of CONSOLIDATED VULTEE AIRCRAFT CORPORATION AND
STUDIO COMMISSARY SERVICE COMPANY and CULINARY AND HOTEL
WORKERS, LOCAL UNION No. 681, A. F. L.

Case No. 21-R-2406.—Decided August 28, 1944

Mr. George C. Ford, of Downey, Calif., for the Consolidated.

Mr. Jack Arnold, of Long Beach, Calif., and *Mr. C. T. McDonough*,
of San Francisco, Calif., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by Culinary and Hotel Workers, Local Union No. 681, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Consolidated Vultee Aircraft Corporation, herein called the Consolidated, and Studio Commissary Service Company, herein called the Commissary, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Los Angeles, California, on July 3, 1944. Consolidated and the Union appeared and participated. Commissary, although served with Notice of Hearing, did not appear. However, in a letter of June 25, 1944, addressed to the Regional Director, Commissary denied the jurisdiction of the National Labor Relations Board. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the Trial Examiner reserved for the Board a ruling on Consolidated's motion to dismiss the petition as to it on the ground that it was not the employer of the employees involved in this proceeding. For the reasons hereinafter stated, the said motion is hereby granted. 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:

57 N. L. R. B., No. 277.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Consolidated Vultee Aircraft Corporation, a Delaware corporation operates a number of aircraft manufacturing plants throughout the United States, including the plant at Downey, California, with which this proceeding is concerned. Commissary operates the canteen and cafeteria facilities at this plant under a lease agreement with Consolidated.¹ From the terms of the contract, it appears that Commissary has the status of an independent contractor; Consolidated retains no control over the personnel, wage, or price policies of Commissary. There is no other evidence in the record which may reasonably be construed as establishing an employer-employee relationship between Consolidated and the employees of Commissary.² We find, in accord with the contention of Consolidated, that the employees of Commissary are not employees of Consolidated.

Commissary is engaged in a business essentially local in character and one over which the Board does not customarily assert jurisdiction. While the evidence clearly establishes the fact that Consolidated is within the purview of the Act, no evidence was adduced showing that a strike involving only the employees of Commissary would burden or obstruct Consolidated's production processes.³ Under these circumstances, we are of the opinion that the policies of the Act will not be effectuated by asserting jurisdiction in this case. Accordingly, we shall dismiss the petition.

ORDER

Upon the basis of the foregoing findings of fact and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives filed by Culinary and Hotel Workers, Local Union No. 681, affiliated with the American Federation of Labor, be, and it hereby is, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.

¹ Commissary also operates cafeteria concessions at the North American Aviation plant at Inglewood, California, and at the R. K. O. Radio Pictures, Inc., studio in Hollywood, California.

² In *Matter of Bethlehem-Fairfield Shipyard, Incorporated*, 53 N. L. R. B. 1428, the Board found that employees of a cafeteria concessionaire in the plant were also employees of Bethlehem on the basis of provision in the contract between the concessionaire and Bethlehem in which the concessionaire agreed ". . . to dismiss from its employ any person or persons whom the Contractor in writing states is unsatisfactory to the Contractor, and to pay such salaries which are not less than, or in conflict with such scale wages or salaries as may be established by the Contractor." No such provision for control is contained in the contract between Consolidated and Commissary in the instant case.

³ Employees of Consolidated are not dependent completely on the canteen and cafeteria facilities operated by Commissary. Beyond the confines of Consolidated's property, and about 100 yards from the building housing Commissary's canteen and cafeteria, are two restaurants and one cafeteria, independently operated