

In the Matter of CONSOLIDATED VULTEE AIRCRAFT CORPORATION and
HOTEL AND RESTAURANT EMPLOYEES' & BARTENDERS' UNION, LOCAL
No. 133, A. F. L.

Case No. 10-R-1238.—Decided September 12, 1944

Loftin Anderson Scott McCarthy and Preston, by Mr. Alfred L. McCarthy, of Miami, Fla., for the Company.

Mr. Harry Brand, of Miami, Fla., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Hotel and Restaurant Employees' & Bartenders' Union, Local No. 133, 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, Miami Springs, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Paul S. Kuelthau, Trial Examiner. Said hearing was held at Miami, Florida, on August 16, 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

Consolidated Vultee Aircraft Corporation, a Delaware corporation, is engaged in the manufacture and assembly of aircraft parts at its plant in Miami Springs, Florida. This plant annually uses raw mate-

rials valued in excess of \$100,000, of which 95 percent is received from outside the State of Florida. During the same period the Miami Springs plant manufactures finished products whose value exceeds \$500,000, all of which is shipped to points outside the State of Florida.

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

II. THE ORGANIZATION INVOLVED

Hotel and Restaurant Employees' & Bartenders' Union, Local No. 133, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the Union as the exclusive bargaining representative of its cafeteria employees until the Union has been certified by the Board in an appropriate unit.

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.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 Union seeks a unit comprising all of the employees in the cafeteria, excluding the manager. The Company contends that in addition to the manager, the chef, the clerks, and the cashiers should also be excluded.

Chef. In addition to doing some cooking himself, the chef supervises the work of nine employees in the kitchen. He has the power to recommend the hiring and discharging of kitchen help. In view of his supervisory duties, we shall exclude him from the unit.²

¹ The Field Examiner reported that the Union submitted petitions signed by 17 employees; that the petitions were dated between April 19 and April 21, 1944, and that there were 37 employees in the unit petitioned for. At the hearing the Union submitted to the Trial Examiner undated designations from 5 additional employees.

The Company claims that since the original designations were signed in April 1944, there has been a very large turnover of employees in the cafeteria and that the Union should be required to prove that it represented a substantial number of employees at the time of the hearing. Designations are submitted to enable the Board to determine administratively at the time the petition is filed whether or not the Union has sufficient interest to justify the Board in proceeding with an investigation. The Union is not required to show continued substantial representation down to the date of the hearing. *Matter of The Regina Corporation*, 57 N. L. R. B. 4.

² *Matter of Bethlehem-Fairfield Shipyard, Incorporated*, 53 N. L. R. B. 1423.

Clerks and Cashiers. The duties of both these classes of employees are clerical in nature and not directly connected with the preparation and serving of food. In accord with previous decisions of the Board, respecting similar employees, we shall exclude clerks and cashiers from the unit.³

We find that all of the employees of the Company's cafeteria at its plant in Miami Springs, Florida, excluding the manager, chef, clerks, cashiers, 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,⁴ 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 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.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Consolidated Vultee Aircraft Corporation, Miami Springs, Florida, 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 Tenth 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 the said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed

³ *Matter of Bethlehem-Fairfield Shipyards, Incorporated*, 53 N. L. R. B. 1428; *Matter of S & W Cafeteria of Washington, Incorporated*, 20 N. L. R. B. 259.

⁴ Regular employees of the plant who help out in the cafeteria during rush hours are excluded from the aforesaid unit in accordance with the agreement of the parties.

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 Hotel and Restaurant Employees' & Bartenders' Union, Local No. 133, affiliated with the American Federation of Labor, for the purposes of collective bargaining.