

In the Matter of CONSOLIDATED VULTEE AIRCRAFT CORPORATION and
INTERNATIONAL ASSOCIATION OF MACHINISTS, PALM CITY LODGE
#745, A. F. OF L.

Case No. 10-R-1339.—Decided December 28, 1944

Messrs. Loftin, Anderson, Scott, McCarthy & Preston, by Messrs. Alfred L. McCarthy and R. H. Biron, of Miami, Fla., for the Company.

Messrs. H. C. Summers, Howard S. Davis, and E. O. Kimpton, of Miami, Fla., for the Union.

Mr. Samuel G. Hamilton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, Palm City Lodge #745, A. F. of 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 November 22, 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. On December 5 and 6, 1944, respectively, the Company and the Union filed briefs, which the Board has considered.

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, operates a plant at Miami Springs, Florida, at which it is engaged in
59 N. R. L. B., No. 232.

the manufacture and assembly of aircraft parts. Annually, the Miami Springs plant uses raw materials valued in excess of \$100,000, 95 percent of which is shipped to the plant from points outside the State of Florida. The Miami Springs plant ships annually to points outside the State of Florida all of its products, which are valued in excess of \$500,000.

The Company does not deny, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, Palm City Lodge #745, 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 grant recognition to the Union as the exclusive bargaining representative of certain of its 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 composed of all nurses employed by the Company at its Miami Springs, Florida, plant, excluding supervisory personnel. However, the Company contends that nurses are comparable to supervisory employees because they exercise in behalf of management similar discretion and independent judgement, and consequently "are not entitled to bargaining rights under the Wagner Act." It also asserts that the Union, currently representing the production and maintenance employees at the Company's Miami Springs, Florida, plant, may not properly represent the nurses as well, for the reason that the Union "will be in a position to exert influence upon the nurses which may interfere with their exercise of independent judgment and discretion in their dealings with other employees" of the Company. In addition, it argues that nurses may be compelled by the Union

¹ The Field Examiner reported that the Union submitted four authorization cards; that the names of four persons appearing on the cards were listed on the Company's pay roll of October 28, 1944; that the cards were dated "October 1944"; and that there were six employees in the alleged appropriate unit.

to strike with other employees of the Company and consequently their allegiance to the Union would be inimical to a purported code of ethics requiring that they "take orders only" from the doctor or the patient. If overruled in these contentions, the Company urges that, in any event, the visiting nurse should be excluded, inasmuch as she has no community of interest with the other nurses concerned.

All nurses are registered and work under the plant doctor.² Three, known as first-aid nurses, are stationed in the plant's first-aid room. There, they administer to employees suffering from industrial injuries and minor ailments. They may determine whether or not employees are physically capable of working and, in cases of serious industrial injury, may send employees home directly. In instances of industrial injury, employees are paid for time not worked. Two other nurses are engaged in the plant doctor's office where all preemployment physical examinations are conducted and where all cases are referred which require more than first aid, or redressing which the doctor himself desires to control. These two nurses assist the doctor and give such treatment as he may prescribe. They also act as first-aid nurses in the latter's absence and when emergencies arise. The visiting nurse treats employees at their homes, administering to them in accordance with the plant doctor's instructions in cases of industrial injury, and pursuant to the orders of personal physicians in instances of other illnesses. While she may, in her reports to the plant doctor, indicate whether or not an employee is ill, she makes no recommendation, as such, in that connection, and renders no decision to that effect. She is paid a salary, whereas the nurses in the plant are paid on an hourly basis. She earns less than the first-aid nurses and more than the nurses working in the doctor's office. She works on a different hourly schedule than do the other nurses. She has no supervisory authority over the other nurses and exercises functions requiring essentially the same training, skill, and experience.

The functions of all nurses, exercised largely in a subordinate role, involve treatment of injuries received by employees in the course of employment or minor ailments from which they suffer. Relating solely to the health of employees, such functions are obviously not managerial or supervisory in character.³ Nor do we believe that there is any necessary conflict between self-organization and the faithful performance of duty. Therefore, in our opinion, the Union may properly represent the nurses.⁴ Undoubtedly, the nurses' code of ethics prescribes a course of conduct having as its goal the healing of the sick. Inasmuch as the nurses involved herein administer solely

² On Sundays the plant doctor is not present.

³ See *Matter of Consolidated Vultee Aircraft Corporation*, 56 N. L. R. B. 1785.

⁴ See *Matter of Consolidated Vultee Aircraft Corporation*, *supra*.

to the Company's other employees, it would appear that this code redounds to the latter's benefit. Thus, to assume in the instant proceeding that the Union, apparently composed in large measure of the Company's production and maintenance employees, will insist upon the nurses' adherence to it in such manner as to cause them to violate their code of ethics, is to presuppose that all employees of the Company who are not nurses and who are members of the Union will act against their own interests. Accordingly, we find no merit to the Company's contention relating to the nurses' code of ethics. Furthermore, it is clear that the visiting nurse, contrary to the Company's assertion, has a community of interest with the other nurses.

Consequently, we find that all nurses in the employ of the Company at its Miami Springs, Florida, plant, including the visiting nurse, but excluding supervisors in the medical department 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.

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 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 the election, to determine whether or not they desire to be represented by International Association of Machinists, Palm City Lodge #745, A. F. of L., for the purposes of collective bargaining.