

In the Matter of BENDIX RADIO DIVISION OF BENDIX AVIATION CORP. and
INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. OF L.

In the Matter of BENDIX RADIO DIVISION OF BENDIX AVIATION CORP.
and UNITED ELECTRICAL RADIO & MACHINE WORKERS OF AMERICA,
CIO

Cases Nos. 5-R-1732 and 5-R-1782, respectively.—Decided January
4, 1945

Mr. Edwin H. Cassels, of Chicago, Ill., for the Company.

Messrs. J. E. Poulton, William J. Garrison, R. Schulz, and F. Stecka, of Baltimore, Md., for the IAM.

Mr. David Scribner, by *Mr. Frederick R. Livingston*, of New York City, and *Messrs. William Britton, Walter Barry, and Peter D. Besch*, of Baltimore, Md., for the UE.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by International Association of Machinists, A. F. of L., herein called the IAM, and United Electrical Radio & Machine Workers of America, CIO, herein called the UE, alleging that questions affecting commerce had arisen concerning the representation of employees of Bendix Radio Division of Bendix Aviation Corp., Baltimore, Maryland, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Earle K. Shawe, Trial Examiner. Said hearing was held at Baltimore, Maryland, on December 12, 1944. The Company, the IAM, and the UE 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

Bendix Aviation Corp., a Delaware corporation, has a division known as Bendix Radio Division whose principal office and place of business is in Baltimore, Maryland. This Division encompasses plants in the Baltimore Area, with which we are solely concerned, engaged in the manufacture, sale, and distribution of aircraft, radio, and general radio equipment. During 1943, the Company purchased for these plants raw materials valued at approximately \$15,000,000 which were shipped from points outside the State of Maryland. During the same period, the Company sold and shipped products finished at these plants, of the approximate value of \$40,000,000, to points outside the State.

The Company admits, for the purposes of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to either the IAM or the UE as the exclusive bargaining representative of certain of the Company's employees until the IAM or the UE has been certified by the Board in an appropriate unit.

A statement of a Board Field Examiner, introduced into evidence, at the hearing, and a statement of the Trial Examiner made on the record at the hearing, indicate that the IAM and the UE each represents a substantial number of employees in the units hereinafter found appropriate.¹

¹The Field Examiner reported that the IAM submitted 878 authorization cards bearing the names of persons listed on the Company's pay roll of October 8, 1944, which contained the names of 2,978 employees in the alleged appropriate production and maintenance unit. The Field Examiner also reported that the UE submitted 425 authorization cards bearing the names of persons listed on the aforesaid pay roll.

At the hearing, the Trial Examiner stated for the record that the UE submitted 1,610 authorization cards which purported to be in addition to those previously furnished to the Field Examiner.

All parties agree to a unit composed of all production and maintenance employees of the Company's plants located in the Baltimore, Maryland, area, which are part of the Bendix Radio Division,² including employees in the classifications listed in Appendix A, attached hereto, group leaders, and set-up men,³ but excluding employees in the classifications listed in Appendix B, attached hereto, assistant foremen, foremen, general foremen, superintendents, the head timekeeper, assistant head timekeepers, and other supervisory employees. However, they are in dispute with respect to timekeepers and counters, whom the IAM and the UE would include, and the Company would exclude.

The Company employs approximately 50 timekeepers and 20 counters. Timekeepers are part of the Accounting Department and are assigned to various production departments where they keep time records of production employees and the jobs upon which they work. They are under the direction of the head timekeeper and are independent of any supervision by production supervisory employees. Practically all their time is devoted to clerical duties which are performed at their desks. Promotion among timekeepers is generally to higher clerical positions. Counters, either by scale, meter, or by hand, count the number of parts fabricated by production employees and record the results on tally sheets which they deliver to timekeepers. The data thus collected by timekeepers and counters are used by the Company in preparing its pay roll and allocating costs. Since it is apparent that the functions of timekeepers and counters are essentially clerical, we shall in accordance with our usual practice, exclude such employees from the unit.⁴

The IAM and the UE request, and the Company apparently agrees, that, in the event the Board excludes timekeepers and counters from a production and maintenance unit, a separate unit of such employees should be established. Since timekeepers and counters perform closely allied work and have similar interests, they constitute an appropriate unit.⁵

² They are the Towson, Fort Avenue, 25th Street, Monument Street, Belvedere Avenue, Fayette Street, and Charles Street plants.

³ Group leaders and set-up men are not supervisory employees within the meaning of our customary definition.

⁴ *Matter of Bendix Aviation Corporation (Philadelphia Division)*, 53 N. L. R. B. 869; *Matter of Bendix Aviation, Ltd.*, 52 N. L. R. B. 1182; and *Matter of Julien D. Friez & Sons, Division Bendix Aviation Corp.*, 47 N. L. R. B. 43.

⁵ See *Matter of Sullivan Drydock and Repair Corp.*, 56 N. L. R. B. 582; and *Matter of Todd-Johnson Dry Docks, Inc.*, 54 N. L. R. B. 1362.

plants located in the Baltimore, Maryland, area, which are part of the Bendix Radio Division, including employees in the classifications listed in Appendix A, attached hereto, group leaders, and set-up men, but excluding employees in the classifications listed in Appendix B, attached hereto, timekeepers, counters, assistant foremen, foremen, general foremen, superintendents, 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.

2. All timekeepers and counters of the Company's plants located in the Baltimore, Maryland, area, which are part of the Bendix Radio Division, excluding the head timekeeper, assistant head timekeepers, 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.

V. THE DETERMINATION OF REPRESENTATIVES

Bendix Radio Division is primarily engaged in war work, and because of the varying needs of the armed services, has had, for the past 6 months at least, a high rate of labor turn-over with attendant indefinite lay-offs.⁶ To fill its future labor requirements, the Company maintains a preferential hiring or "recall" list of indefinitely laid-off employees, to which it resorts before hiring new employees when jobs become available. The names of these employees remain on this list for 6 months unless sooner removed upon their failure to respond to the Company's offer to return to work.⁷ Under certain circumstances, the Company, instead of indefinitely laying off employees because of lack of work, may temporarily lay them off for a short, specified period. Such employees, unlike those indefinitely laid off, are retained on the pay roll.

To obviate any possible dispute regarding eligibility to vote at the election, the UE requests that all employees laid off within 6 months prior to the Direction of Election herein should be permitted to participate in the election. The IAM suggests that only those employees laid off within 15 days prior to the Direction should be entitled to vote,

⁶ The record indicates that from April to September 30, 1944, the Company indefinitely laid off approximately 1,074 production employees, of whom 126 were subsequently reemployed. The Company's Director of Industrial Relations for the Baltimore plants testified that practically all 126 employees had been laid off less than 30 days before they were rehired.

⁷ When jobs became available, the Company rehires indefinitely laid-off employees on the basis of seniority "within occupational groups in departments."

while the Company would limit the period to 30 days. All parties apparently agree that employees who failed to respond to the Company's offer of reemployment should be ineligible.

Since it appears that indefinitely laid-off employees have, for 6 months after lay-off, a sufficient expectancy of reemployment by the Company with previously accumulated seniority, we shall, except as hereinafter noted, permit such employees, who have been laid off within 6 months immediately preceding the date of the Direction of Election herein, to participate in the selection of a bargaining representative.⁸ However, those employees who failed to respond to the Company's offer of reemployment, or who obtained permanent employment elsewhere, shall not be entitled to vote.⁹

With respect to those employees who are temporarily laid off for a specified period of time and remain on the Company's pay roll, we perceive no reason to depart from our usual policy of permitting them to vote.

We shall direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.¹⁰

DIRECTION OF ELECTIONS

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 Bendix Radio Division of Bendix Aviation Corp., Baltimore, Maryland, separate elections 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 Fifth 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 units found appropriate in Section IV, above, who were employed during the pay-

⁸ See *Matter of Bristol Steel & Iron Works, Incorporated*, 47 N L R B 1429. *Matter of International Shoe Company*, 36 N L R B 1173, and *Matter of City Auto Stamping Company*, 15 N L R B 1032.

⁹ See *Matter of Bristol Steel & Iron Works, Incorporated*, *supra*.

¹⁰ The unions request that their names appear on the ballot as set forth in the Direction of Elections

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, or who were indefinitely laid off by the Company during the 6-month period immediately preceding the date of the Direction herein, 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 been indefinitely laid off for more than 6 months prior to the date of the Direction, or those indefinitely laid-off employees who have obtained permanent employment elsewhere or who have failed to accept the Company's offer of reemployment, or those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine whether they desire to be represented by IAM-AFL, International Association of Machinists, or by United Electrical Radio & Machine Workers of America, CIO, UE-CIO, for the purposes of collective bargaining, or by neither.

APPENDIX A

Production Machine Operators; such as, boring machine, automatic screw machine, punch press, kick press, shears, brakes, drill press, mills, lathes, hobbers, grinders, and spot welders.

Assemblers	Machinists
Inspectors; such as, incoming, sub-assembly, line, final, and tool	Box Makers
Receiver Testers	Carpenters
Transmitter Testers	Pipefitters
Packers and Shippers	Electricians
Tool Makers	Welders
Tool Crib Attendants	Trades Helpers
Truckers	Riggers
Storeroom and Stockroom Attendants	Scrap Metal Handlers
Coil Winders	Material Movers
Platers	Wrappers
Engravers	Maskers
Riveters	Painters
Tool Chasers	Spray Painters
Cable Harness Lacers	Buffers and Polishers
Janitors	Model Shop Mechanics
Porters	Test Equipment Mechanics
Truck Drivers	Burr Hands
Charwomen	Bench Hands
	Sheet Metal Workers
	Heat Treaters

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Anodizers
Degreasers
Etchers
Calibrators
Steam Engineers

Utility Operators
Inside Expeditors
Apprentices
Machine Dispatchers

APPENDIX B

Production Process Engineers
Inspection Process Engineers
Guards and Fire Marshals
Clerks
Typists
Stenographers
Secretaries
Time Study Men
Methods Engineers
Junior and Senior Field Repre-
sentatives
All office and clerical employees
I. B. M. Operators
Nurses
Telephone Operators
Engineers

Junior Engineers
Laboratory Assistants
Laboratory Technicians
Production Engineers
Outside Expeditors
Production Planners
Tool Designers
Draftsmen
Detailers
Tracers
Artists
Metallurgists
Professional employees receiving
training
Cooperative Students