In the Matter of ECLIPSE MACHINE DIVISION, BENDIX AVIATION CORPORATION *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. of L.

In the Matter of ECLIPSE MACHINE DIVISION, BENDIX AVIATION CORPORATION *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO

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Cases Nos. 3–R–900, 3–R–908 and 3–R–917 respectively.—Decided January 31, 1945

Mr. E. H. Cassels, of Chicago, Ill., *Mr. M. A. Heidt*, of South Bend, Ind., and *Mr. E. L. Hennessy*, of Elmira N. Y., for the Company.
Mr. Harry I. Smith, of Buffalo, N. Y., and *Mr. Claude Fairfield*, of Elmira, N. Y., for the I. A. M.
Mr. David Diamond, of Buffalo, N. Y., for the UAW-CIO.
Miss Melvern R. Krelow, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by International Association of Machinists, A. F. of L., herein called the I. A. M., and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, herein called the UAW-CIO, alleging that questions affecting commerce had arisen concerning the representation of employees of Eclipse Machine Division, Bendix Aviation Corporation, Elmira Heights, New York, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Elmira, New York, on December 19 and 20, 1944. The Company, the I. A. M., and the UAW-CIO appeared and participated. All parties were afforded full oppor-

tunity 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

Eclipse Machine Division, Bendix Aviation Corporation, a Delaware corporation duly authorized to do business in the State of New York, is engaged in the manufacture of magnetos, time fuses, secret machine parts for aircraft cannons and other aircraft guns, and fuel injection pumps at Elmira Heights and Southport, New York. From December 31, 1943 to December 1, 1944, the Company purchased raw materials valued in excess of $5,500,000, of which in excess of 50 percent was shipped from points outside the State of New York. During the same period, the Company manufactured finished products valued in excess of $6,000,000, of which in excess of 50 percent was shipped to points outside the State of New York.

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.

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 QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to either the I. A. M. or the UAW-CIO as the exclusive bargaining representative of its employees unless and until either organization has been certified by the Board in an appropriate unit or units.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the I. A. M. and the UAW-CIO represent a

substantial number of the Company's employees in the unit each contends is appropriate.[1]

We find that questions affecting commerce have 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 UNITS

The Company's operations consist of Plants Nos. 1 and 2 in Elmira Heights and Plant No. 3 in Southport. The UAW-CIO and the Company maintain that a three-plant unit is appropriate. The I. A. M. contends that Plants Nos. 1 and 2 constitute a single appropriate unit, and that it is the certified collective bargaining representative of the employees in Plant No. 3.

Prior to occupation by the Company of the property housing Plant No. 3, located approximately 5 to 6 miles from Plants Nos. 1 and 2, another company, Remington Rand, Inc., there conducted certain of its operations known as the "N" Division. In June 1942, the I. A. M. was certified as the exclusive bargaining representative of the production and maintenance employees of Remington Rand's "E" Division, which certification was supplemented in June 1943 to include the employees of the "N" Division. As the result of a consent election, the I. A. M. in November 1943 was also designated as the collective bargaining representative of the plant protection employees of the "N" Division in a separate appropriate unit. Although the I. A. M. conducted bargaining negotiations with Remington Rand with respect to the production and maintenance employees, the parties were unable to agree and the disputed issues were submitted to the War Labor Board. The I. A. M. also submitted a proposed contract to Remington Rand covering the unit of guards. While the issues involving the production and maintenance employees were before the War Labor Board, and before the proposed contract covering the guards could be executed, the "N" Division of Remington Rand was seized

[1] The Field Examiner reported that the I. A. M. submitted 1,931 authorization cards (in the production and maintenance unit) dated between January 1942 and December 1944; and that the UAW-CIO submitted 2,060 authorization cards for the same unit, dated between May and December 1944. These cards were spot-checked against the Company's pay roll of November 17, 1944, which contained the names of 5,139 employees in the unit. The I. A. M. objected to the Field Examiner's report on the ground that since the check was conducted on a three-plant basis, its interests were prejudiced. The Trial Examiner overruled the objection. His ruling is hereby affirmed.

The Field Examiner further reported that the UAW-CIO (in the militarized guard unit) submitted 15 authorization cards, dated between August and December 1944, all of which contained the names of persons appearing on the Company's pay roll of November 17, 1944, and that the I. A. M. presented 1 card which contained the name of a person appearing on the Company's pay roll. At the hearing, the UAW-CIO submitted to the Trial Examiner 10 additional cards, dated in December 1944, which contained the names of 8 persons appearing on the Company's pay roll. The I. A. M. submitted 3 additional cards to the Trial Examiner which contained the names of 2 persons listed on the Company's pay roll. There are 76 employees in the unit.

by the Government under Executive Order and turned over to the United States Navy for operation. While in the possession of the United States Navy, the plant was operated by Norden, Inc., as agent for the Navy, and continued its manufacture of strategic war materials. In July 1944, the Navy commenced its termination of the operations conducted at the "N" Division. During July, August, and September 1944, the closing-out period, the approximately 3,000 employees employed were either laid off or transferred to the "E" Division of Remington Rand.

On October 1, 1944, following the Navy's termination of the above operation, the Company leased the property from the Government, and there commenced its operation of Plant No. 3. Of the approximately 700 employees hired by the Company to work in Plant No. 3, about 50 percent had worked in the "N" Division prior to termination of operations by the Navy, 25 percent were new employees hired elsewhere, and the remaining 25 percent were transferred from the Company's Plants Nos. 1 and 2. The Company's operations in Plant No. 3 are entirely different from and have no relation to those conducted by Remington Rand or by Norden, as agent for the Navy, nor is the Company in any way connected by consolidation, merger, sale, transfer, assignment, change in legal status, ownership or management with those companies. In view of this complete lack of relationship between the operations and personnel of the Company and those of Remington Rand's former "N" Division, it is clear that there is no validity to the representation claim of the I. A. M. It cannot be said that the I. A. M. is the present representative of all employees of Plant No. 3 merely because it represented some of these employees during their employment in the "N" Division of Remington Rand prior to the Navy's termination of operations, or because the Company now happens to occupy the same premises as formerly occupied by the "N" Division.[2] The record indicates that the operations of all three plants of the Company are highly integrated in that the wage scales, number of shifts and scheduled hours are the same; there is an interchange of supervisory and other personnel among all three plants; there is one industrial relations manager and one general manager for all three plants; and processing of the same finished products is carried on in all of the plants. In view of the foregoing, and since there is no history of collective bargaining on a less-inclusive basis, we are of the opinion that Plants Nos. 1, 2, and 3 constitute a single appropriate unit.

The parties agree generally with respect to the specific composition of the production and maintenance unit except that the I. A. M. and the UAW-CIO would include counters and the Company would ex-

[2] The present case is plainly not within the holding in *Matter of South Carolina Granite Co.*, 58 N. L. R. B. 1448.

clude them.[3] The Company employs approximately 80 counters. These employees, either by scale, meter, or by hand, count the number of parts fabricated by production employees and record the results on tally sheets which are used by the Company in preparing its pay-roll computations and in allocating costs. The Company contends, *inter alia*, that the counters occupy a confidential relationship to management, since their duties involve such a high degree of responsibility. We have frequently found similar contentions to be without merit.[4] However, we are of the opinion that counters otherwise have duties and interests differing sufficiently from those of the production and maintenance employees as to warrant their exclusion from a unit comprising the latter employees; we shall therefore exclude them.

We find that all production and maintenance employees of the Company at Plants Nos. 1, 2, and 3, including inspection employees, receiving and shipping employees, tool room employees, crib atttendants, stock chasers, stockmen, material handlers, and all other storeroom and stockroom employees, powerhouse employees, outside truck drivers, garage employees, janitors, sweepers, matron, electricians, electronic employees, carpenters, plumbers, pipe fitters, painters, sheet metal workers, millwrights, machine repairmen, laborers, outside laborers, air condition maintenance employees, group leaders, and machine set-up men, but excluding all office and clerical employees, employees of the sales, accounting, personnel, and industrial relations departments, counters, time-study men, plant-protection employees, fire control employees, dispatchers, storekeepers, the powerhouse operating engineer in charge of the powerhouse (supervisor), chief engineers, engineers, junior engineers, all production estimating and plant engineers and junior engineers, draftsmen, detailers, tool designers, tool efficiency men, chemists, metallurgists, timekeepers, follow-up men, chauffeurs (courtesy drivers), cooperative students, professional employeers who are receiving training, kitchen and cafeteria employees, superintendents, assistant superintendents, general foremen, foremen, assistant foremen, foreladies, assistant foreladies, 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.

The UAW-CIO contends that the militarized guards, excluding sergeants and all other supervisory employees, at all three plants of the Company together constitute an appropriate unit. The I. A. M. maintains, as it did above with respect to the production and maintenance employees, that the unit should be confined to Plants Nos. 1

[3] The specific inclusions and exclusions agreed upon by the parties are set forth hereinafter in the appropriate unit finding.

[4] See *Matter of Bendix Aviation Corporation (Philadelphia Division)*, 53 N. L. R. B. 869, and cases cited therein.

and 2, since it allegedly is the current representative of the guards in Plant No. 3. At the hearing, the Company agreed with the contention of the UAW-CIO.

The guards employed by the Company engage in duties normally associated with such employees. At the hearing, the Company stated that the guards had been demilitarized. After the close of the hearing, the Company addressed a letter to the Board in which it advised that its statement regarding demilitarization was in error and that the guards still maintain their militarized status.[5] In its brief, the Company urges that in view of such militarized status of the guards the petition should either be dismissed or its consideration be suspended by the Board for the duration of the war. We find no merit in this contention. We have on numerous occasions considered the status of guards who are militarized and sworn into temporary membership in the armed services. We have always been mindful of the fact that such persons from the nature of their oaths owe allegiance directly to the Government as well as to the Company, and we have also borne in mind the increased responsibilities placed upon such plant-protection employees in wartime.[6] However, always with due consideration to the foregoing factors, we have repeatedly held that such militarized status cannot place persons engaged in plant-protection duties outside the provisions of the Act, specifically pointing out that authoritative military regulations have similarly recognized the rights of such employees to bargain collectively. It is our firm conviction, and we find, that the granting of collective bargaining rights to the militarized guards here involved would effectuate the policies of the Act, and conversely, that the denial thereof for the "duration" would hinder, rather than promote, the war effort and would bring about strife detrimental to the public interest and to the free flow of commerce.

For the reasons set forth above in connection with our finding that a three-plant unit of production and maintenance employees is appropriate, we are of the opinion that the contentions of the I. A. M. are without merit and that the appropriate unit should comprise the guards at all three plants of the Company.

We find that all guards of the Company at Plants Nos. 1, 2, and 3, excluding sergeants 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.

[5] The letter is herewith made a part of the record.

[6] See *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Consolidated Steel Corp., Ltd*, 51 N L. R. B. 333; *Matter of Budd Wheel Co.*, 52 N L. R. B 666; *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881; *Matter of Frigidaire Division, General Motors Corporation*, 39 N. L. R. B. 1108, and cases cited therein.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by 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.

Although the I. A. M. did not indicate that it desired to participate in the event elections were ordered in single three-plant units, we shall place its name on the ballots with leave to withdraw by notifying the Regional Director to that effect within five (5) days from the date of this Decision and Direction of Elections.

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 Eclipse Machine Division, Bendix Aviation Corporation, Elmira Heights, New York, 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 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 units 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 elections, to determine whether they desire to be represented by International Association of Machinists, A. F. of L., or by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, for the purposes of collective bargaining, or by neither.

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