

In the Matter of WRIGHT AERONAUTICAL CORPORATION and DISTRICT
50, UNITED MINE WORKERS OF AMERICA

Case No. 9-R-1655.—Decided March 19, 1945

Frost & Jacobs, by *Messrs. Cornelius J. Petzhold and Kenneth Troy*, of Cincinnati, Ohio, for the Company.

Messrs. Ralph Courtley, John Grigsby, and Frank Hall, of Cincinnati, Ohio, and *Mr. Joseph J. Timko*, of Columbus, Ohio, for District 50.

Messrs. James Desmond and Sol Goodman, of Cincinnati, Ohio, for the C. I. O.

Mr. Julius Kirle, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Wright Aeronautical Corporation, Lockland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on December 19, 1944, and January 18, 1945. The Company, District 50, and United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., herein called the C. I. O. 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:

60 N. L. R. B., No. 231.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Wright Aeronautical Corporation, a subsidiary of the Curtiss-Wright Corporation, a New York Corporation, operates a plant located at Lockland, Ohio, with which we are herein concerned, where it is engaged in the manufacture of aircraft engines. More than 50 percent of the raw material used by the Company at its Lockland plant is obtained from points outside the State of Ohio. More than 75 percent of the finished products manufactured at the Company's Lockland plant is shipped to points outside the State of Ohio.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

United Automobile, Aircraft & 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 QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to District 50 as the exclusive bargaining representative of its fire-equipment inspectors and fire-equipment operators until District 50 has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that District 50 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 DETERMINATION OF REPRESENTATIVES

District 50 seeks a unit of all paid fire-equipment inspectors and fire-equipment operators employed in the Company's Lockland plant. The C. I. O. contends that the unit is inappropriate because fire-equipment inspectors and fire-equipment operators are included in its

¹ The Field Examiner reported that District 50 submitted 16 cards, that the names of 15 persons signing the cards were on the Company's pay roll of November 24, 1944, which contained the names of 15 employees in the claimed appropriate unit, and that the cards were all dated in October 1944.

existing contract with the Company covering a unit of production and maintenance employees. The Company contends that the unit is inappropriate because it is against public policy to permit employees in a war plant, charged with plant fire protection, to hold membership in two competing unions.

We find no merit in the C. I. O.'s contention. Fire-equipment inspectors, under the general category of safety and plant-protection employees, were excluded from the production and maintenance unit certified by the Board on February 2, 1943, and voted in the clerical and technical unit.² Fire-equipment operators were neither expressly excluded nor included, since the position of fire-equipment operator was not created until approximately 8 months after the Board's certification. Although the volunteer firemen³ were included in the unit, they were included as production employees and not as firemen. While it appears that the fire-equipment operators were included in a job-evaluation plan filed jointly by the Company and the C. I. O. with the War Labor Board, the testimony of a representative of the Company's Industrial Relations Department indicates that such inclusion was inadvertent. In view of all the circumstances, and particularly in view of the previous exclusion by the Board of all safety and plant-protection employees from the production and maintenance unit, we are of the opinion, and find, that neither the fire-equipment operators nor the fire-equipment inspectors were intended to be included in the production and maintenance unit or in the bargaining contract executed as a result of the Board's certification.

We also find no merit in the Company's contention. Inasmuch as the fire-equipment inspectors and fire-equipment operators do not perform monitorial duties and are neither militarized, deputized, nor armed, the reasoning set forth by the Sixth Circuit Court of Appeals in the *Jones & Laughlin Steel Corp.* case,⁴ cited by the Company in support of its contention, is inapplicable herein.⁵

The Company's full-time paid fire control force consists of four fire-equipment inspectors and 12 fire-equipment operators, under the supervision of a fire chief and assistant fire chiefs who the parties agree are supervisory employees. The fire-equipment inspectors inspect and service all fire prevention equipment located throughout the plant, and while they do not actually fight fires, they bring up equipment as needed. The fire-equipment operators service and main-

² The election among the employees in this group did not result in the selection of a bargaining representative.

³ To assist the fire equipment inspectors and fire equipment operators, the Company has a volunteer brigade of over 300 employees who receive their regular pay as production employees for such time as they spend fighting fires and return to their regular duties when the fire is extinguished.

⁴ *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 146 F. (2d) 718 (C. C. A. 6).

⁵ See *Matter of Chicago Rawhide Manufacturing Company*, 59 N. L. R. B. 1234.

tain the fire-fighting equipment and respond to all fire calls. Both groups receive special training, devote all of their time to fire control, are quartered at the firehouse, and do not engage in production work.

In view of the fact that the fire-equipment inspectors and fire-equipment operators are a cohesive and easily definable group under separate supervision and possessing skills and functions differing from those of the other production and maintenance employees, we are of the opinion that they may properly function as a separate bargaining unit or as part of the production and maintenance unit. Accordingly, our determination of the appropriate unit will depend in part upon the desires of the employees themselves to be expressed in the election hereinafter directed.⁶ If at such election a majority of the employees in this voting group select District 50, they will thereby have indicated their desire to constitute a separate appropriate unit. If, however, a majority of these employees select the C. I. O., they will have thereby indicated their desire to be included in a unit with the production and maintenance employees, and the C. I. O. may accordingly bargain for them as a part of such unit.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the fire-equipment inspectors and fire-equipment operators, excluding the fire chief, assistant fire chiefs, 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 who were employed by the Company 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 Wright Aeronautical Corporation, Lockland, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth 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 fire-equipment inspectors and operators in the voting group defined in Section IV, above, who were employed during the pay-roll period

⁶ See *Matter of Todd-Pacific Shipyards, Inc*, 60 N. L. R. B. 26.

immediately preceding the date of this Direction, including employees who did not work during the 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, and excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by District 50, United Mine Workers of America, or by International Union, UAW-CIO, Local 647, for the purposes of collective bargaining, or by neither.⁷

⁷ District 50 and the C. I. O. indicated that they be designated on the ballot as set forth above.