

In the Matter of SCINTILLA MAGNETO DIVISION, BENDIX AVIATION CORPORATION and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

*Case No. 3-R-937.—Decided April 12, 1945*

*Mr. E. M. Van Name*, of Sidney, N. Y., for the Company.

*Mr. H. I. Smith*, of Buffalo, N. Y., and *Mr. Victor Kolaski*, of Binghamton, N. Y., for the IAM.

*Mr. Frederick R. Livingston*, of New York City, and *Mr. Willard Bliss*, of Syracuse, N. Y., and *Mr. Ben Kreisberg*, of Sidney, N. Y., for the UE.

*Mr. Charles T. Keane, Jr.*, of Binghamton, N. Y., for the Independent.

*Mr. Sidney Grossman*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, affiliated with the American Federation of Labor, herein called the IAM, alleging that a question affecting commerce had arisen concerning the representation of employees of Scintilla Magneto Division, Bendix Aviation Corporation, Sidney, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Sidney, New York, on March 21, 1945. The Company, the IAM, the United Electrical, Radio and Machine Workers of America, CIO, herein called the UE, and Ignition Employees Association, herein called the Independent, 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 reserved ruling upon the Independent's motion to dismiss the petition on the ground that an existing contract between it and the Company constitutes a bar to this proceeding. For the reason set forth

in Section III, *infra*, the motion is denied. 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 Corporation, a Delaware corporation, is engaged in the manufacture of airplane parts at its various plants throughout the United States. We are here concerned with its Scintilla Magneto Division plant, located at Sidney, New York, where it is engaged in producing ignition apparatus for internal combustion engines and Diesel fuel injection devices. During the year 1944, it purchased raw materials for use at this plant in excess of \$1,000,000 in value, of which approximately 90 percent was secured from sources outside the State of New York. During the same period it manufactured finished products in excess of \$3,000,000 in value, of which approximately 98 percent was sold to the United States Government for use by the armed services.

The Company admits 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.

Ignition Employees Association, unaffiliated, is a labor organization admitting to membership employees of the Company.

United Electrical, Radio and Machine 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

On January 16, 1945, the IAM addressed a letter to the Company wherein it requested recognition as the exclusive representative of the Company's employees. The Company refused to accord recognition to the IAM until the IAM had been certified by the Board in an appropriate unit. The Independent urges, as a bar to this proceeding, the existence of its contract with the Company, which expired on March 1, 1945, and contained the usual 30-day automatic renewal clause. Since the IAM made its demand for recognition prior to the

operative date of the automatic renewal clause, we find that the Independent's contract with the Company does not preclude a present determination of representatives.<sup>1</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the IAM and the UE represent a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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

All parties agree to a unit composed of all production and maintenance employees at the Company's plant at Sidney, New York, including employees in the classifications listed in Appendix A, attached hereto, and group leaders, but excluding employees in the classifications listed in Appendix B, attached hereto, foremen, general foremen, supervisors, factory superintendent, factory manager, and all other supervisory employees. However, they are in dispute as to the inclusion or exclusion of the categories hereinafter discussed.

*Factory clericals in department 37 and timekeepers in department 91.* The factory clericals in department 37 include both timekeepers and production clerks. While the position of the parties is not entirely clear, it appears that the IAM would include, and the Company would exclude, the production clerks, and the IAM and the UE would include the timekeepers in department 91. The timekeepers in department 37 maintain records relating to the attendance and earnings of employees; the production clerks maintain records relating to raw materials and finished stores inventory as work progresses on production contracts. The timekeepers in department 91 perform duties similar to those of the timekeepers in department 37. The employees in both departments are on the office pay roll as salaried employees.

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<sup>1</sup> *Matter of Buffalo Arms Corporation*, 57 N L R B. 1560

<sup>2</sup> The Field Examiner reported that the IAM submitted 1,002 authorization cards, of which 1 was dated in 1942, 279 bore dates in 1944, 707 in 1945, 11 were partially dated, and 4 were undated, and that of 587 cards checked, 175 represented the names of persons on the Company pay roll of February 3, 1945, in an alleged appropriate unit consisting of 2,945 employees. At the hearing, the IAM submitted 62 additional cards, of which 1 was dated in February 1945 and 61 bore dates in March 1945; these cards were not checked against the Company pay roll.

The Trial Examiner reported that the UE submitted 301 membership cards, of which 44 bore dates in 1944 and 257 in 1945; the cards were not checked against the Company pay roll.

The Independent relies upon its contract as proof of its representation interest.

The objections of the UE and the Independent as to the sufficiency of the IAM's interest in the proposed unit are without merit. See *Matter of Buffalo Arms Corporation*, *supra*; *Matter of Seneca Falls Machine Company*, 58 N L R B. 1413.

We shall exclude the timekeepers in accordance with our usual policy,<sup>3</sup> and while the record does not disclose that production clerks have interests or duties which would of necessity prevent their inclusion in the present bargaining unit, in the absence of any compelling circumstances warranting a departure therefrom, we shall adhere to our usual practice and not disturb the contract unit established as the result of collective bargaining between the Company and the Independent.<sup>4</sup>

We find that all production and maintenance employees<sup>5</sup> at the Company's plant at Sidney, New York, including employees listed in Appendix A, attached hereto, and group leaders,<sup>6</sup> but excluding employees, in the classifications listed in Appendix B, attached hereto, timekeepers and production clerks in departments 37 and 91, assistant working foremen, foremen, general foremen, supervisors, factory superintendent, factory manager, 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.

Since it appears, under circumstances similar to those disclosed in *Matter of Bendix Radio Division of Bendix Aviation Corp.*,<sup>7</sup> 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. How-

<sup>3</sup> *Matter of Bendix Radio Division of Bendix Aviation Corp.*, 59 N. L. R. B. 1470.

<sup>4</sup> *Matter of Petersen & Lytle*, 60 N. L. R. B. 1070.

<sup>5</sup> Since there is no cogent reason for confining the unit to hourly employees, as requested by the Company, our unit finding herein includes both hourly and salaried employees.

<sup>6</sup> The record discloses that group leaders, who formerly occupied the status of assistant working foremen and whom all the parties would include, have been bargained for as non-supervisory employees. On the other hand, the assistant working foremen were excluded from the Independent's contract with the Company in conjunction with other supervisory employees, and, although those presently occupying such status are about to be reclassified as group leaders, they still possess indicia of supervisory authority consonant with our customary definition; we shall therefore exclude the assistant working foremen.

<sup>7</sup> 59 N. L. R. B. 1470.

ever, those employees who have failed to respond to an offer of reemployment by the Company or who have obtained permanent employment elsewhere shall not be entitled to vote.

### 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 Scintilla Magneto Division, Bendix Aviation Corporation, Sidney, New York, 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 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 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, 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 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 they desire to be represented by International Association of Machinists, affiliated with the American Federation of Labor, or by United Electrical, Radio and Machine Workers of America, U. E.-C. I. O., or by Ignition Employees Association, I. E. A., for the purposes of collective bargaining, or by none.<sup>8</sup>

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

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<sup>8</sup> The requests of the IAM, the UE, and the Independent, to appear upon the ballot as above designated, are hereby granted.

## APPENDIX A

<i>Dept. No</i>	<i>Name</i>	<i>Dept. No.</i>	<i>Name</i>
10__	Service Repair	70__	Boiler Room
11__	Tool Room	71__	Salvage
12__	Experimental	74__	Truckers & Chauffeurs
13__	Tool Inspection	80__	Production Control (Expeditors)
15__	Coil	96__	Contract Cancellation (Expeditors Hourly Pd.)
16__	Assembly	1___	Administration
17__	Lathe	2___	Purchasing
18__	Paint Shop	3___	Sales
19__	Automatics	4___	Office Supervisors & Secretaries
20__	Stock CC	5___	Tool Design
21__	Punch Press	6___	Engineering
22__	Maintenance	7___	Factory & Production Management
23__	Inspection	8___	Service
24__	Moulding	9___	Factory Supervisors
25__	Receiving & Shipping	29__	Engineering Research
26__	Finished Stock C	33__	Police
27__	Snagging	35__	Engineering Laboratory
28__	Heat Treat	37__	Clerical (Shop Clerks or Timekeepers)
30__	Buffing & Plating	75__	Personnel
31__	Fuel Pump	76__	Medical
32__	Truckers & Sweepers	77__	Training & Wages
34__	Sundry (Machine)	78__	Tabulating
36__	Tool Grinding	81__	Material Control
39__	Moulding Machines	82__	Production Scheduling
41__	DF & 8 Pole Housing Machining	83__	Sub-Contracting
42__	DF 18 & Front Mounted Hous. Mach.	84__	Cost Control
44__	Radio Shield Machining	85__	Plant Engineering (Designers)
46__	Coil Covers Machining	86__	Tools, Methods & Equipment
47__	Adaptor & Breakers Cups Mach.	87__	Production & Engineer Coordination
49__	Aircraft Rotors Machining	88__	New York Engineering
51__	Axles & Shafts Machining	90__	Payroll & Bond
52__	Nelix Gears Machining	91__	Timekeeping
54__	Breaker Cams Machining	92__	Factory Cost Department
55__	Gleason Gears	93__	General Accounting
57__	Inserts	94__	Legal
59__	Spark Plug Machining	97__	Telephone, Central Files, Traffic
61__	Lead Department	98__	Mail and Stock D
63__	Spark Plugs		
66__	Tool Crib		
67__	Harness Experimental (Prod.)		
69__	Spare Parts Bond Room & Packing		