

In the Matter of CONSOLIDATED AIRCRAFT CORPORATION and INTERNATIONAL ASSOCIATION OF MACHINISTS, AIRCRAFT LODGE NO. 1125

Case No. R-127

*Aircraft Manufacturing Industry—Election Ordered*; prior to decision; controversy concerning representation of employees—refusal by employer to recognize union as exclusive representative; rival organizations—question affecting commerce: confusion and unrest among employees; strike threatened—*Unit Appropriate for Collective Bargaining*: community of interest; hourly rate employees; occupational differences; production and maintenance employees; wage differentials—*Certification of Representatives*.

*Mr. Ralph Seward* for the Board.

*Gray, Cary, Ames & Driscoll*, by *Mr. W. P. Cary* and *Mr. E. A. Walters*, of San Diego, Cal., for the Company.

*Mr. Leonard S. Janofsky*, of Los Angeles, Cal., for the Union.

*Mr. Edward J. Kelly*, of San Diego, Cal., for The Consolidators, Intervener.

*Mr. I. S. Dorfman*, of counsel to the Board.

DIRECTION OF ELECTION

April 2, 1937

The National Labor Relations Board, having found that a question affecting commerce has arisen concerning the representation of employees of Consolidated Aircraft Corporation, San Diego, California, and that the hourly paid employees of Consolidated Aircraft Corporation, except the general office and other office and clerical employees wherever located, those engaged in the engineering department, and those classified as executives or timekeepers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, 49 Stat. 449, and acting pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of said Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby

DIRECTS that as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Consolidated Aircraft Corporation, an election by secret ballot shall be conducted within a period of twenty (20) days after the date of this Direction of Election, under the direction and super-

vision of the Regional Director for the Twenty-first Region; acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the hourly paid employees of Consolidated Aircraft Corporation, except the general office and other office and clerical<sup>1</sup> employees wherever located, those engaged in the engineering department, and those classified as executives or timekeepers, on the payroll of Consolidated Aircraft Corporation as of March 8, 1937, to determine whether they desire to be represented by International Association of Machinists, Aircraft Lodge No. 1125, or by The Consolidators.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Direction of Election.

[SAME TITLE]

### AMENDED DIRECTION OF ELECTION

*April 8, 1937*

The National Labor Relations Board, having found that a question affecting commerce has arisen concerning the representation of employees of Consolidated Aircraft Corporation, San Diego, California, and that the hourly paid employees of Consolidated Aircraft Corporation, except the general office and other office and clerical employees wherever located, those engaged in the engineering department, and those classified as executives or timekeepers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, 49 Stat. 449, and acting pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of said Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby

DIRECTS that as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Consolidated Aircraft Corporation, an election by secret ballot shall be conducted within a period of twenty (20) days after the date of this Direction of Election, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the hourly paid employees of Consolidated Air-

<sup>1</sup> So called clerks who regularly handle goods or materials are included in the appropriate unit, and are eligible to vote in the election.

craft Corporation, except the general office and other office and clerical<sup>1</sup> employees wherever located, those engaged in the engineering department, and those classified as executives or timekeepers, on the payroll of Consolidated Aircraft Corporation as of April 8, 1937, to determine whether they desire to be represented by International Association of Machinists, Aircraft Lodge No. 1125, or by The Consolidators.

[SAME TITLE]

## DECISION

AND

## CERTIFICATION OF REPRESENTATIVES

*April 30, 1937*

### STATEMENT OF CASE

On January 9, 1937, International Association of Machinists, Aircraft Lodge No. 1125, San Diego, California, hereinafter called the Union, filed with the Regional Director of the Twenty-First Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of Consolidated Aircraft Corporation, San Diego, California, hereinafter called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. On March 1, 1937, the National Labor Relations Board, hereinafter called the Board, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing upon due notice. Pursuant to notice duly served upon the Company and the Union, a hearing was held in San Diego, California, on March 11, 12, and 16, 1937, before George O. Pratt, Trial Examiner duly designated by the Board. The Company and the Union were represented by counsel and participated in the hearing, the former appearing specially to contest the jurisdiction of the Board, and participating in the hearing without waiving its objection in that regard. The Consolidators, a voluntary association, not incorporated, requested and was granted leave to intervene by the Trial Examiner. Full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence bearing upon the issues was afforded to those who participated in the hearing. At the beginning

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of the hearing, and again at the conclusion of the testimony introduced at the hearing, counsel for the Company moved to dismiss for lack of jurisdiction. The Trial Examiner denied each of the motions. Counsel for the respective participating parties took exception to certain rulings of the Trial Examiner concerning the introduction of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After examining the record in this matter, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a Direction of Election on April 2, 1937, in which it was found that the hourly paid employees of the Company, except the general office and other office and clerical employees, wherever located, those engaged in the engineering department, and those classified as executives or timekeepers, constitute a unit appropriate for the purposes of collective bargaining, and in which the Board designated the Regional Director for the Twenty-First Region as its agent to conduct the election among the employees in the appropriate unit on the payroll of the Company as of March 8, 1937. An Amended Direction of Election was issued by the Board on April 8, 1937, identical in all respects with the previous Direction of Election, except that the payroll date was amended to read April 8, 1937, instead of March 8, 1937. The Directions of Election were issued without accompanying findings of fact and conclusions of law in order to expedite the holding of the election.

The election was conducted on April 10, 1937. Pursuant to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, an Intermediate Report upon the election was subsequently prepared by Towne Nylander, who conducted the election as agent of the Board, and duly served upon the parties. The Intermediate Report found that 3,295 employees were eligible to vote, of whom 1,823 voted for representation by the Union and 531 voted for representation by The Consolidators. No objections to the ballot or to the Intermediate Report were filed by the parties.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE COMPANY AND ITS BUSINESS

The Company is a corporation organized and existing under the laws of the State of Delaware. Its principal office and place of business since September, 1935, has been in San Diego, California,

where it operates the second largest airplane producing factory in the United States. More than 3700 persons are employed in this plant, the monthly payroll being approximately \$465,000.00. Airboats are now being delivered by the Company to the United States Navy under 35 contracts, the total contract price of which is \$20,073,676.11. This represents about 90 per cent of its present total business. Prior to September, 1935, the Company owned and operated airplane producing plants in Buffalo, New York, and in Fort Erie, Canada, but since that date it has disassociated itself from these plants, except that it is a minor stockholder in Fleet Aircraft, Limited, which now operates the Fort Erie, Canada plant.

The principal raw material used by the Company in the production of planes in duralumin, which constitutes about 30 per cent of the finished planes. All of this material is obtained from points outside of the State of California, the major sources being Pittsburgh and New Kensington, Pennsylvania; Alcoa, Tennessee; Massena, New York; and Edgewater, New Jersey. Other materials and parts utilized by the Company in the manufacture of airplanes, and the points of origin from which such materials and parts are delivered to the Company are as follows:

Chrome-molybdenum, primarily from the State of Pennsylvania; paints, varnishes, etc., from the States of Michigan and California; fabrics, from the State of New York; standard parts, from the States of Ohio, Pennsylvania, Indiana, and California; engines, from the States of New Jersey and Connecticut; instruments, from Eastern States of the United States; forgings, spinnings, and parts, from the States of California and New York; rubber, from the State of California; and float and outer panel assemblies, from the State of New York. These materials and parts are transported by rail, ships, and trucks to the plant of the Company at San Diego, California, either f. o. b. shipping point or f. o. b. destination.

A "bull gang", consisting of laborers in the maintenance department of the Company, unloads materials and parts from freight cars under supervision of the stock department. Trucks, including those owned and operated by the Company in hauling to the plant materials and parts from docks in California, are usually unloaded at the plant by the truck drivers. Sometimes, however, receiving clerks help unload the trucks, and the "bull gang" assists on very heavy shipments.

Nearly all of the business of the Company with the United States Navy was obtained by competitive bidding on specifications set forth by the United States Navy. The contracts awarded to the Company set forth the destination of the planes and spare parts, the usual destinations being San Diego, Los Angeles, California; Pearl Harbor, T. H.; Coco Solo, Canal Zone; Seattle, Washington; Pensacola,

Florida; and Brooklyn, New York. A Lieutenant Commander of the United States Navy, permanently assigned to the plant of the Company, inspects all materials and parts, and every step in the process of producing the planes. "Progress payments" are made to the Company from time to time as the planes advance to completion. A period of twelve months normally elapses from the time raw materials arrive at the plant until the finished planes are ready for delivery. Most of the planes now manufactured by the Company are moved on tractors by its employees from the plant to a ramp at the water's edge about 3000 feet distant, or to the adjacent Lindbergh Flying Field, where employees of the Company set the planes for flight and warm up the motors. Thereupon the United States Navy crew takes control of the planes. Some planes are delivered f. o. b. alongside vessels in San Diego or Los Angeles, California, and a few f. o. b. destination in States other than the State of California.

The shipment of spare parts by the Company, although relatively a small part of its business, is in itself a sizeable operation. It should be noted in this connection that 20,000 to 30,000 parts enter into the construction of an airplane. Spare parts such as wings and other large size units are loaded into freight cars on the property of the Company by its employees. Smaller parts are packed in boxes and delivered to railroad stations for transportation. The United States Navy pays about 90 per cent of the total transportation charges on its purchases of planes and parts from the Company. In terms of number of shipments made, however, the United States Navy pays the transportation charges on approximately 60 per cent, and the Company on 40 per cent of the shipments. Not to exceed 2½ per cent of the total volume of business of the Company is delivered f. o. b. destinations outside of the State of California.

The Company is under contract to manufacture six flying boats for the Republic of Argentina, delivery at option of purchaser, ready for flight at San Diego, California, or C. I. F., Buenos Aires. It is also under similar contract to deliver one flying boat to the Union of Soviet Socialist Republics either at San Diego, California, or Vladivostok, U. S. S. R.

## II. QUESTION CONCERNING REPRESENTATION AND ITS EFFECT ON COMMERCE

The Union is a local of the International Association of Machinists, affiliated with the American Federation of Labor. During January, and February, and as late as March 9, 1937, conferences were held between George C. Castleman, as representative of the Union, and C. A. Van Dusen, vice president of the Company and factory man-

ager, relating to recognition of the Union as the exclusive representative of all the "mechanical" employees of the Company. Van Dusen indicated that the Company would consider bargaining with the Union on behalf of its members only, provided that the Union revealed to the Company the names of employees who were members of the Union. To this Castleman replied that the Union would not reveal to the Company the names of its members, and that in any event, having a majority of the Company's mechanical employees among its members, the Union in accordance with the Act was entitled to represent all the "mechanical" employees.

In the meantime, on or about January 30, 1937, a labor organization known as The Consolidators, was formed among the employees of the Company. At the date of the hearing in this matter The Consolidators claimed to represent between 900 and 1000 of the approximately 3700 employees of the Company, some of whom were also members of the Union.

The presence of the two competing labor organizations, with conflicting claims as to membership among the employees, and the refusal of the Company to recognize either as the exclusive representative of the employees has led to a great deal of confusion, unrest, and discussion of strike among the employees.

Van Dusen testified that the Company operates as a complete unit; that every department is dependent on every other department; and that if any one department shuts down, the entire plant is likely to cease operations. It is also evident that the flow of raw materials to, and the shipment of finished planes and parts from, the plant would be seriously interrupted as a result of such cessation of operations.

We find, therefore, that a question concerning the representation of employees of the Company has arisen, and that this question of representation which has arisen in connection with the operations of the Company, described above, has a close, intimate, and substantial relation to trade, traffic, commerce, and transportation among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### III. THE APPROPRIATE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING, AND EMPLOYEES ELIGIBLE TO PARTICIPATE IN THE ELECTION

The Union and the Consolidators each contended that the unit appropriate for the purposes of collective bargaining should coincide with the qualifications for membership in the respective organizations. The Consolidators admits to membership all employees of the Company, except executives and supervisory employees. The Union accepts all employees paid on an hourly basis engaged in production, and also maintenance men and inspectors.

It excludes many so-called non-productive hourly paid factory workers, as well as executives, supervisory, engineering, and clerical employees.

Both organizations are agreed upon the exclusion of executives and supervisory employees. We, therefore, find that executives and supervisory employees shall not be included in the appropriate unit. The engineering department consists mainly of college trained engineers, draftsmen, and tool designers, whose economic interests and relations with the Company are on a plane apart from that of the factory employees. Similarly, those engaged in the general office, including accountants, and clerical employees, clerical employees located elsewhere in the plant, and timekeepers, constitute a group whose rates and manner of compensation, and the nature of whose work, is completely different from that of mechanical and related classes of employees. There is also a class of salaried employees in the factory, not engaged in production, including inspectors, among others, whose positions are more secure than that of the hourly paid employees, with the result that there is not that community of interest regarding wages, hours and working conditions which would warrant their inclusion in one unit with the hourly paid employees.

For these reasons we find that, in order to insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, the hourly paid employees of the Company, except the general office and other office and clerical employees wherever located, those engaged in the engineering department, and those classified as executives or timekeepers, constitute a unit appropriate for the purposes of collective bargaining.

#### CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7), of the National Labor Relations Act.

2. The hourly paid employees of Consolidated Aircraft Corporation, except the general office and other office and clerical employees wherever located, those engaged in the engineering department, and those classified as executives or timekeepers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. The International Association of Machinists, Aircraft Lodge No. 1125, having been designated by a majority of the employees of

the Company in the appropriate unit as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in the appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

#### CERTIFICATION OF REPRESENTATIVES

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 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that the International Association of Machinists, Aircraft Lodge No. 1125, has been designated by a majority of the hourly paid employees of Consolidated Aircraft Corporation, except the general office and other office and clerical employees wherever located, those engaged in the engineering department, and those classified as executives or timekeepers, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of said Act, the International Association of Machinists, Aircraft Lodge No. 1125, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.