

In the Matter of BENDIX PRODUCTS CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, BENDIX LOCAL No. 9

Case No. R-220.—Decided September 16, 1937

Automobile and Aircraft Parts Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: dispute between employer and union as to appropriate unit—*Units Appropriate for Collective Bargaining:* community of interests; similarity of working conditions; employees on hourly rate basis; occupational differences; company policemen held to constitute separate unit—*Representatives:* proof of choice: comparison of union membership cards with pay roll—*Certification of Representatives:* upon proof of majority representation.

Mr. William R. Walsh for the Board.

Mr. Edwin H. Cassels, Mr. Eli F. Seibert, and Mr. Robert B. Johnstone, of Chicago, Ill., for the Company.

Mr. Joseph M. Jacobs, of Chicago, Ill., for the Union.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

On June 28, 1937, International Union, United Automobile Workers of America, Bendix Local No. 9, herein called the Union, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of the Bendix Products Corporation, South Bend, Indiana, herein 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, herein called the Act. On July 20, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to a notice duly issued and served by the Regional Director upon the Company and the Union, a hearing was held in South Bend, Indiana, on August 2, 3, and 4, 1937, before James C. Batten, the Trial Examiner duly designated by the Board. At the hearing the Board, the Company, and the Union were represented by counsel.

Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. At the conclusion of the hearing, the Company filed a brief which we have carefully considered.

The Board has reviewed the rulings of the Trial Examiner on motions and objections directed to the issues raised by the petition and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY¹

Bendix Products Corporation is a corporation organized under and existing by virtue of the laws of the State of Indiana, having its plant and principal office in South Bend, St. Joseph County, Indiana. The Company is a wholly owned subsidiary of the Bendix Aviation Corporation, incorporated under the laws of the State of Delaware with its principal executive offices located in Chicago, Illinois, and South Bend, Indiana. The Company was incorporated in 1931, and was organized by the Bendix Aviation Corporation to acquire manufacturing assets and to take over manufacturing operations of Bendix Brake Company, Bendix-Cowdrey Brake Tester, Inc., Bendix Stromberg Carburetor Company, and Bragg-Kleisrath Corporation.

The Company is now and has continuously been engaged since 1931 in the manufacture and sale of automobile and aircraft parts, consisting principally of carburetors and brakes and parts therefor.

A substantial majority of the raw materials used by the Company in the manufacturing of its products are obtained from points without the State of Indiana. These raw materials consist principally of steel, zinc, brass, aluminum, lumber, coal, sand, acid, oil, scrap iron, salt, and brick. The total amount of raw materials purchased during the period January 1, 1935 to November 30, 1935, was approximately 48,000,000 pounds obtained from points within Indiana, and approximately 103,000,000 pounds obtained from points without Indiana. Of these amounts steel comprised the largest volume, i. e., approximately 25,000,000 pounds obtained from within Indiana, and approximately 35,000,000 pounds obtained from without Indiana, principally Illinois; and coal comprised the second largest volume, i. e., approximately 14,000,000 pounds obtained from within Indiana, and approximately 24,000,000 pounds obtained from

¹ This finding is taken from a stipulation signed by counsel for the parties (Board's Exhibit No. 2), which in turn was drafted with some modifications from a decision of the Board dated February 28, 1936 (Case No. R-8, 1 N. L. R. B. 173), involving the same parties.

without Indiana. All of the zinc, brass, aluminum and lumber was obtained from points without the State of Indiana during the same period.

The raw materials are purchased both by contracts for specific lots and contracts for periodical shipments, and are shipped to the plant by means of railroads and trucking companies.

The amount of raw material purchased by the Company during the period from December 1, 1935 to August 1, 1937, may vary from the monthly average as above disclosed, but the proportions of raw material purchased within and without the State of Indiana will remain substantially the same.

The Company's plant is highly mechanized and the ordinary course of manufacture is similar to that in other such mechanized factories, i. e., the raw materials are cast, shaped and formed into their respective parts, and by successive steps the parts are processed and combined into the finished product.

A substantial majority of the finished products manufactured by the Company are sold and transported to points without the State of Indiana. These finished products consist principally of carburetors and brakes and parts therefor, for use in the manufacture of airplanes and automobiles, and thus the Company's finished products are sold principally to aircraft and automobile companies. The total amount of sales during the period January 1 to November 30, 1935, measured in terms of pounds, was approximately 26,000,000 pounds shipped from the Company's plant to points within Indiana and approximately 74,000,000 pounds shipped from its plant to points without Indiana. A large proportion of the 26,000,000 pounds shipped to points within Indiana consists of scrap iron which is shipped to plants in Kokomo, Indiana; Gary, Indiana; and Indiana Harbor, Indiana, for re-smelting, and the finished products actually comprise approximately 40 per cent thereof, or approximately 10,000,000 pounds. Whether the re-smelted scrap iron is shipped back to the Company is not disclosed.

A large portion of the Company's finished products are sold to General Motors Corporation, Ford Motor Company, Packard Motor Company, Chrysler Motor Company, and Hudson Motor Company and are shipped mainly to Detroit, Michigan and other points within the State of Michigan. The Company also sells to automobile companies engaged in the manufacture of Studebaker and Auburn automobiles, whose plants are located within the State of Indiana. The sales of automobile and aircraft parts are often made on a continuing basis, the understanding with the purchasing companies being that a certain number of such parts will be supplied at a given rate over some specific period of time. However, there is apparently not in every instance a stipulated number of such parts that must be fur-

nished on definite dates; to some customers a varying supply is furnished on demand from week to week or month to month.

The amount of finished products sold and shipped by the Company during the period from December 1, 1935 to August 1, 1937, may vary from the monthly average as above disclosed, but the proportions of finished products sold and shipped within and without the State of Indiana will remain substantially the same.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile Workers of America, Bendix Local No. 9, was originally organized as Federal Labor Union No. 18347 and became affiliated with the American Federation of Labor in July 1933. Thereafter it adopted its present name and later became affiliated with the Committee for Industrial Organization. The Union is a labor organization admitting to its membership all employees of the Company except those having the authority to hire and discharge.²

III. THE QUESTION CONCERNING REPRESENTATION

Following an eight-day strike in November 1936, the Company entered into a contract with the Union on November 25 in which it agreed to recognize the Union "as bargaining agent for its membership, and all other employees who shall choose to avail themselves of its services, on all matters pertaining to their working conditions."³

On March 17, 1937, the Union presented a proposal to the management which would establish seniority rights for the Company policemen and reduce their hours of employment from 12 to eight without a reduction in their monthly salary of \$160. On March 18, the Company agreed to comply with this proposal provided that the policemen would accept a reduction in salary to \$145. The Union offered to agree to a reduction to \$152.50. On March 19, the following day, the Company called off negotiations on the ground that the Union was not authorized to bargain for the policemen. The impasse continued until June 10, 1937, when the Union voted to authorize the executive committee, which had been carrying on the negotiations, to call a strike unless the Company should agree to proceed. On the same day the Company issued a notice placing the policemen on eight-hour shifts without any reduction in salaries.

On June 22, 23, and 24, 1937, the executive committee of the Union, during negotiations with the management, proposed the ac-

² In our decision dated February 28, 1936, cited *supra*, we found that membership in the Union was limited to all employees of the Company paid on an hourly basis, except supervisory and clerical employees, policemen and nurses. The evidence in the instant case shows that the Union has extended its membership as indicated herein.

³ Board's Exhibit No. 3.

ceptance by the Company of an apprentice policy which included a change in wage rates for these employees. John P. Mahoney, vice president of the Company in charge of manufacturing, terminated the conferences, stating that the Company already had individual contracts with the apprentices, and rather than negotiate with the Union, he would discontinue the apprenticeship school.

On July 10, 1937, the Union, whose membership already included some office workers, called a meeting of all such employees of the Company for the purpose of encouraging membership and organizing an office workers' division to bargain for this class of employees.

We find that a question concerning the representation of the Company's employees has arisen which is causing discontent and dissatisfaction among the employees who are members of the Union.

IV. THE APPROPRIATE UNITS

The Union contends that there is one unit for collective bargaining in the entire plant of the Company, whereas the Company claims that the manual employees in the manufacturing, production and non-productive departments constitute an appropriate unit which should not include apprentices, time checkers, factory clerks, company policemen, nurses, salesmen, or office workers.

As of June 28, 1937, for the purposes of the issues here involved, the Company's employees, exclusive of supervisory employees, may be classified as follows:

Manual employees in manufacturing, productive and non-productive departments.....	4,500
Apprentices.....	104
Time checkers.....	18
Factory clerks.....	68
Company policemen.....	29
Nurses.....	7
Salesmen.....	74
Office workers (stenographers, clerks, bookkeepers, purchasing agents, accountants, comptometer operators, draftsmen, telephone operators, mail boys, etc.).....	723
Total.....	5,523

The Company's arguments that apprentices, time checkers and factory clerks should not be included in the unit with manual workers employed in manufacturing, productive and non-productive departments are not persuasive. The very fact that apprentices are employed to secure training in these departments and work in conjunction with the manual employees clearly identifies their interests with such employees. The conditions under which they work are the same, and as in the case of the manual employees, they are paid on an hourly basis. The argument of the Company that their employment does

not give rise to wage controversies is not borne out by the record, and the argument that individual contracts are signed with the apprentices and their guardians, in the cases where they are minors, are entitled to little consideration in view of the alliance of their interests, and the close connection of their welfare with the interests and welfare of the manual employees.

Although it is true that time checkers and factory clerks are clerical employees, the testimony discloses that their working conditions and problems are common with those of the manual employees. In contrast with the office workers who are associated with the managerial offices of the Company, who are salaried employees, and whose duties are confined to the managerial aspects of the Company's business, the time checkers and factory clerks work with the manual employees, are paid on an hourly basis, and have little, if any, direct contact with other clerical employees. In connection with time checkers, who in many plants are considered supervisory employees, evidence introduced by the Company establishes that their duties with the Company are exclusively clerical, and that they exercise few discretionary powers in recording the time of manual workers, and no supervisory powers over them.⁴

The Union claims that office workers should be included in the unit composed of manual employees, apprentices, factory clerks, and time checkers, considered above. However, on the basis of the evidence elicited at the hearing, we cannot decide that such inclusion would be proper.⁵ As distinguished from the employees in the unit already discussed, stenographers, clerks, bookkeepers, purchasing agents, accountants, comptometer operators, draftsmen, salesmen, telephone operators, and mail boys, classified as office employees, compose the sales and general office staff of the Company. All of such employees are paid on a salary basis.⁶ With the exception of the salesmen, many of whom are permanently located away from the plant, their duties are purely clerical and bound up with the management administration, or highly specialized and requiring a training and experience completely divorced from the requirements of manual workers. The evidence does not disclose any interests or problems which they may have in common with the employees in the unit considered above. The fact that 26 of the 723 employees

⁴ *Matter of Mergenthaler Linotype Company and United Electrical and Radio Workers of America, Linotype Local No. 1222, Case No. R-186, decided September 1, 1937, supra, p. 131.*

⁵ The Union lays great stress upon the Company's agreement of November 25 to bargain with the Union for its membership, and all other employees who should choose the Union to act for them. The evidence is conclusive, however, that at the time of the negotiation of the agreement the parties were considering and intended to negotiate only for the manual workers.

⁶ No evidence was introduced to warrant our consideration of the seven Company nurses in connection with the issues here involved.

classified as office workers have joined the Union is not persuasive, and we conclude that the office workers and salesmen herein cannot properly be considered a part of the unit composed of manual workers, apprentices, factory clerks, and time checkers.⁷

The designation of a unit appropriate for the purposes of collective bargaining must be confined to the evidence and circumstances peculiar to the individual case. From the foregoing facts we conclude 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, all of the employees of the Company who are paid on an hourly basis, including apprentices, factory clerks, and time checkers, and excluding other clerical workers and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining.

Although the Union contends that the Company policemen should be included in the above designated unit, a consideration of the status of the policemen herein precludes such determination.⁸ Members of the Company force hold appointments as special policemen from the City of South Bend, and their jurisdiction as well as their duties are limited to plant protection. Their unique position in relation to other groups of employees distinguishes them from employees in any other unit. On the other hand, as employees, they are entitled to the benefits of the Act. We therefore find that, in order to insure to the employees of the Company designated as policemen the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, all of the Company policemen constitute a unit appropriate for the purposes of collective bargaining.

V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

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

VI. THE EXCLUSIVE BARGAINING AGENCY

After checking the Union membership cards with the Company pay roll of August 4, 1937, witnesses both for the Company and the

⁷ See also *Matter of R. C. A. Manufacturing Company, Inc* and *United Electrical and Radio Workers of America* (Case No R-39, decided August 3, 1936, 2 N. L. R. B. 159)

⁸ *Matter of R. C. A. Manufacturing Company, Inc*, *supra*.

Union agreed to the following summary regarding the number and classification of the employees who are members of the Union:

Manual employees in manufacturing, productive, and non-productive departments, including factory clerks and employees laid off with seniority	3,783
Apprentices	18
Time checkers	14
Company policemen	15
Office workers	26
Total	3,856

The bargaining unit stated in Section IV to consist of all of the employees of the Company who are paid on an hourly basis, including apprentices, factory clerks and time checkers, and excluding other clerical workers and supervisory employees; at the time of hearing, included 4,690 employees. From the summary above it appears that 3,815 employees in this unit were members of the Union. Accordingly, we find that the Union, having been selected by a majority of the employees in such unit as of August 4, 1937, as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative for such purposes of all of the employees in this unit, exclusive of other clerical workers and supervisory employees, and we will so certify it.

We have found above that the policemen in this case constitute a separate appropriate unit for the purposes of collective bargaining with the Company. On August 4, the date of the hearing, the Company had 29 policemen on its pay roll. On the same day 15 of the policemen were members of the Union. Although we have decided that the policemen, by reason of their unique position among the employees of the Company, constitute a unit separate and apart from the unit heretofore discussed, they are entitled to designate any representative they may desire for the purposes of collective bargaining. Since a majority of them have expressed a desire to be represented by the Union, their desire is controlling. We find that the Union, having been selected by a majority of the Company policemen as of August 4, 1937, as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative for such purposes of all the Company policemen, and we will so certify it.

⁹In addition, 65 members were laid off without seniority, 43 resigned or were discharged, and 179 were unaccounted for.

CONCLUSIONS OF LAW

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

1. All of the employees of Bendix Products Corporation who are paid on an hourly basis, including apprentices, factory clerks and time checkers, and excluding other clerical workers and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. All policemen employed by the Bendix Products Corporation constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. A question affecting commerce has arisen concerning the representation of the employees in the aforesaid units, within the meaning of Section 9 (c) of the National Labor Relations Act.

4. International Union, United Automobile Workers of America, Bendix Local No. 9, having been selected for the purposes of collective bargaining by the majority of the employees, respectively, in each unit, as aforesaid, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in each 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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that

1. International Union, United Automobile Workers of America, Bendix Local No. 9, has been designated and selected by a majority of all the employees of Bendix Products Corporation who are paid on an hourly basis, including apprentices, factory clerks, and time checkers, and excluding other clerical workers and supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, International Union, United Automobile Workers of America, Bendix Local No. 9, 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.

2. International Union, United Automobile Workers of America, Bendix Local No. 9, has been designated and selected by a majority of the policemen employed by Bendix Products Corporation as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, International Union, United Automobile Workers of America, Bendix Local No. 9, is the exclusive representative of all such policemen for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.