

In the Matter of CONSOLIDATED AIRCRAFT CORPORATION *and* INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL No. 506, C. I. O.

Case No. R-761.—Decided June 22, 1938

Aircraft and Parts Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; controversy concerning appropriate unit; rival organizations; substantial doubt as to majority status—*Contract:* terminable, by its terms, if "a majority of the employees in the unit should elect other representation," no bar to election—*Unit Appropriate for Collective Bargaining:* hourly rated employees, excluding timekeepers and superintendent's clerks; prior Decision of Board; existing contract; welders included in larger unit as not a separate craft—*Election Ordered*

Mr. William R. Walsh, for the Board.

Packard & Carter, by *Mr. Marshall Ross*, of Los Angeles, Calif., and *James S. Lowrie*, of San Diego, Calif., for the U. A. W. A.

Mr. Charles C. Crouch, of San Diego, Calif., for the I. A. M.

Mr. Jimmie Goss, of West Los Angeles, Calif., for the Welders.

Mr. Warren L. Sharfman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On April 23, 1938, International Union, United Automobile Workers of America, Local No. 506, C. I. O., herein called the U. A. W. A., filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Consolidated Aircraft Corporation, San Diego, California, 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 April 29, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the

Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On May 4, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the U. A. W. A., upon International Association of Machinists, Aircraft Lodge No. 1125,¹ herein called the I. A. M., a labor organization named in the petition as claiming to represent employees directly affected by the investigation, upon the International President of the Grand Lodge, International Association of Machinists, and upon United Aircraft Welders of America, herein called the Welders, another labor organization named in the petition as claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on May 10, 11, and 12, 1938, at San Diego, California, before George Kennedy, the Trial Examiner duly designated by the Board. The Board, the U. A. W. A., and the I. A. M. were represented by counsel and the Welders by their business agent. All parties participated in the hearing. Full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed these rulings 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 COMPANY

Consolidated Aircraft Corporation, a Delaware corporation with its main office and plant in San Diego, California, is engaged in the design, manufacture, development, and sale of aircraft, aircraft parts, and accessories. It is the largest manufacturer of air boats in the world; the largest contractor to the United States Navy for aircraft; and the second or third largest airplane manufacturing establishment in the United States. The Company has approximately 2,500 production employees and a monthly pay roll of \$290,000, exclusive of amounts paid to executives and for overtime work.

During the year 1937 the Company spent approximately \$5,600,000 for the purchase of materials, supplies, and equipment. Included in this amount were purchases of materials made during the 7 months ending December 31, 1937, from certain vendors in New York, Con-

¹The notice was incorrectly mailed to International Association of Machinists, Box 618, La Jolla, California. However, at the hearing the I. A. M. waived its right to object to the irregularity.

necticut, Ohio, and New Jersey, which totaled \$1,094,135. During the year 1937 the Company also purchased \$775,000 worth of aluminum and duralumin, the chief materials used by the Company in the construction of aircraft, from the Aluminum Company of America. While some of the aluminum and duralumin was supplied from the Los Angeles warehouse of the Aluminum Company, it all originated in New York, New Jersey, Pennsylvania, or Tennessee.

The sales of the Company aggregated \$11,907,493.48 during the year 1937. Of this amount \$22,423.13 consisted of sales to the United States Army, \$9,670,918.21 of sales to the United States Navy, and \$2,214,152.14 of sales to commercial and export customers. Substantially all of the sales to commercial and export customers represented deliveries made outside of California. Sales to the Army or Navy are made f. o. b. factory if the goods are shipped by rail. If the goods are delivered in "fly-a-way" condition, as air boats for the Navy, they are taken by the Navy from the ramp on Lindbergh Field, where the factory is located.

The respondent admitted that it was engaged in interstate commerce and that it was within the jurisdiction of the Board.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile Workers of America, Local No. 506; C. I. O., is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership hourly rated production and maintenance employees of the Company.

International Association of Machinists, Aircraft Lodge No. 1125, is a labor organization affiliated with the American Federation of Labor, admitting to its membership hourly rated employees of the Company engaged in production or maintenance.

United Aircraft Welders of America is an unaffiliated labor organization, admitting to its membership all of the welders employed by the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On April 8, 1937, after a petition requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act had been filed by the I. A. M., the Board issued a Direction of Election² providing for a vote by secret ballot among the employees of the Company in an appropriate unit to determine the representatives of the employees in that unit for the purposes of collective bargaining. The I. A. M. received a majority of the votes at the election

² *Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125, 2 N L. R. B. 772*

held on April 10, 1937, pursuant to the Board's Direction.³ On April 26, 1937, the I. A. M. entered into a contract with the Company for all of the employees in the appropriate unit, covering rates of pay, wages, hours of employment and other conditions of employment. The contract provided that it would run for 1 year, and would continue in effect thereafter until "amended by agreement upon thirty days written prior notice by either party thereto or unless by legal procedure such as the election of 10 April 1937, a majority of the employees in the unit should elect other representation."

On July 12, 1937, the members of the I. A. M. voted to disaffiliate with the I. A. M., and affiliated with the U. A. W. A. For the most part the old officers of the I. A. M. retained their respective offices in the U. A. W. A. On July 14, 1937, the U. A. W. A. offered to continue the contract in effect, and requested the Company to deal with a duly appointed committee of the U. A. W. A. on questions arising under it. The Company reserved its decision on this question, and for a month or more "hesitated" to, and did not, bargain with the I. A. M. or the U. A. W. A. Late in August the Company started to meet again with a newly elected committee from the I. A. M., not, the Company avers, because it was believed to represent a majority of the employees, but because the I. A. M. was thought to be the other party to the contract.

Since the events of July 1937, there have been conflicting views as to what representation the employees of the Company desire. At the hearing neither the I. A. M. nor the U. A. W. A. claimed to have a majority of the 2,500 hourly rated employees in the ranks of their membership. Both, however, have a substantial number of members among the employees. Many of the employees are satisfied with the representation of the I. A. M., although they are not members of that organization. Many other employees favor representation by the U. A. W. A. although they are not members of the U. A. W. A. The U. A. W. A. claims that a majority of the employees favor representation by it. The I. A. M. is not opposed to an election.

The Company took the position that in view of its contract with the I. A. M. the Board should deny the request by the U. A. W. A. for an election unless the U. A. W. A. represented a majority of the employees covered by the contract. As the contract, by its own terms, is terminable if "a majority of the employees in the unit should elect other representation," it is clear that it is no bar to an election. Nor is the fact that the petition was filed by a labor organization whose

³ *Ibid* The I. A. M. was certified as the exclusive representative of all of the employees in the appropriate unit in the Board's Decision and Certification of Representatives issued on April 30, 1937.

membership included less than a majority of the employees in an appropriate unit any bar to an election, for the existence of such a majority would obviate the necessity of holding an election.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring 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.

V. THE APPROPRIATE UNIT

In *Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125*,⁴ decided April 30, 1937, we 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." The contract between the Company and the I. A. M., which has been in effect during the past year, covered "all of the employees in the Unit as defined by the National Labor Relations Board * * *, to wit: All hourly paid employees, exclusive of timekeepers and excepted clerks." The U. A. W. A. and the I. A. M. are agreed that the "excepted clerks" are the hourly paid superintendent's clerks.

The Welders contend that the welders are a separate craft and constitute a unit appropriate for the purposes of collective bargaining. It claims to represent the proposed unit by virtue of a petition signed by all 28 of the welders designating it as their bargaining agent. George Draper, a member of the Welders, testified that welding is differentiated from other work at the plant in that it requires a degree of special experience and skill; that 20 of the 28 welders employed by the Company are Army-Navy certified welders who have passed special examinations; that welders are exposed to special occupational hazards; and that they consider themselves to be highly skilled craftsmen.

The record indicates that the Company considers welders to be like other production employees. Welders number only 28 out of

⁴ 2 N. L. R. B. 772

2,500 production employees and are employed in the inspection department, the heat-treat and spot-weld department, and the welding, plating, and sandblasting department.

In *Matter of Great Lakes Engineering Works and Welders International Association*⁵ we said:

In most industries welding and burning are operations performed by skilled workmen in connection with their work in a broader field, as for example, the craft of boiler making. Welding and burning are performed in connection with the construction and repair of boilers which requires, in addition, craftsmen particularly skilled in other operations. This is also true of nearly every industry requiring use of the burning or welding process. Consequently, welders and burners, or either alone, do not constitute a distinct craft and are in most cases necessarily merged into crafts with which their work is associated.

In that case we recognized an exception to the general rule upon a showing that the welders and burners there involved had been segregated into one department under one foreman for a period of 20 years. The instant case presents no reason for departure from the rule.⁶ We will therefore include the welders in the larger unit.

We find the hourly rated employees of the Company, excluding timekeepers and superintendent's clerks, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

Neither the I. A. M. nor the U. A. W. A. claimed to have a majority of the employees in the unit which we have found to be appropriate for the purposes of collective bargaining within the ranks of their membership.

We find that the question which has arisen concerning the representation of employees can best be resolved by means of an election by secret ballot. None of the parties made any recommendations as to the date which should be selected for the determination of eligibility to vote. However, at the hearing, a list of the hourly employees of the Company as of May 6, 1938, was introduced into evidence. Those employees in the appropriate unit whose names are on that list shall be eligible to vote.

⁵ 5 N. L. R. B. 788.

⁶ *Matter of The Novelty Steam Boiler Works and Local 101, Welders, Burners, Apprentices, A. F. of L.*, 7 N. L. R. B. 969

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Consolidated Aircraft Corporation, San Diego, California, within the meaning of Section 9 (a) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The hourly rated employees of the Company, excluding timekeepers and superintendent's clerks, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Consolidated Aircraft Corporation, San Diego, California, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the hourly rated employees who were employed by Consolidated Aircraft Corporation as of May 6, 1938, excluding timekeepers, superintendent's clerks, and those employees who left the employ of the Company or were discharged for cause between such date and the date of election, to determine whether they desire to be represented by International Union, United Automobile Workers of America, Local No. 506, C. I. O., or by International Association of Machinists, Aircraft Lodge No. 1125, for purposes of collective bargaining, or by neither.

MR. EDWIN S. SMITH, concurring:

I concur in the result reached in the opinion of the Board.

I do not think, however, that the question of whether or not the welders are a craft is determinative of the issue raised here. I believe that welders are a class of skilled workers with common economic interests and that they may, under certain circumstances, constitute a unit appropriate for the purposes of collective bargain-

ing.⁷ However, in the instant case, where collective bargaining has proceeded for over a year on the basis of an industrial unit as defined in a written contract and where the welders now seek for the first time to bargain as a distinct unit, I do not believe that the effectiveness of the bargaining power of the great majority of the employees should be impaired by splitting off from the industrial unit a separate unit for the welders, even if they constituted a craft or may constitute an appropriate unit under other circumstances.

⁷ See my dissent in *Matter of The Novelty Steam Boiler Works and Local 101, Welders, Burners, Apprentices, A. F. of L.*, 7 N. L. R. B. 969.