

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

Case No. R-8

DIRECTION OF ELECTION

January 29, 1936

The Board having found that a question affecting commerce has arisen concerning the representation of employees of the Bendix Products Corporation, South Bend, Indiana, within the meaning of Section 9, subdivision (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, and that an election by secret ballot should be conducted, it is hereby

DIRECTED that, as part of the investigation authorized by the National Labor Relations Board in this case to ascertain representatives for collective bargaining with the Bendix Products Corporation, an election by secret ballot shall be conducted within a period of ten days from the date of this Direction of Election, under the direction and supervision of L. W. Beman, Regional Director for the Thirteenth Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of its Rules and Regulations—Series 1, among all employees of the Bendix Products Corporation paid on an hourly basis, except supervisory employees having authority to hire or discharge, clerical employees, policemen and nurses, on the payroll on the date of the payment of wages immediately preceding the date of this Direction, to determine whether they desire to be represented by Local No. 9, International Union, United Automobile Workers of America, or by the Bendix Employees Association.

[SAME TITLE]

Decision, February 28, 1936

Automobile and Aircraft Parts Industry—Unit Appropriate for Collective Bargaining: eligibility for membership in both rival organizations; employees on hourly basis—*Election Ordered:* question affecting commerce; confusion and unrest among employees—controversy concerning representation of employees; majority status disputed by employer; rival organizations; substantial doubt as to majority status.

Mr. Harold A. Cranfield and *Mr. Robert Rissman* for the Board.
Mr. E. H. Cassels and *Mr. R. B. Johnstone*, of Chicago, Ill., and
Mr. E. F. Seebirt, of South Bend, Ind., for the Company.

Mr. Arthur E. Reyman, of Washington, D. C., for Local No. 9.

Mr. Lewis W. Hammond, of South Bend, Ind., for Bendix Employees Association.

Mr. Melvin C. Smith, of counsel to the Board.

DECISION

STATEMENT OF CASE

A petition for an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, approved July 5, 1935, and Article III, Section 1, of National Labor Relations Board Rules and Regulations—Series 1, was filed with the Regional Director for the Thirteenth Region by United Automobile Workers Federal Labor Union No. 18347, on October 29, 1935, alleging that a question affecting commerce had arisen concerning the representation of the production employees of Bendix Products Corporation, South Bend, Indiana. The National Labor Relations Board duly authorized the Regional Director to conduct an investigation pursuant to Section 9(c) of the Act. In connection therewith the Regional Director issued a notice of hearing on November 21, 1935, setting a hearing for December 5, 1935, at South Bend, Indiana. On November 30, 1935, an amended notice of hearing was issued by the Regional Director, postponing the hearing from December 5, 1935 to December 12, 1935, at the same place; and on December 9, 1935, a second amended notice of hearing was issued by the Regional Director, postponing the hearing from December 12, 1935, to December 17, 1935, at a different place in South Bend, Indiana. All notices of hearing were duly served. An answer and a motion to dismiss were filed with the Regional Director by counsel for Bendix Products Corporation; and an answer and a motion to dismiss were likewise filed with the Regional Director by counsel for Bendix Employees Association.

A hearing was held on December 17, 18 and 19, 1935, before John A. Lapp, Trial Examiner duly designated by order of the Board. Bendix Products Corporation, Bendix Employees Association, and United Automobile Workers Federal Labor Union No. 18347 were each represented at the hearing by counsel and participated in the proceedings. Counsel for United Automobile Workers Federal Labor Union No. 18347 filed a motion for leave to amend its petition, stating that subsequent to the filing of its petition its name and designation had been changed from "United Automobile Workers Federal Labor Union No. 18347" to "Local No. 9, International Union, United

Automobile Workers of America". The motion for leave to amend was granted. The motion to dismiss filed by Bendix Products Corporation and Bendix Employees Association were denied. Briefs were submitted on behalf of Bendix Products Corporation, Bendix Employees Association, and Local No. 9, International Union, United Automobile Workers of America, and a reply brief was submitted on behalf of Bendix Products Corporation. Subsequently, a hearing was held before the Board, in Washington, D. C., on January 28, 1936, at which counsel for the parties made oral arguments.

The Board now affirms the rulings of the Trial Examiner denying the motions to dismiss.

Upon the evidence adduced at the hearings and from the entire record now before it the National Labor Relations Board promulgates the following:

FINDINGS OF FACT

1. Bendix Products Corporation, hereinafter referred to as the 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 Corporation 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 Corporation 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-Kliesrath Corporation. According to the application for registration filed with the Securities and Exchange Commission by the Bendix Aviation Corporation, the latter companies now function in sales capacities only; whether they function as such for the Corporation is not stated.

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

3. A substantial majority of the raw materials used by the Corporation 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 43,000,000 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 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 continuing shipments, and are shipped to the plant by means of railroads and trucking companies. Certain of the raw materials, steel for example, are shipped to the plant in a continuing stream as needed, but others, zinc for example, are purchased and shipped to the plant in large quantities several times each year.

4. The Corporation'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. The record clearly indicates that the various materials flow through the plant in a steady stream in the course of the manufacturing process, and the finished products are thence shipped to various customers. However, during slack seasons a substantial supply of parts is manufactured and stored for future use.

5. A substantial majority of the finished products manufactured by the Corporation 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 Corporation'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 Corporation'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 resmelting, and the finished products actually comprise approximately forty per cent thereof, or approximately 10,000,000 pounds. Whether the resmeltered scrap iron is shipped back to the Corporation is not shown by the record.

A large portion of the Corporation's finished products are sold to General Motors Corporation and Ford Motor Company and are shipped mainly to Detroit, Michigan, and other points within the

State of Michigan. The Corporation 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 usually 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 furnished on definite dates; to some customers a varying supply is furnished on demand from week to week or month to month.

6. The aforesaid operations of the Corporation constitute a continuous flow of trade, traffic and commerce among the several states.

7. United Automobile Workers Federal Labor Union No. 18347, a labor organization, was organized in the summer of 1933 and obtained its charter from the American Federation of Labor on July 28, 1933. On October 1, 1935, the said Union became affiliated with the International Union, United Automobile Workers of America, which is affiliated with the American Federation of Labor, and changed its name to "Local No. 9, International Union, United Automobile Workers of America", hereinafter referred to as Local No. 9. All employees of the Corporation, paid on an hourly basis, except supervisory and clerical employees, policemen and nurses, are eligible to membership in Local No. 9.

8. The Bendix Employees Association, hereinafter referred to as the Association, was organized about September, 1933, and employees of the Corporation paid on an hourly basis are eligible to become members thereof. No evidence was offered by the Association to show whether it excludes from membership the same groups excluded by Local No. 9. The Association collects no initiation fees or dues, but obtains its finances from contributions, and from proceeds of entertainments.

9. In view of the above, and in view of the fact that no issue has been raised in this matter relative to the appropriate unit for the purposes of collective bargaining, we find that the unit appropriate for the purposes of collective bargaining consists of all employees of the Corporation paid on an hourly basis, except supervisory and clerical employees, policemen and nurses.

10. In December, 1935, at the time this case was heard before the Trial Examiner, there were approximately 3,450 employees in the production departments of the Corporation paid on an hourly basis. Of this number Local No. 9 claims approximately 2,500 members, and the Association claims a membership of 2,549 employees. Local No. 9 has a duly elected Executive Committee and the Association has a duly elected Executive Board. Both

groups, representing Local No. 9 and the Association, respectively, meet separately from time to time with the management of the Corporation.

11. On and before September 17, 1935, certain of the employees of the Corporation, members of Local No. 9, were laid off in their respective departments according to seniority. Attempts were made by the Executive Committee of Local No. 9 to obtain employment for these employees in other departments in which the Corporation had hired new men, with apparently no success. At a meeting of Local No. 9 on September 17, 1935, the Executive Committee was given the power to put into effect a strike vote which had been taken several months previous, in the event the controversy could not be settled within forty-eight hours. On the night of September 18, 1935, the Corporation began to move some of its machinery out of the plant in order to set up a reserve plant at some distant point to be used in the event of any extensive labor disturbance. On September 19, 1935, the management met with all its employees in its auditorium and all employees decided to remain at work. Subsequent thereto the management met with the President of International Union, United Automobile Workers of America, and the Executive Committee of Local No. 9, and agreed to bring the machinery back to the plant and put back to work at one place or another the employees who had been previously laid off and were waiting to be recalled.

12. As a direct result of the above-mentioned threatened labor difficulties the business of the Corporation was substantially decreased. The General Motors Corporation withdrew approximately 20 per cent of its usual volume of business, and the Ford Motor Company decreased its usual amount of business by approximately 50 per cent.

13. At meetings between the management of the Corporation and the Executive Committee of Local No. 9 held during the second week of July, 1935, and on September 17 or 19, 1935, the Executive Committee informed the management that Local No. 9 represented a majority of the employees, and requested the management to bargain with it as the sole bargaining agent of the employees. It is not clear what statement, if any, the management made at the July meeting, but at the meeting in September the management replied that it did not know that Local No. 9 actually represented a majority of the employees of the Corporation. Since July the management has stated on several occasions that it will continue to meet with both Local No. 9 and the Association.

14. It appears that the Corporation has not only made a practice of meeting with representatives of both Local No. 9 and the Association, but also meets with individuals and other groups of em-

ployees. It has never actually made any agreement with any group of its employees, or organization purporting to represent its employees. On numerous occasions the Corporation has considered grievances and suggestions which had been presented to it and decided to act favorably thereto; however, upon publicly announcing such action the same was declared to be the "policy" of the Corporation, and no organization was given credit therefor, although on several such occasions Local No. 9 was the sole proponent of such new plan or working condition. As a result thereof considerable rivalry exists between Local No. 9 and the Association, and a spirit of unrest prevails generally among the employees of the Corporation.

15. The unrest and rivalry existing among the employees of the Corporation is of long standing as is evidenced by the fact that on September 14, 1934, United Automobile Workers Federal Labor Union No. 18347 filed with the Regional Labor Board, Tenth District, of the old National Labor Relations Board, a petition for an election in the Corporation's plant, with a view to determining the representatives of the employees for the purpose of collective bargaining within the meaning of Section 7(a) of the National Industrial Recovery Act and the Code of Fair Competition for the Automotive Parts and Equipment Manufacturing Industry. Hearings were subsequently conducted in this matter on October 11, 1934, and January 14, 1935, and a decision and order of election were issued by the old National Labor Relations Board on January 25, 1935, finding that it was in the public interest that an election be held of all the employees of the Corporation paid upon the basis of hourly wages. The Corporation thereupon obtained an injunction in a Federal district court restraining that Board from conducting an election. The Corporation thereafter filed a petition for review in the appropriate Circuit Court of Appeals. However, the case was dropped when the Supreme Court of the United States handed down its decision in *A. L. A. Schechter Poultry Corporation, et al. v. United States*, 295 U. S. 495.

16. A question has arisen concerning the representation of the employees of the Corporation paid on an hourly basis, except supervisory and clerical employees, policemen and nurses.

17. This controversy is one which has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

18. A secret ballot should be taken among the said employees of the Corporation to ascertain their representatives for the purposes of collective bargaining. By a Direction of Election, dated January 29, 1936, we have already directed that such a secret ballot should be taken.

CONCLUSIONS OF LAW

Upon the basis of the above findings, the following conclusions of law are made by the Board:

1. The employees of the Corporation paid on an hourly basis, except supervisory employees having authority to hire or discharge, clerical employees, policemen and nurses, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of employees of the Bendix Products Corporation, within the meaning of Section 9 (c) of the Act.