

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

VOUGHT AIRCRAFT INDUSTRIES, INC.¹

Employer

and

Case 12-RC-9034

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Vought Aircraft Industries, Inc., is a Delaware corporation engaged in the manufacture and assembly of aerospace parts. The Employer has facilities in several locations, including Stuart, Florida and Dallas, Texas. The Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, filed a petition on March 19, 2004, seeking to represent the Employer's production and maintenance employed in Stuart, Florida. Following a hearing, both parties filed briefs with me.

There is no issue as to the scope or composition of the unit, and both parties agree that the petitioned-for unit consists of approximately 200 employees. The sole issue in this case is whether an election should be conducted in the petitioned-for unit in light of the Employer's claim that it is closing the Stuart facility by December 2005. Specifically, the Employer contends that it would not effectuate the policies of the Act to hold an election in

¹ The name of the Employer appears as corrected at the hearing.

this unit because: (1) prior to the filing of the petition, it announced plans to close the facility; (2) approximately 5 percent of the employees have already taken voluntary layoff; (3) approximately 25 percent of the employees will be transferring to the Dallas facility; and (3) other employees will be laid off, including those working on two production lines that are shutting down for reasons unrelated to the closing. The Petitioner, on the other hand, contends that an election should be held because the Stuart facility will remain in operation until December 2005, and a substantial and representative complement of employees will be working at the time of an election.

Based on the evidence and relevant case law, I conclude that a substantial and representative complement of employees will be employed for a sufficient amount of time such that it is appropriate to conduct an election in this unit, and a sufficient amount of time remains before the closing to allow for meaningful bargaining.

I. RELEVANT FACTUAL BACKGROUND

As noted above, the Employer has facilities in several locations in the United States, including Stuart, Florida and Dallas, Texas. It recently announced plans to close the Stuart facility. On February 26, 2004, Stuart site manager Jim Girdner read a letter to employees from the Employer's CEO informing employees that, due to excess capacity, the Employer plans to close the Stuart facility and consolidate its operations in Dallas.²

² The letter mentioned that the Employer was also phasing out its Nashville, Tennessee operation and consolidating it with Dallas. Girdner testified it will take up to three years to close that facility.

As to the dates for phasing out the Stuart operation, Girdner testified that the Employer anticipates closing the Stuart facility by December 2005. However, the Employer was unable to provide detailed information as to the specific number of employees that will be transferred or laid off and the specific dates such actions will take place. Although Girdner testified that the Employer anticipates a September 3, 2004, "completion date" for some transfers and layoffs to take place, he does not know how many of either will take place then. In fact, when asked whether there could be up to 150 employees still working on the day the facility closes, Girdner simply responded that he did not know. According to Girdner, the Employer plans to have a finalized plan in place on May 28, 2004 that will set forth the specific numbers and dates of transfers and layoffs.

As to transfers, the Employer offered all Stuart employees the opportunity to relocate to the Dallas facility. As of the date of the hearing, only about 50 employees indicated an interest in transferring to Dallas.³ Girdner testified that those 50 employees would be transferring through the summer and into next year, and that some would transfer prior to September 3, 2004. As noted, however, Girdner could not testify to the specific number of employees to be transferred on any given date.

Regarding layoffs, as previously mentioned, Girdner testified that an unknown number of layoffs will occur on September 3, 2004. Approximately nine

³ The hearing took place on April 5, 2004.

employees already took a voluntary layoff following the closure announcement.⁴ In addition, the Employer contends that two of its production lines, the Nacelle production line and the 757 production line, are shutting down for reasons unrelated to the closing.⁵ Approximately 20 employees will be affected by the shutdown of these lines. Girdner testified that the date these lines will shut down and the 20 employees will be laid off is also unknown at this time, but he thinks it might be sometime this summer.

As to the equipment, the Employer similarly does not have a final plan in place for its disposition upon closing. Girdner testified that most of it will be transferred to Dallas or sold. According to Girdner, the Employer plans on increasing production levels at the Stuart location this summer in connection with the plan to eventually close. The increase in production will create overtime work for the employees and may even result in the recall of employees laid off or the hiring of local employees. As to the building that houses the Stuart facility, it is currently under a lease that expires in 2008 or 2009. Girdner testified that the Employer will give the building back to the county when it moves out.

II. ANALYSIS AND CONCLUSIONS

When there is definite evidence of an expanding or contracting unit, the Board considers whether the present work complement is substantial and representative of the ultimate complement to be employed in the near future,

⁴ The employees who took this voluntary layoff received an eight-week severance package. Those employees who decide to stay until the date of their layoff will receive a severance package and a completion bonus of an additional eight weeks of pay.

⁵ Specifically, the Employer lost the Nacelle contract and Boeing stopped the 757 production.

projected both as to the number of employees and kind of classifications, so as to warrant an election. MJM Studios, 336 NLRB 1255, 1256 (2001)(citations omitted). Otherwise, the Board will not conduct an election at a time when a closing or permanent layoff is imminent and certain. Hughes Aircraft Co., 308 NLRB 82, 83 (1992), and cases cited therein. The Board has consistently held that a closing or layoff is sufficiently imminent so as to foreclose an election when it is to take place within approximately four months or less. See, e.g., Hughes Aircraft Co., 308 NLRB at 83; Larson Plywood Company, Inc., 223 NLRB 1161 (1976); Martin Marietta Aluminum, Inc., 214 NLRB 646, 646-647 (1974); and Douglas Motors, Corp., 128 NLRB 308 (1960).

There have been cases in which a layoff or closing was to occur later than four months from the date of the hearing and the Board still found that no useful purpose would be served by an election. For example, in M.B. Kahn Construction Co., Inc., 210 NLRB 1050 (1974), the employer anticipated ceasing operations approximately six to seven months from the date of the hearing, and it set forth a schedule for layoffs, including the specific number of employees that it would lay off on specific dates throughout the following six to seven months. The Board, which issued its decision five months after the close of the hearing, concluded at that point that the closing was sufficiently imminent such that no useful purpose would be served by conducting an election.

Absent a schedule for layoffs, however, the Board has ordered an election when a layoff or cessation of operations is to take place four or more months in

the future. In General Electric Co., 101 NLRB 1341, 1344 (1952), the Board ordered an election when the employer anticipated ceasing operations eight months from the date of the decision. The Board acknowledged that the cessation of operations would involve layoffs. However, because the employer failed to show how many employees would be laid off in the coming months, the Board concluded that a substantial and representative complement would remain employed for a major portion of the termination period. See also NLRB v. Engineers Constructors, Inc., 756 F.2d 464 (6th Cir. 1985)(election ordered where project scheduled to end eight to nine months from date of decision); Gibson Electric, Inc., 226 NLRB 1063 (1976)(election ordered where project might continue for at least another four months from date of Board decision).

Here, although the evidence shows that the closing of the Stuart facility is certain, the closing is not imminent. Indeed, the Petitioner does not dispute the Employer's contention that it plans on closing the facility. However, site manager Girdner testified that the Employer does not anticipate closing the facility until December 2005, approximately 19 months from the date of this decision. Certainly, this is a sufficient length of time for bargaining to take place.

In addition, the Employer failed to provide a specific schedule of layoffs to occur in the near future. Although it mentioned a September 3, 2004 date for layoffs, it failed to disclose how many layoffs will occur on that date. Significantly, Girdner could not rule out the possibility that there still may be 150 employees employed by the closing date. The Employer cannot circumvent its

failure to provide more specific evidence by claiming that it will have a finalized plan after the fact. Thus, as in General Electric Co., supra, I conclude that a substantial and representative complement of employees will remain employed on the election date, if the election is held in due course, and for many months to come.⁶

The Employer's reliance on Longcrier Co., 277 NLRB 570 (1985) is misplaced. In that case, the Board reversed the regional director's unit determinations and concluded that a *second* election in the corrected unit was not warranted because the projects at issue were either already completed by the time the Board's Decision issued, or would be in the following two months. Clearly, the Longcrier case was in a different posture at the time the Board reviewed it, than is the present case. I note that, at the time of the underlying hearing in that case, the employer similarly argued for dismissal of the petition where it anticipated completing the projects at issue over the next 9 to 13 months. However, the regional director still found it appropriate to order an election. And, that decision to order an election was never reversed by the Board.

Given the Employer's anticipated closing date of December 2005, and its failure to provide a specific schedule of when layoffs and transfers are to occur, the record and case law clearly support the conclusion that a substantial and representative complement of employees will remain employed in the near

⁶ Cooper International, 205 NLRB 1057 (1973), is also distinguishable from the present case, as it involved an imminent closing.

future, and that a sufficient amount of time exists for bargaining to take place. Accordingly, an election in the petitioned-for unit is warranted.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, and in accordance with the discussion above, I conclude and find as follows:

A. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

B. The Employer, Vought Aircraft Industries, Inc., is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁷

C. The Petitioner, a labor organization, seeks to represent certain employees of the Employer.⁸

D. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

E. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

⁷ At the hearing, the parties stipulated that, Vought Aircraft Industries, Inc., a Delaware corporation engaged in the manufacture and assembly of aerospace parts, has an operation located at 1801 Southeast Airport Road, Stuart, Florida. During the past 12 months, the Employer, in conducting its business operations described above, purchased and received at its Stuart facility materials valued in excess of \$50,000 directly from suppliers located outside the State of Florida.

⁸ At the hearing, the parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

All full-time and regular part-time production and maintenance hourly employees employed by the Employer in Stuart, Florida; excluding office clerical employees, guards, and supervisors as defined in the Act.

F. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among employees in the unit set forth above. The employees will vote on the question of whether or not they wish to be represented by the International Association of Machinists and Aerospace Workers, AFL-CIO, for the purposes of collective bargaining. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this decision.

A. Voter Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly it is hereby directed that within 7 days of this Decision, the Employer must submit to the Regional Office, an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Boulevard, Suite 530, Tampa, Florida 33602-5824, on or before May 10, 2004. No extension of time to file this list will be granted except in

extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. Since the list will be made available to the parties to the election, please furnish a total of two (2) copies when submitting the list in hard copy form. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuously visible to potential voters for a minimum of 3 full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). An employer who fails to do so may not file objections based on the non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board

in Washington by 5 p.m., EDT, on May 17, 2004. This request may not be filed by facsimile. A copy of the request for review should also be served on the other parties and on me.

DATED at Tampa, Florida, this 3rd day of May 2004.

/s/ [Rochelle Kentov] _____
Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Boulevard, Suite 530
Tampa, FL 33602