In the Matter of NORTHWEST AIRLINES, INC. *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 134, C. I. O.

Case No. R-4524.—Decided February 13, 1943

Jurisdiction: bomber modification project of an air carrier, found not subject to the jurisdiction of the Board.

Doherty, Rumble, Butler, Sullivan & Mitchell, by *Mr. Pierce Butler* and *Mr. Irving Clark*, of St. Paul, Minn., for the Company.

Helstein & Hall, by *Mr. Douglas Hall*, *Mr. Joseph Mattson*, and *Mr. James E. Kirby*, of Minneapolis, Minn., and *Mr. Maurice Sugar*, *Mr. Ernest Goodman*, and *Mr. Morton Eden*, of Detroit, Mich., for the U. A. W.-C. I. O.

Mr. Lee Pressman and *Mr. Eugene Cotton*, of Washington, D. C., for the C. I. O.

Mr. C. M. Mulholland, of Toledo, Ohio, and *Mr. J. L. McFarland*, of Chicago, Ill., for the Association.

Covington, Burling, Rublee, Acheson & Shorb, by *Mr. Gerhard A. Gesell*, *Mr. Charles M. Davison, Jr.*, and *Mr. Geo. S. Elpern*, of Washington, D. C., for *amici curiae*.

Mr. Leon Novak, of counsel to the Board.

DECISION
AND
ORDER

STATEMENT OF THE CASE

Upon petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 134, C. I. O., herein called the U. A. W.-C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Northwest Airlines, Inc., St. Paul, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Minneapolis, Minnesota, on November 10, 1942. The Company, the U. A. W.-C. I. O., and Air Line Mechanics Association, herein called the Association, appeared, participated, and were afforded full op-

portunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. On December 4, 1942, the Board granted the following air carriers permission to file briefs and present oral argument as *amici curiae:* American Airlines, Inc.; Braniff Airways, Inc.; Chicago and Southern Air Lines, Inc.; Colonial Airlines, Inc.; Delta Air Corporation; Eastern Air Lines, Inc.; Inland Air Lines, Inc.; Mid-Continent Airlines, Inc.; National Airlines, Inc.; Northeast Airlines, Inc.; Pan American Airways, Inc.; Pan American-Grace Airways, Inc.; Pennsylvania-Central Airlines Corporation; Transcontinental & Western Air, Inc.; United Air Lines Transport Corporation; and Western Air Lines, Inc. Oral argument was presented to the Board in Washington, D. C., on December 10, 1942, all of the parties being represented by counsel. All the parties, including the *amici curiae*, filed briefs which have been considered by the Board.

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

Findings of Fact

I. THE BUSINESS OF THE COMPANY

Northwest Airlines, Inc., is a Minnesota corporation with its principal office and place of business in St. Paul, Minnesota. It operates as a carrier by air, transporting passengers, freight, and mail from Chicago, Illinois, to Seattle, Washington; from Minneapolis, Minnesota, to Duluth, Minnesota; from Fargo, North Dakota, to Grand Forks, North Dakota, and Winnipeg, Manitoba. The Company maintains offices at various points on these routes. In addition to its business of transportation, the Company, pursuant to a contract with the War Department of the United States Government, operates a Military Bomber Modification Project at its plant located at St. Paul, Minnesota. Bombers are flown from other parts of the country to the Company's St. Paul plant, where its employees install various parts and make certain modifications. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 134, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Air Line Mechanics Association is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

Since about 1935, the Company has operated as a common carrier by air, transporting mail, passengers, and property over regularly established routes. In the course of these operations, the Company maintains hangars, machine shops, and administrative offices in St. Paul and Minneapolis, Minnesota. In February 1942, the Company undertook, pursuant to contract with the United States War Department, to use its existing facilities and such additional facilities as necessary for the purpose of installing in military aircraft various parts and armament and performing maintenance work on such aircraft. This work is referred to as the bomber modification project, and is the operation with which we are here primarily concerned. The Company, the Association, and the *amici* urge that the petition of the U. A. W.–C. I. O., which seeks to establish a unit of employees working at the modification project, be dismissed on the ground that the project is not subject to the jurisdiction of the Board. The U. A. W.–C. I. O., on the other hand, contends that the Board has jurisdiction.

The contention of the Company, which is in substance also that of the Association and the *amici*, is that if an employer is "in any measure subject" to the Railway Labor Act, then "he and all his activities are removed from the jurisdiction of the National Labor Relations Board, since, by the explicit terms of Section 2 (2) [of the National Labor Relations Act], he is no longer an employer." The argument proceeds, therefore, that since the Company is subject to the Railway Labor Act in its customary carrier activities, and since the bomber modification project is an activity carried on by the Company, it follows that as to that project the Company is not an employer within the meaning of the Act. On the other hand, the U. A. W.–C. I. O. maintains that the test of jurisdiction depends upon the nature of the work immediately involved, and that the record here shows that the bomber modification project is sufficiently separated from the normal carrier activities of the Company to remove it from the exclusionary provisions of Section 2 (2) of the Act.

Section 2 (2) of the Act provides: "The term 'employer' . . . shall not include . . . any person subject to the Railway Labor Act." Title II of the Railway Labor Act provides that "every common carrier by air engaged in interstate or foreign commerce" and "every air pilot or other person who performs any work as an employee or subordinate official of such carrier," are, respectively, "carriers" and "employees" within the meaning of that Act.[1]

[1] 45 U. S. C. A., Section 181.

While a literal interpretation of these provisions would seem to lead to the conclusion urged by the Company, the decisions of other administrative agencies, as well as of the courts, are persuasive of the view that the terms "carrier" and "employee" as used in the Railway Labor Act are to be interpreted realistically.[2] We therefore reject the foregoing argument of the Company, which would lead to the result that all activities of a concern are exempt from the provisions of the Act if it operates to any extent, however incidental, as a carrier by air.

The bomber modification project is an emergency wartime activity and is to a considerable extent integrated with the regular transportation activities of the Company. While the location of the new project is in the main separated from that of the other airline operations, the project is under the same auditing and clerical, engineering, and traffic departments as are the airline activities. Regular stock equipment was adapted, except with minor exceptions, to use on the project. The Company's established shops perform such project work as welding, engine overhauling, and sheet metal overhauling. Inspection work incident to the project operations is under the supervision of the chief inspector of the entire plant. There is some interchange of employees between the project and the airline operations. It appears that some of the planes, both during the time they are being modified and afterward, are assigned by the Army to the Company to be used in connection with transport work.

Although the question is by no means free from doubt, we are of the opinion and find that the relation of the Company's bomber modification project to its regular air carrier activities is not so remote, tenuous, and negligible as to establish that the project is a separate and distinct enterprise and that the Company therefore is, as to this project, an employer within the meaning of the Act. In view of the exclusionary provision in Section 2 (2) of the Act, it is our opinion that it should be clear that the National Mediation Board, the agency primarily vested with jurisdiction by the terms of the Railway Labor

[2] In *Virginian Railway* v *System Federation No 40,* 300 U S 515, the Supreme Court held that the Railway Labor Act was applicable to the "back shop" employees of a railroad carrier, and stated that "It is the nature of the work done and its relation to interstate transportation which afford adequate basis for the exercise of the regulatory power of Congress" The Interstate Commerce Commission, in performing the duties assigned to it has adopted as a test whether the relation of the work performed by the employees concerned to the interstate carrier activities is "remote, tenuous and negligible" *Matter of Hudson & Manhattan Railway Co*, 245 I. C. C 415, 425 The Railroad Retirement Act defines an employer subject thereto in substantially the same terms as used in Title I of the Railway Labor Act in defining a carrier. 45 U S C. A., Section 228a. The Railroad Retirement Board has issued regulations and interpretations which clearly show that the same legal entity may or may not be an employer subject to the Retirement Act, depending upon the nature of the specific enterprise under consideration See 4 Federal Register 1479 (April 7, 1939) ; Annual Report of Railroad Retirement Board (1938), p. 145–6. See also *Anderson* v. *Bigelow,* 130 F. (2d) 460 (C. C. A 9).

Act, has declined to assume jurisdiction over the operations here involved. No such showing has been made. In the absence thereof, and since we cannot say that the project operations are remotely and incidentally related to the normal air carrier work of the Company, we find that the project is not subject to our jurisdiction.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 134, C. I. O., be, and it hereby is, dismissed.