

In the Matter of **BENVILLE K. KELLY AND ALICE W. KELLY** d/b/a **KELLY TOOL COMPANY** and **INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO**

Case No. 9-R-1317.—Decided February 14, 1944

Mr. Russell E. Wise, of Union City, Ind., for the Company.

Mr. Joseph C. Harris, of Indianapolis, Ind., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Benville K. Kelly and Alice W. Kelly, d/b/a Kelly Tool Company, Winchester, Indiana,¹ herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. Said hearing was held at Winchester, Indiana, on January 17, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity 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. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a partnership, is engaged at Winchester, Indiana, in the manufacture of aircraft parts. During 1943 all of the raw ma-

¹ The name of the Company, at times incorrectly shown in the record, was corrected by stipulation at the hearing.

terials used by the Company were brought into Indiana from points outside that State, and more than 80 percent of its finished products, totally valued at more than \$192,000, was sent to points outside the State of Indiana.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the Company's employees in effect, until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all employees of the Company, excluding salaried, office, clerical, and confidential employees, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.³

² The Field Examiner reported that the Union submitted 31 designation cards, all of which bore apparently genuine original signatures; that the names of 30 persons appearing on the cards were listed on the Company's pay roll of December 29, 1943, which contained the names of 63 employees in the appropriate unit.

³ The Union sought the exclusion of three of the four employees who work for the Company during the winter, and work on farms during other seasons, beginning sometime in March, on the ground that their employ will terminate shortly. These men are farmers, deferred as such, and are now working for the Company upon temporary release from farm work by interested authorities. It is problematical whether these four men would be permitted to absent themselves from farming to work at the plant after March. Since any certification in this case would not be forthcoming until shortly before their terms of employment will end, we exclude these four men from the unit.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Benville K. Kelly and Alice W. Kelly, d/b/a Kelly Tool Company, Winchester, Indiana, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America UAW-CIO, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.