

In the Matter of KING VENTILATING COMPANY and UNITED CONSTRUCTION WORKERS, AFFILIATED WITH U. M. W. A.

Case No. 18-R-920.—Decided March 15, 1944

Mr. Samuel Lord, of Owatonna, Minn., for the Company.

Mr. Milton Hodson, of Owatonna, Minn., for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Construction Workers, affiliated with the U. M. W. A., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of King Ventilating Company, Owatonna, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Owatonna, Minnesota, on January 26, 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

King Ventilating Company, a Minnesota corporation, is engaged at its plant in Owatonna, Minnesota, in the manufacture and distribution of ventilators, prefabricated ducts, and unit heaters. During the calendar year 1943, the Company purchased and used raw materials of a value of approximately \$46,000, 60 percent of which was purchased from sources outside the State of Minnesota. During the

same period the value of its sales approximated \$135,280, 50 percent of which was made to customers outside the State of Minnesota.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Construction Workers, affiliated with the United Mine Workers of America, 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 its employees until the Union has been certified by the Board in an appropriate unit.

A statement of the Trial Examiner made at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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

The parties agree that the appropriate unit shall consist of all employees of the Company except supervisory, office and clerical employees. The Company contends that this description includes employees Mellem, Torkelson and Maxwell. The Union contends that Mellem and Torkelson are supervisory employees and that Maxwell is an office employee.

The plant involved herein is small. The executives of the Company, whose offices open into the shop, are consulted by the men for advice in performing their work, and personally supervise work in the shop by making frequent trips through it observing, commenting, and advising. There is no concededly supervisory employee who is stationed at all times in the shop. Mellem, whose status is in dispute, lays out the work, assigns it, and is responsible for seeing that the production schedule is maintained. Although he has no power to hire and discharge, his opinions are elicited by the executives in matters pertaining to wage increases, discharge and discipline. He is the

¹ The Trial Examiner reported that the Union submitted 17 authorization cards all of which bore apparently genuine original signatures; that the names of 7 persons appearing on the cards were listed on the Company's pay roll of January 21, 1944, which contained the names of 15 persons in the appropriate unit; and that the cards were all dated in December 1943.

highest paid man in the shop, receiving 12½ cents per hour more than the next highest paid employee. We find that Mellem is a supervisory employee.

Torkelson is an experienced employee who works at painting and crating. When the job he is given to do becomes too great for one man he is assigned a helper or helpers whom he instructs and directs. It appears that all work in the plant is done on this basis, the person whose regular job is being performed giving orders to the helper.² Torkelson has no authority to hire or discharge or to make recommendations concerning other employees. We find that Torkelson is a skilled production employee, not a supervisor.

Maxwell is an apprentice who works in the drafting office learning to make blueprints. His work does not require him to enter the shop at any time, and it is apparent that his interests and the character of his work differentiate him from the production employees. We find that Maxwell is an office employee.

We find that all employees of the Company at its Owatonna, Minnesota plant excluding office and clerical employees 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.

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 payroll 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 King Ventilating Company, Owatonna, Minnesota, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days

² One witness testified that when he helped Torkelson, he took orders from Torkelson; when Torkelson helped him, he gave orders to Torkelson

from the date of this Direction, under the direction and supervision of the Regional Director for the Eighteenth 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 the 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 any 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 United Construction Workers, affiliated with the U. M. W. A., for the purposes of collective bargaining.