

In the Matter of OSCAR H. KJORLIE CO. *and* GENERAL DRIVERS, HELPERS
AND INSIDE WORKERS UNION, LOCAL 116, A. F. L.

Case No. 18-R-953.—Decided April 12, 1944

Mr. Herman G. Tenneson, of Fargo, N. D., for the Company.

Mr. N. E. Kragerud, of Fargo, N. D., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by General Drivers, Helpers and Inside Workers Union, Local 116, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Oscar H. Kjorlie Co., Fargo, North Dakota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Fargo, North Dakota, on March 16, 1944. The Company and the Union appeared, participated, and 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 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

Oscar H. Kjorlie Co., is a North Dakota corporation with its principal place of business at Fargo, North Dakota, where it is engaged in the purchase and wholesale and retail sale of coal, fuel oil, flour, seeds, farm feeds, and baby chicks. During its fiscal year ending June 30, 1943, the Company purchased coal, fuel oil, flour, seeds, farm feeds, and baby chicks, valued at approximately \$257,000, between 60 to 70 percent of which was shipped to it from points outside the State of North Dakota.

During the same period, the Company's sales amounted to approximately \$298,000, about 5 percent of which was sold to customers outside the State of North Dakota. Approximately 20 percent of the Company's total sales are wholesale. The Company also stores merchandise which it sells to jobbers within the State of North Dakota. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

General Drivers, Helpers and Inside Workers Union, Local 116, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of its employees.

A statement of an agent of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be 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 Union urges that all warehousemen, truck drivers, yardmen, and coal passers at the plant and coal yard of the Company at Fargo, North Dakota, constitute an appropriate unit. The Company stated that it had no objection to this unit. Evidence introduced at the hearing indicates that the employees claimed by the Union constitute a well-defined homogeneous group.

We find that all warehousemen, truck drivers, yardmen and coal passers at the coal yard and plant of the Company at Fargo, North Dakota, excluding 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 find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot.

¹The agent reported that the Union submitted 10 application for membership cards. There are 11 employees in the appropriate unit.

The Union urges that the pay roll following the date of hearing be used to determine eligibility to vote. Inasmuch as no persuasive reason appears as to why we should depart from our usual practice, we shall direct that those eligible to vote shall be 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 Oscar H. Kjolrie Co., Fargo, North Dakota, 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 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 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 any who have since quit or been discharged for cause and who have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by General Drivers, Helpers and Inside Workers Union, Local 116, A. F. L., for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.