

In the Matter of BERKEY AND GAY FURNITURE COMPANY and UNITED
FURNITURE WORKERS OF AMERICA, LOCAL 415, CIO

Case No. 7-R-1723.—Decided May 17, 1944

Mr. Lawson E. Becker, of Grand Rapids, Mich., for the Company.
Mr. Raymond E. Barlow, of Grand Rapids, Mich., 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 United Furniture Workers of America, Local 415, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Berkey and Gay Furniture Company, Grand Rapids, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harold A. Cranefield, Trial Examiner. Said hearing was held at Grand Rapids, Michigan, on April 18, 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 is engaged in Grand Rapids, Michigan, in the manufacture of gasoline containers, aircraft wing de-icers, and certain other products for military aircraft. In its operations the Company utilizes raw materials aggregating in value more than \$500,000 per year, of which more than 75 percent in value is obtained from outside of the

State of Michigan. Almost the entire output of the Company is shipped through manufacturers of military aircraft to points outside the State of Michigan.

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

II. THE ORGANIZATION INVOLVED

United Furniture Workers of America, Local 415, 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 plant-protection employees on the grounds, in effect, that such persons are representatives of management, that their representation by the Union, which also represents the production and maintenance employees, would create a divided loyalty on the part of the plant-protection employees, and that the plant-protection employees are ineligible to membership in the Union. In support of its position the Company points to our decision in the *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733. The doctrine enunciated in that case pertained to supervisory employees. Plant-protection employees have been held not to be supervisory. The Company's contention is therefore without merit.

Nothing in this record supports the assertion that the plant-protection employees, who perform the usual functions of that classification, are a part of management. Plant-protection employees are clearly "employees" within the meaning of the Act, as conceded by the Company, and as such are entitled to exercise all rights under the Act.¹ The mere fact that plant-protection employees might be ineligible to membership in the Union is also irrelevant, since we are merely concerned with the employees' representation desires and not with their eligibility to union membership. Nothing in our experience leads us to conclude that the exercise of rights under the Act is incompatible with the full, honest, and loyal performance of duties by employees. The remedy for any improper conduct on the part of employees lies implicitly in the power of the Company to discipline or discharge them.

We see no reason, therefore, for denying to the plant-protection employees the benefits and rights guaranteed by the Act, or for prohibiting their possible representation, if they so desire, by the Union,

¹ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Maryland Drydock Company*, 50 N. L. R. B. 363; *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733.

which also represents other employees of the Company.² We find that none of the Company's contentions present a bar to this investigation of representatives.

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.³

We find that a question affecting commerce had 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 seeks a unit composed solely of plant-protection employees of the Company, excluding sergeants and all supervisory employees. The Company disputes the appropriateness of such a unit on the grounds which we have considered in Section III, above. We have heretofore held that plant-protection employees may appropriately constitute a unit for collective bargaining purposes under the Act.⁴ Nothing in the instant case requires deviation from that view.

We find that all plant-protection employees of the Company, excluding sergeants, and all other 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 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,

² The Company also points, likewise without merit, to the exclusion of the plant-protection employees from the production and maintenance unit contract with the Union, asserting that it now "resents the present attempt [by the Union] to void the spirit of that contract."

³ The Field Examiner reported that the Union submitted 9 membership cards, all of which bore the names of persons appearing on the Company's pay roll of March 29, 1944, which contained the names of 12 employees in the appropriate unit.

⁴ See e. g., cases cited in footnote 1, *supra*.

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 Berkey and Gay Furniture Company, Grand Rapids, Michigan, 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 Seventh 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 the 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 United Furniture Workers of America, Local 415, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.