

In the Matter of GATKE CORPORATION and UNITED CONSTRUCTION  
WORKERS, AFFILIATED WITH THE UNITED MINE WORKERS OF AMERICA

*Case No. 13-R-2393.—Decided June 17, 1944*

*Messrs. Fyffe & Clark, by Mr. John Harrington, of Chicago, Ill.,  
for the Company.*

*Mr. Frank Barnhart, of Hammond, Ind., and Mr. Robert Moog, of  
Warsaw, Ind., for the Union.*

*Mrs. Platonia P. Kaldes, 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 United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Gatke Corporation, Warsaw, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert T. Drake, Trial Examiner. Said hearing was held at Warsaw, Indiana, on May 9, 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

Gatke Corporation is an Illinois corporation, having its principal office at Chicago, Illinois, and a plant at Warsaw, Indiana. At its Warsaw, Indiana, plant it is engaged in the manufacture of asbestos friction products, brake linings, timing gears and non-metallic bear-

ings. Among the raw materials used by the Company are crude rubber, crude asbestos, cotton cloth, asbestos cloth, and asbestos yarn. During the year 1943 the Company purchased raw materials valued at more than \$50,000, and manufactured and sold products having a value in excess of \$100,000. More than 50 percent of the materials used by the Company is obtained from sources outside the State of Indiana, and more than 50 percent of the products manufactured by the Company is sold and shipped to purchasers outside the State of Indiana.

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 refuses to grant recognition to the Union as the exclusive representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board Field Examiner, introduced into evidence at the hearing, as supplemented by a statement of the Trial Examiner made on the record, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

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 requests a unit comprised of all production and maintenance employees of the Company at its Warsaw, Indiana, plant, including a watchman, but excluding a shipping room clerk, all office and clerical employees, armed guards, foremen and supervisors. The Company objects to the Union's request only insofar as: (1) it includes the watchman; (2) excludes the shipping room clerk; and (3) fails, "in view of the past history of this case," to state definitely which of certain employees hereinafter named are to be considered as supervisory employees and thus excluded from the unit.

<sup>1</sup> The Field Examiner reported that there are 207 employees in the alleged appropriate unit; that the Union submitted 123 application cards, 118 of which were dated in March 1944, and 5 in April 1944. The Trial Examiner stated that the Union had presented 7 additional cards, 5 of which were dated in April and May 1944, and 2 of which were undated.

### 1. The watchman

The duties of the watchman here in question consist of night watching, punching the watchman's clock and doing janitor and maintenance work. He spends approximately 50 percent of his time doing janitor and maintenance work. He is not an armed guard. In view of the latter fact and also the fact that he spends a considerable portion of his time doing maintenance work, we perceive no reason why he should be excluded from the appropriate unit.

### 2. The shipping room clerk

The shipping room clerk here involved, a female employee, works in the shipping room of the plant. She makes out bills of lading, writes packing slips, fills orders, and does other related work. She performs her duties in the midst of the production workers and is under the general supervision of the plant manager. We are persuaded by the foregoing facts that her interests are more intimately related to those of production and maintenance employees than to those of the office and clerical employees whom the parties would exclude. We shall, therefore, include the shipping room clerk in the appropriate unit.

### 3. The supervisory status of certain employees

The alleged supervisory status of certain employees, some of whom are involved herein, has been a subject of dispute in the past between the Company and various labor organizations which have sought to represent the Company's employees in a unit almost identical to the one here requested. The issue has been presented to us at various stages of the said labor organizations' attempts to achieve representative status and to bargain collectively with the Company,<sup>2</sup> and we have ruled specifically on the inclusion or exclusion of all the employees whose status is placed in issue in the instant proceeding, with the exception of Ivan Klinger. Those involved in the instant proceeding whose status we have previously considered and passed upon are Earl West, Irl Braillier, Carl Boggs, Forest Dieder,<sup>3</sup> William Braddock, Roger Stafford, Ted Blue, and Wayne Zolman. Of these eight we are now asked to reconsider the status of all except Earl West.<sup>4</sup>

The Union contends that Braillier, Boggs, Dieder, Braddock, Stafford, Blue, and Zolman have supervisory status and should thus be excluded from the appropriate unit; the Company contends that

<sup>2</sup> 33 N. L. R. B. 216; 41 N. L. R. B. 915; 48 N. L. R. B. 962

<sup>3</sup> Dieder has been referred to in prior Board decisions as Forest Deeter.

<sup>4</sup> The parties agree that Earl West has supervisory status and should be excluded from the appropriate unit.

Boggs, Braillier, Dieder, Braddock, Stafford, and Blue do not have supervisory status and should thus be included in the unit. As to Zolman, the Company makes no contention with respect to his inclusion or exclusion, although it asks that we redetermine his status.

Our most recent determination with respect to each of those employees whose status is again placed in issue here, was that Braillier and Boggs had supervisory status,<sup>5</sup> and that Dieder,<sup>6</sup> Stafford, Braddock, Blue, and Zolman did not have supervisory status.<sup>7</sup>

The present record contains no evidence that the duties of any of these seven employees have changed substantially since the time as of which we last considered and determined their status, and, except in the case of Zolman, the record contains no additional facts which might persuade us to alter the position we have most recently taken with respect to each.<sup>8</sup>

Therefore, we shall adhere to our last-determination with respect to each employee, except Zolman, and in accordance therewith, find that Boggs and Braillier possess supervisory status, and that Dieder, Braddock, Stafford, and Blue do not.

Zolman is employed as the head machinist in the Bearings Department. He supervises the work of about 12 employees and is directly responsible to the plant manager. Unlike the prior record before us, the present record reveals that Zolman has authority effectively to recommend changes in the status of employees, in that the plant manager would transfer an employee from the Bearings Department on Zolman's recommendation. It appears that Zolman thus falls within our customary definition of a supervisory employee.

<sup>5</sup> 48 N. L. R. B. 962, 971-972.

<sup>6</sup> 48 N. L. R. B. 962, 963.

<sup>7</sup> 41 N. L. R. B. 915, 918.

<sup>8</sup> The present record indicates that: (1) *Boggs* is employed as a supervisor in the mixing department, Department R, supervising the work of 15 or 18 employees. In connection with his supervision of the work performance of the employees in his department, he "keeps track" of their attendance at work. *Boggs* apparently has authority to recommend the disciplining of employees who do not perform their work properly; (2) *Braillier* is employed as a lead man in the finishing room of Department B, overseeing, laying out and directing the work of approximately 12 to 15 employees in the finishing room, and doing some production work himself. Like *Boggs*, he "keeps track" of the employees' attendance at work and the quality of their work performance. He is considered by the employees in the finishing room as their "boss"; (3) *Dieder* is employed in the supply department as a storeroom keeper and receiving clerk. His duties consist of receiving materials for the plant and working in the supply and stockroom. In addition to *Dieder*, 2 other employees (neither of whom the parties would exclude) are engaged in the same work, performing it independently of *Dieder* and on their own responsibility; (4) *Braddock* is employed in the shipping room in a position closely analogous to that held by *Dieder* in the receiving or supply department. He makes out bills of lading and helps with the keeping of time records for the other employees in his department; (5) *Stafford* is employed as a set-up man in Department E and works on clutch facings. He spends approximately one-half of his time doing set-up work and the other half doing production work in conjunction with other employees in his department; (6) *Blue* is employed as the head machinist in the friction department, Department B, and works with 15 or 18 other machinists in the department. He has no authority to make effective recommendations which might result in the change of status of any employee.

As previously stated, the status of Ivan Klinger is before us for the first time. He is employed as the head pressman in a section of the Bearings Department, doing set-up work on hydraulic presses and moulds for bearings. Approximately 14 or 15 other people work in that section of the Bearings Department under the direct supervision of the plant manager. Klinger has no authority to recommend raises or the hiring or discharging of employees. From the foregoing, we find that Klinger does not possess supervisory status.

We find that all production and maintenance employees of the Company at its Warsaw, Indiana, plant,<sup>9</sup> including the shipping room clerk, and the watchman, but excluding office and clerical employees, foremen, supervisors, 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,<sup>10</sup> constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>11</sup>

#### 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 Gatke Corporation, Warsaw, 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 Thirteenth 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 em-

<sup>9</sup> Ivan Klinger, Roger Stafford, Forest Dieder, William Braddock, and Ted Blue are, as found *supra*, production and maintenance employees

<sup>10</sup> Irl Brailher, Earl West, Wayne Zolman, and Carl Boggs are, as found *supra*, supervisory employees

<sup>11</sup> The Company does not employ any armed guards. Accordingly, we make no disposition of this category of employees

ployed 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 Construction Workers, affiliated with the United Mine Workers of America, for the purposes of collective bargaining.