

In the Matter of M. A. KNIGHT COMPANY and DISTRICT 50, UNITED
MINE WORKERS OF AMERICA

Case No. 8-R-1591.—Decided August 30, 1944

Messrs. E. O. Boedicker, H. L. Proctor, and E. O. Guess, of Akron, Ohio, for the Company.

Messrs. Joseph Bird, Sam Wantling, and E. Williams, of Cleveland, Ohio for the UMW.

Messrs. Pat Calvert and Frank Williams, of East Liverpool, Ohio, for the AFL.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called the UMW, alleging that a question affecting commerce had arisen concerning the representation of employees of M. A. Knight Company, Akron, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Akron, Ohio, on August 2, 1944. The Company, the UMW, and National Brotherhood of Operative Potters, Local Union No. 159 (AFL), herein called the AFL, 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

M. A. Knight Company, an individual proprietorship, is engaged in the manufacture of acid, stoneware, and pyroflex tank and tower
57 N. L. R. B., No. 287.

linings at a plant in Akron, Ohio. The annual value of the raw materials purchased by the Company exceeds \$100,000, of which approximately 95 percent is secured outside the State of Ohio. The annual value of the finished products is in excess of \$100,000, of which approximately 85 percent is shipped to points outside the State of Ohio.

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

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

National Brotherhood of Operative Potters, Local Union No. 159, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about June 28, 1944, the UMW notified the Company that it claimed to represent a majority of the production and maintenance employees and requested that a date be set to discuss the negotiation of a contract. The Company replied that its production and maintenance employees were covered by a current contract with the AFL and that it could not therefore comply with the request. Thereupon the UMW filed the petition in the instant case.

The contract between the Company and the AFL constitutes no bar to this proceeding since it expired on August 1, 1944.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the UMW 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 stipulated, and we find, that all production and maintenance employees, including key men, but excluding guards, office and clerical employees, and all supervisory employees, constitute the appropriate unit.

¹The Field Examiner reported that the UMW submitted 35 designation cards; that the names of 35 persons appearing on the cards were listed on the Company's pay roll of July 18, 1944 which contained the names of 57 employees in the appropriate unit, and that the cards were dated in February, April and June 1944. The AFL relied upon its contract to establish its interest in this proceeding.

The parties were unable to agree as to the inclusion or exclusion of the chief shipping clerk, Luther Williams. The Company contends he is a supervisor and should therefore be excluded from the unit. He is paid a weekly salary and is carried on the office pay roll, while the production and maintenance employees are carried on the factory pay roll. He receives orders directly from the superintendent or plant manager and is responsible for getting the finished goods segregated, packed and placed into the cars or trucks. There are four men in the shipping department who are under his immediate supervision and direction and his time is spent almost exclusively in the performance of non-manual supervisory work. It is clear that he is a supervisory employee and we shall exclude him from the unit as such.

We find that all production and maintenance employees of the Company, including key men, but excluding guards, office and clerical employees, the chief shipping clerk and all or any 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, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with M. A. Knight Company, Akron, Ohio, 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 Eighth 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 they desire to be represented by District 50, United Mine Workers of America, or by National Brotherhood of Operative Potters, Local Union No. 159 (AFL), for the purposes of collective bargaining, or by neither.

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