

In the Matter of **KOBE INCORPORATED** and **INTERNATIONAL ASSOCIATION
OF MACHINISTS, DISTRICT LODGE 94, A. F. OF L.**

Case No. 21-R-2499.—Decided November 23, 1944

*Latham & Watkins, by Mr. Paul R. Watkins, of Los Angeles, Calif.,
for the Company.*

*Messrs. E. M. Skagen, Stanley D. Stearns, and Kenneth Roberts, of
Los Angeles, Calif., for the Union.*

Mr. Louis Cokin, of counsel to the Board.

**DECISION
AND
DIRECTION OF ELECTION**

STATEMENT OF THE CASE

Upon petition and amended petition duly filed by International Association of Machinists, District Lodge 94, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Kobe Incorporated, Huntington Park, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. Said hearing was held at Los Angeles, California, on October 31, 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

Kobe Incorporated, is a California corporation operating a plant at Huntington Park, California, where it is engaged in the manufacture of oil well producing equipment, precision gages, and aircraft

parts. The Company purchases raw materials valued in excess of \$200,000 annually, approximately 75 percent of which originates outside the State of California. During the same period the Company produces products valued in excess of \$1,000,000, about 50 percent of which is shipped to points outside the State of California.

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

II. THE ORGANIZATION INVOLVED

International Association of Machinists, District Lodge 94, 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 because it doubts that the Union represents a majority.

A statement of a Field Examiner 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 production and maintenance employees of the Company, including set-up men and leadmen, but excluding factory clerical employees, office employees, timekeepers, truck driver, plant-protection employees, and supervisory employees, constitute an appropriate unit. The only controversy with respect to the unit concerns factory clerical employees and the truck driver.

The Company employs approximately 22 factory clerical employees. They are paid on an hourly rate and are under the supervision of plant supervisory employees. It further appears that they spend a substantial amount of their time performing manual duties. We shall include the factory clerical employees in the unit.

The Union desires that the truck driver be excluded from the unit on the ground that he is eligible for membership in International

¹ The Field Examiner reported that the Union presented 137 authorization cards bearing the names of persons who appear on the Company's pay roll of October 6, 1944. There are approximately 334 employees in the appropriate unit.

Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization affiliated with the American Federation of Labor, as is the Union. The record does not contain any facts concerning the duties of the truck driver. Thus, we will assume that his duties are those normally performed by a teamster, and as such, we shall exclude him from the unit.

We find that all production and maintenance employees of the Company, including set-up men, leadmen, and factory clerical employees, but excluding office employees, timekeepers, the truck driver, plant-protection 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, constitutes 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 means of 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.

The Company contends that its employees presently in the armed forces of the United States should be afforded an opportunity to vote. We are not unmindful of the fact that employees on military leave retain their status as employees and, therefore, have a real interest in the choice of a bargaining representative. For this reason, our Direction of Election will provide, as has been the case in the past, that those who appear at the polls in the election shall be allowed to vote if otherwise eligible. However, the Company urges that, to assure an opportunity for all the employees in the armed forces to vote, a provision should be included in the Direction of Election requiring the Regional Director to mail ballots to each such employee. We find such a suggestion to be unfeasible for the reasons stated in *Matter of Mine Safety Appliances Co.*, 55 N. L. R. B. 1190. When it is determined that service men have returned to their employment in sufficient numbers so that they comprise a substantial percentage of the employees in an appropriate unit in which we have certified a collective bargaining representative, a new petition for the investigation and certification of a bargaining agent may be filed with the Board. In this manner, employees in the armed forces, who were unable to cast a vote, will be afforded an opportunity to affirm or change the bargaining agent selected in their absence.

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 Kobe Incorporated, Huntington Park, California, 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 Twenty-first 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 have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by International Association of Machinists, District Lodge 94, A. F. of L., for the purposes of collective bargaining.