

In the Matter of: E. W. KOLL AND F. J. DOWLING, CO-PARTNERS  
D/B/A K AND D INDUSTRIES and SACRAMENTO BUILDING AND CON-  
STRUCTION TRADES COUNCIL, ACTING ON BEHALF OF CONSTRUCTION AND  
GENERAL LABORERS UNION, LOCAL No. 185; INTERNATIONAL ASSOCIA-  
TION OF MACHINISTS, LOCAL No. 33; AND SACRAMENTO-YOLO DISTRICT  
COUNCIL OF CARPENTERS AFFILIATED WITH UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA, ALL AFFILIATED WITH THE  
AMERICAN FEDERATION OF LABOR\* and INTERNATIONAL LONGSHORE-  
MEN'S & WAREHOUSEMEN'S UNION, LOCAL 1-17, AFFILIATED WITH THE  
CONGRESS OF INDUSTRIAL ORGANIZATION\*

*Case No. 20-RE-43.—Decided May 31, 1945*

*Messrs. F. J. Dowling and M. J. Heller*, of Sacramento, Calif., for  
the Company.

*Mr. Charles J. Janigian*, of Sacramento, Calif., for the AFL.

*Gladstein, Grossman, Sawyer & Edises*, by *Mr. Bertram Edises*, of  
Oakland, Calif., for the CIO.

*Mr. Harold M. Humphreys*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a petition duly filed by E. W. Koll and F. J. Dowling, co-partners d/b/a K and D Industries, Sacramento, California, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before John Paul Jennings, Trial Examiner. Said hearing was held at San Francisco, California, on March 1, 1945. The Company, the Sacramento Building Trades Council, AFL, acting on behalf of Construction and General Laborers Union, Local No. 185; International Association of Machinists, Local No. 33; and Sacramento-Yolo District Council of Carpenters affiliated with United

\*It appears from the record that these are the names of the labor organizations actually interested in this proceeding, although the petition filed merely designated "American Federation of Labor" and "Congress of Industrial Organizations."

Brotherhood of Carpenters and Joiners of America, all affiliated with the American Federation of Labor, herein collectively called the AFL, and International Longshoremen's & Warehousemen's Union, Local 1-17, CIO, herein called the CIO, 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. At the hearing, the CIO moved to dismiss the petition and the Trial Examiner referred the motion to the Board for determination.<sup>1</sup> The motion is denied.<sup>2</sup> 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

E. W. Koll and F. J. Dowling, co-partners d/b/a K and D Industries, are engaged in Sacramento, California, in the job contracting business, under contracts let to them by the Ordnance Department and Signal Corps of the United States Army. The Company is presently engaged in the repair and crating of motor-driven trailers. All materials worked on by the Company are furnished by the United States Government, with the exception of packing material which is supplied by the Company itself. A majority of the material furnished by the Government is shipped to the Company from points outside the State of California. The materials worked on by the Company are valued in excess of \$1,000,000 annually, and all are ultimately delivered to the Army. The annual value of the Company's contracts is in excess of \$100,000.

The Company stipulates, for the purpose of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Sacramento Building and Construction Trades Council; Construction and General Laborers Union, Local No. 185; International Asso-

<sup>1</sup> The CIO's appearance was special, having been entered solely for the purpose of enabling it to move for dismissal. It made its motion at the outset of the hearing and thereafter withdrew from the proceeding.

<sup>2</sup> The CIO predicated its motion upon two grounds. One is discussed in Section III, *infra*. Alleged unfair labor practices on the part of the Company which would preclude the employees from registering a free choice in any election is the other. It appears that the CIO filed an unfair labor practice charge on March 1, 1945, Case No 20-C-1311; that a settlement agreement was later executed; and that, on or about May 23, 1945, the CIO waived the right to protest, "on any ground set forth in Case No. (20-C-1311)," any election which might be directed herein. Thus, the motion is now an academic matter insofar as it is predicated upon the Company's alleged unfair labor practices.

ciation of Machinists, Local No. 33; and Sacramento-Yolo District Council of Carpenters, affiliated with United Brotherhood of Carpenters and Joiners of America, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Longshoremen's & Warehousemen's Union, Local 1-17, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the AFL or the CIO as the exclusive bargaining representative of certain of its employees until the AFL or the CIO has been certified by the Board in an appropriate unit. Although the CIO apparently contends that the Company improperly initiated the instant proceeding, we are of the opinion that the Company, faced with conflicting claims of representation made by the AFL and CIO, properly filed the petition herein.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the AFL and the CIO represent a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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 Company and the AFL agree that the appropriate unit should consist of all production and maintenance employees, including leadermen, watchmen, inspectors, and factory clerks, but excluding office and office clerical employees, foremen and other supervisory personnel.<sup>4</sup> They are in disagreement, however, concerning the automotive mechanic foreman. The Company would exclude this employee on the ground that he is supervisory, while the AFL would include him.

The automotive mechanic foreman employed at the time of the hearing has direct supervision over approximately 30 employees who repair, assemble, and crate power driven reels and motors for export shipment. Undisputed testimony of Company witnesses shows this

<sup>3</sup> The Field Examiner reported that the AFL submitted 24 cards; that the names of 22 persons appearing on the cards were listed on the Company's pay roll of February 10, 1945, which contained the names of 47 employees in the alleged appropriate unit; and that the cards were dated during February, 1945. He further reported that the CIO submitted 11 cards; that the names of 7 persons appearing on the cards were contained in the aforesaid pay roll, and that the cards were dated December 1944 and February 1945.

<sup>4</sup> The CIO took no position as to the appropriate unit.

employee to have authority effectively to hire and discharge employees. We shall therefore, exclude the automotive mechanic foreman.<sup>5</sup>

We find that all production and maintenance employees of the Company, including leadermen, watchmen, inspectors,<sup>6</sup> and factory clerks, but excluding office and office clerical employees, automotive mechanic foreman, other foremen, 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.<sup>7</sup>

#### 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 E. W. Koll and F. J. Dowling, co-partners d/b/a K and D Industries, Sacramento, 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 Twentieth 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

<sup>5</sup> A company witness stated that the Company expected to employ additional foremen within 30 days from the date of the hearing, all are to have similar supervisory authority.

<sup>6</sup> On the day of hearing the Company did not employ watchmen and inspectors, but stated that it would engage such employees within 30 days.

<sup>7</sup> We hereby grant the AFL's request that it appear upon the ballot as its name is set forth in the Direction of Election

We shall place the CIO upon the ballot with the option to withdraw therefrom upon notice to the Regional Director to that effect given within 5 days from the date of the Decision and Direction of Election herein.

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 they desire to be represented by Sacramento Building and Constructing Trades Council, AFL, or by the International Longshoremen's & Warehousemen's Union, Local 1-17, CIO, for the purposes of collective bargaining, or by neither.