

In the Matter of F. J. KRESS BOX COMPANY and GENERAL TEAMSTERS,
CHAUFFEURS AND HELPERS, LOCAL NO. 247, AFL

Case No. 6-R-1149.—Decided October 12, 1945

Mr. John E. Laughlin, Jr., of Pittsburgh, Pa., for the Company.
Mr. Ben Paul Jubelirer, of Pittsburgh, Pa., for the Union.
Miss Katharine Loomis, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by General Teamsters, Chauffeurs and Helpers, Local No. 249, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of F. J. Kress Box Company, Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on June 26, 1945. 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

F. J. Kress Box Company is a Pennsylvania corporation engaged in the manufacture of paper containers and related products at Pittsburgh and Washington, Pennsylvania. This proceeding concerns only certain employees at the Pittsburgh plant. During the past year the Company purchased for use in its Pittsburgh plant raw materials

valued in excess of \$1,000,000, of which approximately 75 percent originated outside the commonwealth of Pennsylvania. During the same period it sold finished products valued in excess of \$2,000,000, of which approximately 50 percent was shipped to points outside Pennsylvania.

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

II. THE ORGANIZATION INVOLVED

General Teamsters, Chauffeurs and Helpers, Local 249, affiliated with the American Federation of Labor, 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 certain of the Company's employees until the Union has been certified by the Board in an appropriate unit.

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.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 seeks a unit of all shipping department employees, including checkers, loaders, and laborers, but excluding shipping clerks, the shipper, the assistant shipper, and the night shipper. The Company, however, takes the position that the unit sought by the Union is inappropriate and that only a plant-wide unit is appropriate for its employees.

There has been no history of collective bargaining between the Company and the employees in the group sought by the Union. International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL, herein called the Paper Workers, presently represents other employees of the Company in a unit of "all production and mainte-

¹ The Field Examiner reported that the number of employees in the alleged appropriate unit was approximately 38; that the Union submitted 21 application cards; that the names of 18 persons appearing on the cards corresponded to those on a list furnished by the Company, that 13 of the cards were dated between January 1945 and April 1945, and 8 were undated.

nance employees, except for office and clerical employees, shipping department employees, and supervisory employees."²

Shipping department employees are principally engaged in loading the Company's finished products into either trucks or railroad cars. The Company's plant is situated between two railroads. The shipping platforms where the loading is done are at the ends of the main factory buildings which are adjacent to the respective railroads. These platforms are separated from the factory buildings by fire walls. Seventy-five percent of the finished products is brought from the production floor to the platforms by means of an overhead conveyor. The remainder is moved by hand truck. Checkers, loaders, and laborers are engaged in the shipping process. These employees work under the supervision of the shipper. Checkers confer with the shipper as to the method of shipment, see that the material is at hand, check it for count, and plan the loading so that all available space is utilized. Loaders place the material in the truck or railroad car. Laborers remove bundles from the conveyor or go into the factory and move them up in hand trucks. Production employees also bring bundles from the factory to the shipping platforms in hand trucks.

The unloading of the Company's raw materials is done principally by warehousemen. These employees are not part of the shipping department and work under different supervision from the shipping employees. There are no checkers among the warehousemen. Incoming raw material is delivered principally by rail, whereas most of the finished products is shipped by truck.³ Unloading is done for the most part from a separate unloading platform, although some unloading is performed on an unloading area of one of the shipping platforms. The Company calls upon both warehousemen and production

² The Paper Workers and the Company, on September 9, 1944, entered into an agreement for a consent election among "all production and maintenance employees excluding office and clerical employees and all supervisory employees" (Case No 6-R-1025). The Paper Workers lost the election and, subsequently, on June 11, 1945, filed a petition for its present unit. The Company and the Paper Workers then entered into an agreement for a cross-check covering the employees in the unit petitioned for and, as part of the agreement, inserted the following provision:

Nothing in this agreement shall be construed as precluding the Company from at any subsequent hearing contending that shipping department employees do not constitute an appropriate unit by themselves and that shipping department employees should be included in this unit

A cross-check was made and the Regional Director found that a majority of the employees in the aforesaid unit had designated the Paper Workers as their exclusive bargaining agent (Case No 6-R-1193).

The Paper Workers, although served with notice of the hearing in the instant proceeding, did not appear and stated, prior to the hearing, that it disclaimed any interest in the employees covered by the Union's petition

³ Ninety-nine percent of incoming raw materials is delivered by rail and only about 1 percent by truck, whereas, of the outgoing finished products, 48 percent is shipped by rail and 52 percent by truck. The Company owns no trucks. Of the truck shipments, 75 percent is carried by contract haulers and 25 percent by common carriers. Shipping department employees load the trucks of the contract haulers. Those of the common carriers are loaded by employees of the carriers

workers to assist shipping department employees at any time that the latter require help in getting orders out promptly. At present, due to wartime conditions, such assistance is needed more than in normal times.⁴

The record clearly shows that shipping department employees form a well-defined and homogeneous group. They are under separate supervision and comprise the principal group responsible for the shipment of finished products. Furthermore, no union is seeking to represent these employees in the plant-wide unit which the Company has requested. Under all the circumstances, we are of the opinion that the Company's shipping employees constitute a coherent group which may appropriately function as a separate unit.⁵

We find, therefore, that all shipping department employees, including checkers, loaders, and laborers, but excluding shipping clerks, the shipper, the assistant shipper, the night shipper, 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Company employs six part-time workers in its shipping department. Five of these employees average between 20 and 36 hours of work a week, and the Union and the Company agree that they should participate in the election. The eligibility of one part-time employee is in dispute.⁶ The Union contends that he is ineligible because he averages only 12 hours of work a week. The record indicates that all the part-time workers have been employed by the Com-

⁴ At the time of the hearing warehousemen spent 15 percent of their time assisting shipping department employees, and about one crew of four production workers for one shift a week also assisted shipping employees. The record does not indicate how much assistance the shipping department employees require in normal times.

⁵ See *Matter of General Tire and Rubber Company*, 55 N. L. R. B. 250, and *Matter of Wells Aircraft Parts Company*, 61 N. L. R. B. 1331. The Company attempts to distinguish the latter case from the instant proceeding. There, as the Company points out in its brief, no mention is made of any interchange of duties between shipping employees and production workers. However, while it may be true in the present case that production workers perform some of the duties in which shipping employees are engaged, the Company's shipping operations revolve, for the most part, about the work of the latter group. In addition, cf. *Matter of Arkell Safety Bag Company*, 57 N. L. R. B. 1423, and 58 N. L. R. B. 575.

⁶ George Cofsky

pany for the past 8 months and all work under the same conditions and enjoy the same privileges as the full-time workers. It is clear that all six are regular part-time employees who spend a sufficient amount of time weekly and have a sufficiently substantial interest in wages, hours, and working conditions to entitle them to a voice in the selection of a collective bargaining agent.⁷ We shall, therefore, permit all six part-time employees to participate in the election.

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 F. J. Kress Box Company, Pittsburgh, Pennsylvania, 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 Sixth 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 General Teamsters, Chauffeurs and Helpers, Local No. 249, AFL, for the purposes of collective bargaining.

⁷ See *Matter of The National Machinery Company*, 56 N L R B 481