

In order to give as wide a publication to the attached notice as possible it will be recommended that Respondent, by one of its officers, read the notice to the membership of Local 777 at the first regular meeting of its membership held 20 days after the issuance of this report. It will be further recommended that, to insure compliance with said recommended reading of the notice, Respondent give 5 days' notice of said meeting, fixing the time and place, to the Regional Director for the Thirteenth Region so that the Regional Director may assign a Board agent or agents to attend such meeting to obtain proof of compliance, with police or Federal Bureau of Investigation protection if deemed advisable by the Regional Director.

It will also be recommended that Respondent post the attached notice in conspicuous places in its halls and offices and that at least one copy of the notice be placed in each room of Respondent's halls and offices, including the restrooms.

Upon the basis of the foregoing findings and conclusions and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Crown Metal is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 777 is a labor organization within the meaning of Section 2(5) of the Act.

3. Joseph Glimco, Wallace Brown, Raymond Frazier, and Robert Howard are agents of Local 777.

4. By engaging in the conduct above found, Respondent has restrained and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

5. The aforesaid labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

**K. W. Muth Company, Inc. and Allan W. Hoffman, Petitioner
and United Furniture Workers of America, Local #800. Case
No. 13-RD-553. November 26, 1963**

DECISION, DIRECTION, AND ORDER DIRECTING HEARING

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on July 19, 1963, under the direction and supervision of the Regional Director for the Thirteenth Region among the employees in the stipulated unit. At the conclusion of the balloting, the parties were furnished with a tally of ballots which showed that of approximately 40 eligible voters, 40 cast ballots, of which 17 were for and 17 were against the Union, with 6 ballots challenged. The challenged ballots were sufficient in number to affect the results. Thereafter, the Union filed timely objections to conduct affecting the election.

The Regional Director investigated the objections and challenges and, on September 12, 1963, issued his report on objections and challenges. He recommended that the challenges be sustained. He also found that some of the conduct complained of in objection No. 1 interfered with the election, and recommended that the election be set

aside and a new election be directed. However, he further recommended, if the election is not set aside, that a hearing be held to resolve factual issues which he found were raised by objections Nos. 1, 2, and 4. The Employer filed timely exceptions to the Regional Director's report and the Union filed a reply.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Fanning].

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. We find, in accordance with the stipulation of the parties, that the following unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All production and maintenance employees at the Employer's Sheboygan, Wisconsin, location, including truckdrivers, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the Employer's exceptions,¹ and the Union's reply, and upon the entire record in this case finds:

The challenged ballots: The Employer, a fabricator of hardboard and related products, has a complement of approximately 40 production employees. Its acknowledged supervisors are the production superintendent, the production manager, and the silk screen and laminating department supervisor. An undisclosed number of the engineering staff also exercise some supervisory authority. The Union contended, and the Regional Director found, that in addition to the admitted supervisors, the six challenged voters—Gehrig, Hildebrand, Hawkins, Fraizer, Steil, and Semph—are also supervisors. The Employer contends that the six-named individuals are "leadmen" or "working foremen" possessing no supervisory attributes within the statutory definition.

Gehrig and Hildebrand are skilled employees who spend part of their time setting up machines for other employees in their departments. The production superintendent, however, assigns work to

¹In the absence of exceptions thereto, we adopt *pro forma* the Regional Director's recommendation that objection No 3 be overruled

such other employees and transfers them from department to department as work requires.

Hawkins is assigned to the Tufflex department where he works normally with only one other employee. Fraizer, who has a helper, unloads trucks and boxcars and moves stock within the plant. Steil, a shipping clerk, prepares bills of lading, writes up packing slips, and makes loading arrangements. Semph, who usually works alone, performs maintenance work throughout the plant.

The Regional Director found that none of the six employees challenged by the Union has authority to hire, fire, lay off, discipline, suspend, or recall employees, or to make any effective recommendations concerning such action. The Regional Director's findings further reflect that none of the six responsibly directs other employees in a manner requiring the use of independent judgment. Notwithstanding such findings—to which the Union has not excepted—the Regional Director concluded that the employees in question were “clothed with apparent authority to speak for management” and on that basis found them to be supervisors. We do not agree. As the six employees do not possess any of the indicia of supervisory authority as defined in Section 2(11) of the Act, we find that they are not supervisors. We shall, therefore, overrule the challenges to their ballots and direct that their ballots be opened and counted, and that a revised tally of ballots be served upon the parties.

The objections: The Regional Director recommended that the election be set aside on the basis of objection No. 1, because he found that the Employer had made material misrepresentations on the eve of the election. He based that finding upon literature issued by the Employer, as well as oral statements by its managerial and supervisory personnel which in effect denied the Union's claim that during bargaining prior to the filing of the instant petition the Union had reached agreement with the Employer upon certain contractual provisions. In its exceptions, the Employer alleges in substance that there was no misrepresentation since, so it asserts, there had been no negotiated agreement authorized by or binding on it with respect to the contractual provisions in question. In view of these circumstances we believe that an issue of fact is raised at least in part with respect to objection No. 1 warranting a hearing for purposes of resolving the factual conflict.

We also find that objection No. 2 raises an issue of fact, except for that part of the objection concerning alleged statements by Gehrig to fellow employees. The Regional Director found that Gehrig's statements, if made, were objectionable because they were made by an individual whom he found to be a supervisor. However, as we have

found that Gehrig, like the other challenged individuals, is not a supervisor, his statements do not constitute election interference.² For this reason, we likewise do not adopt the Regional Director's recommendation that a hearing be held with respect to objection No. 4 as it is confined to alleged statements by three of the challenged employees.

Accordingly, we shall direct that if the revised tally of ballots discloses that the Union has not received a majority of the votes cast, a hearing be held with respect to objections Nos. 1 and 2 except as it concerns Gehrig's conduct.

[The Board directed that the Regional Director shall, within 10 days from the date of this Decision, open and count the ballots of Gehrig, Hildebrand, Hawkins, Fraizer, Steil, and Semph and serve upon the parties a revised tally of ballots. If the tally discloses that a majority of the valid ballots have been cast for the Union, the Regional Director shall issue the appropriate certification of representatives. In the event the tally shows that the Union has failed to receive a majority of the valid ballots, the Regional Director is directed to proceed with a hearing as hereinafter provided.]

[The Board ordered that, in the event the Union fails to receive a majority of the valid ballots, a hearing be held before a Hearing Officer to be designated by the Regional Director to resolve the issues with respect to objections Nos. 1 and 2 except as it concerns Gehrig's conduct.]

[The Board further ordered that the Hearing Officer serve upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the said objections. Within 10 days from the date of issuance of such report any party may file with the Board in Washington, D.C., an original and six copies of exceptions. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy upon each of the other parties, and shall file a copy with the Regional Director. If no exceptions are filed, the Board shall adopt the recommendations of the Hearing Officer.]

[The Board further ordered the above-entitled proceeding be referred to the Regional Director for the Thirteenth Region for the purpose of opening and counting the challenged ballots and, if necessary, conducting a hearing.]

² *Pittsfield Shoe Company*, 119 NLRB 1067.