

In the Matter of **KEYSTONE MANUFACTURING COMPANY** and **UNITED TOY AND NOVELTY WORKERS LOCAL INDUSTRIAL UNION No. 538 OF THE C. I. O.**

Case No. R-599.—Decided May 13, 1938

Toy Manufacturing Industry—Motion Picture Equipment Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: employer's refusal to grant recognition of union—*Unit Appropriate for Collective Bargaining:* production employees, excluding supervisory employees, foremen, assistant foremen, clerical and office employees, inspectors, and employees of drafting department, maintenance department, and machine shop; history of collective bargaining relations with employer; dissimilarity of interest; occupational differences—*Election Ordered:* labor organization which was found to be company-dominated in Trial Examiner's Intermediate Report, with which employer complied, excluded from ballot.

Mr. Norman F. Edmonds, for the Board.

Mr. Jeremiah W. Mahoney, of Boston, Mass., for the Company.

Mr. Sidney Grant, of Boston, Mass., for the United.

Mr. Hyman H. Rovner, of Chelsea, Mass., for the Association.

Mr. Joseph B. Robison, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 8, 1937, United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O., herein called the United, filed with the Regional Director for the First Region (Boston, Massachusetts) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Keystone Manufacturing Company, Boston, Massachusetts, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 12, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional

Director to conduct it and to provide for an appropriate hearing upon due notice. The Board also ordered, pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of the Rules and Regulations, that this case be consolidated for the purposes of hearing with a case involving the same parties, based on charges filed by the United, in which a complaint had been issued on November 8, 1937, alleging that the Company had engaged in and was engaging in unfair labor practices within the meaning of the Act.¹

On November 12, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United, and upon Keystone Employees Association, herein called the Association, a labor organization purporting to represent employees directly affected by the investigation.² Pursuant to the notice, a hearing on the consolidated cases was held from November 15 to November 24, 1937, at Boston, Massachusetts, before Eugene Lacy, the Trial Examiner duly designated by the Board. The Board, the Company, the United, and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed those rulings of the Trial Examiner which affected the issues arising under the petition and finds that no prejudicial errors were committed. Those rulings are affirmed.

On January 12, 1938, the Trial Examiner filed his Intermediate Report in the case arising under the complaint, in which he found, among other things, that the Company had dominated and interfered with the Association and had contributed support thereto, and had thereby engaged in unfair labor practices within the meaning of Section 8 (1) and (2), and Section 2 (6) and (7), of the Act. He recommended that the Company cease and desist from its unfair-labor practices and, affirmatively, that it withdraw all support from the Association and disestablish it as the bargaining agency of the Company's employees. On February 3, 1938, the Board was informed by the Regional Director that the Company had complied with the affirmative portions of the Trial Examiner's recommendations.

¹ Case No. C-380 The complaint in this case alleged unfair labor practices on the part of the respondent within the meaning of Section 8 (1), (2), and (3) of the Act

² The complaint in Case No. C-380 alleged that the respondent had dominated and interfered with the formation and administration of the Association, thereby committing unfair labor practices within the meaning of Section 8 (2) of the Act.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Keystone Manufacturing Company is a Massachusetts corporation engaged in the manufacture and distribution of various kinds of toys, movie cameras, and projectors. It uses many varieties of raw materials, including steel, wood, electrical appliances, optical lenses, zinc and iron castings, and paint. The total value of the raw materials purchased between November 1, 1936, and November 1, 1937, was \$400,000. Over 55 per cent of the raw materials bought during that period were purchased outside the State of Massachusetts, and shipped to the Company, from such States as New York, Michigan, California, and Ohio. During the same period, the total value of the finished products sold by the Company exceeded \$1,000,000. Sixty per cent of these products were shipped out of Massachusetts by the Company, to destinations in every State in the United States as well as in Europe.

The Company owns 17 United States patents and 5 trade-marks registered for use in interstate commerce. It has a railroad siding and uses motor, railroad, and water transportation. It maintains a sales office in New York City, from which salesmen operate all over the country.

II. THE ORGANIZATIONS INVOLVED

United Toy and Novelty Workers Local Industrial Union No. 538 is a labor organization, affiliated with the Committee for Industrial Organization. It was organized by the Toy and Novelty Workers Organizing Committee, herein called the Organizing Committee, and received its charter on September 10, 1937. It admits to membership production workers employed by the Company and by Marks Brothers Company, which occupies the same building as the Company.

Keystone Employees Association is an unaffiliated labor organization. Its membership is limited exclusively to employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During the latter part of July 1937, certain of the Company's employees went to the office of the Organizing Committee and expressed a desire to form a labor organization at the plant of the Company. The employees were given applications for membership. During the following weeks a substantial number of the Company's employees signed such applications.

On August 13 the Organizing Committee sent a letter to the Company in which it requested the Company to communicate with the union's attorneys with regard to setting a date for the opening of negotiations for collective bargaining. The letter stated that the employees of the Company had become affiliated with the Organizing Committee. In the evening of August 13 a conference was held at the headquarters of the Organizing Committee at which it was decided to call a strike. On the following day a strike was commenced which continued until August 24. The Association was formed, during the course of the strike, among the employees who continued to work at the Company's plant, and it was recognized by the Company as the representative of its employees for purposes of collective bargaining.

During the week following August 13, conferences were held at the Regional Office of the Board in Boston, Massachusetts, at which representatives of the Company, the Organizing Committee and the Association were present. At one of these conferences Isadore Marks, president of the Company, referred to a letter which he had received from the Organizing Committee requesting recognition. He denied on that occasion that the Organizing Committee represented a majority of the Company's employees and requested that an election be held.

On August 23 a conference took place between representatives of the Board and of the Organizing Committee and David Greer, an attorney representing the Company. It was agreed orally that the striking employees were to return to work within 10 days without discrimination on the part of the Company. This oral agreement was communicated to Marks, who consented thereto. Thereafter, Greer entered into a written agreement with the Organizing Committee, embodying what he believed to be the terms of the agreement. As a result of this agreement the striking employees returned to work on August 24.³

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate and substantial rela-

³ The agreement of August 23 was later repudiated by the Company, which claimed that Greer had no authority to bind the respondent to its terms. It is not necessary for the Board to decide at this time whether in fact Greer lacked such authority.

tion to trade, traffic, and commerce among the several States, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The United contends that the production workers employed by the Company, excluding supervisory, office, clerical, and maintenance employees, constitute a unit appropriate for the purposes of collective bargaining. The inclusion of certain employees raises the only issues as to the extent of the appropriate unit.

The 6 employees in the Company's maintenance department and the 17 employees in the machine shop appear to have a separate organization of their own, affiliated with the American Federation of Labor. They have bargained collectively in the past with the Company. They are not generally considered as production employees since they do not handle the actual product of the Company. The employees in the machine shop manufacture the dies used in stamping parts. The employees in the maintenance department and in the machine shop will be excluded from the appropriate unit.

The Company has six employees in its drafting department. They are highly skilled employees and draft the designs for the dies used by the Company. They will be excluded from the appropriate unit.

The pay roll of the Company of November 8, 1937, lists 35 employees as office and clerical workers. While some of these employees appear to do their work among the production employees, their tasks are clearly clerical in nature and differ from those of the production employees. In accordance with numerous decisions of the Board, they will be excluded from the appropriate unit.

The Company's foremen have complete power to hire and discharge the employees who work under them. The record indicates that in addition to foremen there are certain assistant foremen who, although they do not have authority to hire and discharge, direct the work of employees under them and exercise other supervisory powers. While the record does not clearly reveal the full extent of their duties, we must assume, in the absence of any evidence to the contrary, that they are more closely associated with the management than with the employees who work under their direction. Accordingly, both foremen and assistant foremen will be excluded from the appropriate unit.

On November 8, 1937, there were 28 employees in the Company's inspection department. These men inspect the work of the production employees and return defective products to the workers for correction.

Where the defects are small, however, they are eliminated by the inspectors themselves. The United contends that they should be excluded from the appropriate unit because the earnings of the production workers are affected to a large extent by the decisions of the men in the inspection department. We find that the evidence sustains this contention and will therefore exclude the employees in question from the appropriate unit.

On November 8, 1937, the Company had 17* employees in its shipping department and 5 in its stock department. The United contends for the inclusion of the former in the appropriate unit and for the exclusion of the latter. The record indicates that, although they do not contribute directly to the manufacture of the product, the employees in both departments handle the raw materials and the products of the Company. We find that both groups of employees should be included in the appropriate unit.

We find that the production employees of the Company, excluding supervisory employees, foremen, assistant foremen, clerical and office employees, inspectors, and employees in the drafting department, maintenance department, and the machine shop, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

Application cards of the Organizing Committee were produced at the hearing and were open to inspection of counsel for all parties, but were not submitted in evidence. An official of the Organizing Committee testified on the basis of the cards that 121 employees of the Company had signed applications by August 14, that 107 signed between August 14 and August 24, and that 11 had signed since that time. The pay roll of the Company for August 13, 1937, shows that there were 420 employees in the appropriate unit on that date. No evidence was presented at the hearing, however, to prove that those who had signed applications to membership in the United were employees of the Company or that these applicants fell within the unit found by the Board to be appropriate.

We find that the question concerning representation which has arisen can best be resolved by the holding of an election by secret ballot. Those eligible to vote in the election will be the employees of the Company within the appropriate unit employed during the pay-roll period next preceding November 8, 1937, the date of the

petition in this case, exclusive of those who have quit or have been discharged for cause between that date and the date of the election.

Since the Trial Examiner has found that the Association was dominated, interfered with, and supported by the Company, and since the Company has acquiesced in this finding by compliance with the Trial Examiner's recommendations, we shall make no provision for the designation of the Association on the ballots.⁴

On the basis of the above findings of fact and upon the entire record in the case, the Board makes the following :

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Keystone Manufacturing Company, Boston, Massachusetts, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

2. The production employees of Keystone Manufacturing Company, excluding supervisory employees, foremen, assistant foremen, clerical and office employees, inspectors, and employees in the drafting department, maintenance department, and the machine shop, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Keystone Manufacturing Company, Boston, Massachusetts, an election by secret ballot shall be conducted within forty-five (45) days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, Boston, Massachusetts, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the production employees of Keystone Manufacturing Company who were on the pay roll of the Company for the period next preceding November 8, 1937, excluding those who have quit or have been discharged for cause between that date and the

⁴ Cf. *Matter of S. Blechman & Sons, Inc. and United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N L R B 15 decided November 4, 1937

date of the election, and excluding supervisory employees, foremen, assistant foremen, clerical and office employees, inspectors, and employees in the drafting department, maintenance department, and the machine shop, to determine whether or not they desire to be represented by United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O., for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

May 31, 1938

On May 13, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding, the election to be held within forty-five (45) days from the date of the Direction, under the supervision of the Regional Director for the First Region (Boston, Massachusetts). At the request of the Regional Director, we shall postpone the election for the present.

The Board hereby amends its Direction of Election by striking out the words "within forty-five (45) days from the date of this Direction" and substituting therefor the words "at such time as the Board may in the future direct."