

In the Matter of THE KINNEAR MANUFACTURING COMPANY and STEEL WORKERS ORGANIZING COMMITTEE affiliated with COMMITTEE FOR INDUSTRIAL ORGANIZATION

Case No. R-359.—Decided January 10, 1938

Rolling Door Manufacturing—Investigation of Representatives: controversy concerning representation of employees: rival organizations; prior contract recognizing one of rival organizations as representative of employees held no bar to petition for investigation, because supervisory employees were included in the bargaining unit described in such contract; such inclusion raises a doubt as to majority status of such organization—*Unit Appropriate for Collective Bargaining:* all employees, except office, field, and supervisory employees—*Election Ordered*

Mr. Oscar Grossman, for the Board.

Mr. Ed D. Shorr, of Columbus, Ohio, and *Mr. Manuel Koslen*, of Columbus, Ohio, for the Company.

Mr. Francis H. Kearns, of Columbus, Ohio, for the Independent Union.

Mr. J. P. Harris, of Columbus, Ohio, for the S. W. O. C.

Mr. Melvin S. Frazier, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 14, 1937, a petition, signed by G. George De Nucci, District Director of the Committee for Industrial Organization, was filed on behalf of the Steel Workers Organizing Committee, herein called the S. W. O. C., with the Regional Director of the Ninth Region (Cincinnati, Ohio) alleging that a question affecting commerce had arisen concerning the representation of employees of The Kinnear Manufacturing Company, Columbus, Ohio, 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 October 5, 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.

On October 26, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the petitioner, and Independent Union of Rolling Door Workers,¹ herein called the Independent, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice a hearing was held on November 3, 1937, at Columbus, Ohio, before Robert M. Gates, the Trial Examiner duly designated by the Board. The Board, the Company, and the Independent Union were represented by counsel and participated in the hearing. The S. W. O. C. was represented by an organizer for the Committee for Industrial Organization 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 the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Kinnear Manufacturing Company is an Ohio corporation with its principal office and factory in Columbus, Ohio. It has sales offices in New York, Boston, Washington, Chicago, New Orleans, Cleveland, and Cincinnati. The Company is engaged in the manufacture, distribution, and sale of wood and metal rolling doors, wood and metal upward acting doors, and operating mechanisms for such doors. During the calendar year 1936, sales amounted to approximately \$1,000,000 and purchases of raw materials amounted to approximately \$400,000.

The Company purchases the greater portion of the raw materials used, consisting principally of steel and wood, from outside the State of Ohio. Approximately eighty-five per cent of its finished products are shipped to points outside the State of Ohio.

¹ The notice of hearing was addressed to the "Independent Union of Kinnear Employees", but the record in this case shows that the correct name of the union is "Independent Union of Rolling Door Workers".

The Company employs approximately 300 persons, of which number approximately 200 are production workers employed in the Columbus factory.

II. THE ORGANIZATIONS INVOLVED

Steel Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. A local of the S. W. O. C. for employees of the Company was formed about May 1, 1937. The local admits to membership all factory employees of the Company except office, field and supervisory employees.

Independent Union of Rolling Door Workers is a labor organization, not affiliated with any other organization, which admits to membership all factory employees of the Company except office and field employees.

III. THE APPROPRIATE UNIT

The S. W. O. C. contends that the appropriate unit for collective bargaining is all factory employees of the Company, excluding office, field and supervisory employees. The Independent contends that the appropriate unit is all factory employees of the Company, excluding office and field employees. The only disagreement between the S. W. O. C. and the Independent as to the appropriate unit relates, therefore, to the supervisory employees.

The supervisory employees of the Company have the duty not only of supervising the work of other employees but also of making recommendations regarding the tenure of employment of personnel. Their duties and responsibilities therefore relate them more directly to the management than to the factory workers.

We find that the factory employees of the Company, excluding office, field and supervisory employees, 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.

IV. THE QUESTION CONCERNING REPRESENTATION

During April and May, 1937, a group of employees of the Company joined the S. W. O. C. and another group organized the Independent. The S. W. O. C. and the Independent, each claiming to represent a majority of the factory employees of the Company, attempted to bargain with the Company. The Company refused in view of the conflicting claims to bargain with either as the exclusive representative of the factory employees of the Company. The Company, however, submitted a proposed contract to the representatives of the

S. W. O. C. and a proposed contract to the representatives of the Independent. The two contracts were identical in all respects except that the representatives of the S. W. O. C. were named as parties to one contract and the representatives of the Independent were named as parties to the other contract. On June 7, 1937, the Company and three representatives of the S. W. O. C. executed one contract and the Company and three representatives of the Independent executed the other.

Each contract provides, in effect, as follows: (1) any employee of the Company may become a party to the contract by filing with the Company a signed notice of election to become a party, such notice to be in the form set forth in the contract; (2) the unit appropriate for the purposes of collective bargaining shall be all of the employees of the Company employed in the factory, but shall not include employees employed in the office or in the field; (3) in the event a majority of the employees of the unit become parties to the contract the representatives named in the contract or their successors shall be the exclusive representatives of all employees of the unit for the purposes of collective bargaining; and (4) it shall be effective until May 1, 1938, and thereafter until terminated upon due notice, but in the event a majority of the employees of the Company in the unit defined in the contract designate as their representatives for collective bargaining persons other than the parties named in the contract or their successors, the agreement shall be void.

The Independent submitted in evidence a list of persons who it claims signed and filed with the Company notices of election to become parties to the contract signed by the Company and the representatives of the Independent. The list contained 105 names. At the hearing, the names were checked against the Company's pay rolls of June 3, 1937, and November 3, 1937. Each pay roll showed 204 employees, exclusive of office and field employees, but inclusive of 14 supervisory employees and each pay roll contained the names of all persons on the list submitted by the Independent.

The Independent contends that no question concerning representation exists and the Board should dismiss the petition of the S. W. O. C. since the majority of the employees in the unit specified in the contract have filed notices electing to become parties to the contract and since the contract provides that in such event the representatives named in the contract shall be the exclusive representatives of all the employees of the unit for the purposes of collective bargaining. The contract provides, however, that the appropriate unit shall be all the employees of the Company employed in the factory, but shall not include employees of the Company employed in the office or in the field. The Independent and the Company both took the position at the hearing that the unit described in the contract included super-

visory employees. That the contract was executed and the notices were signed upon the basis that the supervisory employees were included within the unit appears clear. Indeed, a number of supervisory employees signed notices and filed them with the Company. It must be concluded, therefore, that the unit which the contract described included supervisory employees.

The Board has found that the factory employees of the Company, excluding office, field, and supervisory employees, constitute an appropriate unit. The unit described in the contract as appropriate, and on the basis of which the contract designates representatives for the purposes of collective bargaining differs, therefore, from the unit which the Board has found to be appropriate. Under the circumstances of the case the Board is not precluded from investigating and certifying representatives for the purposes of collective bargaining.²

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

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

VI. THE DETERMINATION OF REPRESENTATIVES

The pay roll of the Company as of November 3, 1937, the date of the hearing, showed 204 employees, exclusive of office and field employees. The plant manager testified that 14 of the 204 employees were supervisory employees.

The S. W. O. C. claims that on November 3, 1937, and at all times since May 7, 1935, at least 110 employees of the Company, excluding office, field, and supervisory employees, have been members of the S. W. O. C. It submitted in evidence a membership card and asserted that 110 employees of the Company duly executed such cards. The Company and the Independent claim that approximately 30 of the cards were not properly executed.

The Independent claims that by virtue of the notices of election referred to above 105 employees desire the Independent to represent them. It is apparent from the record that eight and possibly 14 of the 105 persons signing notices are supervisory employees. Fur-

² See *In the Matter of Northrop Corporation and United Automobile Workers, Local No 299*. Case No. R-185, decided October 6, 1937, 3 N. L. R. B. 228

thermore, the names of 21 of the persons signing notices of election appear upon the membership cards of the S. W. O. C.

It is clear, therefore, that there is not a sufficient basis for the Board without an election to certify either the S. W. O. C. or the Independent as the exclusive bargaining representative of the employees in the appropriate unit.

We find that the question which has arisen concerning the representation of employees of the Company can best be resolved by the holding of an election by secret ballot to determine whether the employees in question desire the S. W. O. C. or the Independent to represent them for the purpose of collective bargaining, or neither.

Upon 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 The Kinnear Manufacturing Company, Columbus, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The factory employees of the Company, excluding office, field, and supervisory employees, 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, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as a part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with The Kinnear Manufacturing Company, Columbus, Ohio, an election by secret ballot shall be conducted within fifteen days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth Region, 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 factory employees of the Company who were employed on August 14, 1937, excluding those who have since quit or been discharged for cause and excluding office, field, and supervisory employees, to determine whether they desire to be represented by the S. W. O. C. or the Independent for the purposes of collective bargaining, or by neither.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Decision and Direction of Election.