

In the Matter of **KAY MUSICAL INSTRUMENT COMPANY and FURNITURE
WOODWORKERS AND FINISHERS, LOCAL 18-B**

Case No. R-474.—Decided January 20, 1938

Musical Instrument Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: substantial doubt as to majority status; refusal of employer to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining:* no controversy as to—*Election Ordered*

Mr. Stephen M. Reynolds, for the Board.

Mr. Otto A. Jaburek, of Chicago, Ill., for the Company.

Mr. Bliss Duffan, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 22, 1937, Furniture Woodworkers and Finishers Local No. 18-B, hereinafter called the Union, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Kay Musical Instrument Company, Chicago, Illinois, 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 9, 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 November 19, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to the notice, a hearing was held on November 23, 1937, at Chicago, Illinois, before Herbert Wenzel, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel and participated in the hearing. A business agent of the Union was present and testified at the hearing. Full opportunity to be heard, to examine and 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 of the case the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, an Illinois corporation, is engaged in the manufacture, sale and distribution of guitars, banjos, mandolins and bass violins. Its plant is located at Chicago, Illinois. The Company has no branch offices or salesmen, and does business principally through wholesalers, forty in number, located in fifteen states. It also does business by mail order throughout the United States and in several foreign countries.

The Company uses lumber, lacquer, shellac, stains, glue, strings, hardware manufactured from brass, and other materials. Seventy-five per cent of all such materials are obtained outside the State of Illinois.

The total sales of the Company each year amount to about \$250,000, approximately 60 per cent of the finished products being shipped outside the State of Illinois.

II. THE ORGANIZATION INVOLVED

Furniture Woodworkers and Finishers Local No. 18-B is a labor organization affiliated with the Upholsterers, Furniture, Carpet, Linoleum and Awning Workers' International Union of North America, which is in turn affiliated with the American Federation of Labor, admitting to membership all production and maintenance employees of the Company, excluding foremen, office employees, and employees acting in a supervisory capacity.

III. THE QUESTION CONCERNING REPRESENTATION

On October 16, 1937, a committee from the Union met with the president of the Company and asked that the Union be recognized as the exclusive bargaining representative of the Company's employees, excluding foremen, office employees and employees acting in a supervisory capacity. The president refused such recognition, contending that the Union did not represent a majority of the employees.

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

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON 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.

V. THE APPROPRIATE UNIT

In its petition the Union alleged that all employees of the Company, exclusive of foremen, office, and supervisory employees constituted an appropriate unit. The Company raised no objection to this unit.

We find that all the employees of the Company, excluding foremen, office and supervisory employees, constitute a unit appropriate for collective bargaining purposes and that said unit will insure the employees of the Company the full benefit of their rights to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The Company employed on October 15, 1937, and at the time of the hearing, 62 employees within the appropriate unit. A business agent of the Union testified that 43 employees had signed applications for membership in the Union. The applications were not introduced in evidence. The president of the Company testified that 36 employees had signed a petition indicating that they did not desire to be represented by the Union.

We find that the question which has arisen concerning representation can best be resolved by the holding of an election by secret ballot.

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 the Kay Musical Instrument Company, Chicago, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the employees of the Company, excluding foremen, office employee and employees acting in a supervisory capacity, 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 collective bargaining with Kay Musical Instrument Company, Chicago, Illinois, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth 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 all the employees of Kay Musical Instrument Company who were employed by the Company during the pay-roll period next preceding the filing of the petition in this case, excluding foremen, office employees, and supervisory employees, and excluding employees who quit or were discharged for cause between such date and the date of election, to determine whether or not they desire to be represented by Furniture Woodworkers and Finishers Local 18-B for the purpose of collective bargaining.