

In the Matter of FRANK PILLEY & SONS, INC. and GENERAL DRIVERS,
WAREHOUSE & HELPERS, LOCAL #383

Case No. 18-R-797.—Decided October 14, 1943

Sifford, Wadden & Jepson, by *Mr. Byron L. Sifford*, of Sioux City, Iowa, for the Company.

Mr. James J. Murphy, of Sioux City, Iowa, for the Drivers.

Mr. John Davidchik, of Sioux City, Iowa, for the P. W. O. C.

Mr. Robert Silagi, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by General Drivers, Warehousemen & Helpers, Local #383, herein called the Drivers, alleging that a question affecting commerce had arisen concerning the representation of employees of Frank Pilley & Sons, Inc., Sioux City, Iowa, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Sioux City, Iowa, on September 22, 1943. The Company, the Drivers, and Packinghouse Workers Organizing Committee, Local No. 135, C. I. O., herein called the P. W. O. C., 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

Frank Pilley & Sons, Inc., is a Delaware corporation engaged in the processing, selling, and distributing of dairy and poultry products.

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The Company maintains its general office in Omaha, Nebraska, and operates branch plants at Norfolk, Nebraska, Springfield, Missouri, Tracy, Minnesota, and Sioux City, Iowa. During the last fiscal year of the Company's operations, the Sioux City plant, which is the only plant involved in this proceeding, purchased raw materials consisting of cream, eggs, poultry, and milk valued in excess of \$10,000,000. Approximately 20 percent of the raw materials was shipped to the Sioux City plant from points outside the State of Iowa. During the same period of time the total sales of the plant exceeded \$10,000,000, approximately 94 percent of which was shipped to purchasers outside the State of Iowa. A substantial part of the products manufactured and processed by the Company is taken by the Federal Government for use in its Lend-Lease program.

At its Sioux City plant the Company operates the following departments: creamery, egg, poultry, and retail milk. The retail milk business was instituted in September 1942. All the milk sold at retail is bought in Sioux City from a milk producers' association and nearly all of it is marketed in Sioux City. Milk sold by the Sioux City Milk Producers Cooperative Association to the Company amounts to about \$50,000 to \$75,000 in value per year. The milk business amounts to 1 percent or less of the total business of the Company in Sioux City.

Although the Company acknowledges that aside from the retail milk business it is engaged in commerce within the meaning of the National Labor Relations Act,¹ it challenges the jurisdiction of the Board as to its retail milk business, and urges that this petition should be dismissed because it affects only the Company's milk driver-salesmen. The record shows that three of the four milk driver-salesmen deliver milk from house to house, and the one wholesale driver now employed delivers milk to retail stores. Over 90 percent of the milk is distributed in Sioux City or other nearby points in Iowa. However, the record shows that one of the retail drivers crosses into South Dakota on his route and the wholesale driver travels into Nebraska. Moreover, the record clearly establishes that the milk department out of which these drivers work is merely a part of the general operations of the Company which are definitely in interstate commerce. The contention of "separability" of an employer's business has been foreclosed by the Supreme Court in *Virginia Electric & Power Company v. N. L. R. B.*, 314 U. S. 469.² The evidence dis-

¹ *Matter of Frank Pilley & Sons, Inc.*, 47 N. L. R. B. 863.

² In this respect the decision of the Fourth Circuit (115 F. (2d) 414) was affirmed. The lower court stated ". . . unfair labor practices in any department of such a business will have repercussions in other departments; and strife affecting the interstate commerce in which the Company is engaged will be avoided only if the rights of all employees are properly safeguarded.

closed that the milk driver-salesmen are in all respects employees of the Company, and that they would be considered for transfer to other departments of the plant in the event their own work diminished or was discontinued. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

General Drivers, Warehousemen & Helpers, Local #383, chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Packinghouse Workers Organizing Committee, Local No. 135, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 21, 1943, and again on July 28, the Drivers advised the Company that it represented a majority of the milk driver-salesmen and requested recognition as their collective bargaining representative. The Company refused to grant such recognition on the grounds that it had already recognized the P. W. O. C. as the representative of the employees in question and further that the Company did not consider that the operations of the milk driver-salesmen were such as to bring them within the protection of the Act. In June 1941, the Company and the P. W. O. C. entered into a contract which continued until January 1943. At the time the contract was entered into the Company employed no retail milk driver-salesmen and hence they were not covered by said contract. Since January 1943 the Company has been negotiating with the P. W. O. C. for a new contract and at the present time the various issues that have not been disposed of, have been referred to a regional panel of the National War Labor Board for settlement. Both the Company and the C. I. O. contend that there is an oral agreement whereby milk drivers are represented by the P. W. O. C. In the absence of an executed contract, however, such oral recognition cannot constitute a bar to a present determination of representatives.³

A statement of the Regional Director, introduced into evidence, and a statement by the Trial Examiner made at the hearing, indicate that both unions represent a substantial number of employees in the unit which is alleged to be appropriate.⁴

³ See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

⁴ The Regional Director reported that the Drivers submitted 5 application cards, all of which bore apparently genuine original signatures; that the names of 3 persons appearing

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 Company and the P. W. O. C. contend that the milk driver-salesmen should be absorbed into the industrial unit for which the C. I. O. is the collective bargaining representative. The Drivers seeks to have the milk driver-salesmen established in a separate unit. Although the P. O. W. C. allegedly has negotiated on behalf of the employees in question, since January 1943, as stated above, no written contract has been entered into covering them. The record discloses that the retail milk department is considered by the Company to be a separate and independent department. It is clear that the milk driver-salesmen could either constitute a separate appropriate unit, or could be properly merged into the main production and maintenance unit.⁵

Under these circumstances, we shall make no final determination of the appropriate unit at this time, but shall direct an election among the milk driver-salesmen employed by the Company, excluding all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, to determine whether they desire to be represented by the Drivers, or by P. W. O. C., or by neither. In view of the absence of any question concerning representation among the employees in the main production and maintenance unit, we shall direct an election only among the employees in the retail milk department wherein such question has arisen. If such employees choose to be represented by the Drivers, we will regard their choice as indicating that they desire to constitute a separate bargaining unit, and will find accordingly. If, however, the employees in this voting group select the P. W. O. C., they will thereby have indicated their desire to be included in a unit with the general production and maintenance group and will be a part of such unit.⁶

on the cards were listed on the Company's pay roll of August 31, 1943, which contained the names of 7 employees in the alleged appropriate unit; and that all the cards were dated in July 1943.

At the hearing the P. W. O. C. submitted 8 authorization cards to the Trial Examiner who, after investigation, stated that 2 of the cards bore the names of persons who are on the Company's pay roll of August 31, 1943; that these cards were dated in January 1943; and that each card bore the apparently genuine original signature of the individual whose name appeared thereon

⁵ In a previous case involving the same Company, see *supra*, footnote 1, the Board permitted operating engineers to be established as a unit separate from the industrial one in which they had been bargained for by the P. W. O. C.

⁶ See *Matter of Armour and Company*, 40 N. L. R. B. 1333.

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 milk driver-salesmen who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Frank Pilley & Sons, Inc., Sioux City, Iowa, 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 Eighteenth 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 milk driver-salesmen employed by the Company at its Sioux City plant, 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 supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and those employees who have since quit or been discharged for cause, to determine whether they desire to be represented by United Packinghouse Workers of America, No. 135, C. I. O., or by Local Union No. 383, General Drivers, Warehousemen & Helpers,⁷ for the purposes of collective bargaining, or by neither.

⁷ A request to appear thus on the ballot is hereby granted.