

In the Matter of WILSHIRE CHEESE COMPANY *and* CONFECTIONERY AND
FOOD WORKERS UNION, LOCAL NO. 139

Case No. 17-R-692.—Decided October 15, 1943

Mr. M. R. Swanson, of Chicago, Ill., for the Company.

Messrs. John P. Simmons and *A. A. White*, of Springfield, Mo.,
for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Confectionery and Food Workers Union, Local No. 139, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Wilshire Cheese Company, Springfield, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Margaret L. Fassig, Trial Examiner. Said hearing was held at Springfield, Missouri, on September 17, 1943. The Company and the Union appeared, participated, and 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

Wilshire Cheese Company, an affiliate of Wilson & Co., Inc., Chicago, Illinois, is a Delaware corporation. Its only plant is located in Springfield, Missouri, where it is engaged in the processing of cheese. Its raw materials consist of raw cheese purchased from dairies and other cheese plants within the State of Missouri. The

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Company's annual sales of processed cheese exceed \$500,000 annually, 90 percent of which is shipped to points outside the State of Missouri. Most of its finished product is sold to the United States Government for lend-lease purposes.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Confectionery and Food Workers Union, Local No. 139, Bakery and Confectionery Workers International Union of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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

In accordance with the stipulation of the parties, we find that all production and maintenance employees of the Company, excluding clerical and office employees, the manager, the superintendent, the foreman, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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 employees in the appropriate unit. The Union requests that eligibility

¹The Field Examiner reported that the Union submitted 15 certificate of authority cards, all of which bore apparently genuine original signatures corresponding with names of persons appearing on the Company's pay roll of August 15, 1943, which contained the names of 20 employees in the appropriate unit; the cards were dated July 26, 27, and 28, 1943.

to vote in the election be determined by the August 15, 1943, pay roll to protect the rights of certain employees who have been temporarily laid off.² As it is our settled policy to declare persons temporarily laid off eligible to vote, it is unnecessary that we depart from our usual procedure. The election will be participated in by all employees in the appropriate unit 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 Wilshire Cheese Company, Springfield, Missouri, 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 Seventeenth 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 employees in the unit found appropriate in Section IV, above, 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 those employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Confectionery and Food Workers Union, Local 139, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

² Beulah Montgomery, who was temporarily laid off but subsequently refused an offer of reemployment, is to be considered as an employee who quit.