

IN the Matter of LAND O' LAKES CREAMERIES, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION 581, AFL

*Case No. 18-R-794.—Decided November 25, 1943*

*Mr. R. J. Leonard*, of St. Paul, Minn., for the Company.

*Mr. Floyd Coverston*, of Grand Forks, N. Dak., *Mr. J. M. O'Laughlin*, of Minneapolis, Minn., and *Mr. W. W. Murrey*, of Fargo, N. Dak., for the Union.

*Miss Frances Lopinsky*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 581, AFL<sup>1</sup> herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Land O' Lakes Creameries, Inc., Thief River Falls, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held on October 19, 1943, at Thief River Falls, Minnesota. 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 Company moved dismissal of the petition on the ground that the Board lacks jurisdiction. For reasons hereinafter given, the motion is overruled. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

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<sup>1</sup> The amended petition was filed in the name General Drivers and Warehouse Employees, Local Union #581, A. F. of L., the designation which the Union requested to be used on the ballot.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Land O' Lakes Creameries, Inc., is a cooperative, organized and existing under the laws of the State of Minnesota. All common stock of the Company is owned by approximately 400 member creameries and cheese factories located principally in the States of Minnesota, Wisconsin, and North Dakota. The Company is engaged in the purchase, processing, and sale of farm supplies and farm produce. The Thief River Falls branch of the Company, involved in this proceeding, is engaged in the processing and sale of eggs, poultry, and seeds; manufacture and distribution of commercial feed and ice cream; and jobbing of cheese, fertilizer, twine, and paint. All sales are made by the Minneapolis office of the Company, but most shipments are made by the branch direct to the customers under direction from the Minneapolis office. For the calendar year 1942 the Company purchased for the Thief River Falls branch approximately 500,000 dozen eggs, 800,000 pounds of poultry and turkey, 1,500,000 to 2,000,000 pounds of seed, 15,000,000 pounds of feed, fertilizer, and twine. Substantially all of the raw materials used were purchased from sources within the State of Minnesota and were purchased by a central buying office of the Company. For the same period the Company sold approximately 480,000 pounds of poultry and turkey, 200,000 dozen eggs, and 1,000,000 to 1,400,000 pounds of seeds to customers located in States other than the State of Minnesota. These sales comprised approximately 30 to 40 percent of the total business of the Thief River Falls branch. Trucking and storage facilities of the branch to some extent are used in connection with the operation of the branches of the Company.

The Company contends that it is not engaged in commerce within the meaning of the National Labor Relations Act. In view of the quantity of its products which are carried in interstate commerce and the close interrelationship of the Thief River Falls branch to other parts of the cooperative, we find that the operations of the Company at its Thief River Falls branch affect commerce within the meaning of the Act.<sup>2</sup>

## II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers Local Union 581, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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<sup>2</sup> See *Santa Cruz Fruit Packing Company v. N. L. R. B.*, 303 U. S. 453; cf. *Virginia Electric & Power Co. v. N. L. R. B.*, 115 F. (2d) 414 (C. C. A. 4).

## 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 Regional Director introduced into evidence at the hearing, supplemented by a statement of the Trial Examiner made at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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 Union defines the appropriate bargaining unit as all employees of the Thief River Falls branch of the Company, excluding office and clerical workers and supervisory employees. The Company contends that its employees should be separated into two units: one consisting of all the employees of the Thief River Falls branch of the Company working in the "plant," excluding office and clerical workers and supervisory employees; the second unit to consist of all employees of the Thief River Falls branch of the Company working in the grain elevator department, excluding supervisory employees.

The grain elevator is the latest acquisition of the Company's Thief River Falls branch. It consists of three elevators, seed cleaning equipment, a feed grinding room, and two warehouses. The grain elevator employees of the vendor were retained by the Company, and there has been no interchange of employees between this part of the elevator and the plant, but there has been an interchange between employees of the seed cleaning department at the elevator and the seed cleaning department of the plant. In rush periods, the plant's truck drivers and laborers assist in loading and unloading operations at the elevator. Although the Company asserts that the employees at the elevator are highly skilled and for that reason should not be included in a unit with other employees, the record does not support this assertion. Employees at the elevator department receive substantially the same wages as employees of other departments; they have the same vacation schedule and receive the same overtime rate. The two parts of the branch are but half a block apart. We are of the opinion that a single

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<sup>3</sup> The Regional Director reported that the Union submitted 51 authorization cards, 48 of which bore apparently genuine original signatures, corresponding with the names of persons listed on the Company's pay roll of September 29, 1943, which contained the names of 94 employees in the appropriate unit. The Union presented to the Trial Examiner 10 additional cards, all of which bore genuine original signatures, 7 of which corresponded with the names listed on the said pay roll of September 29, 1943.

unit comprising both the elevator employees and the plant employees is the appropriate unit for purposes of collective bargaining for the employees involved herein.

The Union would exclude from the unit Catherine Heirin, who is a clerk at the grain elevator but spends 25 percent of her time as a seed analyst. The Company takes a neutral position in the matter. Since the major part of her time is spent in clerical duties, we shall exclude Heirin from the unit.

The parties agree to the inclusion of the assistant superintendent of the elevator, working foremen employed in the main plant, and the maintenance foreman.

*Assistant superintendent of the grain elevator.* The assistant superintendent is a working foreman. He works in the driveway of the elevator taking in the grain. He supervises loading and unloading of cars at the elevator and helps buy grain. He spends about half of his time in supervision. He is paid by the hour and earns about 8 cents per hour more than the men under him. He and the superintendent of the elevator make a joint report to the plant superintendent, and the superintendent consults them both concerning the hiring of men. We find that the assistant superintendent of the grain elevator exercises substantial supervisory authority and shall exclude him from the unit.

*The working foremen.* The plant is divided into departments for the processing of the different products handled by the Company. Each department is under the direction of a working foreman. The employees, for the most part, are experienced and need so little supervision that the working foremen spend only 5 to 10 percent of their time supervising. They do, however, have the duty to supervise, and they have authority to hire and discharge upon their own initiative. We find that the working foremen are supervisory employees and shall exclude them from the unit.

*Maintenance foreman.* The maintenance foreman is one of three maintenance engineers employed by the Company. He is apparently a better mechanic than the others, bears the responsibility for the proper operation of the machinery, and does the complicated work himself. He receives more pay than do the other two, gives them instructions, but neither reports on their performance nor makes recommendations concerning them. He has no authority to hire or discharge. In our opinion the relationship of the maintenance foreman to the maintenance engineers is that of a skilled mechanic to his helpers.<sup>4</sup> We shall, therefore, include him in the unit.

We find that all employees of the Company's Thief River Falls branch, including the maintenance foreman, but excluding all office

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<sup>4</sup> See *Matter of Victor Chemical Company*, 52 N. L. R. B. 194; *Matter of United States Smelting, Refining and Mining Company*, 53 N. L. R. B. 84.

and clerical workers and Heirin, working foremen, the assistant superintendent of the elevator, and all 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 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.

The Union requests that its name appear on the ballot as General Drivers & Warehouse Employees Local Union #581, A. F. of L. The request is hereby granted.

#### 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 Land O' Lakes Creameries, Inc., Thief River Falls, Minnesota, 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 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 and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by General Drivers and Warehouse Employees, Local Union #581, affiliated with the American Federation of Labor, for the purposes of collective bargaining.