

In the Matter of FORT DODGE CREAMERY COMPANY *and* PACKINGHOUSE  
WORKERS ORGANIZING COMMITTEE

*Case No. 18-R-832.—Decided November 27, 1943*

*Mr. A. R. Loomis*, of Fort Dodge, Iowa, for the Company.

*Mr. Walter Wagner*, of Fort Dodge, Iowa, for the P. W. O. C. and the Council.

*Mr. C. I. McNutt*, of Des Moines, Iowa, for the Teamsters.

*Mr. Fred Baker*, of Des Moines, Iowa, for the Operating Engineers.

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

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by Webster County Industrial Union Council,<sup>1</sup> herein called the Council, alleging that a question affecting commerce had arisen concerning the representation of employees of Fort Dodge Creamery Company, Fort Dodge, Iowa, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Fort Dodge, Iowa, on October 12, 1943. The Company, the Council, Local Union 844, International Brotherhood of Teamsters, Warehousemen, and Helpers of America, herein called the Teamsters, and International Union of Operating Engineers, Local No. 268, herein called the Operating Engineers, and with the Teamsters, collectively called the AFL Unions, appeared and participated. In the course of the hearing it became apparent that the Packinghouse Workers Organizing Committee, herein called the P. W. O. C., was the real petitioner, whereupon the Council moved the Trial Examiner to amend all pleadings in the matter by substituting the name of the P. W. O. C. for that of the Council therein. The Trial Examiner granted the motion over objection of the AFL Unions, who

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<sup>1</sup> Webster County Industrial Union Council is a council made up of representatives of CIO organizations in Webster County. One of its functions is to aid member organizations in their organizational drives.

contend that the substitution prejudiced them because they were prepared to meet the allegations of the Council and had no opportunity to prepare a case against the P. W. O. C. who, they allege, is an entirely new party to the proceeding. As the petition clearly showed the agency relation of the Council to the P. W. O. C., we find no merit in the AFL Unions' contention.<sup>2</sup>

The AFL Unions moved the dismissal of the petition on the grounds (1) that the petitioner is not a labor organization, (2) that a contract signed by the AFL Unions with the Company is a bar to the proceeding, (3) that the AFL Unions lost membership because of the alleged delay of the War Labor Board in settling a question concerning its members and because of alleged raiding by the P. W. O. C. Since the petitioner acted only as an agent of an admitted labor organization, it is unnecessary to determine its status as a labor organization. For this and for reasons hereinafter discussed, the motion to dismiss is denied. 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

Fort Dodge Creamery Company is an Iowa corporation with its principal office and place of business at Fort Dodge, Iowa. It is engaged in the processing and sale of milk products, including ice cream, cheese, butter, evaporated milk and bottled milk, and in the processing and sale of dried eggs. During the calendar year of 1942, the value of raw materials and operating supplies purchased by the Company was approximately \$700,000, of which about \$50,000 represented the value of raw materials shipped to the plant from points outside the State of Iowa. For the same period, the value of the finished products was approximately \$1,000,000, of which products of about \$300,000 in value were shipped from the plant to points outside the State of Iowa. The Company sells about 25 to 30 percent of its processed products under direct national defense contracts. In addition, the Company is required by the Government to have available approximately 10 percent of its output under "set-aside" orders.

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

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<sup>2</sup> The petition contains the statement "the P. W. O. C. represents a majority of the employees."

## II. THE ORGANIZATIONS INVOLVED

Packinghouse Workers Organizing Committee, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 844, and International Union of Operating Engineers, Local No. 268, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

By letter dated September 8, 1943, the P. W. O. C. requested the Company to hold all contract negotiations in abeyance pending a Board determination of its claim to represent a majority of the Company's employees. In accordance with the request, the Company took no action. On September 15, the Council filed the petition in the instant case. October 1 was the automatic renewal date of a contract then existent between the Company and the AFL Unions. The AFL Unions contend that since the petition was not filed by the real party in interest, their contracts renewed themselves on October 1. This contention is untenable. The P. W. O. C.'s notice and its agent's petition made its position clear prior to the renewal date of the AFL contracts. The AFL Unions urge that our general rule of recognizing the existence of a question of representation when a doubt as to the union affiliation of employees has arisen prior to the execution or renewal of a contract should not apply to this case because the P. W. O. C. has gained members by reason of raiding and discontent of AFL members caused by the War Labor Board's alleged delay in handing down a decision concerning a wage increase. Even if true, these allegations do not warrant a departure from our general rule in this instance. While we do not condone raiding, we reiterate that our function is to give employees the right to select a representative of their own choosing; we cannot examine the motives of employees in making that choice.<sup>3</sup> Nor is the situation here presented comparable to that encountered in several recent cases involving resort to the procedures of the War Labor Board, in which we refused to direct elections.<sup>4</sup> In those cases, the submission of disputes to the orderly processes of government followed closely upon the certification of the contracting union and the delay caused thereby prevented the Union from enjoying the reasonable term of contractual relations which the Board in the

<sup>3</sup> See *Matter of Trailer Company of America*, 51 N. L. R. B. 1106.

<sup>4</sup> See *Matter of Allis Chalmers Mfg. Co.*, 50 N. L. R. B. 306; *Matter of Kennecott Copper Corporation, Nevada Mines Division*, 51 N. L. R. B. 930; *Matter of Aluminum Company of America, Vancouver, Washington*, 53 N. L. R. B. 593.

interests of stability has always sought to protect. In the instant matter, the contracting unions have represented the employees for 2 years. The P. W. O. C.'s demand was made prior to the automatic renewal date of the contract. It has shown that it has a substantial interest in the plant. The mere fact that a government procedure has been invoked is not sufficient to alter the rule that pending negotiations are not a bar to a determination of representatives.<sup>5</sup>

A statement of the Acting Regional Director introduced into evidence at the hearing, supplemented by a statement of the Trial Examiner made at the hearing indicates that the P. W. O. C. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>6</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 DETERMINATION OF REPRESENTATIVES

Since September 1939 the Teamsters has bargained for a unit of production employees of the Company including working foremen, excluding supervisory employees, office and clerical employees, and engineers. Since 1940 the Company has bargained with the Operating Engineers as representative of its engineers and apprentice engineers. The contracts of both AFL Unions provided for a closed shop. They had identical termination dates.

The Company, the P. W. O. C., and the Teamsters stipulated that the production unit<sup>7</sup> should consist of all production employees, including working foremen, but excluding supervisory employees and clerical employees. The P. W. O. C. would include engineers in the production unit; the Teamsters and the Operating Engineers insist that two separate units are appropriate. All parties agreed that the chief engineer should be included in whatever unit the Board should find appropriate for the engineers.

Three of the engineers operate the boilers, refrigeration and deep well pump. They repair equipment and piping in the plant. The

<sup>5</sup> See *Matter of Eicor, Inc.*, 46 N. L. R. B., 1035; *Matter of Leonard-Burke Co.*, 51 N. L. R. B. 1315; *Matter of Columbia Protectosite Co.*, 52 N. L. R. B. 595

<sup>6</sup> The P. W. O. C. submitted to the Acting Regional Director 43 authorization cards, all of which bore apparently genuine original signatures which he checked against a pay roll furnished by the Company. At the hearing it appeared that the pay roll submitted by the Company inadvertently omitted the names of 9 employees in the appropriate unit. The Trial Examiner, after rechecking the cards against the revised pay roll of September 27, 1943, reported that the said pay roll contained names of 65 persons in the appropriate unit and that 39 of the names on the cards appeared on the said pay roll. Four of the names listed on the pay roll and 1 of the signatures on the cards were names of engineers. The AFL Unions depended upon their respective contracts to show their interest in the matter.

<sup>7</sup> The Operating Engineers had no interest in this unit and did not enter into the stipulation.

fourth is an outside man who keeps refrigerator cabinets for ice cream in repair and operation. They are more skilled, and earn an average of \$20.00 per month more than production employees.

Since they are a homogeneous group and members of a distinct craft, the engineers may properly function as a separate bargaining unit. On the other hand since the work of those employees is closely inter-related with that of the production employees, and the interests of both groups are similar, these employees might properly be merged with the production workers in a single unit. Under the circumstances, we are of the opinion that our determination of the unit issue with respect to the employees in question should depend, in part, on the desires of the affected employees, to be expressed in the elections hereinafter directed. Consequently, we shall make no final determination of the unit at this time, but shall defer such determination pending the results of the said elections. If the P. W. O. C. is selected by both voting groups, we shall allow the P. W. O. C. to bargain for the two groups as one.

Although all parties are in agreement that working foremen and the chief engineer should be included in the unit or units found appropriate by the Board, we find that these employees are supervisory employees and shall exclude them from the unit or units. We base our finding on the following facts: The working foremen are responsible for receiving raw materials and processing and delivering the products of their respective departments; they instruct the persons under them in the performance of these duties. They report directly to the assistant manager and plant superintendent of the Company. They do not hire and discharge but their recommendations in such matters are given weight. The chief engineer supervises the work of the other engineers and is their only supervisor.

We shall direct that separate elections by secret ballot be held among the employees of the Company within the groups listed below who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction. There shall be excluded from each of such voting groups, in addition to employees specifically mentioned therein, all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action. The respective voting groups shall be:

1. All production employees of the Company excluding engineers and engineers' apprentices, office and clerical employees and working foremen.

2. All engineers and engineers' apprentices excluding the chief engineer.

The question concerning representation which has arisen shall be resolved by said elections and our determination of an appropriate unit or units, if any, will depend in part upon the results thereof.

The P. W. O. C. requests that its name appear on the ballot as United Packinghouse Workers of America, CIO. The request is hereby granted.

### DIRECTION OF ELECTIONS

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 3, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Fort Dodge Creamery Company, Fort Dodge, Iowa, separate elections 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 following groups of employees, 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 elections and excluding also all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action: (1) All production employees of the Company excluding engineers and engineers' apprentices, office and clerical employees, and working foremen, to determine whether they desire to be represented by United Packinghouse Workers of America, CIO or by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 884, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither; (2) All engineers and engineers' apprentices excluding the chief engineer, to indicate whether they desire to be represented by United Packinghouse Workers of America, CIO, or by International Union of Operating Engineers, Local No. 268, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

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