

In the Matter of LAND O'LAKES CREAMERIES, INCORPORATED and UNITED CANNERY, AGRICULTURAL PACKING & ALLIED WORKERS OF AMERICA, C. I. O.

Case No. 13-R-2157.—Decided January 11, 1944

Mr. R. J. Leonard, of Doherty, Rumble, and Butler, of St. Paul, Minn., and Mr. Russell A. Timm, of Ripon, Wis., for the Company.
Mr. Chris A. Bothe, of Milwaukee, Wis., for the Union.
Miss Marcia Hertzmark, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Cannery, Agricultural Packing & Allied Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Land O'Lakes Creameries, Incorporated, Ripon, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Bernard Cushman, Trial Examiner. The hearing was held at Ripon, Wisconsin, on December 6, 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. At the conclusion of the hearing the Company moved that the petition be dismissed on the ground that the Company is not engaged in interstate commerce. The Trial Examiner referred the motion to the Board. The motion is hereby denied. All parties were afforded 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

Land O'Lakes Creameries, Incorporated, is a cooperative organized and existing under the laws of the State of Minnesota. Its common

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stock 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 and, at its Ripon plant, with which the present proceeding is concerned, is engaged in the processing and manufacture of powdered eggs. During the period from December 1, 1942, to December 1, 1943, the Ripon plant purchased raw materials valued at \$3,994,534.32, of which amount \$3,658,964.41 represented the value of materials shipped to it from points outside the State of Wisconsin. During the same period the total sales of the Ripon plant were \$4,127,436.55, of which amount \$3,944,911.82 represented sales to the Federal Surplus Commodities Corporation, f. o. b. Ripon, and \$182,524.73 represented sales of products shipped outside the State of Wisconsin to other purchasers.

We find that the activities of the Company affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Cannery, Agricultural Packing & Allied Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On November 1, 1943, the Union requested recognition as the exclusive bargaining representative of the Company's production and maintenance employees. The Company replied by letter of November 3, 1943, that it would not recognize the Union until it had been certified by the Board.

A statement of a Field Examiner introduced in evidence at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found to be 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

The Union requests a unit composed of all production and maintenance employees of the Company at its Ripon plant, excluding

¹ The Field Examiner reported that the Union submitted 53 designations, all containing apparently genuine, original signatures and 49 containing the signatures of persons whose names appear on the Company's pay roll of November 17, 1943, in the alleged appropriate unit. This pay roll contains the names of 87 persons within the alleged appropriate unit.

executives, supervisory, office and clerical employees. The Company agrees that this unit is appropriate. The parties specifically agreed to the exclusion from the unit of Roland Gessner, a supervisor in charge of the breaking room, who assigns and directs the work of 45 employees. However, they took no position with reference to the inclusion or exclusion of Lawrence Harder, a supervisor in charge of the drying room and warehouse, who has 6 employees under his direction and whose duties appear to be substantially similar to those of Gessner. We shall exclude both Gessner and Harder as supervisory employees.

We find that all production and maintenance employees of the Company at its Ripon plant, excluding office and clerical employees, the supervisor of the breaking room, the supervisor of the drying room and warehouse, and all 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 payroll period immediately preceding the date of the Direction of Election, 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Land O'Lakes Creameries, Incorporated, Ripon, Wisconsin, 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 Thirteenth 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 of the Company in the unit found appropriate in Section IV, above, who were employed during the payroll period immediately preceding the date of this Direction, includ-

ing 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 who have since quit or been discharged for cause and have not been rehired or reinstated prior to the election, to determine whether or not they desire to be represented by United Cannery, Agriculture Packing & Allied Workers of America, C. I. O., for the purpose of collective bargaining.