

In the Matter of GENERAL FOODS CORPORATION, CORN MILL DIVISION
and INTERNATIONAL BROTHERHOOD OF FIREMEN & OILERS, LOCAL 296,
A. F. OF L.

Case No. 13-R-2007.—Decided January 13, 1944

Mr. Mark C. Candee, of New York City, for the Company.

Mr. Howard A. Plank, of Chicago, Ill., and *Mr. Emmett T. Dooley*,
of Kankakee, Ill., for the Firemen.

Mr. G. D. Weiny, of Keokuk, Ill., for the Grain Processors.

Mr. Earl D. Winn, of Bradley, Ill., for Local 22123.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Firemen & Oilers, Local 296, A. F. of L., herein called the Firemen, alleging that a question affecting commerce had arisen concerning the representation of employees of General Foods Corporation, Corn Mill Division, Kankakee, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George F. Freudenthal, Jr., Trial Examiner. Said hearing was held at Kankakee, Illinois, on November 19, 1943. The Company, the Firemen, and Flour, Feed, Cereal and Elevator Workers, Local 22123, hereinafter called Local 22123, 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 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

General Foods Corporation, a Delaware corporation, is engaged in the manufacture, processing, and distribution of food products.

Either directly or through its affiliates the Company owns and operates numerous plants throughout the United States and Canada. The only operation of the Company here involved is a plant operated by the Company at Kankakee, Illinois, known as the Corn Mill Division. At the Kankakee plant the Company carries on the usual functions of a corn mill, including the storing, grinding, and mixing of grain and the manufacture of grits, cornmeal, and hominy.

During the 12-month period ending September 20, 1943, the Company processed at its Kankakee plant approximately 5,000,000 bushels of corn, about 50 percent of which was shipped to the plant from points outside the State of Illinois. During the same period approximately 90 percent of the finished products of the plant was shipped to points outside the State of Illinois.

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

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Firemen & Oilers, Local 296, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Flour, Food, Cereal and Elevator Workers, Local 22123, affiliated with the American Federation of Grain Processors and with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 27, 1943, the Firemen wrote to the Company, requesting recognition as the exclusive bargaining agent of certain of the Company's employees and requesting a meeting with a view to having the Company negotiate a joint contract with the Firemen and Local 22123. The Company refused to recognize or bargain with the Firemen on the ground that there was an existing bargaining unit covering all of the Company's employees and that the Company was already dealing with Local 22123 as the exclusive bargaining representative of the employees in said unit.

The Company and Local 22123 had, on October 1, 1942, executed a contract covering all the employees, which contract was to run for a period of 1 year, and from year to year thereafter unless terminated by notice of either party, given at least 60 days before the expiration of any yearly period. On July 24, 1943, more than 60 days before the expiration of the current contract period, Local 22123 notified the Company of its intention to negotiate a new contract. In addition, Local 22123 advised the Company that it was no longer seeking

to represent the employees here involved. In view of these circumstances, as well as the Firemen's timely demand for recognition, it is clear that the contract is not a bar to a present determination of representatives.

A statement of the Regional Director, introduced into evidence at the hearing, and a statement by the Trial Examiner at the hearing, indicates that the Firemen represents a substantial number of employees in the unit which it alleges is 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 DETERMINATION OF REPRESENTATIVES

The Firemen contends that all firemen in the Company's employ constitute an appropriate bargaining unit. Local 22123 also takes the position that the proposed unit is appropriate. The Company contends that a separate craft unit, particularly in view of the history of plant-wide bargaining since 1940, is inappropriate.

The Company urges that, because collective bargaining has been on a single-unit basis since a consent election in 1940, it cannot now be determined that any other unit is appropriate. We find no merit in this contention. At no time prior to the instant proceeding was the propriety of a craft unit in issue. Under such circumstances, even a prior Board determination that an industrial unit was appropriate is not necessarily determinative of the propriety of a presently proposed craft unit.²

The Company's steam generating or power plant is located in a separate building and provides heat and power for the plant. In addition, it produces steam which is used in processing the grain. The firemen, who operate the power plant under the supervision of the chief engineer, maintain the proper steam pressure, adjust and grease the stokers, clean the grates, and adjust the water pumps and air compressors. Each fireman works in the powerhouse for a period of 2 weeks and then works for 2 weeks as an extra maintenance man, unloading coal, repairing and maintaining the steam pipes throughout the plant, and doing whatever other kinds of maintenance work he may be assigned to by the chief engineer. There is no interchange of employees between the powerhouse and production departments,

¹The Regional Director reported that the Firemen submitted 4 authorization cards bearing apparently genuine signatures of persons listed on the pay roll of the Company for the period ending August 31, 1943. The Trial Examiner reported that the Firemen submitted 1 additional authorization card at the hearing bearing the apparently genuine signature of an employee who had replaced an employee who was no longer in the Company's employ. There are 5 employees in the proposed unit.

²*Matter of Westinghouse Electric & Manufacturing Company*, 49 N. L. R. B. 445, and cases cited therein.

although there have been a few permanent transfers from production departments to the powerhouse. Since the duties of the firemen are completely different and require special skills not possessed by other employees of the Company, we are of the opinion that they may appropriately constitute a separate bargaining unit if they so desired. We shall direct an election among the firemen to determine whether or not they desire to be represented by the Firemen. Upon the results of this election will depend, in part, our determination of the appropriate unit. If a majority of these employees select the Firemen as their representative, they will have indicated their desire to constitute a separate bargaining unit; if a majority of those participating in the election indicate that they do not wish to be represented by the Firemen, the firemen will remain part of the production and maintenance unit.

The parties agree and we find that the chief engineer is a supervisory employee and should be excluded from the proposed unit.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among all firemen in the Company's employ, excluding supervisory employees 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.

Local 22123 indicated that it does not wish to appear on the ballot in the election and the Firemen has requested that it be designated on the ballot as International Brotherhood of Firemen & Oilers, Local 296, A. F. of L. Said 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with General Foods Corporation, Corn Mill Division, Kankakee, Illinois, 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 all firemen in the employ of the Company at its plant at Kankakee, Illinois, excluding the chief engineer and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of em-

ployees, or effectively recommend such action, 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 who have not been rehired or reinstated prior to the election, to determine whether or not they desire to be represented by International Brotherhood of Firemen & Oilers, Local 296, A. F. of L., for the purposes of collective bargaining.