

In the Matter of COLUMBIA BAKING COMPANY, D/B/A SEYBOLD BAKING COMPANY and BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL #249

Case No. 10-R-1059.—Decided January 17, 1944

Mr. George Sapp, of Jacksonville, Fla., for the Company.

Mr. Philip Whitehead, of Miami, Fla., for Local 249.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Bakery and Confectionery Workers' International Union of America, Local #249, herein called Local 249, alleging that a question affecting commerce had arisen concerning the representation of employees of Columbia Baking Company, d/b/a Seybold Baking Company, Miami, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Paul S. Kuelthau, Trial Examiner. Said hearing was held at Miami, Florida, on December 1, 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.¹ 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

Columbia Baking Company is a Delaware corporation operating bakeries in the States of Virginia, North Carolina, South Carolina,

¹ Notice of the hearing was duly mailed on November 24, 1943, to Motor Transport and Allied Workers, Local Union #400, with which the Company is presently under contract, but said notice was not received until December 3, 2 days after the hearing was held. However, in view of the evidence at the hearing set forth in Section III, *infra*, we are satisfied that no prejudice has resulted from the tardy notice.

Georgia, and Florida. Its bakeries in Florida, including the Company's Miami plant, are operated under the name Seybold Baking Company. The Company produces annually at its Miami plant bread and rolls valued at approximately \$750,000, 15 percent of which is sold to the United States Army. In addition, the Miami plant sells cakes valued at approximately \$250,000 per year, which are obtained from the Company's plant at Jacksonville, Florida. All of the sales of the Miami plant are to customers located in the vicinity of Miami. The Miami plant used raw materials during 1942 valued at approximately \$200,000, 75 percent of which was shipped to the plant from points outside the State of Florida.

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

II. THE ORGANIZATION INVOLVED

Bakery and Confectionery Workers' International Union of America, Local 249, Affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that on or about October 19 and again on October 22, 1943, Local 249 requested recognition as the exclusive bargaining representative of the Company's employees and that the Company refused to extend such recognition on the ground that it had an existing contract with Motor Transport and Allied Workers, Local Union #400, chartered by District 50, United Mine Workers of America, herein called Local #400.² At the hearing, however, the Company did not assert the contract as a bar to the proceeding.

The evidence reveals that early in October 1943, the members of Local #400 voted unanimously to withdraw from District 50 and to affiliate with the Bakery and Confectionery Workers. The officers all resigned from the former local and notified District 50 of the action of their local. It appears, therefore, that there is doubt as to the continued existence of the contracting union. Under such circumstances we find that the contract is not a bar to a present determination of representatives.³

A statement of the Trial Examiner at the hearing, indicates that

² This contract was dated April 10, 1943, and was to be in effect for a period of 1 year and thereafter for additional 1-year periods unless terminated by the parties by notice at least 30 days before the beginning of any new yearly period.

³ *Matter of Wisconsin Southern Gas Company*, 44 N. L. R. B. 311; *Matter of Great Lakes Carbon Corporation*, 44 N. L. R. B. 70; *Matter of Morrison Steel Products Company*, 50 N. L. R. B. 72; *Matter of Rockland Power & Light Co.*, 49 N. L. R. B. 1398.

Local 249 represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 conformance with the stipulation of the parties, we find that all production and maintenance employees, including porters, at the Company's plant at Miami, Florida, but excluding truck drivers, office employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁵

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. Local 249 has requested that it be designated on the ballot in the election by its full name, followed by the initials A. F. of L. Said request is hereby granted.

In the event that Motor Transport and Allied Workers, Local Union #400, within 10 days of the date of this Decision and Direction of Election, notifies the Regional Director of its desire to appear on the ballot, said request will be 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 Columbia Baking Company d/b/a Seybold Baking Company, Miami, Florida, an election by secret ballot shall be conducted as early as possible, but not later

⁴The Trial Examiner reported that Local 249 submitted 56 authorization cards bearing apparently genuine original signatures of persons listed on the Company's pay roll of October 23, 1943, which contained the names of 60 employees in the appropriate unit.

⁵The Company stipulated and we find that a working foreman, Tony Knarr, does not possess such supervisory authority as to require his exclusion from the unit.

than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Tenth 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 who have not been rehired or reinstated prior to the election, to determine whether they desire to be represented by Bakery and Confectionery Workers International Union of America, Local #249, A. F. of L., for the purposes of collective bargaining.