

In the Matter of CENTRAL GRAIN AND MALTING COMPANY and INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 167 (AFL)

*Case No. 8-R-1291.—Decided January 20, 1944*

*Messrs. H. W. Lilley and Myer A. Lyon, of Piqua, Ohio, for the Company.*

*Mr. Howard A. Plank, of Troy, Ohio, for the A. F. of L.*

*Mr. Karl F. Feller, of Cincinnati, Ohio, and Mr. Guy W. Crist, of Dayton, Ohio, for the Brewery Workers.*

*Mr. Wallace E. Royster, of counsel to the Board.*

DECISION

AND  
ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Firemen and Oilers, Local 167 (AFL), herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Central Grain and Malting Company, Piqua, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Piqua, Ohio, on November 22, 1943. The Company, the A. F. of L., and Brewery and Malt House Workers, Local Union No. 50, herein called the Brewery Workers, 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. 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

Central Grain and Malting Company is an Ohio corporation with its principal office and place of business at Piqua, Ohio, where it is 54 N. L. R. B., No. 101.

engaged in the manufacture of malt. During 1942, the Company purchased for use in its manufacturing operations raw materials, principally barley, amounting to \$586,437.13 in value, all of which was shipped to the Company from points outside Ohio. During the same period, the Company produced malt having an approximate value of \$750,000, of which about 95 percent was shipped to points outside Ohio. The Company does not contest the jurisdiction of the Board, and we find that its operations affect commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Firemen and Oilers, Local 167, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Brewery and Malt House Workers, Local Union No. 50, is a labor organization affiliated with International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, admitting to membership employees of the Company.

## III. THE ALLEGED QUESTION CONCERNING REPRESENTATION; THE ALLEGED APPROPRIATE UNIT

Since the operations of the Company began in 1940, the Brewery Workers has represented all its production and maintenance employees under a series of closed-shop contracts. The initial 1-year period of the latest contract expired September 23, 1943, but, since no notice of termination was given by either party 30 days before that date, the contract due to its automatic renewal provision, appears to be still in effect. In August 1943, before the date when the contract appears to have been automatically renewed, the A. F. of L. notified the Company by letter that it represented all the firemen in the boiler room and requested a bargaining conference. The Company did not reply to this letter, but at the hearing refused to accord recognition to or to confer with the A. F. of L. unless and until it is certified by the Board as bargaining representative of the employees it claims to represent. In view of the timely claim of recognition made by the A. F. of L., we find that the contract does not bar an investigation of representatives affecting the employees whom the A. F. of L. seeks to represent.

We turn, then, to the question of the appropriate unit. The A. F. of L. concedes that the firemen have been represented by the Brewery Workers but argues that they constitute a distinguishable group with interests and functions separate and apart from those of the remaining employees. In support of its contention, the A. F. of L. points

to the fact that despite the closed-shop provisions of the Brewery Workers' contract, firemen have not generally become members of that organization but have maintained or accepted membership in the A. F. of L.<sup>1</sup> The arguments of the A. F. of L. can best be evaluated by a consideration of the operations of the Company: The malting season ordinarily extends from September to the end of the following June and during this period, barley is subjected to a series of steeping, germinating, and drying processes to make the finished product. All but the firemen among the Company's approximately 20 employees appear to work interchangeably in the various aspects of these processes. The firemen operate a high pressure steam boiler to maintain the temperature in the germinating rooms and to provide steam for the operation of pumps. The drying kilns are heated by coke furnaces. During the evening and early morning shifts, only a fireman is on duty and he combines with his stoking the usual duties performed by other employees throughout the day. Thus during these hours firemen "plow" the malt in the germinating rooms, a task which must be performed every 3 or 4 hours. While firemen alone are licensed to fire the boiler, this requires only about 25 percent of their time and the remainder of their working shift is devoted to stoking the kiln furnaces, a function which is frequently performed by the other employees. For 2 or 3 months during the summer, fires are not maintained under the boiler or the kilns and the firemen then work along with the other employees performing whatever tasks are necessary to maintain and prepare the plant for the coming malting season.

All employees including the firemen are under the supervision of the head maltster, all production and maintenance employees appear to receive the same basic wage; the wage rates of firemen are specifically set forth in the Brewery Workers' contract; during the greater part of their working shift, firemen perform the same duties that the other employees can and do perform; and during the summer months, there is no distinction between the firemen and other employees in duty or function. While in the *Tampa, Florida Brewery*<sup>2</sup> and *Southern Brewing Company*<sup>3</sup> cases, the Board found that powerhouse engineers might constitute separate bargaining units if they so desired, despite a history of bargaining on an industrial basis, it does not appear that the employees there involved were interchangeable with plant workers, and it is clear that each group was under the separate supervision of a chief engineer instead of a production foreman.

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<sup>1</sup> The Brewery Workers admits that it has not sought to force the firemen to join its organization, as it has been unable to supply men of such skill. Testimony that the A. F. of L. has established a routine of supplying firemen for employment with the Company was undenied at the hearing.

<sup>2</sup> *Matter of Tampa, Florida Brewery Inc.*, 42 N. L. R. B. 642.

<sup>3</sup> *Matter of Southern Brewing Company*, 42 N. L. R. B. 649.

These considerations coupled with the special skills of the employees in question, served to set them apart as clearly distinct groups. We find, then, no difficulty in distinguishing the case before us from those cited above. We conclude in consideration of all the factors, that the unit of boiler room firemen requested by the A. F. of L. is inappropriate for the purposes of collective bargaining and we so find.<sup>4</sup>

Since we have found the bargaining unit sought to be established by the petition herein to be inappropriate for the purposes of collective bargaining, we find that no question has been raised concerning the representation of employees in an appropriate bargaining unit. Accordingly, we shall dismiss the petition.

### ORDER

Upon the basis of the above findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives filed by International Brotherhood of Firemen and Oilers, Local 167 (AFL), be, and it hereby is, dismissed.

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<sup>4</sup> See *Matter of Phoenix Manufacturing Company*, 44 N. L. R. B. 1388.