

In the Matter of RALPH A. ANDERSON AND SPENCER J. ANDERSON,
D/B/A PEERLESS DAIRY COMPANY *and* INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,
LOCAL UNION No. 371 (AFL)

Case No. 13-R-2091.—Decided January 20, 1944

*Messrs. Ralph A. Anderson and Ben T. Reidy, of Rock Island, Ill.,
for the Company.*

Mr. Sam Lord, of Rock Island, Ill., for the Union.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 371 (AFL), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ralph A. Anderson and Spencer J. Anderson, d/b/a Peerless Dairy Company, Rock Island, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John R. Hill, Trial Examiner.¹ Said hearing was held at Rock Island, Illinois, 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. 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

Ralph A. Anderson and Spencer J. Anderson, a co-partnership doing business under the name and style of Peerless Dairy Company

¹ At the hearing the Trial Examiner granted the Company's motion to amend the name of the Company to read as it appears in the above caption.

is engaged in the purchase, processing, sale, and distribution of dairy products. Its principal place of business is in the City of Rock Island, Illinois. The Company annually purchases raw materials and supplies valued in excess of \$100,000, and its annual sales exceed \$100,000 in value.

During the month of June 1943, a representative month in the Company's operations, it purchased raw materials valued at approximately \$25,000, approximately 80 percent of which was raw milk and cream. Annually the Company purchases approximately \$200,000 worth of milk, 90 percent of which it purchases from Quality Milk Association, a cooperative association of producers,² whose main office is located in Moline, Illinois. The milk thus purchased is picked up from designated producers by an independent trucker who delivers it to the Company at the direction of the Association. The Association obtains approximately 60 percent of its total supply of milk from farms located in Iowa and the remaining 40 percent from farms in Illinois. During June 1943, the Company purchased supplies, consisting of sweet cream, butter, bottle caps, cartons, ice cream supplies, and sugar valued at approximately \$2,500 from suppliers located outside the State of Illinois. During the same month, the Company's sales amounted to about \$50,000, of which less than 5 percent represents sales made to purchasers outside the State of Illinois. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.³

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 371 (AFL), is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

At the hearing, the parties stipulated that prior to October 5, 1943, the Union requested the Company to recognize it as the exclusive bargaining representative of the employees within an alleged appropriate bargaining unit, and that in answer to this request, the Company advised the Union that the question concerning representation should be resolved by the Board. Thereafter on October 6, 1943, the Union filed its petition herein.

² In the milk industry, the term "producer" is applied to those who actually produce the milk, i. e., the farmers.

³ *Matter of Land O' Lakes Dairy Company*, 48 N. L. R. B. 1028; *Matter of Rudolph and Charles Kudile Co-partners, doing business under the name of Kudile Bros. Hasbrouck Heights Dairy*, 28 N. L. R. B. 116, enforced in *N. L. R. B. v. Kudile, et al.*, 130 F. (2d) 615 (C. C. A. 3).

A statement prepared by the Regional Director and introduced into evidence at the hearing indicates that the Union represents a substantial number of employees within the unit hereinafter found to be 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

At the hearing the Union, without objection, amended its description of the bargaining unit to read, "all production and maintenance employees of the Company, including sales drivers, but excluding clerical employees, sales clerks, mechanics, and supervisory employees."⁵ The Company's sole objection to the proposed unit concerns the exclusion of mechanics who, it contends, should be included in the appropriate bargaining unit.

The Company's plant is comprised of a main building which houses the dairy, a garage, and an office building. Another building located some distance from the main plant is used by the Company as a stable. The Company also owns and operates a small retail dairy store located at 11th street and 18th Avenue in the City of Rock Island, which employs from two to five sales clerks. The Union does not claim to represent these sales clerks.

The Company's processing operations consist of weighing, pre-heating, pasteurizing, cooling, bottling, and storing milk. Some of the milk purchased by the Company is converted into chocolate milk, buttermilk, ice cream, and other byproducts of milk.

The Company employs approximately 25 production and maintenance employees in the dairy building. One person listed on the Company's pay roll as a stableman, is employed in the building which houses the stable. His duties consist of fitting and shoeing the horses used to pull delivery wagons. The Union includes the stableman within its alleged appropriate unit. The three mechanics whom the Union desires to exclude from the appropriate unit⁶ spend part of their time working in the garage repairing, greasing, and washing the Company's delivery trucks. In addition to the aforesaid duties, the mechanics repair bottle washing, capping, filling, and refrigeration

⁴ The Regional Director reported that the Union submitted 24 application for membership cards bearing the apparently genuine original signatures of persons whose names appear on the Company's pay roll of November 15, 1943, which contains the names of 54 persons within the alleged appropriate unit.

⁵ The petition describes the unit alleged by the Union to be appropriate as "inside dairy workers and dairy drivers."

⁶ Apparently the Union's sole reason for desiring the exclusion of the mechanics is that they come under the jurisdiction of the International Association of Machinists.

equipment in the dairy, repair automatic dispensing machines owned and operated by the Company, and help the stableman shoe horses and repair wagons. The Company employs 26 delivery truck drivers whom the Union desires to include in the unit. Occasionally the mechanics act as relief truck drivers. Since the mechanics spend a considerable portion of their time performing general maintenance work which does not require any great degree of skill and since the Union would include all other maintenance employees in the bargaining unit it desires to represent, we shall include the mechanics in the appropriate unit.

Spencer J. Anderson, one of the partners, acts as plant manager in charge of the entire plant. The supervisory employee in charge of the dairy operations is known as the plant superintendent. The Company also employs three foremen who supervise the truck drivers. We shall exclude from the unit the plant manager and superintendent, the three foremen, and all other supervisory employees within our customary definition.

We find that all production and maintenance employees employed by the Company, including sales drivers and mechanics, but excluding clerical employees, sales clerks, foremen, and any other 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

Although the Union requested that eligibility to vote be determined by the pay-roll period nearest the date it filed its petition herein, we perceive no valid reason to depart from our usual practice in this respect. Accordingly, we shall direct that the question concerning representation which has arisen be resolved by means of 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.

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 Ralph A. Ander-

son and Spencer J. Anderson, d/b/a Peerless Dairy Company, Rock Island, 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 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 any who have since quit or been discharged for cause and have not been rehired or reinstated prior to date of the election, to determine whether or not they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 371 (AFL), for the purposes of collective bargaining.