

In the Matter of BURKE BREWERY, INC. and AMERICAN FEDERATION OF
OFFICE EMPLOYEES, FEDERAL LOCAL 20940, A. F. OF L.

Case No. 2-R-4314.—Decided February 4, 1944

Mr. Gerald A. Walsh, of New York City, for the Company.

Mr. Howard Coughlin, of New York City, for the Union.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon petition duly filed by American Federation of Office Employees, Federal Local 20940, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Burke Brewery, Inc., Long Island City, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cyril W. O'Gorman, Trial Examiner. Said hearing was held at New York City, on December 9, 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

Burke Brewery, Inc., a Delaware corporation and wholly owned subsidiary of Edward and John Burke, Ltd., of Dublin, Ireland, has its principal office, brewery, and warehouse in Long Island City, New York, where it is engaged in the brewing of ale and stout beverages. During the year immediately preceding December 1, 1943, the Company used at its Long Island City plant raw materials valued in excess of \$100,000, of which 90 percent was obtained from points outside the

State of New York. During the same period, the Company brewed products of a value in excess of \$500,000, of which 15 percent was for war purposes. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

American Federation of Office Employees, Federal Local 20940, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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

The Union contends that the non-supervisory office employees of the Company, comprising two employees, constitute a unit appropriate for the purposes of collective bargaining. The Company maintains that the proposed unit is inappropriate upon the ground that one of the two employees therein should be excluded as a confidential employee.

The employees herein concerned are by name John W. Schumacher and Charles L. Wills. The Company concedes that Schumacher does work which is not of a nature to bar him from inclusion in an office workers' unit. With respect to Wills, however, the Company contends that the work done by this employee and his alleged opportunity to acquire confidential information relating to the business of the Company require that he be denied the privilege of collective bargaining.

The record reveals that while Wills has no supervisory capacity and has no part in or confidential knowledge concerning the labor relations of the Company, he is, nevertheless, generally responsible for all accounting records and pay rolls and occupies the combined positions of office manager, head bookkeeper, and secretary to the company president, to whom he is also related by marriage.¹ Under the circumstances, we are of the opinion and find that Wills has interests and functions which are more closely aligned to those of management than are the interests and functions of the ordinary employees of the Company.² Accordingly, we conclude that Wills does not properly comprise part of the alleged unit.

¹ The president of the Company is Wills' stepfather, and testified that because of Wills' long service of 9½ years and family relationship he would attach greater importance to Wills' recommendations than he would to the recommendations of the other employees of the Company.

² See *Matter of Westinghouse Electric Manufacturing Co.*, 45 N. L. R. B. 826 at 829. The Board has frequently excluded from an appropriate unit employees who are on an intimate relationship with officers of the company. See *Matter of Jerry and Edythe Belanger, partners, doing business under the fictitious name of Aluminum Alloy Casting Company*, 32 N. L. R. B. 1278, and cases cited therein.

The Board has frequently held that the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain and that the National Labor Relations Act therefore does not empower the Board to certify where only one employee is involved.³ Since in the absence of a sufficient number of eligible employees the bargaining unit sought by the petition is inappropriate,⁴ we find no question has arisen concerning the representation of employees of the Company.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Burke Brewery, Inc., Long Island City, New York, filed by American Federation of Office Employees, Federal Local 20940, A. F. of L., be, and it hereby is, dismissed.

³ See *Matter of The Central Foundry Company*, 20 N. L. R. B. 31, and cases cited therein.

⁴ See *Matter of Zanesville Stoneware Company*, 53 N. L. R. B. 1408.