

In the Matter of LARUS & BROTHER COMPANY, INC. and TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 219 (AFL)

In the Matter of LARUS & BROTHER COMPANY, INC. and UNITED CANNERY, AGRICULTURAL, PACKING AND ALLIED WORKERS OF AMERICA, CIO

Cases Nos. 5-R-1413 and 5-R-1437 respectively.—Decided February 16, 1944

Messrs. Charles L. Reed, C. C. Bailey, and N. W. Gregory, of Richmond, Va., for the Company.

Messrs. A. J. Marcus and Ernest B. Pugh, of Richmond, Va., for the CIO.

Mr. John O'Hare, of Richmond, Va., for the AFL.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION
DIRECTION OF ELECTION
AND
ORDER

STATEMENT OF THE CASE

Upon amended petitions duly filed, respectively, by Tobacco Workers International Union, Local 219 (AFL), herein called the AFL, and United Cannery, Agricultural, Packing and Allied Workers of America, CIO, Local No. 577, herein called the CIO, alleging that questions affecting commerce had arisen concerning the representation of employees of Larus & Brother Company, Inc., Richmond, Virginia, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Earle K. Shawe, Trial Examiner. Said hearing was held at Richmond, Virginia, on December 17, 1943. The Company, the AFL, and the CIO appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. On December 23, 1943, the Company filed a motion to strike from the record all testimony relating to certain groups of employees, on the ground that said testimony

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is irrelevant. Said motion is hereby denied. On January 18, 1944, the CIO filed a motion to reopen the record for the purpose of introducing certain evidence relating to the membership of a number of the Company's warehouse employees in the CIO. In view of our finding in Section IV, hereinafter, respecting the appropriate bargaining unit, said evidence is immaterial and said motion is hereby denied. 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

Larus & Brother Company, Inc., a Virginia corporation maintaining its principal office and plants at Richmond, Virginia, is engaged in the business of manufacturing, packaging, and selling cigarettes and smoking and plug tobacco. During the year 1942, the Company purchased in excess of 9 million pounds of leaf tobacco, valued at approximately \$3,000,000, over 50 percent of which was shipped to Richmond from points outside the State of Virginia. During the same period, in excess of 75 percent of the finished products was shipped to points outside the State of Virginia. For the purposes of this proceeding, the Company concedes, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Tobacco Workers International Union, Local 219, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Cannery, Agricultural, Packing and Allied Workers of America, Local No. 577, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The parties stipulated that questions concerning representation have arisen in that, in October 1943, the AFL and the CIO each requested the Company to recognize it as the exclusive bargaining representative of certain employees within an alleged appropriate unit, and that the Company refused to accord such recognition to either union prior to certification by the Board, on the ground that there are contracts in effect between the Company and said unions which establish bargaining units different from those now being requested.

All parties agreed, however, that said contracts constitute no bar to this proceeding.

A statement of a Field Examiner of the Board, introduced in evidence at the hearing, and a statement of the Trial Examiner made at the hearing indicate that the AFL and the CIO each represents a substantial number of employees in the unit it claims to be appropriate.¹

We find that questions effecting commerce have 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 CIO seeks to represent a multi-plant unit comprised of all production, maintenance, stemmery, and warehouse employees at the Company's Richmond operations, including truck drivers, watchmen, kitchen, laboratory, advertising and mimeograph employees, but excluding clerical and supervisory employees. The AFL seeks a more restricted unit comprised of all production and maintenance employees in the Company's manufacturing plant at Richmond, Virginia, including truck drivers, watchmen, laboratory, advertising, mimeograph, and kitchen employees, but excluding warehouse, stemmery, clerical and supervisory employees. The Company is in general agreement with the unit proposed by the AFL.²

The Company's operations at Richmond, Virginia, consist of stemming, raw material and leaf storage, and manufacturing. Tobacco in the green state is brought to the stemmery, a single separate building, where it is stemmed, redried, and prized into hogsheads. From there, the tobacco is moved to the leaf storage warehouse, a separate facility located approximately 1 mile from the stemmery, where it is stored for aging from 2 to 3 years. The aged tobacco is then transported to

¹ The Field Examiner stated that the AFL submitted 435 authorization cards, all of which bore apparently genuine original signatures; 302 of said authorization cards bore names of persons on the Company's pay roll of October 15, 1943, which lists the names of 702 persons within the unit alleged to be appropriate by the AFL. Said 302 authorization cards bore the following dates: 52 in 1940; 10 in 1941; 66 in 1942; 170 in 1943; and 4 were undated. The Trial Examiner stated that the CIO submitted several lists bearing the names of employees whose dues were checked off by the Company on behalf of the CIO, pursuant to contract, for the months of August, September, October, and November 1943. The evidence may be summarized as follows

| | <i>Manufacturing Stemming Total</i> | | |
|----------------------|-------------------------------------|-----|-----|
| August, 1943..... | 114 | 96 | 210 |
| September, 1943..... | 107 | 104 | 211 |
| October, 1943..... | 156 | 101 | 257 |
| November, 1943..... | 173 | 90 | 263 |

There are approximately 1015 persons in the unit alleged to be appropriate by the CIO.

² All parties are agreed, and we find, that all employees of the rank of assistant division manager and above are supervising employees. Assistant division managers are salaried employees comparable to foremen, have the authority to hire and discharge, and are excluded from the existing bargaining units. All parties are also agreed, and we find that watchmen, truck drivers, laboratory, advertising and mimeograph employees should be included in the unit.

the main or manufacturing plant, two contiguous buildings, where it is made into cigarettes, smoking, and plug tobacco. The raw material warehouse is also a separate facility, located approximately ½ mile from the manufacturing plant where various raw materials used in the manufacturing process are stored. One vice president of the Company is in charge of manufacturing and another is in charge of the stemmery.

In 1937, as a result of consent elections, two separate bargaining units were established at the manufacturing plant—one unit comprising white production and maintenance employees, represented initially by the Larus Employees' Association (now defunct) and subsequently by the AFL; and a second unit composed of all colored production and maintenance employees, represented by the CIO. In 1941, again through a consent election, a third bargaining unit was established, composed of all production and maintenance employees at the stemmery plant, represented by the CIO. There has been no collective bargaining history in the leaf and raw material warehouses. The Company has maintained collective bargaining relations with the CIO and AFL on this 3-unit basis, pursuant to three separate bargaining agreements.

All parties are agreed that bargaining on the basis of racial units in the manufacturing plant should be abandoned and, indeed, this Board is committed to the policy that "the color or race of employees is an irrelevant and extraneous consideration in determining, in any case, the unit appropriate for the purposes of collective bargaining."³ The AFL and the Company desire to combine the existing two units at the manufacturing plant, thus setting up a single unit of all production and maintenance employees therein, and leaving undisturbed the separate production and maintenance unit at the stemmery plant. In view of the fact that the stemmery has operated as a separate bargaining unit since 1941, and that the manufacturing and stemmery plants constitute separate physical units in the Company's operations, we are of the opinion, and find, that the employees in the Company's manufacturing plant constitute an appropriate bargaining unit.

In view of this finding, and the fact that the AFL makes no claim to represent employees in the stemmery plant, who are currently represented by the CIO pursuant to contract, we shall dismiss the petition of the CIO and order an election in the manufacturing plant, with both unions on the ballot.

The parties are in disagreement with respect to the following groups of employees:

Kitchen employees: There are five employees in this classification who are engaged in the preparation of food for the Company's super-

³ *Matter of U. S. Bedding Company*, 52 N. L. R. B. 382

visory and office staffs. They work in a kitchen and dining room apart from the plant proper and, although they have not been included in the existing units, both unions now seek their inclusion. The Company is opposed. The facts indicate that these employees do not possess a sufficient community of interest with the other employees in the unit to warrant their inclusion. In accordance with the foregoing facts and the Board's usual policy regarding this type of employee group, we shall exclude the kitchen employees from the unit.

Office porters and maids: The parties stipulated at the hearing that the office porters and maids should be included in the unit. However, the Company subsequently filed a motion seeking to withdraw from said stipulation. The porters and maids in question are engaged in maintenance tasks in the offices of the manufacturing plant and perform the same kind of work as the porters in the plant who, by agreement of the parties, are included in the unit. In view of these facts, we shall include office porters and maids in the bargaining unit.

We find that all production and maintenance employees at the Company's manufacturing plant in Richmond, Virginia, including porters and maids, watchmen, truck drivers, laboratory, advertising and mimeograph employees, but excluding kitchen and clerical employees, and all 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

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 Larus & Brother Company, Inc., Richmond, Virginia, 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 Fifth 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 employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Tobacco Workers International Union, Local 219 (AFL), or by United Cannery, Agricultural, Packing and Allied Workers of America, CIO, for the purposes of collective bargaining, or by neither.

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 Larus & Brother Company, Inc., Richmond, Virginia, filed by United Cannery, Agricultural, Packing and Allied Workers of America, CIO, be and it hereby is, dismissed.