

In the Matter of SUTHERLAND PAPER COMPANY and LOCAL UNION No. 7,  
BROTHERHOOD OF TEAMSTERS, ETC., A. F. OF L.

*Case No. 7-R-1605.—Decided February 24, 1944*

*Mr. Charles H. Farrell*, of Kalamazoo, Mich., for the Company.  
*Mr. Roland L. Huff*, of Kalamazoo, Mich., for the Teamsters.  
*Mr. Henry Ford, Jr.*, of Kalamazoo, Mich., for the Independent.  
*Mr. Armin Uhler*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, A. F. of L., Local Union No. 7,<sup>1</sup> herein called the Teamsters, alleging that a question affecting commerce had arisen concerning the representation of employees of Sutherland Paper Company, Kalamazoo, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frederick P. Mett, Trial Examiner. Said hearing was held at Kalamazoo, Michigan, on December 13, 1943. The Company, the Teamsters, and Independent Union of Sutherland Paper Company Employees, Inc., herein called the Independent, appeared and participated. All parties 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. The Company, the Teamsters and the Independent filed briefs which the Board has considered.

Upon the entire record in the case, the Board makes the following:

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<sup>1</sup> The name of the union as indicated on the petition and as distinguished from that used in the caption herein is presumed to be correct and will herein be used whenever necessary.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Sutherland Paper Company is a Michigan corporation with its principal office and two plants at Kalamazoo, Michigan, where it is engaged in processing paper box board and manufacturing paper cartons and paper specialties. The Company employs approximately 2,200 employees.

During the 6-month period ending November 16, 1943, the Company purchased raw materials valued at approximately 3 million dollars, approximately 90 percent of which was shipped to its plants from outside the State of Michigan. During the same period the Company's total sales amounted to approximately 7 million dollars, including shipments to destinations outside the State of Michigan valued at approximately 6 million dollars.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, Local Union No. 7, affiliated with the American Federation of Labor, and Independent Union of Sutherland Paper Company Employees, Inc., unaffiliated, are labor organizations admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about September 25, 1943, the Teamsters requested recognition from the Company as the exclusive representative of its truck drivers. The Company refused so to recognize the Teamsters because of the existence of a contract with the Independent covering the employees in the alleged unit. The Independent has joined in the Company's contention that said contract is a bar to the present proceeding.

The record discloses that in June 1938, the Company and the Independent entered into a collective agreement covering all except office and supervisory employees. Similar 1-year contracts were executed by the parties on the first days of July 1939, 1940, and 1941. The contract upon which the Company and the Independent rely in opposing a present investigation to ascertain representatives was entered into on July 1, 1942, but, unlike its predecessors, it provides for a 2-year term and does not expire until June 30, 1944. Since this contract is for a longer term than 1 year and has already been in effect for more than 19 months, it does not constitute a bar to a present determination of representatives.<sup>2</sup>

<sup>2</sup> See *Matter of Los Angeles Shipbuilding and Drydock Company*, 40 N. L. R. B. 1150; *Matter of Kahn & Feldman, Inc.*, 30 N. L. R. B. 294, and cases cited there.

A statement of the Acting Regional Director, introduced into evidence at the hearing, indicates that the Teamsters represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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

The Teamsters contends that a separate unit composed of drivers who operate the Company's motor trucks, both over the highways between Kalamazoo and other cities,<sup>4</sup> and locally between the Company's plants, railroad terminals, customers and suppliers,<sup>5</sup> is appropriate. The Company and the Independent, on the other hand, insist that such a unit is inappropriate and that the plant-wide unit established by past bargaining history should not be disturbed.

The record shows that since 1938 the Company has maintained contractual relations with the Independent,<sup>6</sup> covering "all persons employed by the [Company] in any and all departments thereof, with the exception of the [Company's] officers, executives, managers, superintendents, assistant superintendents, foremen or forewomen, and office employees."<sup>7</sup> Each of the five contracts successively entered into between June 1938 and July 1942<sup>8</sup> contains schedules of wages and other terms of employment applicable to employees in the several departments and classifications. While the first three of these agreements make no specific mention of truck drivers, the agreements of July 1, 1941 and 1942, set out their rate of compensation together with that of other employees listed under "Dispatch" in the Company's Standard Carton Division. According to the record, the Independent, since its inception, has represented the drivers in negotiating contracts with the Company as well as in the matter of individual grievances.

<sup>3</sup> The Acting Regional Director reported that the Teamsters submitted 17 application for membership cards all of which bore apparently genuine original signatures; that the names of 16 persons appearing on the cards were listed on the Company's pay roll of November 16, 1943, which contained the names of 22 employees in the appropriate unit; and that 16 cards were dated between October 1 and 8, 1943, 1 card being undated.

<sup>4</sup> This group is known as "over the road" drivers and drives chiefly between Kalamazoo and Chicago.

<sup>5</sup> These employees are referred to in the record as local cartage drivers

<sup>6</sup> *Supra*, Section III.

The contracts introduced in evidence refer to an earlier agreement between the parties entered into October 2, 1937.

<sup>7</sup> The contract last entered into by the parties on July 1, 1942, also excludes salaried watchmen from the unit.

<sup>8</sup> The parties on March 9 and July 12, 1943, respectively, executed agreements supplemental to the contract of July 1, 1942, neither of which is of importance to the issues here involved.

Thus, it appears that the drivers have been submerged in the industrial unit which, since 1938, has prevailed at the Company's plant.

On the other hand, truck drivers belong to a clearly defined and historical craft<sup>9</sup> and their interests are identified with the business of transportation rather than with the particular industry which they serve.<sup>10</sup> Drivers are solely concerned with and responsible for the operation and safety of their vehicles and of the goods entrusted to them for transit and delivery. In carrying out their peculiar duties, they are subject to Federal and State legislation and regulatory provisions which do not affect other employees.<sup>11</sup> While the services of the drivers in transporting and delivering materials and manufactured products to and from the plant are essential to the Company's business, the functions of the drivers are not integrated with those of production employees.<sup>12</sup> The Company's drivers are thus well identified as a separate and homogeneous group with distinct functions and interests. Indeed, these employees are under the separate supervision of the Fleet Superintendent<sup>13</sup> and they hold regular monthly safety meetings in which their special problems are discussed with the superintendent. Finally, the Company's drivers have been organized by the Teamsters which has made a substantial showing of membership among them (*supra*, Section III).<sup>14</sup>

While we have often given weight to past bargaining history in determining the scope of employee units, this factor is not of itself conclusive when, as here, the propriety of a craft unit has never been in issue<sup>15</sup> and there is a manifest overbalance of considerations which militates in favor of establishing a different unit. Under all the circumstances, we find that the Company's drivers, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or

<sup>9</sup> See *Matter of Federal Telephone & Radio Corporation*, 49 N. L. R. B. 938.

<sup>10</sup> Cf. *Matter of Jones & Laughlin Steel Corporation*, 54 N. L. R. B. 679.

<sup>11</sup> Drivers engaged in the transportation of goods, whether employed by public, contract, or private carriers, because of the nature of their work and their special concern with highway safety, have been excluded from the operation of the Fair Labor Standards Act (52 Stat. 1060, Section 13), and subjected to regulation under the provisions of the Federal Motor Carrier Act (49 Stat. 543, Section 204). Compare the similar exemption of transportation employees under the terms of the Public Contract Act (49 Stat. 2036; Regulation 504, Article 102; Rules and Interpretations No. 2).

<sup>12</sup> It is unimportant in this connection that the Company's "over the road" drivers, whose regular working hours have recently been reduced to 40 hours per week, are afforded an opportunity to perform other duties in the plant so as to receive the benefit of overtime compensation. This extra work is entirely voluntary and is not a part of the driver's regular employment.

<sup>13</sup> The Fleet Superintendent is in charge of a department known as the "Motor Truck Division" which is composed of the drivers and auxiliary personnel.

<sup>14</sup> Cf. *Matter of Breuster Aeronautical Corporation*, 31 N. L. R. B. 776.

<sup>15</sup> Cf. *Matter of General Foods Corporation, Corn Mill Division*, 54 N. L. R. B. 596; *Matter of Westinghouse Electric & Manufacturing Company*, 49 N. L. R. B. 445, and cases cited there. *Matter of Tampa Florida Brewery, Inc.*, 42 N. L. R. B. 642.

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 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 Sutherland Paper Company, Kalamazoo, Michigan, 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 Seventh 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 have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by International Brotherhood of Teamsters, Warehousemen, and Helpers, Local Union No. 7, affiliated with the American Federation of Labor, or by Independent Union of Sutherland Paper Company Employees, Inc., for the purposes of collective bargaining, or by neither.