

In the Matter of AMERICAN FOOD PRODUCTS CORPORATION AND MUSKEGON DOCK AND FUEL Co. and DEHYDRATE WORKERS UNION OF GRAFTON, NORTH DAKOTA, LOCAL 23582 (A. F. L.)

Case No. 18-R-926.—Decided March 21, 1944

Mr. Carroll E. Day, of Grand Forks, N. Dak., for American Food Products Corporation and Muskegon Dock and Fuel Co.

Mr. W. W. Murrey, of Fargo, N. Dak., for the Union.

Mr. Thomas B. Sweency, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Dehydrate Workers Union of Grafton, North Dakota, Local 23582 (A. F. L.), herein called the Union, alleging that a question affecting commerce had arisen concerning the employees of Muskegon Dock and Fuel Co., American Food Products Corporation, Grafton, North Dakota, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgeson, Trial Examiner. Said hearing was held at Grafton, North Dakota, on February 9, 1944. Muskegon Dock and Fuel Co., hereinafter called the Company, American Food Products Corporation, and the Union 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. At the hearing the Trial Examiner granted a motion on behalf of the Union to substitute Muskegon Dock and Fuel Co. for American Food Products Corporation, as the sole party to the instant proceeding. The Trial Examiner, however, reserved decision on motions to dismiss made by the Company and American Food Products Corporation. The Board hereby affirms the Trial Examiner's ruling on the motion to substitute, grants the motion to dismiss the petition with respect

55 N. L. R. B., No. 115.

to American Food Products Corporation,¹ and denies the motion to dismiss the petition with respect to the Company in view of the findings hereinafter set forth in Section I. The Trial Examiner's other rulings made at the hearing are free from prejudicial error and are hereby affirmed. The 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

Muskegon Dock and Fuel Co. is a Michigan corporation, having its principal office in Muskegon, Michigan. It owns and operates a potato dehydrating plant at Grafton, North Dakota. During the period from October 1, 1943, to June 1, 1944, the Company's purchases of potatoes for processing (including actual and contemplated purchases) will total 275,000 bushels, all of which have been or will be purchased within the State of North Dakota. After processing, the entire output of the plant is sold to American Food Products Corporation, and by it delivered to the United States Army for distribution within and without the continental limits of the United States. We find, contrary to the contention of the Company, that it is engaged in commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATION INVOLVED

Dehydrate Workers Union of Grafton, North Dakota, Local No. 23582, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the employees in the appropriate unit until the Union has been certified by the National Labor Relations Board.

¹ Although the record contains some evidence that the Company and the American Food Products Corporation are affiliated corporations, the extent and nature of such affiliation is not disclosed. The record is clear, however, that the employees herein involved are employed and paid solely by the Company. Therefore, for the purposes of this present representation proceeding, we deem it inappropriate to name American Food Products Corporation as coemployer of the employees in the unit which we herein find appropriate for the purposes of collective bargaining.

² *N. L. R. B. v. Fambblatt*, 306 U. S. 601; *Wickard v. Filburn*, 317 U. S. 111; *N. L. R. B. v. Van Deusen Dress Mfg. Co.*, 138 F. (2d) 893 (C. C. A. 2); *N. L. R. B. v. Cleveland Cliffs Iron Co.*, 133 F. (2d) 295 (C. C. A. 6).

A statement of the Trial Examiner at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

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 Union contends that the unit should consist of all production and maintenance employees, excluding executives, office and clerical employees, together with all employees possessing the right to hire or discharge or those who may effectively recommend such action. No objection was made by the Company to the appropriateness of the unit claimed.

We find that all production and maintenance employees of the Company, excluding executives, office 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 an election by secret ballot among the employees in the appropriate unit who were employed during the payroll 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 Muskegon Dock and Fuel Co., Grafton, North Dakota, 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

³ The Trial Examiner stated at the hearing that the Union had submitted a petition which bore 91 apparently genuine original signatures; that the names of such persons were listed on the Company's pay roll for the period commencing January 30, 1944, which contained the names of 159 employees in the appropriate unit and that 84 of the 91 names appearing on said petition are the names of employees listed on said pay roll.

of the Regional Director for the Eighteenth 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 the 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 or not they desire to be represented by Dehydrate Workers Union of Grafton, North Dakota, Local No. 23582, affiliated with the American Federation of Labor, for the purposes of collective bargaining.