

In the Matter of LOOSE-WILES BISCUIT COMPANY and UNITED CRACKER WORKERS OF GREATER NEW YORK, LOCAL 25, U. R. W. D. S. E. OF A., C. I. O.

Case No. 2-R-4531.—Decided April 12, 1944

Mr. William A. Ferguson, of Long Island City, N. Y., and *Proskauer, Rose, Goetz, and Mendelsohn*, by *Mr. Arthur P. Reyman*, of New York City, for the Company.

Markewich, Rosenhaus and Markewich, by *Mr. Arthur K. Garfinkel*, of New York City, for the C. I. O.

Messrs. Kalman Sklar and Daniel Koonmen, of New York City, for the A. F. L.

Mrs. Platonía P. Kaldes, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Cracker Workers of Greater New York, Local 25, United Retail, Wholesale & Department Store Employees of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Loose-Wiles Biscuit Company, Long Island City, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Martin I. Rose, Trial Examiner. Said hearing was held at New York City, on March 14 and 16, 1944. During the course of the hearing, Biscuit and Cracker Workers Local Union No. 405, Greater New York and Vicinity, Biscuit and Cracker Workers International Union of America, A. F. L., herein called the A. F. L., moved to intervene in the proceedings. The Trial Examiner granted the motion. The Company, the C. I. O., and the A. F. L. 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. 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

Loose-Wiles Biscuit Company is a New York corporation engaged in the manufacture, sale, and distribution of biscuit, cakes, and crackers. Among many others, the Company operates a plant at Long Island City, New York, with which we are solely concerned in this proceeding. During the year 1943, the Company purchased materials for its Long Island City plant valued at more than \$1,000,000, of which approximately 66 percent was shipped to that plant from points outside the State of New York. For the same period, the sales value of the Long Island City plant's finished products was more than \$1,000,000, of which approximately 75 percent was shipped to places outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

United Cracker Workers of Greater New York, Local 25, United Retail, Wholesale & Department Store Employees of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Biscuit and Cracker Workers Local Union No. 405, Greater New York and Vicinity, Biscuit and Cracker Workers International Union of America, 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 C. I. O. as the exclusive bargaining representative of its employees until the C. I. O. has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.¹

¹The Field Examiner reported that the C. I. O. submitted 1,117 application cards, that there were 1,956 employees in the unit petitioned for, and that the cards were dated as follows: 652 in December 1943; 452 in January 1944; and 13 were undated.

The A. F. L. submitted 364 application cards to the Trial Examiner all of which bore apparently genuine original signatures. The names of 72 persons appearing on the cards were contained in the Company's pay roll of December 30, 1943. These 72 cards were dated as follows: 16 were dated in November and December 1939; 26 in January-December 1940; 27 in January-December 1941; and 3 in February-March 1944.

The undisputed evidence establishes that in 1941 and 1943, the A. F. L. wrote to the Company claiming to represent a majority of its employees in the Long Island City plant

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

According to the stipulation of the parties, we find that all full-time employees and all part-time employees working 20 hours or more weekly at the Company's Long Island City plant and garage,² and including employees in the sample room and retail store, but excluding office and clerical employees, night loaders, shipping checkers, drivers, truck loaders, truck unloaders, executives, superintendents, foremen and foreladies, assistant foremen and assistant foreladies, instructresses and all 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

The parties have requested that the pay roll of January 3, 1944, be used as the eligibility date. The record fails to disclose any substantial supporting basis for such a request. Accordingly, we shall adhere to our usual practice.

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

and requesting bargaining rights; that for 2 years following November 14, 1941, there was in existence a closed-shop agreement between the Company and the C. I. O. which required new employees to join the C. I. O. as a condition of employment and all other employees who were not members to join within 90 days from the date of the agreement; and that since December 5, 1941, the A. F. L. has been the charging union in three separate cases before the Board, in two of which the Board has issued orders based upon the stipulations of the parties (Cases Nos. C-2009 and 2-C-4103 respectively), and in the last of which the Board has refused to issue a complaint (Case No. 2-C-5413). Despite the C. I. O.'s contentions to the contrary, we are of the opinion that, under the circumstances, the A. F. L. has evidenced sufficient interest to warrant a place on the ballot in the election hereinafter directed.

² The garage is an adjunct of the Long Island City plant.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Loose-Wiles Biscuit Company, Long Island City, New York, 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 Second 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 any 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 United Cracker Workers of Greater New York, Local 25, U. R. W. D. S. E. of A., affiliated with the Congress of Industrial Organizations, or by Biscuit & Cracker Workers Local Union No. 405, Greater New York and Vicinity, B. & C. W. I. U. of A., affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.