

In the Matter of CORN PRODUCTS REFINING COMPANY and OIL WORKERS
INTERNATIONAL UNION, C. I. O.

Case No. 13-R-2289.—Decided May 31, 1944

Mr. Frank T. Miller, of Peoria, Ill., and Mr. Frank A. Hasse, of Chicago, Ill., for the Company.

Messrs. R. T. Aylor, John Norris, and W. E. Gifford, of Argo, Ill., for the CIO.

Mr. George B. Christensen, of Chicago, Ill., for the Association.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Corn Products Refining Company, Argo, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Chicago, Illinois, on April 11, 1944. The Company, the CIO, and Employees Association of Corn Products Refining Company of Argo, herein called the Association, 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 Company and the Association moved for the dismissal of the petition on the grounds that the CIO did not make out a sufficient *prima facie* showing of membership to warrant the Board's proceeding with the case, and that a presently existing contract between the Company and the Association is a bar to this proceeding. For reasons hereinafter given, the 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:

56 N. L. R. B., No. 200.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Corn Products Refining Company is engaged in the manufacture, sale, and distribution of food and food products in the United States and foreign countries. The principal products sold by the Company are starch, syrup, sugar, vegetable oils, and cattle feed. The principal raw materials used by the Company are corn, cane sugar, chocolate, lumber, paper, cardboard, and package materials. The Company operates plants and warehouses at Argo and Pekin, Illinois, and at Kansas City, Missouri. It also maintains and operates various plants in foreign countries. The plant at Argo, Illinois, is the only plant directly involved in this proceeding.

During 1943 the Company purchased for use at its Argo plant raw materials valued in excess of \$5,000,000, over 50 percent of which was purchased outside Illinois. During the same period the Company manufactured at its Argo plant products valued in excess of \$20,000,000, over 75 percent of which was sold and shipped by the Company to points outside Illinois. The Company is presently engaged in war production, approximately 20 percent of its output going to the various armed forces and being shipped under Lend-Lease arrangements, the remainder going to various prime contractors and to the general public.

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

II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union, affiliated with the Congress of Industrial Organizations, and Employees' Association of Corn Products Refining Company of Argo, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On November 4, 1943, and again on January 7, 1944, the CIO, by letter to the Company, asserted that it represented a majority of the Company's employees and requested recognition as their exclusive bargaining representative. The Company, by letter dated January 10, 1944, denied the CIO's request on the ground that the Company was bound by an existing contract with the Association covering the employees whom the CIO sought to represent.

On October 13, 1943, we issued a Decision and Direction of Election in Case No. R-5836, concerning the employees of the Company at the

Argo plant.¹ In that case we considered the agreements which the Company and the Association have executed consisting of a recognition agreement, a maintenance-of-membership agreement and oral agreements concerning wages and conditions of employment and found them to be no bar to a determination of representatives for employees covered by them: The status of the contracts as described in our Decision in that case has not been altered. For the reasons set forth in that Decision, we find that the agreements between the Company and the Association are no bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing supplemented by a statement made by the Trial Examiner at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.²

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 CIO requests a unit of all maintenance and production employees at the Argo plant, excluding supervisory employees, office and clerical employees, plant guards, part-time employees, technical employees, and employees of the two machine shops considered in Case No. R-5836 and found to constitute an appropriate unit. The Company and the Association contend that the only appropriate unit for bargaining at the Argo plant is one consisting of all hourly paid production and maintenance employees. This description would, according to the present pay-roll practice of the Company, exclude from the unit supervisory employees above the rank of relief-shift foreman, office clerical employees, and technical employees.³ The description would include relief-shift foremen, gang leaders and checkers whom the CIO would exclude as supervisors, factory clerical employees and plant guards, as well as the machine shop employees whom the Board has heretofore found constitute a separate unit.⁴

¹ *Matter of Corn Products Refining Company*, Case No. R-5836, 13-R-1774, 52 N. L. R. B. 1324

² The Field Examiner reported that the CIO submitted 541 application for membership cards, 444 of which bore signatures of persons listed on the Company's pay roll of March 10, 1944, which contained the names of 1,660 employees in the appropriate unit and that the cards were dated August 1943 through March 1944. The Trial Examiner reported that the CIO submitted to him 22 additional cards, 17 of which bore signatures of employees whose names appeared on the April 1, 1944, pay roll of the Company which contained the names of 1,736 employees in the appropriate unit. The cards were dated in March and April 1944. In the light of the Association's maintenance-of-membership contract we find this to be a substantial showing. See *Matter of Groveton Papers Company*, 52 N. L. R. B. 1256. A witness testified at the hearing that the Association has 1,200 dues paying members.

³ At the hearing it appeared that all parties are in agreement as to the exclusion of technical employees and the meaning of the term as applied to the employees of the Company.

⁴ The International Association of Machinists was certified by the Board in Case No. R-5836 on December 24, 1943, as exclusive bargaining representative for "all employees

Factory clerical employees. This classification includes approximately 10 employees. They are for the most part record clerks who work in the various production departments of the Company under the supervision of the production supervisory personnel. They have the same vacation schedule and conditions of work as production and maintenance employees. Their contacts are with those employees. For these reasons, we are of the opinion that the interest of factory clerical employees are more nearly similar to those of production and maintenance employees than to those of the office clerical employees. We shall, therefore, include them in the appropriate unit.⁵

Guards. With the exception of the guard at the gate of the plant who wears a uniform, the guards at the plant are neither uniformed nor members of the Auxiliary Military Police. Since their duties are those customarily performed by watchmen, rather than those of a specialized plant-protection force, we shall include them in the unit.⁶

Relief-shift foremen. The Company employs a group of relief-shift foremen who devote their entire time to supervision and are classified as relief foremen only because they are not assigned regularly to the same department. All parties are in agreement that these employees are supervisory and should be excluded from the unit. The Company also designates as relief-shift foremen certain production and maintenance employees who, on an average of once a week and during the vacation of the regular shift foremen, take on the duties of the shift foremen. During such periods of time they receive 15 to 20 cents an hour more than their regular wages. They do not, however, assume the authority of the foremen and their recommendations have no effect in changing the status of employees working under them. We find, therefore, that the relief-shift foremen who, for the major portion of their time perform ordinary production or maintenance work are, in fact, production and maintenance employees and we shall include them in the unit.⁷

Gang leaders and checkers work along with and direct the work of small groups of employees but have no authority to change or to recommend change in the status of persons in their charge. Inasmuch as their authority does not equal that required by our definition of supervisory employees, we shall include them in the unit.⁸

Machine shop employees. Since the Board has already passed upon the question of inclusion of machine shop employees in a general plant-

of the Company in the two machine shops at the Argo plant, except for the storeroom clerk, automobile mechanic, sweeper, foreman, night foreman and assistant foreman." The parties are in agreement that the automobile mechanic and the sweeper should be included in, and that the named foremen excluded from, any unit which the Board might find appropriate herein, and that the storeroom clerk is a factory clerical employee.

⁵ See *Matter of Bemis Bros. Bag Company*, 51 N. L. R. B. 211.

⁶ *Matter of Ash Grove Lime & Portland Cement Co.*, 55 N. L. R. B. 1007.

⁷ See *Matter of Johnston Brothers, Inc.*, 53 N. L. R. B. 1191.

⁸ See *Matter of Manning, Maxwell & Moore, Inc.*, 53 N. L. R. B. 951.

wide unit in Case No. R-5836, we find it unnecessary to discuss the matter further.

We find that all⁹ production and maintenance employees of the Company at its Argo plant, including factory clerical employees, guards, relief-shift foremen who spend the major portion of their time in production or maintenance work, checkers and gang leaders, but excluding office clerical employees, technical employees, and the employees for whom the International Association of Machinists has been certified as the exclusive bargaining representative, 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.

The Company employs approximately 20 to 25 high school students as regular part-time employees. These employees work 4 to 8 hours a day at regular production and maintenance jobs. They receive the same rate of pay as do regular full-time employees. Their rights and privileges as employees of the plant are to some extent limited by the fact that they cannot be transferred from shift to shift and that they do not usually work a sufficient number of hours in a year to earn a vacation. The work they do, however, gives them sufficient interest in the conditions of employment in the plant to entitle them to a voice in the designation of a bargaining representative. We hold, therefore, contrary to the contention of the CIO, that part-time employees are eligible to vote in the election hereinafter directed.¹⁰

The Company and the Association insist that the employees who are presently members of the armed services be allowed to vote by

⁹ Since method of payment in and of itself is not a deciding factor in determining the constituency of an appropriate unit, we shall omit the words "hourly paid" from our definition of the appropriate unit herein. See *Matter of Bendix Aviation, Ltd.*, 52 N. L. R. B. 1182

¹⁰ *Matter of Kaplan Brothers*, 46 N. L. R. B. 1057, *Matter of Wagner Folding Box, Corp.*, 49 N. L. R. B. 346. The Company employs casual laborers who are hired on a daily basis and carried on a pay roll separate and apart from regular employees. All parties are in agreement that these employees should be excluded from the unit, and we perceive no reason to depart from the agreement of the parties.

mail in this election. For reasons given in *Matter of Mine Safety Appliances Company*,¹¹ the request is hereby denied.

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 Corn Products Refining Company, Argo, Illinois, 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 Thirteenth 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 and the findings in Section V, above, 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 they desire to be represented by Oil Workers International Union, C. I. O., or by Employees' Association of Corn Products Refining Company of Argo, for the purposes of collective bargaining, or by neither.

¹¹ 55 N. L. R. B. 1190.