

In the Matter of NESTLE'S MILK PRODUCTS, INC. and UNITED DAIRY  
WORKERS LOCAL 83, C. I. O.

*Case No. 7-R-1677.—Decided June 1, 1944*

*Mr. R. G. Writer*, of Burlington, Wis., and *Mr. W. L. Mann*, of Cass City, Mich., for the Company.

*Mr. Nicholas J. Rothe*, of Detroit, Mich., and *Mr. Russell L. Ballard*, of Detroit, Mich., for the Dairy Workers.

*Messrs. Padway and Goldberg*, by *Mr. I. E. Goldberg*, of Milwaukee, Wis., and *Mr. G. N. McIlwain*, of Saginaw, Mich., for the Teamsters.

*Mrs. Margaret L. Fassig*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by the United Dairy Workers Local 83, C. I. O., herein called the Dairy Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Nestle's Milk Products, Inc., at Cass City, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Detroit, Michigan, on March 22, 1944, and a continued hearing was held at Cass City, Michigan, on April 26, 1944. The Company, the Dairy Workers and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 486, A. F. L.,<sup>1</sup> herein called the Teamsters, 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 and the Teamsters filed a brief which has been duly considered by the Board.

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

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<sup>1</sup> Its motion to intervene was granted at the hearing.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Nestle's Milk Products, Inc., which is a New York corporation and a wholly owned subsidiary of Unilac, Inc., a Panama corporation, owns and operates milk processing plants in various States of the United States. The only plant involved in the present proceeding is its plant located at Cass City, Michigan, which is engaged in the business of converting milk into condensed form.

The principal raw material used at the Company's Cass City plant is milk. During the year 1943 the Company purchased at its Cass City plant raw materials valued at approximately \$300,000 and over two-thirds of such raw materials was purchased outside the State of Michigan. Also during the year 1943 the total sales of the Cass City plant exceeded \$1,500,000 in value, and over 99 percent of the finished products during that year was shipped to points outside the State of Michigan.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

United Dairy Workers Local 83, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 486, 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 Dairy Workers as the exclusive bargaining representative of its employees at Cass City, Michigan, until the Dairy Workers has been certified by the Board in an appropriate unit.

On January 1, 1943, the Company and the Teamsters signed a closed-shop contract, which by its terms became effective on January 1, 1943, and was to continue in effect until December 31, 1943, and from year to year thereafter, unless written notice were given by either party thirty (30) days prior to the annual date of expiration. On November 19, 1943, the Teamsters wrote the Company as follows:

Kindly accept this communication as official notice of our desire to negotiate certain changes and modifications in the present contract signed by your company and our Local Union.

This agreement will expire December 31, 1943, and we desire to have the provisions of this new agreement become effective on January 1, 1944.

The Company replied by letter dated November 26, 1943, indicating its willingness to negotiate and suggesting an early conference. However, before negotiations for a new contract were entered into, 40 of the Company's 43 employees by a communication dated December 14, 1943, notified the Company that they had resigned from the Teamsters and instructed the Company to deduct no more dues from their wages in favor of the Teamsters.<sup>2</sup> Upon being advised of this occurrence, the Teamsters' representative stated to the Company that its contract was "still in existence." On December 22, 1943, the Dairy Workers wrote the Company, notifying it that more than 90 percent of the Company's employees had signified their desire to become members of that organization, and requested recognition and a meeting for the purpose of negotiating a contract. In response to this letter the Company telephoned the Dairy Workers' representative and asked him to petition the National Labor Relations Board for a determination of bargaining representatives. The Dairy Workers filed its original petition with the Board on January 3, 1944. No new contract was negotiated between the Company and the Teamsters.

The Teamsters asserts that its letter of November 19, 1943, did not terminate its contract and that such contract was automatically renewed on December 1, 1943, and hence constitutes a bar to the present proceedings. The Company takes no position but wishes the Board to determine with which labor organization it can properly negotiate a contract.

We find no merit in the Teamsters' contention, for we think it is clear that the letter quoted above was a notice to terminate the contract, and prevented the automatic renewal provision of that contract from taking effect.<sup>3</sup> Therefore, we find that the Teamsters' contract is not a bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Dairy Workers represents a substantial number of employees in the unit hereinafter found appropriate.<sup>4</sup>

<sup>2</sup> The C. I. O. attempted at the hearing to show that sometime in November 1943, the employees gave notice to the Company that they no longer wished to be represented by the Teamsters. In view of our conclusion as set forth herein, the time of such notice by the employees to the Company is immaterial.

<sup>3</sup> See *Matter of Anaconda Wire & Cable Co.*, 52 N. L. R. B. 1028.

<sup>4</sup> The Regional Director reported that the Dairy Workers had submitted 39 authorization cards, all of which bore apparently genuine original signatures; that the names of 38 persons appearing on the cards were listed on the Company's pay roll of January 19, 1944, which contained the names of 43 employees in the appropriate unit; and that the cards were dated as follows: 17 in December 1943 and 21 undated.

The Teamsters did not introduce any evidence of representation, but relied upon its contract of January 1, 1943, to show its interest in this proceeding.

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

We find in substantial accordance with a stipulation of the parties that all production and maintenance employees of the Company at its Cass City, Michigan, plant, including the night watchman, but excluding clerical employees, field men, 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.<sup>5</sup>

#### 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 Nestle's Milk Products, Inc., at Cass City, 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 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

<sup>5</sup> This is substantially in accord with the unit covered by the Teamsters' contract.

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 United Dairy Workers Local 83, affiliated with the C. I. O., or by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 486, affiliated with the A. F. of L., for the purposes of collective bargaining, or by neither.

Mr. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.