

In the Matter of LEVER BROTHERS COMPANY and INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, POWERHOUSE EMPLOYEES, OPERATORS AND MAINTENANCE MEN, LOCAL 3 (AFL)

Case No. 1-R-1852.—Decided July 8, 1944

Mr. Austin M. Fisher, of New York City, for the Company.
Mr. Joseph P. McNamara, of Boston, Mass., for the Firemen.
Mr. Walter Potter, of Cambridge, Mass., and Mr. Joseph T. Healey, of Allston, Mass., for the Soap Workers.
Mrs. Platonía P. Kaldes, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Firemen and Oilers, Powerhouse Employees, Operators and Maintenance Men, Local 3 (AFL), herein called the Firemen, alleging that a question affecting commerce had arisen concerning the representation of employees of Lever Brothers Company, Cambridge, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leo J. Halloran, Trial Examiner. Said hearing was held at Boston, Massachusetts, on May 25, 1944. During the course of the hearing, Local No. 22050, United Soap, Glycerine and Edible Oil Workers Union (AFL), herein called the Soap Workers, moved to intervene in the proceedings. The Trial Examiner granted the motion. The Company, the Firemen, and Soap Workers 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 ruling 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

Lever Brothers Company, a Maine corporation, operates five plants
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and many branch offices and sales offices throughout the United States. One of the five plants, the Cambridge plant, located at Cambridge, Massachusetts, is solely involved in this proceeding. At the Cambridge plant, the Company is engaged in the manufacture of soap and soap products. For the 6-month period ending December 31, 1943, the Company used at its Cambridge plant, raw materials valued at approximately \$9,500,000. These raw materials consisted of tallow, cocoanut oil, Babbassu oil, resin, grease, lard, castor oil, caustic soda, caustic potash, sodium silicate, sodium phosphate, sodium chloride, and perfumes. For the quarter ending December 31, 1943, about 84½ percent of the raw materials purchased by the Company was obtained outside the Commonwealth of Massachusetts. During the same period, the Company shipped to points outside the Commonwealth of Massachusetts finished products having a value of approximately \$10,000,000.

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 Firemen and Oilers, Powerhouse Employees, Operators and Maintenance Men, Local 3, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company:

Local No. 22050, United Soap, Glycerine and Edible Oil Workers Union, 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 had collective bargaining contracts with the Soap Workers since 1939. The last of such contracts was executed June 25, 1943. It covers all employees "eligible for membership" in the Soap Workers executive, supervisory, or clerical employees. By its terms, the said contract is to "remain in effect for the duration of the present war or six months thereafter, and shall continue in force thereafter unless thirty (30) days' written notice is given by either party that changes, amendments, or terminations are desired."

About March 7, 1944, the Firemen wrote to the Company stating that it represented all its employees in the powerhouse and requesting a conference for the purposes of recognition and for collective bargaining. By letter dated March 27, 1944, the Company replied that it had an existing contract with the Soap Workers covering the powerhouse employees and therefore refused to recognize the Firemen as a separate bargaining agent for these employees. The Firemen filed its petition herein on March 27, 1944.

At the hearing, the Company contended that the unit sought by the Firemen was not appropriate at this time, that the employees the Firemen sought to represent were covered by the contract with the Soap Workers, and that, accordingly, it persisted in its refusal to accord recognition to the Firemen. The Company did not, however, specifically urge the existing contract to be a bar to the instant proceeding. In any event, since, as hereinafter noted, the Soap Workers has relinquished jurisdiction over the employees the Firemen seeks to represent, and the contract is of indefinite duration,¹ we find that the said contract does not, constitute a bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Firemen 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 Firemen seeks a unit composed of all employees in the powerhouse of the Company's Cambridge plant excluding the Chief Engineer. The Company is opposed to the segregation of the powerhouse employees in a unit separate from that of production employees.

The Company employs approximately 18 persons in the powerhouse of its Cambridge plant, exclusive of the Chief Engineer. Four are watch engineers, four are firemen, two are maintenance men, two are coal handlers, three are attendants, one is a boiler water treater and oiler, one a bunker, and one a fire cleaner. They all perform duties directly connected with the operation and maintenance of the plant power and heating equipment. All are under the direct supervision of the Chief Engineer, and all work in the same location in the plant. The watch engineers are salaried employees, while all the others are hourly paid. The record clearly shows that the powerhouse employees are not directly concerned with production and constitute a well-defined, homogeneous group of employees whose work requires, in the majority of cases, a distinct skill and some specialized training.³

¹ See *Matter of The Trailer Company of America*, 51 N. L. R. B. 1106

² The Field Examiner reported that the Firemen submitted 18 authorization cards, and that the names of all persons appearing on the cards were listed on the Company's pay roll of April 4, 1944, which contained the names of 18 employees in the appropriate unit.

³ The Company contends that, with the exception of firemen (who must have a State license in order to be employed as such) and watch engineers, the other employees in the powerhouse do not need to have any particular skill or training in order to perform their duties. The record establishes, however, that prior training is required for the proper performance of the duties of powerhouse employees other than firemen or watch engineers, and

Although, as the Company contends, the hourly paid workers in the powerhouse have been considered in the past as part of the plant-wide production unit represented by the Soap Workers,⁴ and have been specifically referred to in the collective bargaining contracts, that fact is not material in the circumstances here presented. The evidence establishes that the powerhouse employees have never been members of the Soap Workers, and that whatever references have been made to powerhouse employees in the collective bargaining contracts between the Soap Workers and the Company, have been for the purpose of protecting other members of the plant-wide unit from inequities. It appears that the powerhouse employees desire to be represented by the Firemen. Moreover, the Soap Workers has ceded jurisdiction over the powerhouse employees to the Firemen and does not desire or intend to bargain for them in the future.

In view of the foregoing facts, we find that all employees in the powerhouse of the Company's Cambridge plant, excluding the Chief Engineer 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.⁵

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 Lever Brothers Company, Cambridge, Massachusetts, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30)

that such employees occupy a relationship to firemen and watch engineers similar to that occupied by apprentices or helpers to employees in recognized traditional craft groups.

⁴It is conceded that the four salaried employees in the powerhouse have never been considered part of the plant-wide unit which was confined to hourly paid workers, and that these four have not been represented by any bargaining agent.

⁵See *Matter of Caterpillar Tractor Co.*, 56 N. L. R. B. 122; *Matter of General Tire and Rubber Co.*, 55 N. L. R. B. 250

days from the date of this Direction, under the direction and supervision of the Regional Director for the First 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 or not they desire to be represented by International Brotherhood of Firemen and Oilers, Powerhouse Employees, Operators and Maintenance Men, Local 3, affiliated with the American Federation of Labor, for the purposes of collective bargaining.