

In the Matter of SNELL MILLING COMPANY and DISTRICT 50, UNITED
MINE WORKERS OF AMERICA

Case No. 10-R-1223.—Decided July 14, 1944

Mr. Marvin C. Atherton, of Nashville, Tenn., for the Company.

Messrs. J. B. Coope and H. E. Smith of Nashville, Tenn., for
District 50.

Mr. W. I. Smith, of Knoxville, Tenn., for the C. I. O.

Mr. G. D. Weiny, of Keokuk, Iowa, for the A. F. of L.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition and amended petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Snell Milling Company, Nashville, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Arthur C. Joy, Trial Examiner. Said hearing was held at Nashville, Tennessee, on June 24, 1944. At the commencement of the hearing the Trial Examiner granted motions of United Gas, Coke & Chemical Workers of America, C. I. O., herein called the C. I. O. and American Federation of Grain Processors, A. F. of L., herein called the A. F. of L., to intervene. The Company, District 50, the C. I. O., and the A. F. of L. appeared at, and participated in, the hearing, and 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 opportunity to file briefs with the Board.

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

FINDING OF FACT

I. THE BUSINESS OF THE COMPANY

Snell Milling Company is a Tennessee corporation engaged in the blending of flour and the manufacture of feeds at Nashville, Tennessee. It is a wholly owned subsidiary of Ballard & Ballard Company, herein called Ballard. The Company's annual purchases of flour and feed ingredients amount in value to approximately \$1,000,000 annually, 90 to 95 percent of which is shipped to it from points outside the State of Tennessee. The Company's annual sales of products exceeds \$3,000,000 annually, about 90 percent of which is shipped to points outside the State of Tennessee.

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

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

United Gas, Coke & Chemical Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

American Federation of Grain Processors is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about May 15, 1944, District 50 requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request until such time as District 50 is certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that District 50, and the C. I. O. each represents a substantial number of employees in the unit herein-after found to be appropriate.¹

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.

¹ The Field Examiner reported that District 50 and the C. I. O. each presented 72 membership application cards. There are approximately 104 employees in the appropriate unit. The A. F. of L. did not present any evidence of representation and stated at the hearing that it did not represent any employees involved herein.

IV. THE APPROPRIATE UNIT

As stated hereinabove, the Company is a wholly owned subsidiary of Ballard. Ballard operates plants at Louisville, Birmingham, Orlando, Florida, and Savannah. The A.F. of L. has a contract covering the employees at the Louisville plant of Ballard. District 50 and the C. I. O. urge that all employees at the Nashville plant of the Company constitute a separate appropriate bargaining unit. The A. F. of L. contends that all employees of the Company and employees of the enumerated plants of Ballard constitute, together, a single appropriate unit. The Company took no definite position with respect to the scope of the unit.

Although, as stated above, the A. F. of L. represents the employees at the Louisville plant of Ballard, it does not now claim to represent any employees of the Company or at the other three plants of Ballard, nor does it appear that employees at the plants of Ballard, other than the Louisville plant, have been organized by any labor organization. A substantial number of employees at the Nashville plant of the Company have designated either District 50 or the C. I. O. as their collective bargaining representative. Evidence introduced at the hearing indicates that the employees at the Nashville plant of the Company constitute a well-defined homogeneous group. Accordingly, we find that a unit limited to the employees of the Company at Nashville is appropriate at this time.

The parties are in agreement that all employees at the Nashville plant of the Company, excluding clerical employees, general office employees, shipping and receiving clerks, watchmen, foremen, and supervisory employees constitute an appropriate unit. The only disagreement with respect to the unit concerns the office porter. The labor organizations would include him in the unit, while the Company would exclude him.

Although the porter spends all his time working in the various offices, he performs work dissimilar to that of the office employees. We find that his duties are more closely allied to those of the production and maintenance employees. Accordingly, we shall include him in the unit.

We find that all employees at the Nashville plant of the Company, including the porter, but excluding clerical employees, general office employees, shipping and receiving clerks, watchmen, foremen, and any 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

We shall direct that the question concerning representation which has arisen be resolved by means of 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.

As stated in footnote 1, *supra*, the A. F. of L. expressly disclaimed any interest among the employees at the Nashville plant of the Company. Accordingly, we shall not accord it a place on the ballot.

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 Snell Milling Company, Nashville, Tennessee, 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 Tenth 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 any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of this election, to determine whether they desire to be represented by District 50, United Mine Workers of America, or by United Gas, Coke & Chemical Workers of America, C. I. O., for the purposes of collective bargaining, or by neither.