

IN the Matter of ACME-EVANS COMPANY, INCORPORATED and UNITED
CANNERY, AGRICULTURAL, PACKING & ALLIED WORKERS OF AMERICA,
LOCAL No. 84, C. I. O.

Case No. 9-R-1339.—Decided July 18, 1944

Messrs. Kurt F. Pantzer, George Rose, and E. G. Beachman, of Indianapolis, Ind., for the Company.

Messrs. Powers Hapgood and Robert Clark, of Indianapolis, Ind., for the C. I. O.

Mr. Frank S. Pryor, of Frankfort, Ind., 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 duly filed by United Cannery, Agricultural, Packing & Allied Workers of America, Local No. 84, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Acme-Evans Company, Incorporated, Indianapolis, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles F. McErlean, Trial Examiner. Said hearing was held at Indianapolis, Indiana, on May 29, 1944. At the commencement of the hearing the Trial Examiner granted a motion of Federal Labor Union No. 21873, A. F. of L., herein called the A. F. of L., to intervene. The Company, 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Acme-Evans Company, Incorporated, is an Indiana corporation with its principal place of business at Indianapolis, Indiana, where it is engaged both in the manufacture of flour, meal, grain and cereal products, and in the purchase and sale of cereal and cereal products. During 1943 the Company purchased material valued in excess of \$100,000, more than 50 percent of which was shipped to it from points outside the State of Indiana. During the same period the Company sold products valued in excess of \$100,000, more than 50 percent of which was shipped to points outside the State of Indiana.

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

II. THE ORGANIZATIONS INVOLVED

United Cannery, Agricultural, Packing & Allied Workers of America, Local No. 84, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Federal Labor Union No. 21873, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During January 1944 the C. I. O. requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request.

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

IV. THE APPROPRIATE UNIT

The C. I. O. urges that all production and maintenance employees at the various mills and elevators of the Company at Indianapolis,

¹ The Field Examiner reported that the C. I. O. presented 90 authorization cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of January 29, 1944. There are approximately 172 employees in the appropriate unit. The A. F. of L. did not present any evidence of representation.

excluding office and clerical employees, foremen, and supervisory employees, constitute an appropriate unit. The only controversy with respect to the unit concerns watchmen and 19 alleged supervisory employees.² The Company would exclude all such employees from the unit, while the C. I. O. would include them. The A. F. of L. took no position.

The Company employs four full-time and two part-time watchmen. They are not militarized or uniformed. They perform the usual duties of watchmen, which consist of patrolling the Company's premises and punching A. D. T. clocks. One of the part-time watchmen performs janitorial services and the other works in the bag department when not performing duties as watchman. Under all the circumstances, we shall include the watchmen in the unit.

John Parsons and Albert Schacke are classified as garage foreman and sheet-metal foreman, respectively. Parsons is the only employee in the Company's garage and the Company has had no other employees in the garage for the last 4 to 6 years. The Company intends to continue its practice of sending necessary repair work to other garages, thus doing away with the necessity of having any other employees in the garage. Schacke is the only sheet-metal worker employed by the Company, and he therefore has no subordinates. Although the Company formerly had two other employees performing sheet-metal work, Schacke was the only employee performing this type of work at the time of the hearing, and there was no indication that the Company intends to increase the number of this type of employee. We shall include Parsons and Schacke in the unit.

Schobe, Edwards, Short, and Taylor are classified by the Company as head packers. Schobe and Taylor have between 5 and 10 subordinates and Edwards and Short have 4. Each of them works on a different shift. It appears that a substantial portion of their time is spent in supervising other employees and they recommend changes in the status of their subordinates. We find that Schobe, Edwards, Short and Taylor are supervisory employees, and as such, we shall exclude them from the unit.

Pickel and Adams are classified as feed grind foremen. Each of them has four subordinates and receives 6 cents an hour more than the latter. Pickel and Adams work on the night shift every other month and are, at such times, in complete charge of the entire department. We conclude that Pickel and Adams are supervisory employees, and as such, we shall exclude them from the unit.

² Roy Schobe, William Edwards, Clarence Short, Samuel Taylor, William Snyder, William Jackson, Louis Casey, Harry Leslie, Murle Pickel, George Adams, Richard Pleasant, Henry Collins, William Foster, Jesse Patton, Jimmie Day, Jesse Bradshaw, John Parsons, Albert Schacke, and Herve Anderson.

Foster and Patton are classified as warehouse foreman and pick-up man, respectively, and Day and Bradshaw are classified as car load checkers. Foster takes care of the warehouse, keeps it clean, and tells truckers where to put materials in the warehouse and which materials to be taken out first. The truckers are mill employees. There are no regular employees in the warehouse. Patton tells the truckers what materials are to be taken out of the warehouse, while Day and Bradshaw direct the same group of persons in the placing of materials in railroad cars. Thus, it appears that the four employees in question all allegedly supervise the same 3 to 20 employees. They receive only slightly higher rates of pay than the employees they are alleged to supervise. We conclude that their work is more monitorial than supervisory in nature, and accordingly we shall include them in the unit.

The remaining employees in question are classified as assistant head packers, head grind packers, head packer in Velta Seal Department, lead packers, and receiving and shipping clerks. Generally speaking, such persons are the older employees in point of service, are paid on an hourly basis, receiving only slightly higher rates of pay than the employees whom they are alleged to supervise. We shall include all such employees in the unit.

We find that all production and maintenance employees at the various mills and elevators of the Company at Indianapolis, Indiana, including watchmen, but excluding office and clerical employees, truck drivers, 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 above, the A. F. of L. did not present any evidence of representation. However, the A. F. of L. was actively engaged in organizing the employees involved herein in 1939 and thereafter filed charges of unfair labor practices against the Company. Said charges were sustained by the Board, and during January 1944, the Company posted a cease and desist notice. The C. I. O. stated that it had no objection to the A. F. of L. appearing on the ballot. Under the circumstances, we shall accord a place on the ballot to the A. F. of L.

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 Acme-Evans Company, Incorporated, Indianapolis, Indiana, 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 Ninth 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 quite 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 Cannery, Agricultural, Packing & Allied Workers of America, Local No. 84, affiliated with the Congress of Industrial Organizations, or by Federal Labor Union No. 21873, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.