In the Matter of CASS-CLAY COOPERATIVE CREAMERY ASSOCIATION *and* GENERAL DRIVERS, HELPERS & INSIDE WORKERS LOCAL 116, A. F. L.

In the Matter of CASS-CLAY COOPERATIVE CREAMERY ASSOCIATION *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL 252, C. I. O.

Cases Nos. 18-R-1032 and 18-R-1043, respectively.—Decided July 27, 1944

Mr. Quentin N. Burdick, of Fargo, N. D., for the Company.

Messrs. N. E. Kragerud and *M. G. Lindemann*, of Fargo, N. D., for the AFL.

Holsteen & Hall, by *Mr. Kenneth J. Enkel*, of Minneapolis, Minn., and *Mr. Joseph Schowalter*, of Moorhead, Minn., for the C. I. O.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by General Drivers, Helpers & Inside Workers, Local 116, A. F. L., herein called AFL, and United Packinghouse Workers of America, Local 252, C. I. O., herein called CIO, alleging that questions affecting commerce had arisen concerning the representation of employees of Cass-Clay Cooperative Creamery Association, Moorhead, Minnesota, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Moorhead, Minnesota, on June 23, 1944. The Company, AFL, and CIO, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Cass-Clay Cooperative Creamery Association, a Minnesota corporation, has its office and principal plant in Moorhead, Minnesota, and a branch plant in Fargo, North Dakota. Both plants are involved in this proceeding. The Company is engaged in the business of receiving and processing dairy and poultry products. During the year 1943, the Company purchased for processing, eggs, milk, live poultry, and separated cream valued at approximately $68,000, of which 75 percent was shipped into the State of Minnesota from points outside the State. In the same period of time, the Company sold processed foods, consisting of bottled milk, cream, ice cream, dressed poultry, eggs, butter, and powdered milk valued at about $1,012,000, of which approximately 75 percent was shipped to points outside the State of Minnesota.

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

II. THE ORGANIZATIONS INVOLVED

General Drivers, Helpers & Inside Workers, Local 116, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Packinghouse Workers of America, Local 252, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.[1]

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to either the AFL or the CIO as the exclusive bargaining representative of its employees until certified by the Board in an appropriate unit.

A statement of the Regional Director, introduced into evidence at the hearing, and additional evidence submitted at the hearing, indicates that both the AFL and the CIO represent substantial numbers of employees in the units hereinafter found appropriate.[2]

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[1] In accordance with the agreement of the parties, the stipulation, submitted subsequent to the hearing, stating that the AFL and the CIO are labor organizations within the meaning of the National Labor Relations Act is hereby incorporated in and made part of the record.

[2] The Regional Director reported that the CIO submitted 29 authorization cards; that the names of 20 persons appearing on the cards were listed on the Company's pay roll of June 3, 1944, which contained the names of 41 employees in the unit sought by the CIO; and that all the cards were dated in April–May 1944. The reports of the Regional Director and the Trial Examiner indicate that the AFL submitted 21 authorization cards; that the

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 DETERMINATION OF REPRESENTATIVES

The AFL seeks a unit of all production and maintenance employees of both the Moorhead and the Fargo plants,[3] including delivery route salesmen, but excluding office and clerical employees, country route drivers, and all supervisory personnel. The CIO desires the same unit with, however, the exclusion of the delivery route salesmen. The Company favors the unit proposed by the AFL.

The delivery route salesmen distribute milk, cream, and butter to retail and wholesale customers of the Company. Their duties are dissimilar to those of the production and maintenance employees and they share none of the work of the latter. Unlike the production and maintenance employees who are paid on an hourly basis, the delivery route salesmen receive a monthly guarantee plus commissions. Their average earnings are substantially higher than those of the hourly paid employees. We are of the opinion that under these circumstances the delivery route salesmen may function for the purposes of collective bargaining either as a separate group or as part of the larger production and maintenance unit sought by the AFL. In this situation, our determination of the unit issue with respect to these employees will depend, in part, upon their own desires as expressed in the election hereinafter directed among them.

We shall direct that separate elections by secret ballot be held among the employees in each of the voting groups described below 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:

1. All delivery route salesmen at the Company's Moorhead and Fargo plants, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

2. All production and maintenance employees at the Company's Moorhead and Fargo plants, excluding delivery route salesmen, office and clerical employees, country route drivers,[4] and all supervisory

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names on 18 of these cards appeared on the Company's June 3, 1944, pay-roll list; that there are approximately 60 employees in the unit sought by the AFL; and that the cards were dated as follows: 17 in May–June 1944; 2 in February 1942; and 2 undated.

[3] The Moorhead and Fargo plants, although in different States, are only a few miles from each other. They are operated as a unit: one pay roll is kept for both plants, the general manager of the Moorhead plant is also responsible for the operation of the Fargo plant, and there is some interchange of employees between the plants.

[4] These are apparently independent contractors who collect milk and cream from the farmers and are paid by the Company on a tonnage basis for their deliveries to the plants.

employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

As stated above, there will be no final determination of the appropriate unit or units pending the results of the elections.

DIRECTION OF ELECTIONS

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Cass-Clay Cooperative Creamery Association, Moorhead, Minnesota, separate elections 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 Eighteenth 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 following groups of employees of the Company 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 elections, as well as all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

1. All delivery route salesmen to determine whether or not they desire to be represented by General Drivers, Helpers & Inside Workers, Local 116, A. F. L., for the purposes of collective bargaining.

2. All production and maintenance employees, excluding delivery route salesmen, office and clerical employees, and country route drivers, to determine whether they desire to be represented by General Drivers, Helpers & Inside Workers, Local 116, A. F. L., or by United Packinghouse Workers of America, Local 252, C. I. O., for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.