

In the Matter of NORTH AMERICAN CREAMERIES, INC. and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL UNION No. 615, A. F. OF L. and WAREHOUSE EMPLOYEES UNION, LOCAL No. 359, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. OF L.

Case No. 18-RE-14.—Decided July 31, 1944

Mr. Alfred W. Bowen, of Minneapolis, Minn., for the Company.

Mr. Leo Segall, of Chicago, Ill., for the Amalgamated.

Mr. Ernest F. Jacobson, of Minneapolis, Minn., for the Teamsters.

Mrs. Catherine W. Goldman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by North American Creameries, Inc., Minneapolis, Minnesota, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of employees of the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen Reynolds, Trial Examiner. Said hearing was held at Minneapolis, Minnesota, on May 19, 1944. The Company, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 615, A. F. of L., herein called the Amalgamated, and Warehouse Employees Union, Local No. 359, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., herein called the Teamsters, appeared and participated. The Amalgamated and the Teamsters each moved to dismiss the petition because of an existing contract with the Company. For reasons hereinafter stated, the motions are hereby denied. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

North American Creameries, Inc., a Delaware corporation, is engaged in the processing of poultry, butter, eggs, and cream, at six principal plants in North Dakota, South Dakota, and Minnesota. It operates an egg-drying plant in Minneapolis, Minnesota, herein called the Minneapolis plant. The Minneapolis plant processes each month approximately 18,000 cases of eggs, of which 20 percent is shipped to it from outside the State of Minnesota. The entire production of the Minneapolis plant is sold to Government agencies, principally the War Food Administration, for use in the war effort.

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

II. THE ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 615, and Warehouse Employees Union, Local No. 359, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In 1943 the Company entered into a contract with the Teamsters, recognizing that organization as the exclusive bargaining representative of the employees at all its plants. The contract was to be effective from July 1, 1943, to June 30, 1944, and was automatically renewable from year to year in the absence of notice 30 days prior to any anniversary date. Thereafter, in March 1944, the Company purchased the Minneapolis plant. On April 4, 1944, the Company entered into a contract with the Amalgamated,¹ recognizing that organization as the exclusive bargaining representative of the female employees at the Minneapolis plant.² The contract with the Amalgamated was to be in effect until April 1, 1945, and from year to year thereafter, subject to reopening upon written notice 30 days prior to April 1 of any year. Upon learning of the Company's contract with the Amalgamated, the Teamsters objected, asserting that its

¹ The Amalgamated had also had a contract with the prior owner of the Minneapolis plant.

² Article I of the contract provides: "This agreement shall relate solely to the female employees of the Egg Department."

contract, covering all the Company's plants, extended to the Minneapolis plant acquired after the execution of the contract.³ In view of the conflicting claims of the Teamsters and the Amalgamated, the Company filed the petition in this proceeding.

The Teamsters and Amalgamated each asserts its contract as a bar to a present determination of representatives. The Amalgamated's claim of representation, however, was made prior to the effective date of the automatic renewal clause of the Teamsters' contract. Consequently, the Teamsters' contract cannot preclude an investigation concerning representation at this time.⁴ The Amalgamated's contract is confined to the female employees of the Minneapolis plant. We are of the opinion that a unit limited to female employees is inappropriate,⁵ and that the Amalgamated's contract covering such a unit cannot, therefor, forestall an election.⁶ Accordingly, we find that neither the Teamsters' contract nor the Amalgamated's contract operates as a bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Amalgamated represents a substantial number of employees in the unit hereinafter found appropriate.⁷

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 Teamsters contends that an employer-wide unit, covering the Company's six plants, is appropriate. The Amalgamated contends that the unit established in its contract, covering the female employees of the Minneapolis plant, is appropriate.

The Minneapolis plant is engaged almost exclusively in the processing of eggs. It is the Company's only egg-drying plant, and is an independent operation under the supervision of a general manager.

³ The Teamsters based its contention upon Article VI, Section 9, of its contract which provides:

In case of the consolidation of the employer with any other company and the employer elects to employ all or part of the employees of such other company then; and in that event, the employees of such other company that the employer elects to employ shall be placed at the bottom of the employer's seniority list in order of seniority amongst themselves. The higher of minimum wage, hour and working conditions of the consolidating companies shall remain in effect.

⁴ See *Matter of Mid West Body and Mfg. Division Electrographic Corporation*, 56 N. L. R. B. 1537.

⁵ See Section IV, *infra*.

⁶ See *Matter of Crescent Bed Company, Inc.*, 29 N. L. R. B. 34; *Matter of Dolese & Shepard Company*, 56 N. L. R. B. 532.

⁷ The Regional Director reported that the Amalgamated submitted 63 dues records; that the names of 48 persons appearing on the records were listed on the Company's pay roll of May 9, 1944; that there are 78 employees in the appropriate unit; and that the dues were dated as follows: 51 in April and May 1944, 7 in March 1944, and 5 in February 1944. The Amalgamated and the Teamsters offer their contracts to establish their interest in the proceeding.

The Company employs approximately 65 workers at the Minneapolis plant, and approximately 400 at its other 5 plants. There is no interchange of employees between the Minneapolis plant and the other plants. In view of the independence of the Minneapolis plant and its separate bargaining history, we are of the opinion that the employees of that plant may function as a separate bargaining unit. On the other hand, they may also properly become part of the existing employer-wide unit. Under these circumstances, we shall defer our determination of the appropriate unit. Such determination will depend, in part, upon the results of the election which we shall herein direct.

There remains for consideration the specific composition of the unit. As indicated above, the Amalgamated would exclude the male employees from the unit, while the Teamsters would include them. The men at the Minneapolis plant are engaged in performing the heavier work in the candling and breaking rooms, in operating the homogenizer and the gas heater which dries the eggs, and in boxing the egg powder. We consider the men to be production employees, and see no valid basis for their exclusion.⁸ We shall include the male employees in the unit.

The parties are agreed that clerical employees and supervisory employees should be excluded from the unit, and that floorladies should be included. It appears, however, that the two floorladies employed by the Company in the candling room and the breaking room exercise a considerable degree of supervision, having from 20 to 30 girls under their direction. They are paid on a salary basis and receive a higher rate of pay than the girls, who are paid on an hourly basis. The floorladies have the authority to effectively recommend discipline, hire, and discharge, of the employees under them. We find that the floorladies fall within our customary definition of supervisory employees, and, accordingly, we shall exclude them from the unit.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among all the employees of the Company's Minneapolis plant, but excluding clerical employees, the floorladies, 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, who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein,⁹ subject to the limitations and additions set forth in the Direction. If the em-

⁸ See *Matter of California Walnut Growers Association*, 18 N. L. R. B. 493, 514; *Matter of General Electric Co.*, 43 N. L. R. B. 453.

⁹ The Amalgamated requests that eligibility be determined by the pay roll prior to the hearing. No persuasive reason appears, however, for departing from our usual practice in this respect.

ployees select the Teamsters as their bargaining representative, they will have thereby indicated a desire to be included in an employer-wide unit. However, if the employees select the Amalgamated as their bargaining representative, they will thereby have indicated a desire to constitute a separate bargaining unit.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with North American Creameries, Inc., Minneapolis, Minnesota, 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 Region 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 all employees of the Company's Minneapolis plant, but excluding clerical employees, the floorladies, 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, 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 they desire to be represented by Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 615, affiliated with the American Federation of Labor, or by Warehouse Employees Union, Local No. 359, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.