

IN the Matter of THE UNITED DAIRY COMPANY and DAIRY WORKERS
DIVISION OF THE UNITED RETAIL, WHOLESALE AND DEPARTMENT
STORE EMPLOYEES OF AMERICA, C. I. O.

Case No. 8-R-1561.—Decided August 15, 1944

Heinlein, James & Jones, by Mr. Thomas J. Jones, of Bridgeport, Ohio, for the Company.

Mr. Charles Scott, of Columbus, Ohio, for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Dairy Workers Division of the United Retail, Wholesale and Department Store Employees of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The United Dairy Company, Barnesville, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Barnesville, Ohio, on June 30, 1944. The Company and the Union 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 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

The United Dairy Company, an Ohio Corporation, is engaged in the processing of milk at its plant in Barnesville, Ohio, one of a number of plants owned by the Company and the only one with

which this proceeding is concerned. The purchases at the Barnesville plant during the calendar year 1943 were valued at approximately \$2,000,000, of which 14½ percent represents shipments into the State of Ohio from points outside the State. During the same period, the Barnesville plant sold fluid milk, evaporated and bulk condensed milk, powdered milk and cream valued in excess of \$2,000,000, of which about 95 percent was shipped to points outside the State of Ohio. Approximately 39 percent of the total 1943 sales were made to the Army, Navy, and Lend-Lease Administration. At the present time, practically all its products are being sold to governmental agencies.

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

II. THE ORGANIZATION INVOLVED

Dairy Workers Division of the United Retail, Wholesale and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its production and maintenance employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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 Union seeks a unit comprising all production and maintenance employees, including the watchman, but excluding office workers, field men, the chief engineer, foremen, superintendents, and all other supervisory employees. The Company agrees that the aforesaid unit is appropriate. The principal issue between the parties with respect to

¹ The Field Examiner reported that the Union submitted 67 authorization cards; that the names of 59 persons appearing on the cards were listed on the company's pay roll of June 20, 1944, which contained the names of 72 persons in the appropriate unit; and that the cards were dated as follows: 46 in May 1944, 6 in June 1944, and 7 undated.

the unit question is the inclusion or exclusion of William E. Moore, Leo Froelich, William Grear, and D. L. Reed. The Company would exclude all of these individuals; the Union would include them.

William E. Moore has charge of making up the farmers' pay rolls, accounting to the farmers for their milk, arranging details with haulers who bring the milk to the plant, consulting with farmers and haulers with respect to loans to be made by the Company or banks, and general accounting. He is paid a salary, whereas admittedly production and maintenance employees are hourly paid. Since the duties and interests of Mr. Moore are more closely identified with those of the office workers whom the parties agreed to exclude, we shall exclude him from the unit.

Leo Froelich is a general utility man; he is hourly paid. At the present time, he is working as a regular production man in operating a filling machine. During the seasonal slack in operations, he also works in the field office where he has occasion to contact farmers. Since we are of the opinion that Mr. Froelich is primarily a production employee, we shall include him in the unit.

William Grear is in charge of control testing and standardization to comply with Government standards. He makes reports to the Government on production and does general accounting work pertaining to production. He works in the laboratory located in the main office building and is on a salary basis. Since his duties are technical and his interests generally dissimilar to those of production and maintenance employees, we shall exclude him from the unit.

D. L. Reed is a school teacher who worked full time for the Company during the summer of 1943, part time during the school year, and is now again working full time during the summer vacation. He works in the laboratory making tests and in the field office helping in the accounting to the farmers for their milk. In view of the fact that he shares the duties of both Mr. Moore and Mr. Grear, we shall, for the reasons which have induced us to exclude those two employees, also exclude Mr. Reed from the unit.

We find that all production and maintenance employees of the Company's Barnesville, Ohio, plant, including the watchman, but excluding office workers, field men, the chief engineer, foremen, superintendents 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,² constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

² Leo Froelich is included in, and William E. Moore, William Grear, and D. L. Reed are excluded from, the terms of the above-described unit.

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.³

The Union contends, over the objection of the Company, that certain temporary or seasonal employees should be permitted to vote in the election. The volume of milk which the Company processes varies during the year depending on milk production on the farm. During the so-called "flush period" from May to July, milk production reaches its peak and the Company is forced to take on additional employees. Beginning in April, the Company gradually increases its working force by adding temporary employees whom it releases as milk production falls off, until by September or October all such employees are laid off. The employees hired during the "flush period" change from year to year; there is no attempt on the part of the Company to recruit the same employees.⁴ Neither has the Company any policy of recruiting permanent employees from among these temporary employees. Since it appears that these temporary employees hired during the "flush period" have no reasonable prospect of either permanent or regular seasonal employment, we are of the opinion that they lack that community of interest with the permanent employees which would entitle them to vote. Accordingly, we find them ineligible to participate in the election.⁵

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

³ The Union requested that the date of eligibility to vote be fixed as of the pay-roll period preceding June 21, 1944, the date the first conference was held with the Field Examiner, in order to enable the maximum number of temporary employees to vote. Since, however, temporary employees are hereinafter declared ineligible, we shall adhere to our customary procedure in fixing the date of eligibility to vote.

⁴ Of the 36 temporary employees hired in 1944, only 2 or 3 worked for the Company the preceding year.

⁵ The reasons which have impelled us to declare temporary employees ineligible are equally applicable to 11 employees who were hired during the 1943 "flush period" as production workers and were retained in the Company's employ during the following winter period for the special purpose of painting and repairing the Company's property. That work has been completed and will not be repeated this winter. These employees are now doing regular production work and will be laid off along with the other temporary employees about September 1, 1944.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The United Dairy Company, Barnesville, Ohio, 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 Eighth 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 the 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 Dairy Workers Division of the United Retail, Wholesale and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

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