

In the Matter of ALLIED MILLS, INC., PLANT #1 and INTERNATIONAL BROTHERHOOD OF FIREMEN & OILERS, LOCAL NO. 8

*Case No. 13-R-2369.—Decided August 31, 1944*

*Miller, Westervelt, Johnson and Thomason, by Messrs. Frank T. Miller and Homer Keller, of Peoria, Ill., for the Company.*

*Mr. John M. Casserly, Jr., of Peoria, Ill., for the Union.*

*Mr. Paul Bisgyer, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Firemen & Oilers, Local No. 8, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Allied Mills, Inc., Plant #1, South Bartonville, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gustaf B. Erickson, Trial Examiner. Said hearing was held at Peoria, Illinois, on August 3, 1944. The Company and the Union appeared and participated.<sup>1</sup> 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

Allied Mills, Inc., operates fifteen plants at which it is engaged in the manufacture of live stock and poultry feeds and the process-

<sup>1</sup> Although duly served with Notice of Hearing, American Federation of Grain Processors, Local 23231, A. F. of L., herein called Grain Processors, did not appear. It, however, filed a formal waiver and disclaimer of interest in this proceeding.

ing of soy beans. At its Plant #1, located at South Bartonville, Illinois, solely involved in this proceeding, the Company manufactures live stock and poultry feeds. During 1943, it purchased approximately \$7,262,465 worth of raw materials, 40 percent of which was shipped from outside the State of Illinois. During the same period, the Company sold finished products valued at about \$9,362,134, of which 90 percent was shipped outside the State of Illinois.

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

## II. THE ORGANIZATION INVOLVED

International Brotherhood of Firemen & Oilers, Local No. 8, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that the Company has refused the Union's request for recognition as the bargaining representative of the Company's boiler room employees until the Union has been certified by the Board in an appropriate unit.

The Company urges the dismissal of the petition on the ground that these employees are already covered, with other employees, in an existing contract entered into with the Grain Processors on February 18, 1944, which became effective on February 26, 1944, for a term of 1 year with a provision for automatic renewal.<sup>2</sup> However, the Company admits that, prior to the negotiation of said contract, and on February 10, 1944, it had been apprised by the Union of its claim to represent the boiler room employees.<sup>3</sup> Under these circumstances, it is obvious that the contract cannot be a bar to this proceeding.

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.<sup>4</sup>

<sup>2</sup> On February 26, 1943, the Company and Grain Processors concluded their first agreement, which also embraced, among other employees of the Company, the boiler-room employees. The agreement provided for automatic renewal in the absence of notice of desire to change the terms thereof given by either party at least 30 days prior to any anniversary date. Since the Grain Processors gave such notice on January 26, 1944, the Company concedes that the resulting contract of February 18, 1944, constituted a new and separate agreement.

<sup>3</sup> On February 22, 1944, the Grain Processors wrote the Union that it was releasing the boiler-room employees from its organization "So that they can join their respective craft unions and have their bargaining rights in the said unions, if they so desire."

<sup>4</sup> The Field Examiner reported that the Union submitted five designation cards bearing the names of persons listed on the Company's pay roll of March 16, 1944, which contained the names of five employees in the appropriate unit.

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 requests a unit of the Company's boiler room employees, consisting of four firemen and one coal, ash and clean-up man. While the Company admits that these employees constitute a distinct and well-defined unit, it nevertheless contends that the history of collective bargaining on a plant-wide basis at its Plant #1 and other plants, renders the requested unit inappropriate. It appears that the boiler room employees desire to be represented by the Union. It also appears that the Grain Processors has relinquished the right to represent and apparently does not intend to bargain for them in the future.

In view of the foregoing facts, we are of the opinion and find that all the Company's boiler room employees at its Plant #1, 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>5</sup>

#### 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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 Allied Mills, Inc., Plant #1, South Bartonville, Illinois, 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 Thirteenth Region, acting in

<sup>5</sup>*Matter of Lever Brothers Company*, 57 N. L. R. B. 139; *Matter of Caterpillar Tractor Company*, 56 N. L. R. B. 122.

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 International Brotherhood of Firemen & Oilers, Local No. 8, Peoria, Illinois,<sup>6</sup> for the purposes of collective bargaining.

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

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<sup>6</sup>The Union requests that its name appear on the ballot as set forth in the Direction of Election.