

In the Matter of THE FAIRMONT CREAMERY COMPANY and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 116, A. F. OF L.

Case No. 18-R-1052.—Decided September 4, 1944

Mr. William J. Scott, for the Board.

Mr. J. H. Deems, of Moorhead, Minn., for the Company.

Messrs. N. E. Kragerud and *M. G. Linemann*, of Fargo, N. Dak., for the Teamsters.

Helstein & Hall, by *Mr. Kenneth J. Enkel*, of Minneapolis, Minn.; *Mr. Joseph Schowalter*, of Moorhead, Minn.; and *Mr. Melvin Gross*, of Casselton, N. Dak., for the UPWA.

Mr. Wallace E. Royster, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 116, A. F. of L., herein called the Teamsters, alleging that a question affecting commerce had arisen concerning the representation of employees of The Fairmont Creamery Company, Moorhead, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Moorhead, Minnesota, on July 27, 1944. The Company, the Teamsters, and United Packinghouse Workers of America, Local 73A, C. I. O., herein called the UPWA, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the hearing, the UPWA moved the dismissal of the petition alleging that the Teamsters had not submitted evidence of substantial membership among the Company's employees. For reasons appearing hereinafter, the motion is denied. 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 Fairmont Creamery Company is a Delaware corporation engaged at Moorhead, Minnesota, in the production, processing, and sale of butter, eggs, milk, cream, poultry, and other dairy products. The total annual business of the Company exceeds several million dollars in value. Sixty percent of the raw materials used at Moorhead is shipped to the Company from points outside the State of Minnesota. More than 90 percent of its finished products is shipped to points outside the State of Minnesota.

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

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 116, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Packinghouse Workers of America, Local 73A, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 3, 1942, the Company and the UPWA entered into a collective bargaining agreement covering all production and maintenance employees with the exception of truck drivers and driver salesmen, and providing for renewal for successive annual terms in the absence of notice of modification or termination by either party not more than 60 days or less than 30 days prior to the anniversary date. The contract was automatically renewed on October 3, 1943, for another year. On June 1, 1944, after the Company had notice of the claim of the Teamsters, an amendment to the contract was executed whereby its term was extended to October 3, 1945. The UPWA contends that the contract as extended constitutes a bar to this proceeding. We do not agree. To give effect to the amending agreement extending the term of the contract, under these circumstances, might permit a labor organization to perpetuate its agency without opportunity to the employees to express a desire for change.¹ Since the renewed term of the contract

¹ See *Matter of Wichita Union Stockyards Company*, 40 N. L. R. B. 369.

will soon expire and since the amendment further to extend it is not effective, we find that neither the original contract nor the amendment thereto constitutes a bar to a present investigation of representatives.

The UPWA also contends that the Teamsters has not made a showing of membership among the Company's employees sufficient to raise a question of representation. According to the Acting Regional Director and the Trial Examiner, the Teamsters submitted current authorization cards from 87 of the Company's 302 employees. While this showing of interest is slightly less than usually required of a petitioner, the consideration that the UPWA contract contains a maintenance of membership provision, persuades us that the showing of the Teamsters is sufficient.²

In accordance with the conclusions above, 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 requests a unit of the production and maintenance employees covered by the UPWA contract and in addition the 21 driver-salesmen and 4 truck drivers employed by the Company.

The UPWA, while not desiring an election, contends that a production and maintenance unit, excluding truck drivers and driver-salesmen, is appropriate for bargaining purposes. The Company maintains a neutral position. The UPWA representative admitted at the hearing that the reason it does not seek to represent truck drivers and driver-salesmen is to avoid competition with the Teamsters and conceded further that in at least one other operation in Minnesota, it represents truck drivers along with production and maintenance employees.

Truck drivers and driver-salesmen, for the most part, work outside the plant and are more highly paid than production employees. However, all employees are covered by the same general labor policy and vacation plan.

The Board has generally considered truck drivers in such an operation as that of the Company to constitute a fringe group which may or may not be consolidated in an industrial unit for the purposes of collective bargaining. We see no reason on the basis of the record before us to exclude the truck drivers and driver-salesmen from an industrial unit when one of the labor organizations desires to include them. On the other hand, we are convinced that truck drivers and driver-salesmen by reason of their special function may constitute a

² See *Matter of Oregon Plywood Company*, 33 N. L. R. B. 1234.

separate appropriate bargaining unit. In this situation we shall permit the employees to express their preference with respect to the bargaining unit in an election. The UPWA does not desire to appear on the ballot in an election confined to employees working as truck drivers and driver-salesmen.

Upon the basis of the entire record, we shall order the conduct of elections among the employees of the Company within each of the groups listed below, excluding from each group office workers and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

Group I

All employees performing the work of truck drivers and driver-salesmen to determine whether or not they desire to be represented by the Teamsters for the purposes of collective bargaining.

Group II

All production and maintenance employees, excluding truck drivers and driver-salesmen to determine whether they desire to be represented for the purposes of collective bargaining by the Teamsters or the UPWA.

Pending the results of the elections, we shall make no determination of the bargaining unit or units.

Those eligible to vote in the elections which we shall direct shall be the employees of the Company described in the voting groups above who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth therein.

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 The Fairmont Creamery Company, Moorhead, Minnesota, 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 employees in the voting groups below 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 any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and excluding further, all office workers and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action: Group I—All employees performing the work of truck drivers or driver-salesmen to determine whether or not they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 116, A. F. of L., for the purposes of collective bargaining; Group II—All production and maintenance employees, excluding truck drivers and driver-salesmen to determine whether they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 116, A. F. of L., or by United Packinghouse Workers of America, Local 73A, C. I. O., 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.