

In the Matter of DETROIT CREAMERY COMPANY, ARCTIC ICE CREAM PLANT, and UNITED DAIRY WORKERS, LOCAL 83, AFFILIATED WITH THE UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, C. I. O.

*Case No. 7-R-1759.—Decided September 8, 1944*

*Butzel, Eaman, Long, Gust & Bills*, by *Mr. Rockwell T. Gust*, of Detroit, Mich., for the Company.

*Messrs. Nicholas J. Rothe and Russell Ballard*, of Detroit, Mich., for the C. I. O.

*Padway & Goldberg*, by *Mr. I. E. Goldberg*, of Milwaukee, Wis., for the A. F. of L.

*Mr. Julius Kirle*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Dairy Workers, Local 83, affiliated with the United Retail, Wholesale and Department Store Employees of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Detroit Creamery Company, Arctic Ice Cream Plant, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Detroit, Michigan, on July 28, 1944. The Company, the C. I. O., and the Milk Drivers and Dairy Employees, Local Union 155, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., herein called the A. F. of L., 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

Detroit Creamery Company, a Michigan corporation, operates a plant at Detroit, Michigan, known as the Arctic Ice Cream Plant. It is engaged in the manufacture of ice cream and related products. During the year 1943, the Company purchased raw materials in excess of \$1,000,000, in value, 28 percent of which was purchased from sources in States other than Michigan. During the same period, the Company's sales were in excess of \$1,000,000, none of which were made or delivered to sources in States other than Michigan.

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

#### II. THE ORGANIZATIONS INVOLVED

United Dairy Workers, Local 83, affiliated with the United Retail, Wholesale and Department Store Employees of America, C. I. O., is a labor organization admitting to membership employees of the Company.

Milk Drivers and Dairy Employees, Local Union No. 155, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On March 30, 1944, the C. I. O., by letter, advised the Company that its employees desired to become members of the C. I. O. and requested that the Company not renew its contract with the A. F. of L. The Company refused to bargain with the C. I. O. because of the existence of a contract with the A. F. of L. dated July 5, 1942 under which the A. F. of L. was recognized as the exclusive bargaining representative. The A. F. of L. contends that this contract is a bar to the instant proceeding. The contract provides that it should continue in force and effect until July 5, 1943, and from year to year thereafter until terminated by either party by written notice 60 days prior to the expiration day in any year. The C. I. O. filed a petition for the determination of representatives on May 1, 1944. Since the request on March 30, 1944, and the petition for a determination of representatives filed on May 1, 1944, were prior to the effective date of the contract's automatic renewal provision, we find that the contract does not constitute a bar to the instant proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. and the A. F. of L. each represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

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 C. I. O. seeks a unit comprising all employees of the Arctic Ice Cream Plant in Detroit, Michigan, excluding clerical employees, engineering and maintenance employees, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action. The Company takes no position with respect to the appropriate unit except to contend that two assistant superintendents, one stockroom clerk and one timekeeper are supervisory employees and should be excluded. The A. F. of L. seeks to include these four employees. The C. I. O. apparently is agreeable to the inclusion of the two assistant superintendents.

*Assistant Superintendents.*—The record clearly discloses that these two employees have the authority to recommend the hire and discharge of employees under their supervision and that such recommendations are normally followed by the superintendent. We find that the assistant superintendents fall within the Board's definition of supervisory employees. We shall exclude them.

*Stockroom Clerk.*—The stockroom clerk has charge of the stockroom. He has one man helping him and occasionally more than one. The record does not disclose, however, that this employee has the authority to make effective recommendations with respect to the status of this helper. This employee, in addition, is in effect a shipping and receiving clerk and does a substantial part of the physical labor involved in connection with the shipping and receiving. We find that the stockroom clerk does not possess supervisory authority within the Board's customary definition. We shall include him.

*Timekeeper.*—The evidence in the record is uncontradicted that this employee compiles figures and records on the basis of which the

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<sup>1</sup> The Regional Director reported that the C. I. O. submitted 115 cards, all of which bore apparently genuine original signatures; that the names of 97 persons appearing on the cards were listed on the Company's pay roll of June 10, 1944, which contained the names of employees in the appropriate unit; and that 4 of these cards were dated in October 1943, and the balance in April 1944. The pay roll of June 10, 1944, lists 164 employees in the alleged appropriate unit.

The A. F. of L. submitted an unsigned statement of dues payments for the month of June 1944. One hundred thirty five names appeared upon the list and all were the names of persons on the pay roll list of June 10, 1944.

employees in the alleged unit are paid. Since it has been the Board's practice to exclude such employees from plant-wide units of the kind here involved, we shall exclude him.

We find that all employees of the Arctic Ice Cream Plant in Detroit, Michigan, including the stockroom clerk, but excluding clerical employees, engineering and maintenance employees, the timekeeper, assistant superintendents, and all or any other 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.

#### V. THE DETERMINATION OF REPRESENTATIVES

The A. F. of L. contends, over the objection of the C. I. O., that certain temporary or seasonal employees should not be permitted to vote in the election, notwithstanding the fact that these seasonal employees are presently covered by the Company's contract with the A. F. of L. and the Company has and does check off dues to the A. F. of L. with respect to all seasonal employees. The ice cream season is at its "peak period" during the summer months and during this period the Company is forced to take on additional employees. These seasonal employees are almost, if not entirely, high school boys and girls, who work for the Company during the summer months. Although the majority of them are employed after the close of school, some of them start working part time shortly before school closes and they leave the Company's employ in the fall. There is no evidence of any attempt on the part of the Company to recruit the same employees from year to year; neither has the Company any policy of recruiting permanent employees from among these seasonal employees. Inasmuch as these school boys and girls will terminate their employment with the Company at the end of the summer season and since it appears that these temporary employees, hired during the "peak 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.

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 Detroit Creamery Company, Arctic Ice Cream Plant, Detroit, Michigan, 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 Seventh 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 of the armed forces of the United States who present themselves in person at the polls, but excluding seasonal employees and 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 United Dairy Workers, Local 83, affiliated with the United Retail, Wholesale and Department Store Employees of America, C. I. O., or by Milk Drivers and Dairy Employees Local Union No. 155, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L. for the purposes of collective bargaining, or by neither.