

In the Matter of CASS-CLAY COOPERATIVE CREAMERY ASSOCIATION *and*
GENERAL DRIVERS, HELPERS & INSIDE WORKERS LOCAL 116, A. F. L.

In the Matter of CASS-CLAY COOPERATIVE CREAMERY ASSOCIATION *and*
UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL 252, C. I. O.

Cases Nos. 18-R-1032 and 18-R-1043

SUPPLEMENTAL DECISION

AND

DIRECTION

October 26, 1944

On July 27, 1944, the Board issued a Decision and Direction of Election in the above-entitled proceeding.¹ On August 11, 1944, pursuant to the Decision and Direction of Election, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Eighteenth Region (Minneapolis, Minnesota). Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board. No Objections to the Conduct of the Election were filed by any of the parties within the time provided therefor.

The Tally shows that in Case No. 18-R-1043, of the approximately 42 eligible voters, 27 cast valid votes, of which 13 were for the CIO, 4 were for the AFL, and 10 were against either union. Nine ballots were challenged.

On August 29, 1944, the Regional Director, acting pursuant to Article III, Section 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended, issued and duly served upon the parties a Report on Challenges in which he recommended that the challenges to the ballots of Johanna Arneson, Anna Foss, Geneva Kuehl, Shirley Morrison, Jeanette Thoenke, Maria Paulson, and Dolores Ruziska should be overruled, and the challenged ballots opened and counted. The Regional Director further recommended that the challenges to the ballots of Arthur Aas and Iola Lorentz should be sustained. On August 31, 1944, the Company filed Exceptions to said Report on Challenges. On September 7, 1944, the Board, after con-

¹ 57 N. L. R. B. 719.

58 N. L. R. B., No. 246.

sidering the Report on Challenges and the Exceptions filed thereto, ordered that a hearing be held on the issues thus raised. Pursuant to such order, the Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Moorhead, Minnesota, on September 19 and 20, 1944. The Company, the AFL, and the CIO 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:

SUPPLEMENTAL FINDINGS OF FACT

Eligibility of Johanna Arneson, Anna Foss, Geneva Kuehl, Shirley Morrison, Jeanette Thoemke, Maria Paulson, and Dolores Ruziska

The AFL and the Company challenged the votes of all of the above-named employees on the ground that they were engaged in a part-time operation and therefore were ineligible to vote. Although the number of chickens dressed varies from day to day depending on the volume of poultry delivered to the plant by the neighboring farmers, substantially the same group of women are called upon each time to do the dressing work. Each of the women whose vote was challenged had worked a considerable number of hours for the Company.² The interest of these employees, in the terms and conditions of employment, is therefore sufficiently substantial under well-recognized principles of the Board to entitle them to vote in the election.³

In support of their challenges, the AFL and the Company further contend that all of the girls except Dolores Ruziska terminated their employment with the Company on August 10, 1944, the day before the election and that Dolores Ruziska ended her employment with the Company on August 5, 1944, the last day of her employment. As previously stated, dressing operations vary from day to day, depending upon the receipts to live poultry. Customarily Briggs, the department head, either directly or through Arthur Aas, another employee,

² Johanna Arneson worked 194 hours from the time of her employment in May 1944 to July 1944 when she was injured on the job, Anna Foss worked 384 hours from January 1944 to August 10, 1944, Geneva Kuehl worked 244 hours from June 1944 to August 10, 1944, Shirley Morrison worked 170 hours from July 1944 to August 10, 1944, Maria Paulson worked 181 hours from June 1944 to August 10, 1944, Jeanette Thoemke worked 365 hours from January 1944 to August 10, 1944, and Dolores Ruziska worked 318 hours from January 1944 to August 5, 1944.

³ See *Matter of B. Hoberman*, 30 N. L. R. B. 1241, *Matter of Delaware-New Jersey Ferry Company*, 30 N. L. R. B. 820; *Matter of International Mercantile Marine Company*, 3 N. L. R. B. 751; *Matter of Union Premier Food Stores, Inc.*, 11 N. L. R. B. 270.

gave daily instructions to Iola Lorentz, the supervisor of the dressing operation, concerning the next day's work. On the basis of those instructions, Lorentz would notify her crew members about the expectancy of work for the following day. The parties are in disagreement about the instructions given to Lorentz on August 9, 1944, concerning the work to be done on August 10, 1944. Briggs and other witnesses for the Company testified that Lorentz was told that there would be a full day's work on August 10, 1944. Lorentz and other witnesses, on the other hand, testified that Aas informed her that there was enough work to last only until noon on August 10, 1944. Regardless of the instructions actually given to Lorentz, it is not seriously disputed that Lorentz did instruct her crew members that they would work only until noon on August 10, 1944. Shortly before noon on August 10, 1944, the girls were asked to pick another battery of chickens, which they did, completing their work about 2 p. m. A number of girls refused to work beyond that time when requested to do so because they had not come to work a full day.⁴ All of the girls then left the premises. In so doing there is no evidence that they had any intention of quitting their jobs the day before the election. The contrary was the fact, for on the evening of August 10, 1944, Lorentz called Briggs to tell him that the girls wanted to work the following day. Although stating that there would be no work that day, Briggs at that time did not maintain that the girls had either quit or been discharged. The first intimation any of the girls received that the Company no longer regarded them as in its employ occurred when they were challenged at the election.

Although *Johanna Arneson's* vote was challenged on the same grounds as were the ballots cast by the other girls, it appears that she did not work on August 10, 1944; she had injured her hand while working in July 1944 and at the time of the election was receiving workmen's compensation. Dolores Ruziska also did not work on August 10, 1944; the last day she did work was August 5, 1944. She explained her absence as due to the illness of her child. Arthur Aas testified that before the child became ill, Ruziska had told him that she was going to take the week of August 7, 1944, off to do some canning. Whatever the explanation for her absence, it is clear that she had no intention of quitting her job and that the Company did not regard her absence as constituting a cause for discharge.

We find, in accordance with the recommendation of the Regional Director, that *Johanna Arneson, Anna Foss, Geneva Kuehl, Shirley Morrison, Jeanette Thoemke, Maria Paulson, and Dolores Ruziska,*

⁴ Some of the girls had not brought their lunches with them and were hungry. One of the witnesses also testified that, relying on Lorentz' statement, she had arranged to have her children cared for during part of the day only and therefore could not work the whole day.

did not terminate their employment prior to the election and were entitled, therefore, to vote.

Eligibility of Arthur Aas

The vote of Arthur Aas was challenged by the CIO on the ground that he is a supervisory employee. The evidence establishes that Aas is in reality little more than a helper in the poultry department. He helps receive and feed the chickens, cleans, packs, and does a variety of odd jobs about the department for which services he is paid 46½ cents per hour. While he has, on occasion, transmitted orders to Lorentz from Briggs, it appears that he has functioned in this regard as little more than a messenger. We find, contrary to the Regional Director's recommendation, that Arthur Aas is not a supervisory employee, and shall direct that his ballot be opened and counted.

Eligibility of Iola Lorentz

The AFL and the Company challenged Iola Lorentz' ballot on the ground, *inter alia*, that she is a supervisory employee. At the hearing on challenges, the CIO conceded her supervisory status. Lorentz is in charge of all the girls engaged in the dressing operations; she selects and calls in the girls each day, and supervises their work. Her hourly rate is also higher than that of the other girls. We find that Iola Lorentz is a supervisory employee within our usual definition, and shall, accordingly, sustain the Regional Director's recommendation that her ballot not be counted.

DIRECTION

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, Sections 9 and 10, 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 Cass-Clay Co-operative Creamery Association, Moorhead, Minnesota, the Regional Director for the Eighteenth Region, shall, pursuant to said Rules and Regulations, within ten (10) days from the date of this Direction open and count the challenged ballots of Johanna Arneson, Anna Foss, Geneva Kuehl, Shirley Morrison, Jeanette Thoemke, Maria Paulson, Dolores Ruziska, and Arthur Aas, and shall thereafter prepare and cause to be served upon the parties a Supplemental Tally of Ballots including therein the count of said challenged ballots.