

In the Matter of RIECK-McJUNKIN DAIRY COMPANY, HOFFMAN DIVISION and UNITED DAIRY WORKERS OF AMERICA, LOCAL 382, AFFILIATED WITH UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, AFFILIATED WITH C. I. O.

In the Matter of RIECK-McJUNKIN DAIRY COMPANY, HOFFMAN DIVISION, BEDFORD, PA., PLANT and UNITED DAIRY WORKERS OF AMERICA, LOCAL 382, AFFILIATED WITH UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, AFFILIATED WITH C. I. O.

Cases Nos. 6-R-1004 and 6-R-1005 respectively.—Decided November 7, 1944

Mr. C. J. Schove, of Pittsburgh, Pa., for the Company.

Mr. Sylvan Libson, of Pittsburgh, Pa., for the United.

Mr. Ben Paul Jubelirer, of Pittsburgh, Pa., for the Salesmen.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by United Dairy Workers of America, Local 382, affiliated with United Retail, Wholesale and Department Store Employees of America, affiliated with C. I. O., herein called the United, each alleging that a question affecting commerce had arisen concerning the representation of employees of Rieck-McJunkin Dairy Company, Hoffman Division, Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Altoona, Pennsylvania, on October 4, 1944. The Company, the United, and Milk and Ice Cream Salesmen, Drivers and Dairy Employees, Local Union No. 205, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., herein called the Salesmen, appeared and par-

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ticipated.¹ 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

Rieck-McJunkin Dairy Company, a subsidiary of National Dairy Products Corporation, is a Pennsylvania corporation having its principal office in Pittsburgh, Pennsylvania. It operates plants in various localities in Pennsylvania and West Virginia for the processing, sale, and distribution of bulk and bottled fluid milk and cream, and miscellaneous dairy products. We are solely concerned in this proceeding with the Company's Altoona and Bedford, Pennsylvania, plants. From July 1, 1943, to June 30, 1944, the Company purchased for use at its Altoona plant raw and other materials valued in excess of \$1,000,000, of which approximately 36 percent came from points outside the Commonwealth of Pennsylvania. For the same period, products finished at its said plant exceeded \$1,000,000 in value, of which approximately 15 percent was sold and shipped to points outside that State.

The Company also purchased from July 1, 1943, to June 30, 1944, for use at its Bedford plant raw and other materials amounting to more than \$200,000 in value, of which approximately 3.5 percent was received from points outside the Commonwealth of Pennsylvania. For the same period, products finished at its said plant were valued at more than \$200,000, of which approximately 22 percent was sold and shipped to points outside that State.

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

II. THE ORGANIZATIONS INVOLVED

United Dairy Workers of America, Local 382, 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.

¹ Although duly served with Notice of Hearing, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 110, A. F. L., failed to appear. However, it sent a telegram addressed to the Acting Regional Director for the Sixth Region stating that it relinquished its claim to represent employees at the Company's Altoona and Bedford, Pennsylvania, plants.

Milk and Ice Cream Salesmen, Drivers and Dairy Employees Local Union No. 205, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., is a labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to the United as the exclusive bargaining representative of certain of its employees at either its Altoona or Bedford, Pennsylvania, plant until the United has been certified by the Board in an appropriate unit.

Statements of a Board Field Examiner, introduced into evidence at the hearing, indicate that the United represents a substantial number of employees in each of the units hereinafter found appropriate.²

We find that questions affecting commerce have 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 UNITS

The United seeks a unit of all production and maintenance employees at the Company's Altoona plant, including receiving, shipping, operating,³ and cabinet service employees, and intercity and freight drivers (transportation employees), but excluding office and clerical employees, salesmen, laboratory employees, retail and wholesale drivers, the superintendent, foremen, and other supervisory personnel. Except for the retail and wholesale drivers whom it would include, the Salesmen is in agreement with respect to the unit sought by the United. The Company takes no specific position as to the composition of this unit, although it apparently approves the inclusions and exclusions not in dispute between the unions.

We have examined the record and find no plausible reason for excluding the retail and wholesale drivers. In fact, as will hereinafter

² The Field Examiner reported that the United submitted 35 authorization cards bearing the names of persons listed on the Company's pay roll of July 29, 1944, which contained the names of 113 employees at its Altoona plant in the unit alleged to be appropriate by the United in Case No. 6-R-1004.

The Field Examiner also reported that the United submitted 10 authorization cards bearing the names of persons listed on the Company's pay roll of July 29, 1944, which contained the names of 10 employees at its Bedford plant in the unit alleged to be appropriate by the United in Case No. 6-R-1005.

At the hearing, the Trial Examiner stated for the record that the Salesmen submitted 36 application for membership cards bearing the names of persons listed on the Company's pay roll of September 30, 1944, which contained the names of 104 employees at its Altoona plant in one unit alleged to be appropriate by the Salesmen.

He also stated for the record that the Salesmen submitted 2 application for membership cards bearing the names of persons listed on the Company's pay roll of September 30, 1944, which contained the names of 10 employees at its Bedford plant in the other unit alleged to be appropriate by the Salesmen.

³ These employees service the Company's trucks.

be noted, the United would include the same classifications in its desired unit of Bedford plant employees. We shall include the retail and wholesale drivers.

There is no disagreement between the unions regarding the unit of employees at the Bedford plant. Both request a unit of all production and maintenance employees, including the receiving employee, shipping employees, and all drivers, but excluding office and clerical and supervisory employees. The Company's position is neutral with respect to this unit. We are satisfied with the propriety of the proposed unit of Bedford plant employees.

Accordingly, we find that the following units are appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All production and maintenance employees at the Company's Altoona, Pennsylvania, plant, including receiving, shipping, operating, and cabinet service employees, intercity and freight drivers (transportation employees), and wholesale and retail drivers, but excluding office and clerical employees, salesmen, laboratory employees, the superintendent, foremen, 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. All production and maintenance employees at the Company's Bedford, Pennsylvania, plant, including the receiving employee, shipping employees, and all drivers, but excluding office and clerical 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.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the appropriate units 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 in the Direction.⁴

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations

⁴ All parties stipulated that certain school boys and school girls temporarily employed at the Altoona plant were ineligible to vote in the election, and we so find.

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 Rieck-McJunkin Dairy Company, Hoffman Division, Pittsburgh, Pennsylvania, separate 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 Sixth 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 units 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 re-hired or reinstated prior to the date of the elections, to determine whether they desire to be represented by United Dairy Workers of America, Local 382, affiliated with the C. I. O., or by Milk and Ice Cream Salesmen, Truck Drivers and Dairy Employees, Local Union No. 205, A. F. of L.,⁵ for the purposes of collective bargaining, or by neither.

⁵ The United and the Salesmen request that their names appear on the ballot as set forth in the Direction of Elections.