

In the Matter of LAND O'LAKES DAIRY COMPANY ¹ and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION 736, A. F. OF L.

Case No. 18-R-1100.—Decided November 14, 1944

Mr. Harold Jordan, of St. Paul, Minn., for the Company.

Mr. Greg Helwig, of Brainerd, Minn., for the Union.

Mr. Jack Mantel, 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, and Helpers of America, Local Union 736, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Land O'Lakes Dairy Company, Brainerd, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Brainerd, Minnesota, on October 4, 1944. The Company and the Union 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. At the hearing, the Company moved to dismiss the petition on the grounds (1) that the Board lacked jurisdiction, and (2) that the Board should not proceed in the matter at this time, because of an election conducted by the State of Minnesota Labor Conciliator. The Trial Examiner reserved ruling on the motion for determination by the Board. For the reasons indicated below the motion to dismiss

¹ The Trial Examiner granted the Union's motion to amend the formal papers so as to designate the company as set forth above, instead of Land O'Lakes Creameries, Incorporated.

is hereby denied. 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

Land O'Lakes Dairy Company, a Minnesota corporation, operates a plant at Brainerd, Minnesota, where it is engaged in the manufacture of powdered milk. Said plant is operated by the Company under a lease from the United States Government. The Company is a subsidiary of Land O'Lakes Creameries, Incorporated, herein called the Creamery Company. The Creamery Company provides the Dairy Company with raw materials which the Creamery Company secures from its member creameries in the vicinity of Brainerd, Minnesota. During the period of January 1 to October 1, 1944, the finished products of the Dairy Company were valued at approximately \$500,000, of which 95 percent was sold by the Creamery Company to the United States Government for Lend-Lease purposes.

We find, contrary to the contention of the Company, that it is engaged in commerce with the meaning of the National Labor Relations Act.²

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 736, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees, because the Union lost an election which was conducted by the Minnesota Labor Conciliator on June 9, 1944, and contends that the Board is precluded from conducting another election among its employees until 1 year has elapsed from the date of such election. Although the Minnesota Labor Relations Law provides that a petitioner is precluded from filing a new petition for the period of 1 year, unless unusual circumstances are shown, such law cannot operate to divest the Board of jurisdiction in this proceeding.³ Even if this Board had conducted the election held on June 9, 1944, it would not constitute a bar to the present pro-

² See *Matter of Land O'Lakes Dairy Company*, 48 N. L. R. B. 1028.

³ See *Land O'Lakes Dairy Company*, footnote 2, *supra*.

ceeding, since the Union has submitted a substantial number of designations all dated subsequent thereto, and indicating that a majority of the Company's employees presently desire representation by the Union.⁴

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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

We find, in substantial accordance with a stipulation of the parties that all production and maintenance employees at the Company's plant at Brainerd, Minnesota, excluding office and clerical employees, the plant manager, plant foreman, truck foreman, 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, 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

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 pay-roll 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 Land O'Lakes Dairy Company, Brainerd, Minnesota, 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 super-

⁴ *Matter of Wagner Electric Corporation*, 53 N L R. B. 543.

⁵ The Field Examiner reported that the Union submitted 18 application for membership cards, 9 of which were dated July 1944, and 9 dated August 1944. The Field Examiner further reported that there are 28 employees in the appropriate unit.

vision 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 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 Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 736, A. F. of L., for the purposes of collective bargaining.