

IN the Matter of J. CHARLES McCULLOUGH SEED COMPANY *and* GENERAL WAREHOUSEMEN, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION OF AMERICA, LOCAL 418, A. F. L.

Case No. 9-R-1565.—Decided November 14, 1944

Mr. Cornelius J. Petzhold, of Cincinnati, Ohio, for the Company.
Messrs. H. J. Zolg, Bert Cook, and James Tone, of Cincinnati, Ohio, for the Teamsters.

Mr. Oliver W. Hardin, of Cincinnati, Ohio, for the Association.
Mr. Thomas A. Ricci, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by General Warehousemen, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, Local 418, A. F. L., herein called the Teamsters, alleging that a question affecting commerce had arisen concerning the representation of employees of J. Charles McCullough Seed Company, Cincinnati, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin E. Cook, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on October 12, 1944. The Company, the Warehousemen, and the J. Charles McCullough Seed Company Employees Association, herein called the Association, 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

J. Charles McCullough Seed Company, an Ohio corporation, has its principal place of business at Cincinnati, Ohio, where it is engaged in the processing and sale of seeds. This proceeding solely concerns certain of the Company's employees at its warehouse located on East Third Street, Cincinnati, Ohio. The Company annually purchases seed valued at approximately \$1,000,000, of which approximately 90 percent is shipped to its warehouse from points outside the State of Ohio. Its annual sales exceed \$1,500,000, and approximately 90 percent of its finished products is shipped to points outside the State of Ohio.

The Company does not deny, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

General Warehousemen, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, Local 418, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

J. Charles McCullough Seed Company Employees Association is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 10, 1944, the Teamsters requested that the Company recognize it as the bargaining representative of certain of the Company's warehouse employees. The Company refused to grant such recognition until the Teamsters has been certified by the Board in an appropriate unit.

On September 15, 1937, the Company's warehousemen, represented by a committee of six, executed a collective bargaining contract with the Company. The contract provided as follows:

(11) It is agreed that this agreement shall remain in full force and effect to July 1, 1938, and after said time this agreement shall continue in full force and effect on a year to year basis, with the provision that said agreement may be amended or cancelled by either party as follows: If either party desires to amend or cancel this agreement after June 30, 1938, a thirty (30) day written notice to that effect shall be given to the other party.

Thereafter, from 1939 to 1943, the parties executed five supplementary amendments to the 1937 contract, the bargaining agency of the employees then being known as the J. Charles McCullough Seed Com-

pany Employees Association. The last of these amendments, dated October 23, 1943, provided that the 1937 contract "be hereby continued in effect to July 1, 1944." The Association contends that the 1937 contract was continued in effect on July 1, 1944, for a further period of 1 year and is therefore a bar to the instant proceeding. The Teamsters contends that the 1943 amendment cannot be construed as extending the 1937 contract beyond July 1, 1944. It is clear that, as originally written, the contract was terminable at any time after June 30, 1938, upon 30 days' written notice by either party. Assuming that the contract was continued in operation on July 1, 1944, it was at best an agreement of indefinite duration which had been in effect for more than 1 year, and therefore cannot be deemed a bar to a present determination of representatives.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Teamsters represents a substantial number of employees in the unit hereinafter found appropriate.²

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

All the parties are in agreement that the appropriate unit should comprise all the Company's warehousemen, excluding office and clerical employees, foremen, assistant foremen, the shipping clerk,³ and other supervisory employees. However, the Teamsters would exclude maintenance employees and the janitor, whom the Association and the Company would include.

The maintenance employees repair machinery in the plant and make minor building repairs. They work together with the warehousemen, have the same working conditions, and, since 1937, have been included with the warehousemen in the same bargaining agreements. The janitor, whose duty it is to clean the shop, has also been included in previous contracts and works together with the other warehouse employees. Under the circumstances, the maintenance employees and the janitor have substantially the same interests as the warehousemen and we shall include them in the appropriate unit.

We find that all warehousemen employed at the Company's Third Street, Cincinnati, Ohio, plant, including the janitor and maintenance

¹ *Matter of Allegheny Ludlum Steel Corporation*, 40 N. L. R. B. 1285.

² The Field Examiner reported that the Teamsters submitted 21 application for membership cards; that the names of 18 persons appearing on the cards were listed on the Company's pay roll of August 24, 1944, which contained the names of 31 employees in the alleged appropriate unit; and that the cards were dated August 1944.

The Association relies upon its contract to establish its interest in this proceeding.

³ Undisputed evidence in the record reveals that the shipping clerk has power effectively to recommend changes in the status of other employees.

employees, but excluding office and clerical employees, foremen, assistant foremen, the shipping clerk, 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.⁴

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 J. Charles McCullough Seed Company, Cincinnati, Ohio, 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 Ninth 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 they desire to be represented by General Warehousemen, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, Local 418, affiliated with the American Federation of Labor, or by The Employees Association of the J. Charles McCullough Seed Company, for the purposes of collective bargaining, or by neither.

⁴The Association requests that its name appear on the ballot as set forth in the Direction of Election.