

In the Matter of BURRUS FEED MILLS, DALLAS PLANT and CONGRESS OF  
INDUSTRIAL ORGANIZATIONS

*Case No. 16-R-1011.—Decided November 22, 1944*

*Mr. Alto B. Cervin*, of Dallas, Tex., for the Company.

*Messrs. A. R. Hardesty and Lee Metker*, of Dallas, Tex., for the Union.

*Mr. Bernard Goldberg*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Burrus Feed Mills, Dallas Plant, Dallas, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Glenn L. Moller, Trial Examiner. Said hearing was held at Dallas, Texas, on October 9, 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. 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

Burrus Feed Mills, a subsidiary of Tex-O-Kan Flour Mills Company, a Delaware corporation, is engaged in manufacturing stock and poultry feed at its mill in Dallas, Texas. The Company annually sells products valued at approximately \$4,000,000, of which about 5 percent is sold and shipped to customers located outside the State of Texas.

About 5 percent of its annual purchases is shipped to the Dallas plant from points outside the State of Texas.

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

## II. THE ORGANIZATION INVOLVED

Congress of Industrial Organizations 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 production and maintenance employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union 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 Union seeks a unit comprising all production and maintenance employees, including shipping department employees, the millwright, elevator operator, truck drivers, and truck drivers' helpers, but excluding office and clerical employees, technicians, professional employees, the superintendent, officials, foremen, and other supervisory personnel. The Company while agreeing generally with the composition of the aforesaid unit contends that the shipping department employees, the millwright, the elevator operator, the truck drivers, and the truck drivers' helpers should also be excluded from the unit.

*Millwright.* The Company would exclude this employee on the ground that he is a technician; the Union would include him. It appears that the millwright is merely a highly skilled mechanic who repairs, installs or supervises the installation of various types of electrical equipment. He is not an engineer. Like other employees, he punches a time clock, is hourly paid, and enjoys similar vacation privileges. Since the duties of the millwright are clearly those of a maintenance employee, we shall include him in the unit.

<sup>1</sup> The Field Examiner reported that the Union submitted 48 membership cards; that the names of 39 persons appearing on the cards were listed on the Company's pay roll of August 1, 1944, which contained the names of 54 employees in the appropriate unit; and that the 39 cards were dated in July 1944.

*Shipping Department Employees.* The Union would include, the Company exclude these employees. The shipping department consists of a day shipping clerk, a night shipping clerk, a front door trucker who assists the day shipping clerk, and usually one or two helpers who aid the night shipping clerk. The day shipping clerk supervises the work of the truck drivers and their helpers and with respect to such employees has the power to hire and to discharge. Accordingly, we find him to be a supervisory employee. The night shipping clerk has no supervision over the truck drivers and their helpers. It is his duty to load the trucks at night in readiness for the following day's deliveries. He is usually assisted in this manual work of loading by one or two helpers; however, at the time of the hearing he was doing all the work of loading himself. The front door trucker trundles out bags of feed to customers who accept delivery at the warehouse platform, helps stack up the bags in the warehouse and does a little cleaning. We shall exclude the day shipping clerk because of his supervisory status, but shall include in the unit the remaining shipping department employees.

*Truck Drivers and Truck Drivers' Helpers.* The Union desires to include these categories of employees, while the Company seeks to exclude them. No other union is attempting to organize the truck drivers and their helpers, who are engaged in making outside deliveries.<sup>2</sup> Under these circumstances and in accord with previous decisions of the Board, we shall include the truck drivers and their helpers in the unit.<sup>3</sup>

*Elevator Operator.* The Union would include, whereas the Company would exclude, this employee from the unit. The elevator operator, in addition to operating certain grain distribution machinery, also oversees the work of scalers and sack sewers. With respect to such employees, the record establishes that he has made recommendations for hiring, transferring, and the granting of wage increases which have been given "considerable weight by his superiors." Accordingly, we find that the elevator operator is a supervisory employee within our usual definition and shall exclude him from the unit.

We find that all production and maintenance employees, including the shipping department employees, the millwright, truck drivers and truck drivers' helpers, but excluding the day shipping clerk, the elevator operator,<sup>4</sup> office and clerical employees, technicians, professional employees, the superintendent, officials, foremen and all other super-

<sup>2</sup> A representative of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. L., notified a Field Examiner for the Board on August 24, 1944, that his union had no interest in this proceeding.

<sup>3</sup> See *Matter of The Cincinnati Times-Star Co.*, 39 N. L. R. B. 39; *Matter of Little Rock Furniture Manufacturing Company*, 39 N. L. R. B. 892; *Matter of Pidgeon Thomas Iron Company*, 32 N. L. R. B. 295.

<sup>4</sup> Willie Gillens.

visory 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 Burrus Feed Mills, Dallas Plant, Dallas, Texas, 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 Sixteenth 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 any 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 Congress of Industrial Organizations for the purposes of collective bargaining.