

In the Matter of MILLIKEN-TOMLINSON Co. and TRUCK DRIVERS,  
WAREHOUSEMEN & HELPERS LOCAL 340, A. F. OF L.

*Case No. 1-R-2095.—Decided December 7, 1944*

*Mr. Nathan W. Thompson, of Portland, Me., and Mr. Vernon C. Stoneman, of Boston, Mass., for the Company.*

*Mr. Raymond M. Conary and Mr. David Hastings, of Portland, Me., for the Union.*

*Mr. Philip Licari, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Truck Drivers, Warehousemen & Helpers Local 340, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Milliken-Tomlinson Co., Portland, Maine, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John W. Coddair, Jr., Trial Examiner. Said hearing was held at Portland, Maine, on October 28, 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

Milliken-Tomlinson Co., a Maine corporation with its principal office and place of business in Portland, Maine, is engaged in the purchase, sale, and distribution of groceries and produce. In connection with its activities, the Company operates several grocery and produce distributing centers consisting of a main warehouse in Port-

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land, and branch warehouses in Bangor, Lewiston, and Presque Isle, all in the State of Maine. Only the Lewiston warehouse is involved in this proceeding. During the past 6 months, the Company purchased groceries and produce valued at approximately \$2,500,000, of which in excess of 50 percent was shipped from points outside the State of Maine. During the same period the Company's total sales were approximately \$2,800,000, of which \$180,000 worth of groceries and produce was shipped to points outside the State of Maine.

While the Company admits that its over-all activities affect commerce within the meaning of the National Labor Relations Act, it, nevertheless, contends that its Lewiston warehouse activities, standing alone, do not affect commerce within the meaning of the Act.

During the past 6 months, the Company's Lewiston warehouse received groceries and produce valued at approximately \$552,000, 20 percent of which was shipped to it by the Company's Portland warehouse, and 90 percent of which was shipped to it directly by producers. Approximately 40 percent of all such groceries and produce was shipped to the Lewiston warehouse from points outside the State of Maine. All shipments to the Lewiston warehouse are made via railroads and trucks. During the same period, the Company's Lewiston warehouse sold solely within the State of Maine groceries and produce valued at approximately \$600,000. The record discloses that the Lewiston warehouse is an integral part of the Company's entire operations.

In view of the foregoing facts, contrary to the Company's contention, we find that its Lewiston warehouse activities affect commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Truck Drivers, Warehousemen & Helpers Local 340, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about September 5, 1944, the Union advised the Company that it represented a majority of certain of the Company's employees and wished to be recognized as their sole bargaining representative. The Company refused to recognize the Union on the ground that the unit sought by the Union was inappropriate.

A statement of a Field Examiner for the Board, 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>

<sup>1</sup> The Field Examiner reported that the Union submitted 8 application cards, all of which bear names of persons appearing on the Company's pay roll of September 16, 1944, which

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 of "all truck drivers, helpers, warehousemen and regular part-time employees<sup>2</sup> in the Lewiston, Maine, branch of the Company, except for salesmen, executives, supervisors and main office employees." The Company, on the other hand, contends that all employees working throughout all its warehouses constitute the appropriate unit.

In connection with its activities, the Company operates one main warehouse in Portland and 3 branch warehouses in various parts of the State of Maine. The Company maintains 1 of these branch warehouses in Lewiston, Maine, which is 35 miles distant from Portland, Maine. At its Lewiston warehouse, the Company employs, among others, 13 employees classified as warehousemen, truck drivers, and helpers, all of whom are residents of Lewiston and its vicinity. This warehouse is in charge of a resident manager who has the power to hire employees, subject to the approval of the Company's main office, but he can discharge them at will. Despite the facts that the operations of all the Company's warehouses are somewhat interrelated and the Company's labor policies and conditions of employment are centrally controlled, it appears that the employees of the Lewiston warehouse comprise a homogeneous group under separate supervision, and that there is no interchange of employees between the Lewiston warehouse and the Company's other warehouses except in cases of promotion. Moreover, the Union's recent organizational efforts have been confined to the employees of the Company's Lewiston warehouse, and these employees desire to be represented by the Union.<sup>3</sup>

We find that all the Company's truck drivers, helpers, warehouseman, and regular part-time employees working at its Lewiston, Maine, warehouse, excluding salesmen, office employees, supervisors, executives, 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.

contained the names of 13 employees in the alleged appropriate unit; and that 5 cards were dated between August and September 1944, and 3 were undated.

<sup>2</sup> The Company employs some school students who work as warehousemen full-time during vacation periods and part-time during the rest of the school year.

<sup>3</sup> In 1941, after the Union filed a petition for certification with the Board, a consent election was held among the Company's Portland warehouse employees, which the Union lost. Case No. 1-R-571.

## 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 Milliken-Tomlinson Co., Portland, Maine, 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 First 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 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 Truck Drivers, Warehousemen & Helpers Local 340, A. F. of L., for the purposes of collective bargaining.