

In the Matter of BURGIE VINEGAR COMPANY and LOCAL INDUSTRIAL UNION No. 1356, AFFILIATED WITH CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 15-R-1233.—Decided January 4, 1945

Messrs. Lowell W. Taylor and J. L. Burgie, of Memphis, Tenn., for the Company.

Mr. W. A. Copeland, of Memphis, Tenn., for the Union.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE.

Upon a petition duly filed by Local Industrial Union No. 1356, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Burgie Vinegar Company, Memphis, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Walter Wilbur and Laurence H. Whitlow, Trial Examiners. Said hearing was held at Memphis, Tennessee, on October 27 and November 28, 1944. The Company and the Union appeared and participated.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 Company's motion to require the Union to file an indemnity bond is hereby denied. The Trial Examiners' 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:

¹The Company appeared specially for the purpose of contesting jurisdiction on the ground that the Act is unconstitutional, predicating its position on that portion of Section 10 (b) thereof which provides that the rules of evidence prevailing in courts of law or equity shall not be controlling. Reserving its position, it participated in the proceeding. We find no merit in the foregoing jurisdictional contention of the Company.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Burgie Vinegar Company, a Tennessee corporation, is engaged in the business of manufacturing vinegar, hot sauce, potato sauce, and mustard, at Memphis, Tennessee. A major portion of its production is concerned with the manufacture of vinegar aggregating about 1,250,000 gallons annually. The dollar value of its annual sales amounts to approximately \$400,000, of which \$300,000 in value relates to sales in interstate commerce.

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

II. THE ORGANIZATION INVOLVED

Local Industrial Union No. 1356, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 11, 1944, the Union addressed a telegram to the Company, stating therein that it represents a majority of the employees as their bargaining agent and requesting that the Company arrange a conference for further discussion. The Company made no response thereto.

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.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

The Union seeks a unit consisting of all employees of the Company, excluding clerical employees, the superintendent, and all other supervisory employees. The Company contends that the manufacturing department and the packing department each constitutes a separate appropriate unit. The record discloses that three employees engage in manufacturing and maintenance work, and that the majority of the

² At the hearing the Trial Examiner stated that the Union submitted 12 membership cards, which bore dates in August 1944; that the names of 8 persons appearing on the cards were listed on the Company's pay roll of November 24, 1944, which contained the names of 18 employees in the alleged appropriate unit.

remaining employees in the plant are employed as packers. In addition, the Company employs a watchman who is not armed or deputized, and two truck drivers who perform any work to which they may be assigned. Since all employees are paid at an hourly rate and are subject to substantially the same working conditions, we are of the opinion that a plant-wide unit, as proposed by the Union, is appropriate for the purposes of collective bargaining.

We find that all employees of the Company, at Memphis, Tennessee, excluding clerical employees, the superintendent, and all or any 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 Burgie Vinegar Company, Memphis, Tennessee, 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 Fifteenth 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 Local Industrial Union No. 1356, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.