

In the Matter of BAKING INDUSTRY COUNCIL, PETITIONER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94 AND ITS AFFILIATED LOCAL UNIONS *and* INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 63 AND ITS SUBORDINATE BRANCHES AND LOCAL 235

*Case No. 21-RM-37.—Decided December 30, 1948*

DECISION  
AND  
DIRECTION OF ELECTION

Upon an employer petition duly filed,<sup>1</sup> a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

The Employers are engaged in the wholesale baking industry in the vicinity of Los Angeles, California. Several of them operate more than one plant in this vicinity.<sup>2</sup> The names of the Employers and the locations of their respective plants are listed in Appendix A attached hereto. During the year 1947, the Employers collectively purchased for use in the manufacture of their bakery products a total of \$26,500,000 worth of supplies, 72 percent of which was obtained directly from

<sup>1</sup> The petition was filed by Baking Industry Council, herein called the Council, on behalf of the wholesale baking companies named in the petition and herein called the Employer. The Council is an informal association composed of the Employers whose purpose in associating themselves together is to act jointly with respect to their labor relations. The record shows that since 1941, the Employers have conducted joint negotiations with the two labor organizations herein involved. Their practice has been to select a committee to bargain on their behalf and when the negotiations are concluded, a single contract is drawn up which is signed by all the Employers who have employees within its coverage. Since 1946, all contracts between the Employers and the two Unions named in the petition have been signed on behalf of the Employers by the attorney who has acted as their counsel in the bargaining negotiations.

<sup>2</sup> One of the Employers maintains eight plants in this area, two operate three plants, and two operate two plants.

sources outside the State of California, while 6 percent was obtained from local jobbers who, in turn, obtained these goods from points outside the State of California. During the same period the total sales of all the Employers exceeded \$47,500,000, of which 1 percent represented sales to customers outside the State of California. Each of the Employers purchases not less than \$250,000 worth of materials and supplies annually and sells not less than \$500,000 worth of bakery products annually. Each of the Employers' out-of-State purchases and sales approximate in percentage those of the Employers as a group.

The totality of the Employers' operations clearly has an impact on interstate commerce. Without determining whether or not the Board would assert jurisdiction as to each Employer were it before the Board individually,<sup>3</sup> we find that for the purposes of this proceeding, the Employers are engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, District Lodge 94 and its affiliated local unions, herein called the Machinists, and International Union of Operating Engineers, Local 63 and its subordinate branches and Local 235, herein called the Engineers, are labor organizations, claiming to represent employees of the Employers.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Employers refuse to recognize the Machinists and the Engineers as representatives of employees of the Employers until certified by the Board in an appropriate unit.

We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

The Machinists contend that a multiple-employer unit composed of the plant maintenance engineers, junior engineers, automotive machinists, and machinists helpers in all the plants of the Employers is appropriate. The Engineers oppose the establishment of the multiple-employer unit proposed by the Machinists insofar as it includes the plant maintenance engineers and the junior engineers, and contend that these employees in each plant involved herein constitute a separate appropriate unit. The Employers, having for the past 7 years bar-

<sup>3</sup> Compare *Matter of Sta-Kleen Bakery, Inc.*, 78 N. L. R. B. 798.

gained on a multiple-employer basis with respect to the employees herein involved, contend that any unit which includes these employees should be multiple-employer in scope. The Employers do not otherwise take any position with respect to the composition of the unit.

The plants of the Employers vary in size and in the number of employees carried on their pay rolls.<sup>4</sup> However, substantially the same equipment is used in each plant, *viz*, refrigeration equipment, ovens, wrapping machines, bread slicers, low pressure boilers, and air compressors. Each of the Employers employs at least one or more persons to maintain and keep this equipment in repair. These are the employees who are herein referred to as plant maintenance engineers.<sup>5</sup> Because all the Employers use their own trucks for the delivery of their goods, each also employs one or more persons to service its trucks and keep them in repair. These are the employees who are herein referred to as automotive machinists.<sup>6</sup>

As previously noted, since 1941 the Employers have been bargaining as a group with the Machinists and the Engineers. Their contracts have all been on a members-only basis, with the Machinists representing the automotive machinists and the Engineers the plant maintenance engineers. During the period from 1941 to 1943, the Employers executed joint contracts with the Engineers and the Machinists which covered "journeymen mechanics or engineers, journeymen automotive machinists and helpers who are members of the Union." In 1944, the IAM requested the Employers to execute separate agreements with it and the Engineers, but the Employers refused and the dispute was submitted to the National War Labor Board for settlement. A directive was issued by the Board early in 1946 in favor of the Machinists' position, and from that time until recently, the Employers have entered into separate "members-only" agreements with the two Unions. The contracts with the Engineers covered the plant maintenance engineers and the junior engineers, while the contracts with the Machinists covered the automotive machinists and their helpers. The latter contracts also embraced within their terms plant maintenance workers whose duties did not include the maintenance and repair of boiler and refrigeration equipment.

Although the plant maintenance engineers and the automotive machinists work on different kinds of equipment and machinery, their duties are essentially similar. Thus, both groups oil, grease, replace

<sup>4</sup> While the record does not show the exact number of employees in each plant, it appears that at least one plant employs 60 workers while others employ over 200.

<sup>5</sup> These employees have also been referred to in the record as watch engineer maintenance mechanics, and maintenance machinists.

<sup>6</sup> These employees have also been referred to in the record as maintenance machinists and maintenance mechanics.

parts, and make minor repairs on machinery. It also appears that in at least three plants, there is some interchange of duties between the two groups, while in four plants the same labor force which is responsible for servicing plant equipment is also responsible for servicing trucks. On the other hand, in a majority of the plants, there is no interchange between these classifications. Also, in all but the few small plants, each group has its own workshop and is separately supervised, the plant maintenance engineers by an operating engineer in charge and the automotive machinists by a foreman.

The Engineers contend that the plant maintenance engineers are essentially engineers and not mechanics or machinists as is claimed by the Machinists, and therefore, that they should be established in a separate unit apart from the automotive machinists. The only duties of an engineering nature which the plant maintenance engineers perform are the maintenance and repair of boilers, refrigerating and air conditioning equipment. This equipment in all the plants is automatic, so that it does not require constant attention. An alarm rings when the pressure in the boilers has fallen too low. The plant maintenance engineers merely keep the plant equipment in running order and make minor repairs on it. Wherever major repairs are necessary, experienced machinists from the outside are employed. At most, the plant engineers devote only 4 or 5 hours a week to the care of boilers and refrigerating and air conditioning equipment. The balance of their time is spent greasing and oiling the machinery used in the production processes and making minor repairs whenever necessary. A large number of the plant maintenance engineers have had no training or experience as engineers before their employment with the Employers. Many had been previously employed as automobile mechanics and machinists. According to the chief engineers of two of the Employers, they look for persons with mechanical aptitude to fill the jobs of plant maintenance engineers. The plant maintenance engineers are not required to be licensed in California.

There is disagreement between the parties not only as to whether the two classifications of employees here involved shall be represented on a multiple-employer basis, but also as to whether separate units shall be established for each classification. It appears that the Employers have for 7 years followed a practice of joint action in dealing with labor organizations. They have negotiated joint contracts not only with the Machinists and Engineers covering employees here involved but also with other labor organizations covering other categories of their workers.<sup>7</sup> Both the Employers and the Machinists

<sup>7</sup> The Employers' production workers appear to be covered by joint contracts with the Bakery & Confectionery Workers of America and its several local unions while their garage

desire to preserve this bargaining pattern with respect to the employees herein involved. Although the Engineers have dealt with the Employers on a joint basis, it now takes the position, without assigning a reason therefor, that there should be separate plant bargaining for the plant maintenance engineers. In view of the Employer's practice of group bargaining, which we note is a practice, followed by the baking industry in other sections of the country,<sup>8</sup> we are persuaded that the employees should be, as they have been in the past, represented on a multiple-employer basis.<sup>9</sup>

With respect to the question of whether the plant maintenance engineers should be established in a separate unit apart from the automotive machinists, the record indicates no notable differences between the interests of these two classifications. The duties and skills of each classification are substantially the same. Although the two groups involved have a separate bargaining history, this history can be accorded little weight since it was on a members-only basis.<sup>10</sup> In view of these circumstances and the entire record in the case, we are of the opinion the plant maintenance engineers and the automotive machinists should function in a single bargaining unit.

There appears to be a question as to whether the operating engineers in charge should be included in the unit. It appears that in some plants, these persons exercise supervisory authority while in others they are so designated because they are responsible for the proper functioning of the boilers and refrigerating equipment. Under these circumstances, we shall exclude the operating engineers in charge in those plants where they render services as supervisors within the meaning of the Act. In the plants where these persons do not have such responsibilities, they shall be deemed to be included.

We find that all plant maintenance engineers, junior engineers, operating engineers in charge,<sup>11</sup> automotive machinists, and machinists' helpers in all the plants of the Employers listed in Appendix A, excluding all other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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workers appear to be covered by joint agreements with the International Brotherhood of Teamsters. All parties are agreed to the exclusion of these employees from any unit which the Board may find appropriate.

<sup>8</sup> *Matter of Ward Baking Company*, 78 N. L. R. B. 781.

<sup>9</sup> *Matter of Coeur d'Alene Mines Corporation*, 77 N. L. R. B. 570; *Matter of Foreman & Clark*, 74 N. L. R. B. 77; *Matter of Rayonier Inc., Grays Harbor Division*, 52 N. L. R. B. 1269.

<sup>10</sup> *Matter of Liggett Drug Company*, 73 N. L. R. B. 312; *Matter of Dana Corporation*, 71 N. L. R. B. 1249.

<sup>11</sup> Provided these persons are not supervisory within the meaning of the Act.

## DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employers listed in "Appendix A," 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 Twenty-First Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in Section IV, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also including employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by International Association of Machinists, District Lodge 94,<sup>12</sup> for the purpose of collective bargaining.<sup>13</sup>

## APPENDIX A

*Employer and Location of plant or plants in California*

Barbara Ann Baking Co.: 3545 Pasadena Avenue, Los Angeles.  
 Barbara Ann Baking Co.: 1877 Massachusetts, San Bernardino.  
 Continental Baking Co.: 9340 Santa Monica Boulevard, Beverly Hills.  
 Continental Baking Co.: 6007 South St. Andrews Place, Los Angeles.  
 Continental Baking Co.: 439 South Stoddard Street, San Bernardino.  
 DiCarlo's National Bakery: 469 Ninth Street, San Pedro.  
 Eagle Bakery: 809 East 15th Street, Los Angeles.  
 Franco-American Baking Company: 426 College Street, Los Angeles.  
 Grandma Baking Company: 671 Antonia Avenue, Los Angeles.  
 Gordon Bread Company: 457 East Santa Barbara Avenue, Los Angeles.  
 Interstate Bakeries: 5225 Wilshire Boulevard, Los Angeles.  
 Weber Baking Company:<sup>1</sup> 5849 Crocker Street, Los Angeles.  
 Weber Baking Company:<sup>1</sup> 1601 West 14th Street, Long Beach.

<sup>12</sup> At the hearing, the Machinists requested that its name appear on the ballot in this form.

<sup>13</sup> We have not ordered the name of the Engineers placed on the ballot because at the hearing it stated that it did not desire to participate in the election if the Board included the plant maintenance engineers in the same unit with the automotive machinists.

<sup>1</sup> Footnote 1 at end of Appendix.

Weber Baking Company :<sup>1</sup> 6841 San Fernando Road, Glendale.  
Weber Baking Company :<sup>1</sup> 2656 North Main Street, Santa Ana.  
Weber Baking Company :<sup>1</sup> 121 East Mason Street, Santa Barbara.  
Weber Baking Company :<sup>1</sup> 1111 Ninth Street, San Bernardino.  
Four-S Baking Company :<sup>1</sup> 1801 Blake Avenue, Los Angeles.  
Dolly Madison Cakes, Ltd. :<sup>1</sup> 2330 Ryfle Avenue, Los Angeles.  
Dolly Madison Cakes, Ltd. :<sup>1</sup> 1657 Reed Street, Long Branch.  
Log Cabin Bread Company :<sup>1</sup> 405 San Fernando Road, Los Angeles.

Lagendorf United Bakeries, Inc. : 1870 West 62nd Street, Los Angeles.

Lagendorf United Bakeries, Inc. : 4726 Everett Court, Vernon.

Olson Baking Co. : 1401 Griffith Avenue, Los Angeles.

Orowheat Baking Co. : 6111 South Gramercy Place, Los Angeles.

Basso Baking Co. : 701 Castelar Street, Los Angeles.

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<sup>1</sup> Weber Baking Company, Four-S Baking Company, Dolly Madison Cakes, Ltd., and Log Cabin Bread Company are all subsidiaries of Interstate Bakeries.