In the Matter of Emmette Barran and C. E. Winton d/b/a Whiteway Pure Milk Company, Employer and Retail, Wholesale and Department Store Union, CIO, Petitioner

Case No. 10-RC-481.—Decided April 13, 1949

## DECISION

#### AND

#### ORDER

Upon a petition duly filed, a hearing in this case was held at Decatur, Alabama, on February 15, 1949, before M. V. Martin, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing, the Employer moved to dismiss the petition. The hearing officer referred this motion to the Board. For the reasons hereinafter stated, the motion is granted.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel.\*

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

## FINDINGS OF FACT

#### THE BUSINESS OF THE EMPLOYER

The Employer is a partnership engaged in the processing of Grade A milk and the manufacture of allied dairy products in the city of Decatur, Alabama. It annually purchases approximately \$300,000 worth of milk, 80 percent of which is purchased from individually owned farms located outside the State of Alabama. In addition the Employer annually purchases approximately \$4,500 worth of bottles and \$6,000 worth of bottle caps which are manufactured outside the State, and makes from \$5,000 to \$7,000 annual replacements of machinery and equipment, of which from 90 to 95 percent is purchased outside the State. During 1948, the Employer installed new equipment valued at approximately \$75,000 which was manufactured outside the State.

<sup>\*</sup>Chairman Herzog and Members Reynolds and Gray.

<sup>82</sup> N. L. R. B., No. 140.

The Employer annually sells products valued in excess of \$500,000, all of which are sold and delivered to consumers within the State.

Although we do not accept the Employer's contention that its operations do not affect commerce within the meaning of the Act, we believe, consistently with earlier decisions involving unaffiliated units in this industry, that it would not effectuate the policies of the Act to assert jurisdiction in this case.¹ Accordingly, we shall dismiss the petition herein.

# ORDER

It is hereby ordered that the petition for investigation and certification of representatives of the employees of Emmette Barran and C. E. Winton, d/b/a Whiteway Pure Milk Company, filed herein by Retail, Wholesale and Department Store Union, CIO, be, and it hereby is dismissed.

<sup>&</sup>lt;sup>1</sup> Matter of Creamland Dairies, Inc., 80 N. L. R. B. 106; Matter of McDonald Cooperative Dairy Company, 58 N. L. R. B. 552.