

In the Matter of SMITH RICE MILL, INC. AND DEWITT BONDED WAREHOUSE COMPANY,¹ EMPLOYERS and FEDERAL LABOR UNION, No. 23415, AFL, PETITIONER

Case No. 32-RC-106.—Decided May 5, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Richard C. Keenan, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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-member panel [Members Reynolds, Murdock, and Gray].

Upon the entire record in this case, the Board finds:

1. The Employers, Smith Rice Mill, Inc., and DeWitt Bonded Warehouse Company, respectively, are engaged in the business of milling rice and storing rice. Prior to July 1948, Smith Rice Mill Company owned and operated the mill, elevator, and warehouses which are presently being operated by the Employers. From September 1944 until September 1947, all the production and maintenance employees of Smith Rice Mill Company, including warehouse and mill employees, were covered by a collective bargaining agreement between the said company and the Petitioner. In 1948, Smith Rice Mill Company sold its physical properties to Smith Rice Mill, Inc. The latter corporation thereafter leased the elevator and warehouses to DeWitt Bonded Warehouse Company, who conducts all storage operations.

The operations of Smith Rice Mill, Inc., and DeWitt Bonded Warehouse Company together are substantially the same as the operations

¹At the hearing, the hearing officer granted the Petitioner's motion to amend its petition by adding DeWitt Bonded Warehouse Company as a party to this proceeding. Smith Rice Mill, Inc., opposed the motion on the grounds that no notice of hearing was served upon DeWitt Bonded Warehouse Company and that the amendment of the petition prejudices the Employers. In view of the fact that we hereinafter find that DeWitt Bonded Warehouse Company and Smith Rice Mill, Inc., together are a single employer within the meaning of Section 2 (2) of the Act, we believe that the notice of hearing served upon Smith Rice Mill, Inc., was sufficient notice to DeWitt Bonded Warehouse Company. Accordingly, we find that the Employers were not prejudiced by the amendment of the petition and we, therefore, affirm the hearing officer's ruling. Cf. *Matter of Texas Hardwood Manufacturing Company*, 73 N. L. R. B. 356; *Matter of National Dress Manufacturers' Association Inc., et al.*, 28 N. L. R. B. 386, 389.

of their predecessor, Smith Rice Mill Company. Rough rice is delivered initially to the rough rice warehouse or the elevator, where it is stored. When the rice is required for milling, it is delivered from the elevator to the mill through a pipe connecting the two buildings. After the milling operation, the rice is sacked and delivered by mill employees to the clean rice warehouses which are physically attached to the mill. The rice is shipped out of the plant from the warehouses. Smith Rice Mill, Inc. operates the mill and DeWitt Bonded Warehouse Company operates the elevator and warehouses. There is a single paymaster, one personnel officer and a single clerical staff for both corporations. All foremen in charge of operations of the elevator and the warehouses are employees of and paid by Smith Rice Mill, Inc. Otto Leibrock, the president and manager of Smith Rice Mill, Inc., also supervises operations of the elevator and warehouses. Employees at the elevator and warehouses are hired and discharged by their foremen who are employees of the Smith Rice Mill, Inc. A single power plant furnishes power to the mill, elevator, and warehouses. Although DeWitt Bonded Warehouse Company is required by law to accept rice for storage from the public generally, the record shows that the great bulk of its operations are for the account of Smith Rice Mill, Inc. In view of the interdependence of operations of the two companies and the exercise of effective control by Smith Rice Mill, Inc. over the employees of DeWitt Bonded Warehouse Company, we believe that Smith Rice Mill, Inc., and DeWitt Bonded Warehouse Company together constitute a single employer within the meaning of Section 2 (2) of the Act.²

The Employers are engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner claims to represent employees of the Employers.

3. A question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. We find that all production and maintenance employees of Smith Rice Mill, Inc., and DeWitt Bonded Warehouse Company at their plant in DeWitt, Arkansas, excluding technical, clerical, and office employees, watchmen, guards, foremen, and other 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.

5. The Employers' operations are seasonal in nature. The peak operations begin in September and continue until the following April or June. We shall direct that the election be held at or about the peak of the Employers' operations on a date to be determined by the Regional

² Cf. *Matter of Clarksburg Paper Company*, 80 N. L. R. B. 1304; *Matter of American Relay and Controls, Inc.*, 81 N. L. R. B. 178.

Director among the employees in the appropriate unit who are employed during the pay-roll period immediately preceding the date of issuance of the notice of election.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employers, an election by secret ballot shall be conducted on a date to be selected by the Regional Director in accordance with the instructions set forth in paragraph numbered 5, above, under the direction and supervision of the Regional Director for the Region in which this case was heard 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 paragraph numbered 4, above, who are employed during the pay-roll period immediately preceding the date of issuance of the notice 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 excluding employees on strike who are not entitled to reinstatement, to determine whether or not they wish to be represented, for purposes of collective bargaining, by Federal Labor Union, No. 23415, AFL.