

In the Matter of MEMPHIS COLD STORAGE WAREHOUSE COMPANY, EMPLOYER and LOCAL 1441, CONSTRUCTION AND GENERAL LABOR UNION, INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS, A. F. L., PETITIONER

*Case No. 32-RC-253.—Decided November 1, 1950*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

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

1. The business of the Employer:

The Employer, a Tennessee corporation, is engaged in the operation of a cold storage warehouse in Memphis, Tennessee. Its plant is a nine-story building containing a gross area of 1,000,000 cubic feet. In the year 1949, the value of the products stored in the warehouse was in excess of \$1,000,000. In the same period, the Employer rendered services, valued in excess of \$100,000, to local users of perishable commodities, including local branches of national grocery chains and of national meat packing concerns. A substantial portion of the products stored by the Employer originate outside the State. The Employer, under contract with the Quartermaster Corps, United States Army, has stored food to be used at a nearby Army base and at other places unknown to the Employer. The Illinois Central Railroad main line passes the warehouse and has a siding adjacent to the

<sup>1</sup> At the beginning of the hearing, the hearing officer granted the motion of the Petitioner to amend the unit description from "all maintenance employees" to "all employees, including maintenance employees." Thereupon a recess was had, and an amended petition was prepared, filed, served upon the Employer and the Intervenor (Local 242, United Packinghouse Workers of America, C. I. O.), and included in the record. At the conclusion of the hearing, the Employer renewed its motion for a continuance on the ground that the Petitioner's amendment presented a substantial change in the original unit request. On the basis of the entire record, we find that the Employer was not surprised by the amendment and that it had ample opportunity to, and did in fact, fully present its position with regard to the unit issue. Accordingly, the hearing officer's ruling denying the Employer's motion is hereby affirmed.

The motion of the Intervenor to dismiss the petition on the ground that the Petitioner had not advised the Employer in advance of the unit it was requesting is likewise denied.

warehouse. In addition, a number of interstate trucking firms transport commodities to and from the Employer's warehouse.

The Employer contends that it is not engaged in commerce and that its operations do not affect commerce. Under all the circumstances of this case, however, and particularly in view of the Employer's contract with the Army Quartermaster Corps, which makes its operations a part of the national defense effort, we shall assert jurisdiction.<sup>2</sup>

2. The labor organizations involved claim to represent certain employees of the employer.

3. 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.<sup>3</sup>

4. The appropriate unit:

The Petitioner seeks a unit composed of all employees of the Employer at its warehouse, including assistant engineers and maintenance employees, but excluding office and clerical employees, watchmen-guards, technical and professional employees, and supervisors as defined in the Act. In the alternative, should the Board determine that the engineers or the maintenance employees constitute separate appropriate units, the Petitioner seeks to represent them in separate units. The Employer and the Intervenor contend that a unit of all employees, excluding assistant engineers, maintenance employees, watchmen, office employees, and supervisors, as described in the current contract, is appropriate.<sup>4</sup>

The Employer's warehouse operation is divided into 3 main departments: storage, maintenance, and power. The storage department consists of a superintendent, 3 supervisors, and 16 porters. The porters perform all the manual labor with the aid of freight elevators, floats, and trucks necessary to move, load, and unload the perishable commodities in the various storage rooms of the warehouse.

The maintenance department consists of a maintenance man and two helpers who work under the supervision of the chief engineer. The maintenance employees are responsible for the general maintenance of equipment and working parts throughout the entire plant. The maintenance man possesses skills in electrical, welding, and machine work. The maintenance employees are sometimes called upon to work

<sup>2</sup> *Westport Moving and Storage Company, Crate Making Division*, 91 NLRB 902.

<sup>3</sup> The most recent agreement between the parties was automatically renewed for 1 year on January 10, 1950. The Intervenor and the Employer contend that this contract constitutes a bar to this proceeding. As this contract contains an unauthorized union-security clause, however, we find that it does not constitute a bar to this proceeding, and the motions of the Intervenor and the Employer to dismiss on this ground are therefore denied.

<sup>4</sup> This unit, confined to the porters, was established in 1944 in accordance with the terms of a consent-election agreement.

The Employer not only opposes the inclusion of the maintenance employees and the engineers in a unit with the porters, but also the establishment of separate units for them.

longer than the regular 40-hour week under standby and emergency conditions. There is no machine shop in the plant. The power plant is located in the basement of the warehouse, and is operated by a chief engineer and three assistant engineers, one on each shift. The engineers are required to obtain city licenses as stationary engineers after 1 year on the job. They are responsible for the operation of the equipment used to produce the refrigerated air of the warehouse. Their duties consist of checking gauges for proper pressures and levels, and operating compressors and brine and water pumps.

In the operation of the warehouse, the furnishing of refrigerated storage space is the function of all three departments. Thus the porters move the perishable commodities in and out of the refrigerated rooms, and the maintenance employees repair the equipment used by the porters and the engineers. This integration of function is, we believe, closely analogous to the organizational pattern of a manufacturing establishment, with the porters comparable to production employees, and the maintenance employees performing the usual tasks of plant maintenance. In these circumstances, we are of the opinion that the porters and maintenance employees may appropriately be included in the same unit. As the assistant engineers operate the equipment which produces the refrigerated air, a necessary component of the service rendered by the Employer, their duties are essential to the operation of the warehouse.<sup>5</sup> Moreover, no other labor organization is seeking to represent these engineers in a separate unit.<sup>6</sup> We find that the assistant engineers<sup>7</sup> possess sufficient interests in common with the porters and maintenance employees to be appropriately included in the same unit.

The parties would exclude the watchman from the unit found appropriate. The watchman makes his rounds at night, and checks the time boxes and ADT controls located throughout the building. We shall exclude the watchman from the unit.<sup>8</sup>

On the basis of the entire record, we find that all employees at the Employer's Memphis, Tennessee, warehouse, including maintenance

<sup>5</sup> See *Lynn Gas and Electric Company*, 78 NLRB 3. Cf. *H. L. Handy Company*, 81 NLRB 425; *C. A. Swanson and Sons*, 81 NLRB 321.

<sup>6</sup> *The French Oil Mill Machinery Company*, 80 NLRB 1069. Inasmuch as no labor organization previously sought to represent all the employees of the Employer in a plant-wide unit, we attach no controlling significance to the history of collective bargaining on a less comprehensive basis. Contrary to the contention of the Employer, agreement of parties as to the appropriate unit for the purposes of a consent election is not binding on the Board in a later proceeding, involving the same employees, in which the unit issue is litigated. *Peoples Life Insurance Company*, 72 NLRB 1406; *Waterfront Employers' Association of the Pacific Coast*, 71 NLRB 121.

<sup>7</sup> We reject as without merit the Employer's contention that the engineers are a part of management. See *K-D Lamp Division, Noma Electric Corporation of Maryland*, 71 NLRB 704.

<sup>8</sup> *Arkansas City Flour Mills*, 88 NLRB 1293.

employees and assistant engineers, but excluding office and clerical employees, watchman, technical and professional employees, and all supervisors<sup>9</sup> 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.

[Text of Direction of Election omitted from publication in this volume.]

CHAIRMAN HERZOG and MEMBER REYNOLDS took no part in the consideration of the above Decision and Direction of Election.

<sup>9</sup> We find, in accord with the parties, that the warehouse superintendent, chief engineer, and the three storage department supervisors are supervisors within the meaning of the Act and are therefore excluded from the unit.