

In the Matter of CALIFORNIA CONSUMERS CORPORATION *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 63, A. F. L.

Case No. 21-R-2581.—Decided April 25, 1945

Messrs. R. M. Hagen and E. D. Sims, of Los Angeles, Calif., for the Company.

Mr. Charles C. King, of Los Angeles, Calif., for the Union.

Mr. Jack Mantel, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, Local 63, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of California Consumers Corporation, Pasadena, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William T. Whitsett, Trial Examiner. Said hearing was held at Los Angeles, California, on February 28, 1945. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

California Consumers Corporation, a California corporation, operates a plant in Pasadena, California, where it manufactures ice and preserves perishable foods by freezing and refrigerated storage. During the fiscal year ending September 30, 1944, the Company, at its

61 N. L. R. B., No. 113.

Pasadena plant, produced goods valued at approximately \$2,000,000, of which 90 percent was shipped to points outside the State of California.

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

International Union of Operating Engineers, Local 63, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.

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.¹

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 urges that a unit of engineers, including the chief and assistant chief engineers, and ice pullers, but excluding all other employees, is appropriate. The Company would confine the unit to engineers, excluding ice pullers, but takes no position concerning the inclusion or exclusion of the chief and assistant chief engineers.

Ice Pullers: The Company employs three ice pullers, who work under the supervision of the chief engineer, or an assistant chief engineer if the chief is absent. The ice pullers work in a room called the ice tank which is separated from the engine room by a wall which has one door connecting the two rooms. Only in the event of a break-down of the machinery in the engine room, do ice pullers work in that room. However, the usual duties of the engineers take them to the ice tank room. Although there are no general transfers between the ice pullers and the engineers, such occasion might arise in emergency situations. The record shows that three engineers were promoted from ice pullers, and that the supervision, vacation, and mode of pay for all of the

¹ The Board agent reported that the Union submitted 8 application-for-membership cards and that there are 11 employees in the appropriate unit. At the hearing, the Union representative testified that subsequent to the Board agent's report, an additional employee applied for membership in the Union.

employees, except for the chief engineer, are identical. For 3 years, the Union had a collective bargaining contract for one of the other plants of the Company which covered both ice pullers and engineers in the same unit. We are of the opinion that the ice pullers and the engineers have a sufficient community of interest to warrant their inclusion in one unit for the purposes of collective bargaining.

Engineers: The Company employs one chief engineer, three assistant chief engineers, and four assistant shift engineers. The assistant shift engineers, who work under the direction of the chief engineer, or an assistant chief engineer if the chief is absent, oil and maintain the equipment in the engine room and the adjacent ice-tank room. No license is required for this position. The assistant chief engineers and the chief engineer are licensed by the City of Pasadena. The assistant chiefs make running repairs on all of the plant's equipment, and have supervisory authority only in the absence of the chief engineer. Since it appears that the assumption of authority by the assistant chief engineers does not occur at regular intervals and is of a sporadic character, we shall include the assistant chief engineers. However, the record is clear that the chief engineer has authority to hire and discharge employees; we shall therefore exclude him.

We find that all engineers and ice pullers, including assistant shift engineers, and assistant chief engineers, but excluding the chief engineer, and all 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 payroll 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 California Consumers Corporation, Pasadena, California, an election by secret bal-

lot 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, 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 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, to determine whether or not they desire to be represented by International Union of Operating Engineers, Local 63, A. F. L., for the purposes of collective bargaining.

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