

In the Matter of FAIRMONT CREAMERY COMPANY and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION 749, AND AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL UNION 52, A. F. OF L.

Case No. 18-R-1240.—Decided May 19, 1945

Mr. C. B. Evinger, of Omaha, Nebr., and *Mr. Glenn Olander*, of Canton, S. D., for the Company.

Mr. Max Crowell, of Sioux Falls, S. D., for the Amalgamated.

Mr. K. E. McCreery, of Sioux Falls, S. D., for the Teamsters.

Mr. Stanley B. Korengold, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed jointly by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 749, A. F. of L., and Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union 52, A. F. of L., hereinafter collectively referred to as the Unions and singularly as the Teamsters and the Amalgamated, alleging that a question affecting commerce had arisen concerning the representation of employees of Fairmont Creamery Company,¹ Canton, South Dakota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Canton, South Dakota, on April 19, 1945. The Company and the Unions 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.

¹ At the hearing, the words "Sioux Valley Produce Division" were deleted from the Company's name at its request.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Fairmont Creamery Company, a Delaware corporation operating a branch plant at Canton, South Dakota, is engaged in the buying and processing of poultry and eggs. The annual volume of the purchases and sales exceeds \$25,000, of which approximately 95 percent moves in interstate commerce to and from points outside the State of South Dakota.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 749, and Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union 52, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 24, 1945, the Teamsters and the Amalgamated jointly requested recognition from the Company as the exclusive bargaining representative of certain of the Company's employees. The Company declined to give such recognition until the Unions are certified by the Board.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Unions represent a substantial number of employees in the unit hereinafter found appropriate.²

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

We find, in substantial accord with a stipulation of the parties, that all employees in the plant, excluding clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline,

² The Field Examiner reported that of 39 employees in the unit petitioned for the Unions submitted 27 authorization cards, 26 of which checked with the names of persons on the Company's pay roll. Fifteen of them were dated December 1944; 11 were dated February 1945. A supplementary report of the Field Examiner pointed out that of the 27 authorization cards, 20 were authorizations to the Teamsters while 7 were authorizations to the joint Unions.

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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Company has expressed its doubt as to the appropriateness of permitting a joint "two-labor-organization" to represent a single unit. We find no merit in the Company's objection. The Board customarily has permitted two unions to act jointly as a single bargaining representative.³ The expressed concern of the Company that discord and disharmony may arise between the two unions, requiring it to bargain with each separately, is unwarranted, since we assume that the Unions do not contemplate that the Company be required to bargain on the basis of any unit other than the one which may be certified as a result of this proceeding. If the Unions win the election hereinafter directed and are certified as the exclusive bargaining representative of a single unit of production and maintenance employees, the Company will have the right to insist on dealing directly with the Unions on the basis of that single unit.⁴

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 Fairmont Creamery Company, Canton, South Dakota, 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 Eighteenth 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,

³ See *Matter of Anniston Warehouse Corporation*, 54 N. L. R. B. 1483; *Brown Paper Mill Company, Inc.*, 58 N. L. R. B. 283

⁴ *Matter of Platzer Boat Works*, 59 N. L. R. B. 292.

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 jointly by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 749, and Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union 52, A. F. of L., for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.