

In the Matter of FAIRMONT CREAMERY COMPANY and AMALGAMATED
MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO.
142, A. F. OF L.

Case No. 18-R-1279.—Decided May 30, 1945

Mr. C. B. Evinger, of Omaha, Nebr., and *Mr. Ben Iverson*, of Webster City, Iowa, for the Company.

Mr. Kenneth Somers, of Cedar Rapids, Iowa, for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 142, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Fairmont Creamery Company, Webster City, Iowa, 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 Webster City, Iowa, on May 8, 1945. The Company and the Union appeared, participated, and 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 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

Fairmont Creamery Company is a Delaware corporation operating a plant at Webster City, Iowa, where it is engaged in the processing of eggs and poultry. The Company annually purchases products for use at its Webster City plant valued in excess of \$25,000, all of which is shipped to it from points within the State of Iowa. In excess of 95 percent of the Company's products are shipped to points outside the State of Iowa.

The Company admits that it is engaged in commerce at its Webster City plant within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 142, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of the employees at the Webster City plant until such time as the Union is certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be 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

We find, in agreement with the parties, that all hourly paid production and maintenance employees at the Webster City, Iowa, plant of the Company, including truck drivers and working foremen,² but excluding hatchery employees, clerical employees, and all 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 means of 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.

¹ The Field Examiner reported that the Union presented 31 authorization cards. There are approximately 51 employees in the appropriate unit.

² The record discloses that the working foremen are not supervisors within the meaning of the Board's definition of that term.

There is pending before the Board a proceeding³ against the Company upon charges alleging unfair labor practices, including, among other things, the alleged discriminatory discharge of 15 persons.⁴ The Union, however, desires an early election and has formally waived the right to protest an election in this case on any ground set forth in that proceeding. Accordingly, we shall not postpone the election pending a determination of the unfair labor practice charges. In the event that the Company is hereafter found to have engaged in unfair labor practices in discharging the persons named in the charges and the Board orders their reinstatement, their continuing employee status will have been established. We shall, therefore, in accordance with our usual practice in this respect,⁵ permit the employees alleged to have been discriminatorily discharged to cast their ballots in the election. However, their ballots shall be segregated and we shall defer ruling as to their validity.

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, Webster City, Iowa, 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, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during 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 any 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 Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 142, A. F. of L., for the purposes of collective bargaining.

³ *Matter of Fairmont Creamery Company*, Case No. 18-C-1085.

⁴ Robert Downs, J. W. White, Grace Whittaker, Dorothy Espe, Clyde Weedman, Leo Keller, Phyllis Kepler, Evelyn L. Keller, Harold Kepler, Evelyn M. Keller, Faye Goodrich, Kathleen Urich, Billy Holtkamp, Vern Over, and Eva Stone.

⁵ *Matter of Fred A. Snow Company*, 40 N. L. R. B. 400.