

IN THE MATTER OF AVONDALE DAIRY CO., ET AL.,<sup>1</sup> EMPLOYERS and  
LOCAL 98, MILK AND ICE CREAM EMPLOYEES UNION, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA, AFL, PETITIONER

Cases Nos. 9-UA-1496 to 9-UA-1505 and 9-UA-1533 to 9-UA-1543.—  
Decided November 15, 1950

DECISION AND ORDER

Upon petitions duly filed a hearing was held before Seymour Goldstein, hearing officer. The hearing officer's ruling made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

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

1. The Employers are engaged in commerce within the meaning of the Act.<sup>2</sup>
2. The labor organization involved claims to represent certain employees of the Employers.
3. The question concerning authorization of union shop:

For a number of years, the Petitioner and the Employers involved herein have negotiated collective bargaining agreements covering the employees concerned. As is detailed hereinafter, negotiations have

<sup>1</sup> Petitions herein were consolidated on August 22, 1950, and involve the following Employers: Joseph Druhe and Caroline Heile, a Partnership, d/b/a Avondale Dairy Co.; Anna Krechtling, a sole proprietorship, d/b/a Bosse Dairy; Cedar Hill Farms, Inc., Joe Hollmann and Fred Hollmann, a Partnership, d/b/a Hollmann Bros. Dairy; The Hyde Park Dairy Company; Harry S. Mandery, a sole proprietorship, d/b/a John C. Mandery & Sons; H. Miller Dairy Company, Inc.; Emma H. Myers, a sole proprietorship, d/b/a L. Myers Dairy; Summe & Ratermann Company, Inc.; Dale Grace, John Grace, Jr., James Grace & Thomas Grace, a Partnership, d/b/a Willson Dairy Products; The Kaesemeyer & Sons Company; John Trenkamp, Joseph Trenkamp, and Lawrence Trenkamp, a Partnership, d/b/a John Trenkamp Dairy; Emmert J. Marschman, a sole proprietorship, d/b/a Clover Leaf Dairy; The H. Meyers & Sons Dairy Co.; Opekasit, Inc.; The Woodmont Dairy Co.; George Rehkamp and Joseph Kahmann, Jr., a Partnership, d/b/a Kahmann & Rehkamp; Fred H. Plapp, a sole proprietorship, d/b/a Highland Park Dairy; The J. H. Berling's Dairy; Dilg Dairy, Inc.; Wehr Dairy, Inc.

<sup>2</sup> As we hereafter conclude that a multiemployer unit is appropriate and as the totality of the operations of the Employers involved warrant our asserting jurisdiction, we need not determine whether we would assert jurisdiction were the Employers before us individually.

been on a multiemployer basis, followed by the execution of identical contracts by the individual employers. The latest agreement negotiated is effective as of August 1, 1950, for a 1-year period.

The Employers currently recognize the Petitioner, and we find that no question affecting commerce exists concerning the representation of employees of the Employers in the unit sought by the Petitioner.

4. The appropriate unit:

The Petitioner contends that the appropriate units for union-security elections in this proceeding are separate employer units. The Employers contend that such units are too limited in scope and the only appropriate unit is a single multiemployer unit.

The record shows that the 21 Employers involved herein and a number of other employers, not parties to this proceeding, together comprise the milk and ice cream dealers of the greater Cincinnati, Ohio, area, and Campbell and Kenton Counties, Kentucky. In various combinations, these Employers have had joint bargaining relationships with the Petitioner since 1913. For most of this period these companies informally designated a committee of 3 members from the industry who represented all the companies, including the 21 involved herein, in collective bargaining negotiations. Although there was no formal association, no name to the group, and no officers or funds, the various companies considered themselves bound by the collective bargaining negotiations of the committee. Contracts were signed by the individual companies at the termination of negotiations. Such contracts were substantially uniform, differing only with respect to their treatment of problems peculiar to a particular company.

In May 1949, approximately 53 dairy companies, including the 21 Employers before us, entered into a written contract in which they created a 9-man committee to represent them in negotiating a new agreement with the Petitioner, with authority to bind them in any agreement reached. Costs incurred during negotiation were prorated among the 53 companies who, at the conclusion of the negotiations, entered into a uniform, individually signed collective bargaining agreement, effective August 16, 1949, for a term of 1 year.

On April 14, 1950, approximately 47 dairy companies, including the 21 Employers herein, again entered into an agreement similar to the 1949 agreement to bargain jointly with the Petitioner. The committee again entered into negotiations, and a collective bargaining agreement effective August 1, 1950, was agreed upon. At the time of the hearing, some of the companies had already executed individual uniform contracts and other companies indicated that they expected to, or were in the process of, executing similar uniform agreements.

From these facts it is clear that the Employers involved herein, by their participation with other employers in their industry in multi-employer bargaining, have indicated an intent to be bound by group rather than individual action in collective bargaining. Accordingly, if this proceeding involved petitions for representation under Section 9 (a) of the Act, we could find, in accord with well-established precedent, that units limited to the employees of the individual employers were inappropriate.<sup>3</sup>

Although the present case is a proceeding for a union-authorization election under Section 9 (e) of the Act, we have held that:

In the absence of any compelling reason for finding the unit in a 9 (e) proceeding to be smaller or different from the unit which we would normally find appropriate in a 9 (a) proceeding (such as that present in the *Giant Food* case) we believe that the unit appropriate for purposes of collective bargaining under 9 (a) is also the appropriate unit for purposes of union security elections under Section 9 (e) (1) of the Act.<sup>4</sup>

In the instant case, as noted above, individual employer units, as sought by the Petitioner, would be inappropriate in a 9 (a) proceeding, and no persuasive reason has been suggested for reaching a different result in a 9 (e) election. The Petitioner directs our attention to the fact that: (1) Union-authorization elections have already been held among the employees of certain of the individual employers who have been a part of the multiemployer bargaining;<sup>5</sup> and (2) there are variations in the contracts with some of the employers. Neither of these factors is sufficient in our opinion to warrant concluding that the multiemployer unit is not the appropriate unit for the purposes of a 9 (e) election. The union-authorization elections which have been held on an individual employer basis have been pursuant to consent agreements and are not binding upon us in the determination of the appropriate unit. As to the contract variations, we have already noted that such variations have been insubstantial, and directed merely at accommodating the contracts to the individual problems unique in a particular plant. They do not render the multi-employer unit inappropriate.

<sup>3</sup> See *Association of Motion Picture Producers, Inc., et al.*, 85 NLRB 902 and cases cited therein.

<sup>4</sup> *Furniture Firms of Duluth*, 81 NLRB 1318. The case referred to in the quotation, *Giant Foods Shopping Center, Inc.*, 77 NLRB 791, dealt with the effect upon a 9 (e) unit of the fact that part of the employees in such unit were in States prohibiting union-security agreements.

<sup>5</sup> None of these involved any of the 21 Employers involved herein.

In these circumstances we conclude that the individual units sought by the Petitioner are inappropriate for a 9 (e) election. Accordingly, we shall dismiss the petitions herein.

### ORDER

IT IS HEREBY ORDERED that the petitions filed herein be, and they hereby are, dismissed.