

In the Matter of SAN LUIS ICE & COLD STORAGE CORPORATION AND SAN LUIS ICE & COLD STORAGE CORPORATION d/B/A SANTA MARIA REFRIGERATING COMPANY and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 381, AFL, AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 235, AFL

*Case No. 21-R-2676.—Decided June 5, 1945*

*Mr. Howard Painter*, of Los Angeles, Calif., for the Companies.

*Mr. Clarence Earing*, of Santa Maria, Calif., for the Teamsters.

*Mr. T. A. Pope*, of Wilmington, Calif., for the Engineers.

*Mr. Jack Mantel*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a joint petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 381, AFL, and International Union of Operating Engineers, Local 235, AFL, herein called the Teamsters and Engineers, respectively, alleging that a question affecting commerce had arisen concerning the representation of employees of San Luis Ice & Cold Storage Corporation, San Luis Obispo, California, and San Luis Ice & Cold Storage Corporation, d/b/a Santa Maria Refrigerating Co., Santa Maria, California, herein called San Luis and Santa Maria, respectively, and collectively referred to as the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before William T. Whitsett, Trial Examiner. Said hearing was held at Santa Maria, California, on April 16, 1945. San Luis and Santa Maria, and the Teamsters and Engineers 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 COMPANIES

Santa Maria Refrigerating Company, a California corporation, is engaged in manufacturing and selling ice at Santa Maria, California. The Santa Maria Company operates as a branch plant of San Luis Ice & Cold Storage Corporation, San Luis Obispo, California. All raw materials used by Santa Maria are purchased locally. During the year 1944, the Company's finished products were valued at \$50,000 to \$60,000, of which approximately 75 percent was sold to vegetable packers who used the ice to refrigerate freight cars which moved to points in and outside the State of California. The Company also sells ice to the United States Army at Camp Cooke.

The Santa Maria Company admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

San Luis Ice & Cold Storage Corporation, a California corporation, is engaged in manufacturing and selling ice, and operates a cold storage plant at San Luis Obispo, California. The San Luis and Santa Maria Companies were both incorporated on January 12, 1926, have the same officers, and are operated by one manager for both plants. All raw materials used by San Luis are purchased locally. During the year 1944, the San Luis plant manufactured 7,101 tons of ice valued at approximately \$28,000, of which approximately 700 tons were sold to vegetable packers who used the ice to refrigerate freight cars which moved to points in and outside the State of California. During the same period, San Luis sold and shipped ice valued at \$4,376.03, to the Van Camp Sea Food Co., Inc., at the latter's tuna canning operations at Astoria, Oregon. All of the ice purchased by Van Camp was used in preserving fish on its boats, for use at its cannery, or for shipping its products from the Oregon plant to its plants in California by refrigerated freight cars or trucks. The San Luis plant supplies ice to the United States Army Camp San Luis Obispo, and to the Southern Pacific Company for icing troop trains of the armed forces.

We find, contrary to the contention of the San Luis Company, that it is engaged in commerce within the meaning of the National Labor Relations Act.<sup>1</sup>

#### II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 381, affiliated with the American Federation

<sup>1</sup> See *Matter of Kansas City Ice Company and City Ice Company of Kansas City*, 54 N. L. R. B. 875; *Matter of The Greeley Ice & Cold Storage Company*, 35 N. L. R. B. 398.

of Labor, is a labor organization admitting to membership employees of the Companies.

International Union of Operating Engineers, Local 235, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Companies.

### III THE QUESTION CONCERNING REPRESENTATION

The Companies have refused to grant recognition to the Teamsters and Engineers until the Unions have been certified by the Board in an appropriate unit

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Teamsters and Engineers represent a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

### IV THE APPROPRIATE UNIT

The Teamsters and Engineers seek a single unit comprised of production and maintenance employees covering both the Santa Maria and San Luis plants of the Companies, including the engineer at the Santa Maria plant and the foreman at the San Luis plant, but excluding individual truck owners who buy ice for distribution, and clerical employees. The Companies contend that a separate unit for each plant would be appropriate, provided the Board asserted jurisdiction over the San Luis Company, and they would also exclude the afore-mentioned engineer and foreman because of their supervisory duties.

The San Luis and Santa Maria plants are 31 miles apart. As previously stated, both Companies have identical officers, and both plants are operated by the same manager. The home office for both plants is at San Luis, the manager spending about 2 days a week at the Santa Maria plant. The engineer, who is on the pay roll of Santa Maria, also does repair work for San Luis. Although the Companies maintain separate pay rolls, bank accounts, and operate as separate entities, permanent employment, tax, and social security records covering employees at both plants are kept at the home office. Since the labor policy for both plants is determined by the same managerial representatives, and since there otherwise is an integration of operations, we find that the Companies constitute a single employer within the meaning of Section 2 (2) of the Act, and that the employees at the

<sup>2</sup> The Board agent reported that the Teamsters and Engineers submitted a petition containing the names of 9 persons, and that 8 of the names appeared on the Companies' pay roll ending February 3, 1945, which contained the names of 10 persons in the unit hereinafter found to be appropriate. The Board agent further reported that L. A. Industrial Union Council and L. A. Central Labor Council were requested to submit evidence of representation, but had failed to do so.

San Luis and Santa Maria plants of the Companies together constitute a single appropriate unit.

The Teamsters and Engineers would include the engineer at the Santa Maria plant and the foreman at the San Luis plant, despite their admittedly supervisory duties, for the reason that it has been the unions' alleged custom to include such supervisors in bargaining units similar to the one sought herein. However, the record does not reveal any well-established custom in the industry for inclusion of supervisory employees, and consequently we see no reason to depart from the Board's established policy of excluding such employees from bargaining units comprised of non-supervisory employees. Accordingly, we shall exclude the engineer and the foreman from the unit hereinafter found appropriate.

We find that all production and maintenance employees at the Santa Maria and San Luis plants of the Companies, excluding individual truck drivers who buy ice for distribution, clerical employees, the engineer at Santa Maria, the foreman at San Luis, 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 pay-roll 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 San Luis Ice & Cold Storage Corporation, San Luis Ibispo, California, and San Luis Ice & Cold Storage Corporation, d/b/a Santa Maria Refrigerating Company, Santa Maria, California, an election by secret ballot shall be conducted as early as possible, but no 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 jointly by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 381, A. F. L., and International Union of Operating Engineers, Local 235, A. F. L., for the purposes of collective bargaining.