

In the Matter of DAIRY INDUSTRIES, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT #118, A. F. L.

Case No. 18-R-1285.—Decided August 10, 1945

Mr. Walter L. Stewart, of Des Moines, Iowa, for the Company.

Mr. James Ashe, of St. Paul, Minn., and *Mr. Earl P. Hogan*, of Des Moines, Iowa, for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Association of Machinists, District #118, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Dairy Industries, Inc., Des Moines, Iowa, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stanley D. Kane, Trial Examiner. Said hearing was held at Des Moines, Iowa, on June 9, 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 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

Dairy Industries, Inc., an Iowa corporation, operates a plant at Des Moines, Iowa, in which it manufactures refrigerator lockers. The Company purchases annually raw materials valued in excess of \$100,000, of which more than 90 percent is shipped to said plant from points outside the State of Iowa. The Company produces annually

finished products valued in excess of \$200,000, of which 50 percent is shipped to points outside the State of Iowa.

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

II. THE ORGANIZATION INVOLVED

International Association of Machinists, District #118, 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 herein as the exclusive representative of certain of its employees in the absence of certification by the Board.

A statement of a Field Examiner for the Board, 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

We find, substantially in accord with the request of the Union which was unopposed by the Company, that all production and maintenance employees of the Company at its main plant and its east side warehouse, including outside maintenance mechanics, leadmen and group leaders, but excluding management personnel, engineering employees, office and clerical employees, part-time janitors and watchmen, 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,² 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 employees in the appropriate unit who were employed during the pay-roll period

¹ The Field Examiner reported that the Union submitted 31 designations and that there were approximately 51 employees in the unit hereinafter found appropriate.

² The parties agree, and we find, that the president and officers of the Company, the works manager, the engineer, the superintendent, foremen, and the person in charge of the order desk and shipping room fall within the above supervisory definition

immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.³

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 Dairy Industries, Inc., Des Moines, 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 International Association of Machinists, District #118, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

³ The request of the Union that it be designated on the ballot otherwise than as herein set forth is hereby referred to the Regional Director to whom the Board has delegated discretionary authority in matters relating to the conduct of the election.