

In the Matter of ARMOUR & COMPANY, d/b/a ARMOUR CREAMERIES, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, TRUCK DRIVERS UNION, LOCAL #446

Case No. 18-R-1272.—Decided September 27, 1945

Mr. J. W. Post, of Chicago, Ill., and *Mr. R. W. Nisbet*, of Marshfield, Wis., for the Company.

Mr. Walter Baumann, of Wausau, Wis., and *Mr. Leon J. DeBroua*, of Port Washington, Wis., for the Union.

Mr. Joseph D. Manders, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, Local #446, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Armour & Company, d/b/a Armour Creameries, Marshfield, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. The hearing was held at Marshfield, Wisconsin, on June 1, 1945. The Company and the Union 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 COMPANY

Armour Creameries, a division of Armour & Company, an Illinois corporation, operates a plant at Marshfield, Wisconsin, with principal 63 N. L. R. B., No. 189.

offices located in Chicago, Illinois. At the Marshfield plant, which is the sole plant involved in this proceeding, the Company is engaged in the processing of poultry, the packing of eggs, the procurement, assembling, paraffining, packaging, warehousing, and shipment of cheese. Substantially all of the raw materials used in the operation of the Marshfield plant are secured from points within the State of Wisconsin. During the year ending December 31, 1944, the Company processed approximately 10,000,000 pounds of cheese, 1,000,000 pounds of poultry and 1,000,000 dozens of eggs. Approximately 99 percent of these finished products was shipped from the Marshfield plant to points outside the State of Wisconsin.

The Company admits that its operations at the Marshfield plant affect commerce, and we so find.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, Local #446, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees at the Marshfield, Wisconsin, plant until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, 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

The Union contends that the production and maintenance employees in the Company's cheese department constitute an appropriate unit. The Company contends that a unit consisting of all the production and maintenance employees at its Marshfield plant, including those in the poultry and egg department, as well as the cheese department constitute the only appropriate unit. The 2 departments at the plant are housed in a series of 3 adjoining buildings which are directly con-

¹The Field Examiner reported that the Union submitted 13 application cards. There are approximately 13 employees in the alleged appropriate unit.

nected. At 4 branch houses which are located within a radius of 70 miles from the Marshfield plant the Company receives, stores, and delivers cheese.² The Company employs approximately 12 persons in each of the 2 plant departments, and approximately 8 persons at the 4 branch houses. The employees in each of the 2 departments at the plant perform different types of operations, but none of the work requires any special degree of skill. The wage rate for male employees is substantially the same for both departments. However, the female employees in the cheese department receive a higher rate of pay.

The two departments are under the supervision of a general manager, but the cheese department has a separate supervisor who is responsible to the manager. There is one administrative office which handles bookkeeping and clerical work for both departments. Each department has a separate time clock and a separate pay roll. In order to prevent lay-offs and take care of seasonal rush periods certain employees are transferred temporarily between the two departments.³

There is no history of collective bargaining for any of the Company's employees. At the hearing, the Union stated that the American Federation of Labor has not granted it the authority to organize poultry and egg employees in the area surrounding Wausau, Wisconsin, and that the employees in the poultry and egg department fall within the jurisdiction of the Amalgamated Meat Cutters, International Union, A. F. L. The Union, therefore, has limited its organizational activities to the employees in the cheese department.⁴

The above facts reveal that the Company's operations are somewhat integrated, and that a unit of all the employees at the plant might be appropriate. However, the employees in the cheese department comprise a distinct and homogeneous group; and they are the only employees of the Company who appear to desire union representation at the present time. To hold that this group of employees is not an appropriate unit would deny them the benefits of the Act until some uncertain future date when they and the other employees of the Company have been organized in some larger unit or on some other basis. In order to render collective bargaining an immediate possibility, we find that the unit requested by the Union, composed of the employees in the cheese department at the Company's plant in Marshfield, Wis-

² The Union objects to the inclusion of the employees in the branch houses, and it has not organized them, the Company takes no position in the matter.

³ At the hearing, the Company argued that a bargaining unit limited to the employees in the cheese department would prevent interchange in the future. In answer to this argument, the Union stated that it has no objection to a continuation of this policy of interchange as long as union members are not replaced in the process.

⁴ In the Company's Webster, South Dakota, plant, the Union and the Amalgamated jointly represent the employees in both the poultry and egg and cheese departments. This type of representation is the result of a consent election conducted by the Regional Director. See *Wist Produce Company, Division of Armour & Company*, 18-R-1249

consin, is appropriate at this time for the purposes of collective bargaining.⁵

There remain for disposition the following categories of employees:

Foreman of the cheese department. This employee devotes approximately 25 percent of his time to regular production work; the remainder of his time is spent supervising and directing the employees in the cheese department. A company witness testified that he has the authority to hire and discharge any employee under his supervision subject to the approval of the plant manager. The foreman receives approximately 45 cents per hour more than any other employee in the department. The Union desires to exclude the foreman; the Company urges his inclusion. We find that this employee possesses supervisory authority within the meaning of our customary definition; and we shall, therefore, exclude the foreman from the appropriate unit.

Engineer. The Company employs one engineer who devotes a majority of his time to the maintenance of three boilers and the refrigeration system. He also performs odd repair jobs in both departments. The engineer receives approximately the same rate of pay as other production employees in the cheese department. The Union would exclude the engineer if the Company did not object; the Company urges his inclusion. The engineer's interests and working conditions are substantially different than those of the employees in the cheese department. We shall, therefore, exclude the engineer.

Truck drivers. The Company normally employs two truck drivers, who haul and deliver cheese from the Company's branch houses and nearby producers to the Marshfield plant. They also deliver cheese which is sold to other companies for further processing. Prior to the hearing, the two truck drivers, who were engaged in the above hauling, quit the employ of the Company; and, at the time of the hearing, the Company had not replaced them. However, the Company indicated that it will employ truck drivers in the future. On the basis of the above facts, we shall include truck drivers.

We find that production and maintenance employees in the cheese department at the Company's Marshfield plant, including truck drivers, and shipping room working foreman,⁶ but excluding the office and clerical employees, engineer, fieldman, the employees at the four branch houses, manager, the foreman of the cheese department, and all or any 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

⁵ See *Matter of Rohm & Haas Company*, 51 N. L. R. B. 1232; *Matter of E. I. Dupont de Nemours & Company, Indiana Ordnance Works*, 59 N. L. R. B. 952.

⁶ The parties agree to include the shipping room foreman; and it does not appear that he possesses supervisory authority.

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 now employs approximately seven high school students in the cheese department. These student employees work full time during the Company's peak season from June 1 to September 1, which is their vacation period. It appears that the Company hires these student employees merely for the summer months; and there is no indication that the same persons are employed each year. We find that they are temporary employees and, accordingly, ineligible to vote.⁷

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 Armour & Company, d/b/a Armour Creameries, Marshfield, Wisconsin, 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 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 by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Truck Drivers Union, Local #446, A. F. L., for the purposes of collective bargaining.

⁷ Cf. *Matter of Johnson-Handley-Johnson Company*, 51 N. L. R. B. 1282.