

In the Matter of WESTERN CONDENSING COMPANY *and* INDUSTRIAL  
LOCAL UNION No. 1361, CIO

*Case No. 19-R-1612.—Decided July 1, 1946*

*Messrs. Richard R. Morris and John G. Guerin*, both of Portland,  
Oreg., for the Company.

*Mr. A. F. Hartung*, of Portland, Oreg., for the CIO.

*Messrs. Edwin D. Hicks and William O'Connell*, both of Portland,  
Oreg., for the AFL.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Industrial Local Union No. 1361, CIO, hereinafter called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Western Condensing Company, Tillamook, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Erwin A. Peterson, Trial Examiner. The hearing was held at Tillamook, Oregon, on September 25, 1945. The Company, the CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the A. F. of L., herein called the AFL, 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 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

Western Condensing Company is a California corporation with its principal office and place of business at San Francisco, California.

It operates factories and branch offices in the States of California, Oregon, Washington, Idaho, Montana, Wisconsin, Ohio, and New York. We are concerned herein solely with the Company's Tillamook, Oregon, plant. The Tillamook plant is engaged in the processing and manufacture of whey powder, milk sugar, ribolac and other milk by-products from fluid whey. The principal raw material used at this plant is fluid whey. During the past year the Company purchased fluid whey for use at the Tillamook plant valued in excess of \$200,000, all of which was purchased from points within the State of Oregon. Sales of the Tillamook plant during this period exceeded \$200,000 in value, approximately 80 percent of which was made to purchasers located outside the State of Oregon.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Industrial Local Union No. 1361, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 CIO as the exclusive bargaining representative of certain employees, engaged at its Tillamook plant until it has been certified as such by the Board.

A statement of a Board agent, introduced into evidence at the hearing, and a statement of the Trial Examiner made at the hearing, indicate that the CIO and the AFL each represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

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 CIO seeks a unit comprised of all production and maintenance employees at the Company's Tillamook plant, excluding office and

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<sup>1</sup> The Field Examiner reported that the CIO submitted 11 designations containing the names of persons appearing upon the Company's pay roll of August 13, 1945. This pay roll indicated that the appropriate unit contained 11 employees.

The Trial Examiner reported that the AFL submitted 7 designations, of which 6 contained the names of persons appearing upon the Company's pay roll of July 28, 1945. This pay roll indicated that the appropriate unit as of that date contained 13 employees.

supervisory employees. The AFL contends that the appropriate unit should include not only such employees engaged at the Tillamook plant, but also those engaged at the Company's Portland and Coquille, Oregon, plants. The Company takes no position as to the appropriate unit or units.

The record indicates that the Company and the AFL have been engaged in contractual relations since 1937, pursuant to a series of collective bargaining agreements. The last of these, dated June 1, 1944, is a 1-year agreement which was automatically renewed in 1945 and, apparently, again in 1946, inasmuch as no notice to the contrary appears to have been given by either party to the other pursuant to its terms. Although this contract is not asserted herein as a bar to a current determination of representatives, the AFL urges that it be considered as clearly evidencing a collective bargaining relationship between the Company and itself covering in a single unit all employees of the Company engaged in the Oregon plants.

We do not agree. The recognition clause in the 1944 agreement does not expressly designate what employees it purports to cover but merely recites that "This agreement is executed by the [AFL] for and in behalf of itself and its constituent local unions and shall be binding upon them, and is executed by the employer as a group or association of employers and shall be binding upon them and all of their employees coming under the jurisdiction of the local union." The record unmistakably indicates, moreover, that the terms of the agreement were applied only to the Company's employees engaged at its Portland plant, and that none of the contracts between the Company and the AFL have ever been applied by the parties to the employees of the Tillamook plant. Under these circumstances we find no merit in the AFL's contention that its collective bargaining with the Company has been conducted on the basis of a three-plant unit.

Geographically, the Tillamook plant is located 77 miles from the Portland plant and approximately 198 miles from the Coquille plant. Furthermore, no evidence was introduced indicating any substantial interchange of employees among the three plants.

Consequently, in view of the lack of a persuasive collective bargaining history upon a multiple plant basis, the segregation of the Tillamook plant from the others, and the absence of evidence showing substantial interchange of employees among the three plants, we are of the opinion that the employees of the Tillamook plant may properly comprise a separate appropriate collective bargaining unit.

We find that all production and maintenance employees of the Company's Tillamook plant, excluding all office 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 an election by secret ballot among 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 Western Condensing Company, Tillamook, Oregon, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Nineteenth 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 they desire to be represented by Industrial Local Union No. 1361, CIO, or by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the A. F. of L., for the purposes of collective bargaining, or by neither.