

IN the Matter of DAVID KATZ AND FANNIE KATZ, PARTNERS, D/B/A KATZ FOOD PRODUCTS COMPANY and AMALGAMATED FOOD EMPLOYEES UNION, LOCAL 590, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, A. F. L.

*Case No. 6-RM-3.—Decided February 20, 1948*

*Mr. David Katz*, of Pittsburgh, Pa., for the Employer.

*Messrs. Clifton C. Caldwell and Joseph H. Sabel*, of Pittsburgh, Pa., for the Union.

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Pittsburgh, Pennsylvania, on November 26, 1947, before W. G. Stuart Sherman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board <sup>1</sup> makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Katz Food Products Company, a partnership consisting of David Katz and Fannie Katz, is engaged in the processing, packing, sale, and distribution of food products at its plant in Pittsburgh, Pennsylvania. During the past year, the Employer purchased materials worth more than \$143,000, of which approximately 50 percent represented shipments from points outside the Commonwealth of Pennsylvania. During the same period, the Employer's sales were in excess of \$200,000, of which more than 10 percent represented shipments to points outside the Commonwealth.

The Employer admits and we find that it is engaged in commerce within the meaning of the Act.

---

<sup>1</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Houston, Muddock, and Gray].

## II. THE ORGANIZATION INVOLVED

Amalgamated Food Employees Union, Local 590, Amalgamated Meat Cutters & Butcher Workmen of North America, herein called the Union, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

## III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

## IV. THE APPROPRIATE UNIT

We find, in substantial accord with the parties, that all employees at the Pittsburgh plant of the Employer, excluding truck drivers, clerical employees, and supervisors, 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

The parties are in dispute as to the eligibility to vote of five individuals<sup>2</sup> who were complainants before the Pennsylvania Labor Relations Board in unfair labor practice proceedings. These proceedings, initiated by a sister local and predecessor of the Union,<sup>3</sup> resulted in a finding by that Board that these five individuals were discriminatorily discharged in contravention of the Pennsylvania Labor Relations Act, and in an order that they be reinstated with back pay. Thereafter the Employer sought review of these proceedings before the Common Pleas Court of Allegheny County, Pennsylvania, and the matter was still pending at the time of the instant hearing. The Employer now asserts, in effect, that these individuals are, by reason of events subsequent to the Order of the Pennsylvania Board, no longer entitled to rein-

<sup>2</sup> Gertrude Cassi, Mary Devlin, Sophia Herbinco, Ann Riley, and Betty Hooks

<sup>3</sup> Contemporaneous with the filing of the unfair labor practice charges, a Petition for Investigation and Certification was also filed with the Pennsylvania Board and both proceedings were consolidated. Although this petition resulted in an election in July 1947 which the petitioning union lost, neither party to this proceeding raises any contention based on the prior election. The Union expresses concern lest its participation herein affect its position in the unfair labor practice case initiated before the Pennsylvania Board. The Union's concern is, however, unwarranted since we do not pass upon any of the issues raised in that proceeding.

statement and therefore are not eligible to vote. The Union, however, contends that they are still employees of the Employer and qualified to vote.

Although there is some evidence before us relative to these contentions, we would not now presume to rule definitively upon the question of voting eligibility. Indeed, as already noted, issues bearing upon such eligibility are before the courts, and will presumably be settled shortly. In the interim, we believe that the facts warrant the coordination of our action with the action of the Pennsylvania Board. This can best be accomplished, and the policies of the National Act can best be effectuated, by permitting these individuals to participate in this election by casting separate sealed ballots to be opened and counted by the Regional Director, only if determinative of the election results; and we shall so direct. If such ballots are determinative, the final disposition of the instant case will await the outcome of the court proceedings and such other determinations as may be necessary.

We shall direct that the question concerning representation which exists 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

As part of the investigation to ascertain representatives for the purposes of collective bargaining with David Katz and Fannie Katz, d/b/a Katz Food Products Company, Pittsburgh, Pennsylvania, 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 Sixth Region, and subject to Sections 203.61 and 203.62, of National Labor Relations Board Rules and Regulations—Series 5, and to our determination in Section V, *supra*, 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, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by Amalgamated Food Employees Union, Local 590, Amalgamated Meat Cutters & Butcher Workmen of North America, A. F. L., for the purposes of collective bargaining.