

In the Matter of GEORGE EHLENBERGER & COMPANY, INC., EMPLOYER
AND PETITIONER *and* FEDERAL LABOR UNION, LOCAL 21888, AFL,
DAIRY PRODUCTS, FRUIT AND VEGETABLE PACKERS AND REPACKERS
UNION

Case No. 2-RM-22.—Decided May 17, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board¹ finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization named in the Direction of Election claims to represent employees of the Employer.

3. A question of representation 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.

4. The appropriate unit.

The Employer and the Union are generally agreed that all production employees in the butter, cheese, and shipping and receiving departments, including floormen, but excluding the porter, office, administrative, and executive employees, and all supervisors,² constitute an appropriate unit. The Union disagrees with the Employer, however, in that it would include in the unit the egg department, and would exclude production employees who are employed on a guaranteed weekly basis; the Union also urges that the son of the Employer's vice president should be excluded from the unit.

The Employer's production operations comprise four departments, viz, the butter, cheese, egg, and shipping and receiving departments,

¹ 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, Reynolds, and Gray].

² The record discloses and the parties agreed that George Ehlenberger, Jr., Jeremiah Hannafin, George Doscher, John Moritz, Gilbert J. Farley, and anyone who may occupy the position formerly occupied by John Brehm, are supervisors as defined in the Act.

all of which are housed in a single structure and are under the supervision of the plant superintendent. The general processing and packaging, and shipping operations for all departments are located on the ground floor of the building. The second floor is occupied by the Employer's offices and also contains the main storage area; and the basement is used as supplementary storage space.

The butter department is divided into two sections, the butter print room where the bulk butter is printed or canned, and the butter refrigerator or butter box, where the butter is stored either in bulk form or in prints, and from which it is shipped out. The cheese department consists of two sections, the cheese room where the cheese is cut and packaged, and the cheese ice box where whole cheese and packaged cheese is stored. The egg department presently has 1 hourly paid employee. The only function of this department is to mark up stock for shipment after orders are received from the order room. Although egg candling has been virtually eliminated as production operation, some inspection candling is done, on occasions, when it is desired to select eggs of a particularly high grade or for a special purpose. The shipping and receiving department performs the usual functions incidental to such a department.

In the operation of its production department the Employer employs approximately 20 employees. With the exception of the employee assigned to the egg department, these production employees are shifted from one department to another, including the egg department, as the need arises.

The history of collective bargaining discloses that the Employer had a collective bargaining contract with the International Brotherhood of Teamsters, Local 202, covering truck drivers and helpers, which ran from approximately 1932 until 1937. There have been no collective bargaining relations between the Employer and any other labor organization since that time.

There is one employee presently employed in the egg department who is hourly paid, has the same working conditions and vacation benefits, and works under the same ultimate supervision as the Employer's other production employees. Under these circumstances and upon the basis of the entire record, we believe that this employee has a substantial community of interest with the Employer's other production employees which would warrant his inclusion in the unit. Accordingly, we shall include him in the unit.

The Union urges that production employees who are employed on a guaranteed weekly wage basis should be excluded from the unit on the ground that they are supervisors and/or because their individual

contracts with the Employer place them in a special category apart from the other employees. We do not agree. The record shows that the employees in question are production workers who by virtue of their seniority and experience act as leadmen in their various sections. Although they are paid a guaranteed weekly wage regardless of the number of hours they work, whereas the hourly paid production employees are paid only for hours actually worked, they have the same hours, working conditions, and vacation benefits, and work side by side with the other production employees. They have no authority to hire, discharge, or recommend changes in the status of employees; and although their duties involve the direction or guidance of other employees in the course of production operations, they have no authority to originate orders and are required to follow a work plan prepared by the plant superintendent, which outlines in complete detail the daily production operations to be carried out. It is also clear that they have no authority or discretion to deviate from these instructions without the permission of the plant superintendent even in cases of emergency. We believe that these employees are not supervisors as defined in the Act.³

Nor do we find merit in the Union's contention that these employees should be excluded from the unit on the ground that their wage payments are based upon a contractual relationship with the Employer. We have previously held that we do not consider mode of payment controlling on unit placement; instead, we will look to the general interests, duties, and nature of work and working conditions of employees to resolve the unit question.⁴ Upon the basis of these considerations we shall include these salaried employees in the unit.

The son of the Employer's vice president performs the same duties as other shipping and receiving employees in the unit. However, by virtue of his relationship to one of the Employer's active executives, his interests are sufficiently distinguishable from those of the other production employees to warrant his exclusion from the unit.⁵

We find that all production employees of the Employer (including employees on a guaranteed weekly wage basis) in the butter, cheese, egg, and shipping and receiving departments, and floormen, but excluding the porter, the son of the vice president, office, administrative and executive employees, and all supervisors as defined in the Act, con-

³ *Matter of Electric Auto-Lite Company, Kings Mills Division*, 76 N. L. R. B. 1189; *Matter of Gemco Engineering and Manufacturing Company, Inc.*, 76 N. L. R. B. 437; *Matter of S-P Manufacturing Corporation*, 75 N. L. R. B. 701.

⁴ *Matter of Kansas City Power and Light Company*, 75 N. L. R. B. 609; *Matter of Gunnison Homes, Inc.*, 72 N. L. R. B. 940, 942.

⁵ *Matter of Association Canado-Americaine*, 72 N. L. R. B. 520, 523, *Matter of Myers-Sherman Company*, 71 N. L. R. B. 910, 912.

stitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. Determination of representatives⁶

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot subject to the limitations and additions set forth in the Direction.

The Union contests the eligibility of John Harris, one of the employees in the shipping and receiving department, to participate in the election on the ground that he is not needed by the Employer and was put on the pay roll as a "ringer" for the purpose of securing a management vote. The evidence fails to support this contention. The record shows that Harris started work as a permanent employee on January 19, 1948, on a guaranteed weekly wage basis. He has the same hours and working conditions as the Employer's other production employees and has completed the usual 3 months' probationary period required by the Employer. Inasmuch as this employee has the same substantial interest in the terms and conditions of employment as do other production employees, we shall, subject to the limitations set forth in the Direction of Election, permit him to vote in the election.

Although the Union desires that the eligibility date of the election should be December 3, 1947, we find no valid reason for departing from the usual eligibility rule.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, 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 Second Region, and subject to Sections 203.61 and 203.62, of National Labor Relations Board Rules and Regulations—Series 5, among the employees in the unit found appropriate in Section 4, 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 ex-

⁶ At the hearing the Employer contended that W Poupas and H Collins were temporary employees and were not eligible to vote. However, in its brief submitted after the hearing, the Employer waived its contention and agreed that these employees were eligible to vote. The parties stipulated that employees, H Hunter, J. McCue, J. Haas, A Mannarino, and L. Kennedy, who were discharged and have filed unfair labor practice charges against the Employer, shall be permitted to vote subject to challenge.

cluding 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 Federal Labor Union, Local 21888, AFL, Dairy Products, Fruit and Vegetable Packers and Repackers Union, for the purposes of collective bargaining.