

In the Matter of MILK PRODUCERS ASSOCIATION OF CENTRAL CALIFORNIA  
and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT No. 41

*Case No. 20-R-1388.—Decided, January 25, 1946*

*Mr. J. Paul St. Sure*, of Oakland, Calif., for the Company and the Association.

*Mr. K. C. Apperson*, of Oakland, Calif., for the Machinists.

*Mr. R. R. Corrie*, of Burlingame, Calif., for the Engineers.

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

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, District No. 41, herein called the Machinists,<sup>1</sup> alleging that a question affecting commerce had arisen concerning the representation of employees of Milk Producers Association of Central California, Modesto, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Wallace E. Royster, Trial Examiner. The hearing was held at San Francisco, California, on October 19, 1945. The Company; the Machinists; International Union of Operating Engineers, Local 734, affiliated with the American Federation of Labor, herein called the Engineers; and Milk Products Manufacturers Association, herein called the Association; 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.

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<sup>1</sup>At the time of the filing of the petition herein, the Machinists was affiliated with the American Federation of Labor. We take official notice of the fact that it is no longer so affiliated and have, upon our own motion, amended all papers in this proceeding by deleting therefrom all references to the Machinists' previous affiliation.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

Milk Products Manufacturers Association is a non-profit California corporation formed for the purpose of handling labor relations for its various members, all of whom are milk products manufacturers. All parties agreed, and we so find, that the Association is an employer of the employees involved herein, within the meaning of Section 2 (2) of the National Labor Relations Act.

Milk Producers Association of Central California, a member of the Association, is a non-profit cooperative association organized under the laws of the State of California, engaged in the manufacture of milk products. For this purpose it operates plants at Stockton and Modesto, California.<sup>2</sup> During the year 1944, the Company purchased 150,000,000 pounds of milk, all of which were obtained from within the State of California. However, during this period the Company also made purchases of machinery and other supplies from points outside the State of California. The Company's total production during this year exceeded \$9,000,000 in value, of which products valued at approximately \$500,000 were shipped to points outside the State of California.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.<sup>3</sup>

### II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, District No. 41; and International Union of Operating Engineers, Local 734, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

### III. THE ALLEGED APPROPRIATE UNIT

The Machinists seeks a unit composed of all maintenance employees, heavy duty truck mechanics, steam plant operators and helpers engaged at the Company's Modesto plant. The Association, for itself and on behalf of the Company, and the Engineers contend that this unit is inappropriate inasmuch as the employees sought by the Machinists comprise only a portion of an existing bargaining unit which has been represented by the Engineers for several years.

<sup>2</sup> Only certain employees of the Company's Modesto plant are involved in this proceeding.

<sup>3</sup> See *N L R B v. Rudolph and Charles Kudile, d/b/a Hasbrouck Hughes Dairy*, 130 F. (2d) 615 (C C A 3).

The record indicates that in 1937 the Association executed a contract with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, herein called the Teamsters, covering all production and maintenance employees of the Association's members. This agreement was renewed in 1938, 1939, 1940, and in 1941. In the early part of 1942, the Engineers having previously asserted a claim with respect to maintenance and boiler room employees of certain of the members of the Association,<sup>4</sup> a joint meeting of the Association, the Teamsters and the Engineers was arranged for the purpose of settling the overlapping claims of the two labor organizations. As a result of this meeting, an agreement, dated February 1, 1942, was executed by the Teamsters and the Engineers, and approved by the Association, which awarded to the Engineers jurisdiction over the maintenance and boiler room employees of certain of the members of the Association. This agreement was followed by the execution of a collective bargaining contract by the Association and the Engineers, antedated to January 12, 1942, covering these employees. Among the workers embraced within the scope of this contract were those sought herein by the Machinists.<sup>5</sup>

The contract provided for a term ending December 31, 1942, and for its renewal for yearly periods thereafter in the absence of notice of "a desire to change" given by either party to the other 30 days prior to any expiration date. It was renewed for the year 1943, during which period the Engineers joined with the Association in filing an application before the War Labor Board seeking an adjustment in the wages of the employees represented by the Engineers. It was further renewed in 1944 and, the Engineers asserts, in 1945.<sup>6</sup>

The Machinists first asserted a claim with respect to maintenance employees of members of the Association in 1941. However, although it pressed its claim in succeeding years, the Machinists was unsuccessful in obtaining recognition as the representative of these employees. In 1944 the Machinists became more importunate in its demands for recognition, particularly insofar as the maintenance employees of the Company's Modesto plant were concerned. It obtained a letter from the Teamsters, dated July 17, 1944, and addressed to counsel for the Association, stating that the Teamsters would "not object to your association entering into an agreement covering [mechanics] in the [Company's] plant of Modesto." Shortly thereafter, on the strength

<sup>4</sup> This claim was first asserted in 1938.

<sup>5</sup> Employees of all Association members within three specified California counties were covered by the contract.

<sup>6</sup> In November 1944, the Engineers served notice upon the Association that it sought to reopen the contract for the purpose of negotiating a revision of the wage provision, apparently pursuant to a clause in the contract permitting the revision of wages and hours without terminating the contract as a whole. The resulting issue between the parties was submitted to the Conciliation Service of the Department of Labor, and, as of the date of the hearing, the matter was still unsettled.

of this letter, counsel for the Association, on behalf of the Company, commenced negotiations with the Machinists with respect to the Company's employees at the Modesto plant "within [the Machinists'] jurisdiction, or eligible to membership therein." This resulted in an agreement between the Company and Machinists, postdated to February 5, 1945, covering these employees. It was understood by the parties, however, that the effectuation of this agreement was contingent upon a settlement of the jurisdictional controversy between the Machinists and the Engineers. The record indicates that no settlement was reached between the two labor organizations,<sup>7</sup> and the agreement never became operative.

It is apparent from the foregoing facts that the employees sought herein by the Machinists have been bargained for collectively by the Engineers since 1942 as part of a larger multiple-employer unit. This bargaining history, we concluded, far outweighs the elements upon which the Machinists relies to substantiate its position,<sup>8</sup> and impels the conclusion that a unit smaller than that which the Engineers has represented is inappropriate.<sup>9</sup> We find, therefore, that the employees sought by the Machinists do not constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### IV. THE ALLEGED QUESTION CONCERNING REPRESENTATION

Since, as indicated in Section III, above, the unit sought to be established herein by the Machinists is inappropriate, we find that no question concerning the representation of employees of the Company in an appropriate unit has been raised. Accordingly, we shall dismiss the petition.

#### ORDER

Upon the basis of the above findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Milk Producers Association of Central California, Modesto, California, filed by International Association of Machinists, District No. 41, be, and it hereby is, dismissed.

<sup>7</sup> By letter dated December 30, 1944, addressed to counsel for the Association, the Engineers refused to cede jurisdiction over the Company's Modesto plant maintenance employees

<sup>8</sup> In addition to the inoperative contract between the Company and the Machinists, dated February 5, 1945, evidence was adduced to the effect that the closed-shop provision in the Engineers' contract was not enforced with respect to the employees of the Company's Modesto plant, and that both the Teamsters and the Engineers recognized that the Machinists had members among these employees.

<sup>9</sup> See *Matter of Dolese & Shepard Company*, 56 N. L. R. B. 532; *Matter of Standard Slag Company*, 63 N. L. R. B. 313; *Matter of Clarksburg Paper Company*, 64 N. L. R. B. 1319. See also *Matter of Advance Tanning Company, et al.*, 60 N. L. R. B. 923.