

In the Matter of STERLING SUGARS, INC. and CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 15-R-1453.—Decided February 18, 1946

Mr. Fontaine Martin, Jr., of New Orleans, La., *Mr. Robert E. Brumby*, of Franklin, La., and *Mr. Paul G. Borron, Jr.*, of Plaquemine, La., for the Company.

Messrs. R. W. Starnes, L. A. L'Hoste, and *J. H. Ritter*, of New Orleans, La., for the C. I. O.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Congress of Industrial Organizations, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Sterling Sugars, Inc., Franklin, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry Whittaker, Trial Examiner. The hearing was held at Franklin, Louisiana, on October 4, 5, and 8, 1945. The Company and the CIO 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. At the hearing, the Company made a motion to dismiss the petition because of the alleged insufficiency of the CIO's showing of representation. The Trial Examiner reserved ruling for the Board. For the reason set forth in Section III, *infra*, the motion is denied. 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. On December 6, 1945, oral argument was heard before the Board at Washington, D. C. All parties appeared by counsel and participated in the argument.

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

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FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Sterling Sugars, Inc., a Delaware corporation, with its principal office and place of business in Franklin, Louisiana, is duly licensed to engage in business in the State of Louisiana. It operates several sugar cane plantations in the Parishes of St. Mary and Iberia, Louisiana, and a sugar refinery and sugar cane processing plant in Franklin, Louisiana. This proceeding is concerned with the refining and processing plant where the Company manufactures, refines, and processes sugar, molasses, and bagasse. During the fiscal year ending August 31, 1945, the Company purchased raw sugar amounting to \$3,414,279.10 in value, of which approximately 52 percent originated from sources outside the State of Louisiana. During the same period, sugar refined at the Company's plant amounted to \$4,550,715.62 in value, of which approximately 85 percent was shipped to points outside the State of Louisiana.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Congress of Industrial Organizations 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 the Company's employees until the CIO 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 CIO 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 CIO requests a unit consisting of all production and maintenance employees of the Company at its Franklin, Louisiana, plant, including working foremen and the commissary clerk. The Company

¹ The Field Examiner reported that the C I O submitted 146 application for membership cards, of which 3 were undated, 109 bore dates in March and April 1945, and the balance bore dates between June and September 1945, and that 86 cards represented the names of persons appearing on the Company's pay roll of September 1, 1945, in an alleged appropriate unit consisting of 216 employees

would confine the unit to employees engaged in refining raw sugar during its regular refining season. Both parties are in agreement as to the exclusion of chemists, watchmen, the chauffeur, seasonal employees, temporary plantation employees, clerical employees, engineers, the chief chemist, cane shed foremen, and all other supervisory employees, but are in dispute as to certain categories hereinafter discussed.

The Company owns various plantations where it raises sugar cane. Plantation employees are under separate supervision and generally are included on the plantation pay roll; neither party contends that such employees should be included in the unit. In addition, the Company operates a plant where it processes sugar cane into raw sugar and related products, and also refines raw sugar. The sugar cane processing season extends from October until the latter part of January; the regular refining season takes place from February to September. During the processing period, the plant personnel consists of plantation labor from neighboring States, transients, local labor, and a substantial number of employees² who remain with the Company at the close of the refining season. Upon the conclusion of the processing season, the seasonal employees leave, others remain for the refining season, and some who left the Company's employ after the preceding refining season return. During the refining season, farm laborers are also recruited by the Company from its plantations as temporary employees. Most of the raw sugar processed during the sugar cane processing season is sold; although a small part is reserved for refining during the regular refining season, most of the sugar refined is purchased from outside sources. Refining also takes place at a reduced scale during the processing season, and maintenance, and at times construction, of processing equipment is engaged in during the refining season.

The dispute between the Company and the CIO centers principally about employees who work during the cane processing season. The Company would confine the unit to the regular refining employees, whereas the CIO desires both refining and processing employees. As indicated above, the same employees work during both the regular

² As revealed by a comparison of the following comparable pay-roll periods:

Pay-roll period:	<i>No. of employees appearing on pay roll</i>	<i>No. of employees appearing on both pay rolls</i>
8-28-43.....	313	
2-19-44.....	300	131
8-19-44.....	288	
2-17-45.....	322	228
9-1-45.....	245	
12-8-45.....	301	187
8-19-44.....	288	
12-9-44.....	283	219

The foregoing information was submitted by the Company subsequent to the oral argument in the form of a letter dated December 8, 1945. Pursuant to a stipulation of the parties, the Company's letter of December 8 is hereby incorporated into the record.

refining and the sugar cane processing seasons; some keep the same jobs, others change, and some engage in work relating to both refining and processing. In addition, refining operations are carried on during the processing season, and, conversely, some maintenance work associated with the processing equipment is engaged in during the regular refining season, and to some extent the same equipment is utilized for both refining and processing. The evidence thus shows that there is an integration of employee activities and company operations such as to warrant a finding that all regular employees of the Company, regardless of the season during which they may be employed, constitute an appropriate unit. We therefore find that employees who engage in both refining and processing may constitute an appropriate unit for the purposes of collective bargaining.³

Norit plant foremen. The CIO would include these employees in the unit for the reason that they perform other work in the plant in addition to their duties in the Norit plant. The Company would exclude them as supervisory employees. The Norit plant is part of the refining operation; because of the nature of the work, it is located in a separate building connected with the main building. Although Norit plant foremen also work in the main plant, they devote a substantial portion of their time to supervisory duties in the Norit plant. Their hourly rate is higher than that of other employees and they can effectively recommend the discharge or transfer of employees under their supervision. In the past, their recommendations as to the hire of employees have been accepted by the Company. Inasmuch as they possess supervisory authority within the meaning of our customary definition, we shall exclude the Norit plant foremen.

Wagon drivers. The Company and the CIO agree that Grandson Hamilton, a wagon driver, should be included in the unit; however, the Company opposes the inclusion of Horace Wade, also a wagon driver. Although both wagon drivers are under the supervision of the store-room foreman, Hamilton is engaged in keeping the property about the plant clean, whereas Wade performs miscellaneous duties in connection with the plantation. Inasmuch as Wade is engaged in work primarily concerned with the plantation, we shall exclude him from the unit.

We find that all production and maintenance employees⁴ engaged in refining and processing operations at the Company's Franklin, Louisiana, plant, including working foremen⁵ and the commissary

³ We find no merit in the Company's contention that employees who engage in construction should be excluded from the unit, particularly where, as here, such employees are recruited from plant personnel and upon the cessation of their construction activities are transferred to other work in the plant. See *Matter of The Logan Clay Products Company*, 63 N. L. R. B. 245.

⁴ Excluding Horace Wade, discussed above, and including, in accordance with the agreement of the parties, Albert Wiggins, a truck driver, who transports employees to and from the plant.

⁵ Falling within this category are Norit press foremen, mixer foremen, dumping crew and raw bin foremen, packing room sugar bin foremen, and centrifugal sugar dryer foremen.

clerk, but excluding chemists, watchmen, the chauffeur, seasonal employees, temporary plantation employees,⁶ clerical employees, engineers, the chief chemist, Norit plant foremen, cane shed foremen,⁷ and all other supervisors 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.

The CIO requests that September 29, 1945, the last pay-roll period of the 1945 regular refining season, be adopted as the eligibility date. Inasmuch as the 1946 refining season will have commenced at the time the election is held, no reason exists for departing from our usual eligibility practice. We shall therefore deny the CIO's request.

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 Sterling Sugars, Inc., Franklin, Louisiana, 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 Fifteenth 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 employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this

⁶ The parties agree, and we find, that feed room operators, auto mechanics and helpers, truck drivers other than Albert Wiggins, and the dredgeman, all of whom are primarily engaged in plantation work but are carried on the general plant pay roll, shall be excluded from the unit as plantation employees

⁷ These employees exercise supervisory authority during the processing season; during the balance of the year they work as non-supervisory maintenance men. They are to be deemed excluded from the unit only when acting in the capacity of foremen.

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 or not they desire to be represented by the Congress of Industrial Organizations, for the purposes of collective bargaining.