

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Local No. 65, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L.; Modern Cleaners Employees Protective Association; and Modern Cleaners Employees Association are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the employees named above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By dominating and interfering with the formation and administration of and by contributing support to Modern Cleaners Employees Association, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. The reliable, substantial, and probative evidence adduced at the hearing herein does not conclusively show that the Respondent discriminatorily discharged Wayne Stuart.

6. By discharging Marion Alberts the Respondent did not engage in any unfair labor practices.

7. By failing to get in touch with and to offer reinstatement to Lena Rosell, Esther Moran, Mildred Brown, and Beatrice ReCouper on April 28, 1950, when they made application at Respondent's office for reinstatement, the Respondent did not engage in any unfair labor practice.

8. By failing to reinstate Duane Powers to his or her former position or substantially equivalent position the Respondent did not engage in any unfair labor practices.³³

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication in this volume.]

³³ The record does not divulge the sex of Duane Powers.

PLUSS POULTRY, INC., PETITIONER *and* AMALGAMATED MEAT CUTTERS
AND BUTCHER WORKMEN OF NORTH AMERICA, AFL. *Case No.*
32-RM-23. July 8, 1952

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

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

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

2. The labor organization involved claims to represent employees of the Employer.

3. No 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, for the following reasons:

The Union urges its current contract with the Employer as a bar to this proceeding. The Employer contends that the contract applies only to its Decatur, Arkansas, plant, and therefore may not prevent a present election among the employees at its Siloam Springs, Arkansas, plant.

The Employer is engaged in the processing of poultry. For almost 3 years it operated a chicken processing plant in the town of Decatur, Arkansas. Because Decatur lacked proper sewage and other disposal facilities, the Employer, starting in June, 1951, took steps to open another plant at the town of Siloam Springs, 17 miles distant. Discontinuance of the processing operations at Decatur was compelled by the Arkansas State Department of Health and by the United States Food and Drug Administration. But for the seven or eight pickup truck drivers who still operate out of Decatur, all work at that locality ceased on March 16, 1952. Five days later, on March 21, the Siloam plant commenced processing operations.

Following a Board election, the Union was certified as bargaining agent for the Employer's production and maintenance employees on December 7, 1951. On February 21, 1952, it executed a contract covering these employees, the agreement to expire on December 7, 1952. After the Siloam plant was opened, the Employer refused to recognize this contract as covering the employees located there and, with the Union asserting bargaining rights for the Siloam employees by virtue of its certification, the Employer filed the petition herein. The contract bar contention thus raises the question whether the Siloam plant is a new or an additional operation, as the Employer contends, or whether it is the old operation transferred to another site. The work performed at Siloam is of the same character as that discontinued at Decatur, whence much of the present Siloam machinery was obtained. Both locations draw from the same labor market, Decatur being a town of only 300 to 400 population. The Employer asserts that the Siloam plant was staffed through the local offices of

the United States Employment Service. The record shows, however, that of the original 145 employees working at Decatur, 113 now work in the Siloam plant. As these employees were invited to apply for work at the new location on its opening date, we attach little significance to the fact that before starting there, they were required to execute employment applications. Although the Employer contends that the Decatur plant is still a functioning operation, it is used only as the headquarters of a small pick-up crew. The record clearly shows, and the Employer admits, that this location will not again be put in operation until costly sewage and other disposal facilities shall have been installed by the municipality, and that the prospects of such improvements are entirely speculative. On these facts, we are impelled to the conclusion that the Siloam Springs operation of the Employer is essentially nothing more than the Decatur operation transferred to a new location. It follows, therefore, that the February 1952 contract between the Employer and the Union covers the employees at the new location and constitutes a bar to an election at this time.¹

In further support of its petition for a new election, the Employer points to the fact that its over-all employment has increased to approximately 180 employees, and that the existing contract adverts literally to the Decatur plant. But, as the Board has heretofore held, absent any material change in the scope and character of the unit, such an increase in personnel, although substantial, is insufficient to require a new election in the face of an existing contract.² As to the argument that use of the word "Decatur" in the existing contract requires limitation of that agreement to that location, we believe such interpretation to be out of context and unnecessarily restrictive. Rather, we believe such phrase to be descriptive of the Employer instead of the operation or the unit covered by the contract.

Upon the basis of all the foregoing and upon the entire record, we find that the existing contract between the Employer and the Union is a bar to a present determination of representatives. In view of this determination, we find it unnecessary to consider the Employer's motion, filed after the close of the hearing, for leave to withdraw its petition. We shall, therefore, dismiss the petition.

Order

IT IS HEREBY ORDERED that the petition filed herein by Pluss Poultry, Inc., be, and it hereby is, dismissed.

¹ *Yale Rubber Manufacturing Company*, 85 NLRB 131.

² *Liggett & Myers Tobacco Co.*, 73 NLRB 207.