

Bowman Dairy Company, Petitioner and Dairy, Bakery and Food Workers Local 379, Retail, Wholesale and Department Store Union, AFL-CIO and Truck Drivers Union Local 413 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.¹ *Case No. 9-RM-194. April 9, 1959*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Harold V. Williams, 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 National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Fanning].

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organizations involved claim 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:

Dairy Workers Local 379 asserts that its current collective-bargaining agreement is a bar to this proceeding. Teamsters Local 413 agrees with the Employer-Petitioner that the conflicting representation claims of the Unions should be resolved by an election.

In May 1955, the Bowman Dairy Company, of Illinois, acquired all the stock of the Richer Dairy Company in Columbus, Ohio. It continued to operate the Richer Dairy under that name until late in August 1958, when the corporate name of the subsidiary, the Employer-Petitioner herein, was changed to Bowman Dairy Company (of Ohio). Since the purchase, Richer Dairy has maintained collective-bargaining agreements with the Dairy Workers. The current contract, which is to expire on February 1, 1960, was entered into February 1, 1958.

On August 23, 1958, Bowman of Illinois acquired Fairmont Foods Company, a wholesale dairy in Columbus, whose employees were represented by the Teamsters under a contract that was not assumed by Bowman. In October 1958 the operations and the personnel of Fairmont Dairy were transferred to the Employer's plant in Colum-

¹ The names of the parties appear as corrected at the hearing.

bus, Ohio. At the time of this consolidation, the Employer had 26 employees, Fairmont had 31 employees. The expanded operations of the Employer remained substantially the same in character, except that it acquired a cottage cheese operation from Fairmont, employing two or three employees. The Employer also uses two or three of the former Fairmont employees to do maintenance work which was formerly subcontracted. The employee classifications at the Bowman plant remained substantially unchanged.

At least 30 percent of the Employer's enlarged complement had been employed at the time the 1958 contract with the Dairy Workers was executed, and at least 50 percent of the plant job classifications were also in existence at that time. The merger and consolidation of the operations of Bowman of Ohio and Fairmont did not result in the creation of an entirely new operation with major personnel changes.² The employees transferred from Fairmont to Bowman have no particular skills and no special interests not possessed by the original employee complement of the Employer with whom they are now commingled.³ Accordingly, pursuant to the rules established by the Board in the *General Extrusion* case,⁴ we find that the Dairy Workers' contract of February 1, 1958, covers the employees of both the former Richer Dairy and the Fairmont Foods plant, and is a bar to the proceeding. We shall, therefore, dismiss the petition.

[The Board dismissed the petition.]

² See *New Jersey Natural Gas Company*, 101 NLRB 251, 252, where the Board found the merger of two gas utility systems which resulted in a *fivefold* expansion of the Employer's original operation, as comparable to an entirely new operation.

³ *Builders Emporium*, 97 NLRB 1113, 1115.

⁴ *General Extrusion Company, Inc., et al.*, 121 NLRB 1165.

**Whittaker Controls Division of Telecomputing Corporation
(Lynwood Plant) and International Union, United Automobile,
Aircraft and Agricultural Implement Workers of America,
UAW-AFL-CIO**

**Whittaker Controls Division of Telecomputing Corporation
(Hollywood Plant) and International Union, United Auto-
mobile, Aircraft and Agricultural Implement Workers of
America, UAW-AFL-CIO. Cases Nos. 21-RC-5344 and 21-RC-
5494. April 10, 1959**

DECISION, ORDER, AND DIRECTION OF ELECTION

On December 19, 1958, the Board issued a Decision and Direction of Election in Case No. 21-RC-5344,¹ finding therein that a unit:

¹ *Whittaker Controls Division of Telecomputing Corporation*, 122 NLRB 624, herein called the *Lynwood* case.