

(b) Notify said Regional Director, in writing, within 20 days from the date of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.²

It is further recommended that the complaint be dismissed as to all allegations not specifically found herein to have been in violation of the Act.

²In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act by granting them, or threatening to withdraw, economic benefits, or by changing the terms or conditions of their employment, provided, however, that nothing in these recommendations requires us to vary or abandon any economic benefit or any term or condition of employment which has heretofore been established.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist Retail Store Employees Union, Local 444, Retail Clerks International Association, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right is affected by the provisos in Section 8(a)(3) of the Act.

U-TELL CORPORATION,
Employer.

Dated..... By.....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 881 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois, Telephone No. 828-7572, if they have any question concerning this notice or compliance with its provisions.

Alta-Dena Dairy and Dairy Employees, Plant & Clerical, Local 93, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner. Case No. 21-RC-8882. February 3, 1965

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, 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. Thereafter, a brief was filed by the Employer herein.

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 Fanning, Brown, and Jenkins].

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

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Petitioner seeks to represent all of the employees of the Employer except those employed in the cash-and-carry stores, the ice cream plant, and in the classifications which the Employer would exclude if an election were directed.

The Employer, a partnership owned by three brothers, is engaged in producing, processing, and selling milk and related dairy products in the Los Angeles area. In the conduct of this business, the Employer operates three dairy farms—one at the City of Industry (herein called Industry), one at Monrovia, and one at Chino. At the Industry and Monrovia sites, the Employer has milk processing plants where the Employer's own milk is processed and bottled. In addition to these two plants, the Employer operates a small ice cream making plant in Los Angeles, a filling or service station at Hawthorne which services and maintains the Employer's trucks in that area and also sells gas and oil to the public, and 12 cash-and-carry stores where the Employer's products are sold directly to the public. It appears that the Employer also maintains docks at Hawthorne and Culver City where certain of the Employer's retail drivers pick up milk and other products for delivery to customers.

As indicated, Chino is a pure dairy farm operation. The milk produced here is transported to Industry or Monrovia for processing at one of the plants. At Industry, which seems to be the largest of the operations, the Employer employs¹ 10 to 12 milk plant processing employees, 6 or 7 maintenance employees who service all of the Employer's machinery—farm equipment, plant machinery, and trucks, about 30 retail route drivers, 7 wholesale route drivers, and 3 vending employees. The processing of the

¹ Milkers and farmhands are employed at all three farms. These individuals, however, the parties have agreed to exclude and are not in issue here.

milk is, of course, done by plant employees. The processed milk and other products are loaded on the trucks by the drivers themselves, who make their deliveries to homes in the case of retail drivers; to schools, cafes, rest homes, and a few grocery stores in the case of wholesale drivers; and to vending machines located in schools and factories in the case of vending employees. Drivers, either retail or wholesale, also make the deliveries to the Hawthorne and Culver City docks for pickup by other drivers and, except as noted below, deliveries to the Employer's cash-and-carry stores.

Monrovia's operation is much like that at Industry except that the only drivers employed there are retail drivers—35 in number. Further, no maintenance employees (mechanics) are employed here, such jobs being done by Industry maintenance employees when necessary. Monrovia has five or six plant employees.

The number of drivers working out of the Culver City dock is eight, and some six or seven work out of the Hawthorne dock.

There are four employees at the Hawthorne service station, three of whom are mechanics and one who sells gas.

As to the 12 cash-and-carry stores, 2 are located at the Industry site, 1 at Monrovia, 1 in Hawthorne—next to the service station, 1 in Los Angeles—at the ice cream plant, 1 in Culver City, 1 in Pasadena, 1 in Arcadia, 2 in West Covina, 1 in South San Gabriel, and 1 in Pico Rivera. Between 10 and 15 cash-and-carry employees, including those working part time, are employed at Industry; approximately 10 at Monrovia; and the other 9 outlets have 4 or 5 each.

It appears from the record that the hours worked by the different classifications of employees vary, as do the methods of compensation. As to the latter, it appears that some (production, vending, and probably maintenance employees) are salaried, and that others (retail and wholesale drivers) are paid on a commission basis with a guaranteed salary. The immediate supervision of the different employee groups is not clearly shown by the record, but it does appear that each of the various operations is overseen by one of the partner brothers or a brother of the partners (there are six or seven brothers in this operation). As to some of the groups, however, immediate supervision is established in the record. Each of the three groups of retail route drivers—Industry, Monrovia, and the Los Angeles area—has its own immediate supervisor, and the maintenance employees, those at Industry and at the service station, have a common immediate supervisor. As to interchange, the record shows that there have been some transfers and these appear to have been on a permanent basis. Thus, in the past year, two cash-and-carry em-

ployees transferred to retail driving routes and two drivers went to cash-and-carry stores. There is also an indication in the record that a plant or maintenance employee may drive a truck as a relief man, but this happens only rarely. Some conditions or terms of employment apply uniformly to all employees. Thus, the record shows that: all personnel records are kept at Industry; hiring is done chiefly by two of the partners; these same two partners have the final word on discharges; all employees are furnished uniforms without charge; and for all full-time employees who have worked for a fixed period of time the Employer has a common pension program, health and welfare program, and sick leave and vacation plans.

The Employer's basic position is that all employees are "agricultural" employees, and that the petition should be dismissed. The Employer's alternative position is that the only appropriate unit is one including all employees except milkers, farmhands, clericals, and the usual statutory exclusions.

The Petitioner's primary unit request is, as noted, one including all employees except those employed in the cash-and-carry stores and the ice cream plant, and those in the classifications whom the Employer would exclude.²

Contrary to the contention of the Employer, we do not believe that all of its employees are agricultural laborers within the meaning of Section 3(f) of the Fair Labor Standards Act. While the Chino farm is limited to milk production with no processing of the milk, the Monrovia and Industry farms have milk processing equipment, including such dairy equipment as short time pasteurizer, butter churn, holding tanks, bottle washer and filler, and cooling equipment. It is clear that the Employer not only has a substantial investment in processing, bottling, and distributing equipment and buildings in which the Employer conducts an extensive commercial operation, but that in its operation the milk is changed from its raw or natural state to a product that is marketed as pasteurized milk, butter, cottage cheese, ice cream, etc.; increased market value is added to the raw milk as a result of this processing by the plant employees. We find this processing of milk into marketable products to be a separate commercial operation, and the employees performing and maintaining this operation are not agricultural laborers within the meaning of Section 3(f) of the Fair Labor Standards Act. The Employer's products are delivered by the truckdrivers to consumers or placed in the cash-and-carry stores for sale to the public by the employees at the particular store. Here again the service that is rendered by the

² The Petitioner made alternative unit requests, but, in view of our finding herein, it is unnecessary to discuss these requests.

truckdrivers and the cash-and-carry store employees is of a nature which does not qualify those employees as agricultural laborers within the meaning of Section 3(f) of the Fair Labor Standards Act. It is equally clear that the mechanics who maintain the equipment and the gas station attendant are not agricultural laborers. Accordingly, we find the foregoing employees to be employees within the meaning of Section 2(3) of the National Labor Relations Act, as amended.

As to the unit, we have concluded that, notwithstanding certain differences in their terms and conditions of employment, the employees sought by the Petitioner constitute basically a plantwide unit which is presumptively appropriate. We find also that the drivers have a sufficient community of interest to warrant their inclusion in such a unit.

As noted, the service station employees service the employer's trucks in the area and sell gas and oil to the public. As they appear to have interests similar to the maintenance employees, including a common immediate supervisor, we shall include them in the unit as requested by Petitioner.

With regard to the cash-and-carry store employees whom, in agreement with the Petitioner, we shall exclude, we find that the very nature of their work gives them interests different from those of plant and driver employees.³ As to the ice cream plant employees, we find that their geographical separation from other unit employees and their proximity to the excluded cash-and-carry employees working at the store located at the plant, justify their exclusion as requested by Petitioner.⁴

We find that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: All production and maintenance employees, including wholesale, retail, and vending machine drivers and service station employees, employed at the Employer's facilities at Monrovia, City of Industry, and Hawthorne, California, excluding cash-and-carry store employees, ice cream plant employees, milkers and farmhands, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

³ See *E. H. Koester Bakery Co., Inc.*, 136 NLRB 1006; *Gunzenhauser Bakery, Inc.*, 137 NLRB 1613

⁴ Member Jenkins would include the ice cream plant employees in the unit. In his view, no rational basis exists for excluding these production employees from the unit which includes other production employees. He would point out that while these employees may be geographically separated from the milk processing plants, included in the unit are two groups of production employees which are likewise geographically separated from each other.