

**United States Baking Company, Inc.<sup>1</sup> and  
International Union of District 50, United  
Mine Workers of America, Petitioner. Case  
25-RC-3467.**

June 23, 1967

**DECISION AND DIRECTION OF ELECTION**

**BY CHAIRMAN McCULLOCH AND MEMBERS FANNING  
AND ZAGORIA**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer William A. Molony. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Petitioner filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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 organizations involved claim to represent certain employees of the Employer.<sup>2</sup>

3. A 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.

4. The Employer is engaged at Seelyville, Indiana, in the manufacture of cookies and crackers. The Petitioner requests an election in a unit of production employees in the following classifications: depositer machine, machine operator, sealer, wrapper and bundler, packing and miscellaneous help, matron, and relief girls; but excluding maintenance employees, truckdriver, office clerical, professional employees, guards, all other employees and supervisors as defined in the Act.

Since 1937, the Employer has had collective-bargaining agreements with locals of Bakery and Confectionery Workers' International Union of America covering its production employees. Prior to 1962, the Employer's production employees were represented by two separate Bakery Workers Local Unions, one for male and the other for female employees. Since 1962, the Intervenor, Bakery Workers, Local No. 372, which admits all production employees into membership, has represented such employees in two separate units.

At the present time, the Intervenor has separate 2-year contracts, effective until June 7, 1967, one covering the classifications of employees in the unit requested by the Petitioner set forth above and referred to as production unit "one"; and the other covering the following classifications of production employees, referred to as production unit "two": cracker mixer, sponge mixer, cake mixer, marsh-mallow mixer, creme mixer, mixer helper, machine man, relief man, cross-roller, sandwich machine operator, oven man, case-sealer, stockman, lead shipper, shipper, receiver, leadman, porters, enrober machine man, enrober setup man, and motorized stockman. Teamsters Local 144 is the contractual bargaining representative of the Employer's warehouse employees and truckdrivers; and Local 764, International Union of Operating Engineers, is the contractual representative of the maintenance employees.

All production departments of the Employer's plant are located in one open area, and the production process is a single, integrated, straight-line operation. All production employees have the same working conditions, share the same plant facilities such as the lunchroom, and punch the same timeclock. Production employees work in the two receiving departments; the mixing and baking department; the packaging, sealing, and packing department; and the shipping department. Production unit "two" employees perform the work to the point where the goods flow through the dough trough into the ovens. After the dough mixture passes through the oven and cools, it then is processed by employees in production unit "one" classified as packing and miscellaneous help. From that point in the packing and shipping processes to the actual shipping of the product, employees in the two production units work together, and, in some instances, on the same job. For example, the outside protective wrapping is applied by a machine operated by employees in both units, and other packaging and loading operations are done in some instances by employees in unit "two" and in others by employees in unit "one." There is no separate supervision of employees in the two production units.

Although there is no such indication on the face of the separate contracts covering production employees, the undisputed evidence establishes, and the parties admit, that the sole basis for the separate units and the separate contracts, is that unit "one" includes all female production employees, and unit "two" includes all male

<sup>1</sup> The name of the Employer appears in the caption as corrected at the hearing

<sup>2</sup> Bakery Workers, Local No. 372, affiliated with Bakery and Confectionery Workers' International Union of America, intervened on the basis of its current contract covering employees involved herein Local 144, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

was represented at the hearing, but requested leave to withdraw its interest in this proceeding on the ground that the warehouse and drivers unit it represents "is not being disturbed by any of the claims of the other parties" This request was referred by the Hearing Officer to the Regional Director, who did not rule thereon. In the absence of any objection, the request is granted

production employees. Admittedly, the only reason why no classifications in the separate units are the same is for the purpose of distinguishing between male and female production employees. In fact, when a man is hired, he is invariably placed in a classification included in the contract covering unit "two" employees, and every woman who is hired is placed in a classification covered by the unit "one" contract. In addition, separate seniority lists are maintained, one for unit "two" male employees and the other for unit "one" female employees.

At the hearing, the Employer, the Petitioner, and the Intervenor agreed to the appropriateness of the unit requested. They also agreed, however, that the requested unit includes only a portion of the production employees and excludes all male employees. The Board has held that units based solely upon sex of employees are inappropriate,<sup>3</sup> and since there is no other basis upon which the requested unit can be justified, we find that the requested unit is inappropriate for purposes of collective bargaining. However, we find, in all the circumstances, that a unit of all production employees is appropriate,<sup>4</sup> and, as the Petitioner

has demonstrated an adequate showing of interest therein, we shall direct an election in such unit.

Accordingly, we find that the following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All production employees at the Employer's plant at Seelyville, Indiana, including employees classified as depositer machine, machine operator, sealer, wrapper and bundler, packing and miscellaneous help, matron, relief girls, cracker mixer, sponge mixer, cake mixer, marsh-mallow mixer, creme mixer, mixer helper, machine man, relief man, cross-roller, sandwich machine operator, machine helper, oven man, case-sealer, stockman, lead shipper, shipper, receiver, leadman, porters, enrober machine man, enrober setup man, and motorized stockman; but excluding maintenance employees, truckdrivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Direction of Election<sup>5 6</sup> omitted from publication.]

<sup>3</sup> *Cuneo Eastern Press, Inc.*, 106 NLRB 343.

<sup>4</sup> The unit found appropriate herein is substantially larger than the unit requested; therefore, if Petitioner does not desire to participate in an election in this unit, it may withdraw its petition without prejudice to the filing of a new petition, by notifying the Regional Director within 10 days of the issuance of the Decision and Direction of Election.

<sup>5</sup> An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 25 within 7 days after the date of this Decision and Direction of Election. The Regional

Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

<sup>6</sup> If Bakery Workers, Local No 372, wins the election and is certified, and it should later be shown, in an appropriate proceeding, that equal representation has been denied to any employee in the unit, the Board will consider revoking its certification. *Pioneer Bus Co.*, 140 NLRB 54.