

In the Matter of GENERAL MILLS, INC., DOING BUSINESS UNDER THE TRADE NAME OF WASHBURN CROSBY COMPANY and FLOUR, FEED, AND CEREAL WORKERS FEDERAL UNION No. 19184, and UNITED GRAIN AND CEREAL WORKERS, LOCAL No. 240.

*Case No. R-266*

*Flour Milling Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* production employees; history of collective bargaining with employer; established labor organizations among employees; community of interest—*Election Ordered—Certification of Representatives.*

*Mr. Norman F. Edmonds* for the Board.

*Locke, Babcock, Hollister, and Brown*, by *Mr. Louis L. Babcock*, of Buffalo, N. Y., for the Company.

*Mr. Alfred Chandler, Jr.*, of Buffalo, N. Y., for the Flour, Feed, and Cereal Workers Federal Union No. 19184.

*Mr. Joseph Kovner*, of Washington, D. C., and *Mr. Hugh Thompson*, of Buffalo, N. Y., for the United Grain and Cereal Workers, Local No. 240.

*Mr. Boris Shishkin*, of Washington, D. C., and *Mr. Meyer L. Lewis*, for the American Federation of Labor.

*Mr. Paul S. Kuelthau*, of counsel to the Board.

DIRECTION OF ELECTION

*September 23, 1937*

The National Labor Relations Board, having found that a question affecting commerce has arisen concerning the representation of employees of General Mills, Inc., doing business under the trade name of Washburn Crosby Company, at its Buffalo, New York, mill, and that all of the production employees of General Mills, Inc., at its Buffalo, New York, mill, except foremen, assistant foremen, millers, handymen with supervisory duties and authority, clerks, and watchmen, and excluding elevator employees and stevedores, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, 49 Stat. 449, and acting pursuant to the power vested in the National

Labor Relations Board by Section 9 (c) of said Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby

DIRECTS that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with General Mills, Inc., an election by secret ballot shall be conducted within a period of ten (10) days after the date of this Direction of Election, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations, Series 1, as amended, among all of the production employees of General Mills, Inc., at its Buffalo, New York, mill, on its last pay roll prior to the date of this Direction of Election, except foremen, assistant foremen, millers, handymen with supervisory duties and authority, clerks, and watchmen, and excluding elevator employees and stevedores, to determine whether they desire to be represented by the Flour, Feed, and Cereal Workers Federal Union No. 19184, affiliated with the American Federation of Labor, or the United Grain and Cereal Workers, Local No. 240, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Direction of Election.

[SAME TITLE]

### AMENDMENT TO DIRECTION OF ELECTION

*September 30, 1937*

On September 23, 1937, the National Labor Relations Board, herein called the Board, issued a Direction of Election in the above entitled proceeding.

The Board having been advised that the Flour, Feed, and Cereal Workers Federal Union No. 19184, herein called Union No. 19184, has been supplanted by Flour Mill Workers, Local No. 21021, and that the latter is desirous of having its name placed on the ballot instead of the name of Union No. 19184, and all of the parties to the proceeding, including Union No. 19184, having entered into a stipulation on September 29, 1937, agreeing to that change, the Board hereby amends the Direction of Election issued on September 23, 1937, by striking therefrom the name, "Flour, Feed, and Cereal Workers Federal Union No. 19184", wherever it occurs and substituting therefor the name, "Flour Mill Workers, Local No. 21021."

[SAME TITLE]

DECISION  
AND  
CERTIFICATION OF REPRESENTATIVES

*October 22, 1937*

STATEMENT OF THE CASE

On June 30, 1937, Flour, Feed, and Cereal Workers' Federal Union No. 19184, herein called the Federal Union, filed a petition with the Regional Director for the Third Region (Buffalo, New York) alleging that a question affecting commerce had arisen, concerning the representation of the production employees of the Washburn Crosby mill of General Mills, Inc., Buffalo, New York, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 20, 1937, United Grain and Cereal Workers, Local No. 240, herein called the United, filed a similar petition with the Regional Director for the Third Region. On August 17, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, of the Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and provide for an appropriate hearing. The Regional Director duly issued a notice of hearing to be held at Buffalo, New York, on August 23, 1937, copies of which were duly served upon the Company, the Federal Union, and the United.

Pursuant to notice, a hearing was held at Buffalo, New York, on August 23 and 24, 1937, before Irving G. McCann, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, the Federal Union and the United by their respective organizers. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. The Board has reviewed the rulings of the Trial Examiner on objections to the introduction of evidence during the course of the hearing and finds no prejudicial errors were committed. The rulings are hereby affirmed. After all the evidence in the case was presented, counsel for the Company moved to dismiss the case on the ground that no question concerning representation had arisen. The Trial Examiner reserved ruling on that motion. That motion is hereby overruled. The Trial Examiner granted counsel for the Company permission to file a brief, and the brief was subsequently filed.

On September 9, 1937, the Board issued a notice to all the parties of a hearing to be held before it on September 16, 1937, in Washington, D. C., for the purpose of hearing argument on the record. Pursuant to the notice, arguments were heard by the Board in Washington, D. C., on September 16, 1937. The Company, the American Federation of Labor, and the Union were represented at and participated in the argument.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the Company at its Buffalo, New York, mill, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of said Rules and Regulations—Series 1, as amended, issued a Direction of Election on September 23, 1937, in which it found that all of the production employees of the Company at its Buffalo, New York, mill, except foremen, assistant foremen, millers, handymen with supervisory duties and authority, clerks, and watchmen, and excluding elevator employees and stevedores, constituted a unit appropriate for the purposes of collective bargaining. Merely for the purpose of expediting the election and thereby insuring to the employees of the Company at its Buffalo mill the full benefit of their right to collective bargaining as soon as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

On September 29, 1937, all of the parties entered into a stipulation agreeing that the Federal Union had been supplanted by Flour Mill Workers, Local No. 21021, also affiliated with the American Federation of Labor. By this stipulation the parties agreed that the name of Flour Mill Workers, Local No. 21021, should appear on the ballot instead of the name of the Federal Union. On September 30, 1937, the Board issued an Amendment to Direction of Election which provided for the substitution of Flour Mill Workers, Local No. 21021 for the Federal Union on the ballot at the election.

Pursuant to the Board's Direction of Election and the Amendment thereto, an election by secret ballot was conducted on October 1, 1937, by the Regional Director for the Third Region among the employees of the Company constituting the bargaining unit found appropriate by the Board. On October 2, 1937, the Regional Director issued his Intermediate Report upon the secret ballot, which was duly served upon the parties to the proceeding. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot, the Regional Director reported the following:

Total number eligible to vote.....	473
Total number of ballots cast.....	457
Total number of ballots cast for Flour Mill Workers, Local No. 21021.....	267
Total number of ballots cast for United Grain and Cereal Workers, Local No. 240.....	174
Total number of ballots rejecting both of the above unions.....	10
Total number of void ballots.....	2
Total number of challenged ballots.....	4

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

### FINDINGS OF FACT

#### I. THE COMPANY AND ITS BUSINESS

General Mills, Inc., is a Delaware corporation with its general office in Minneapolis, Minnesota. Before June 1, 1937, the Company was chiefly a holding company controlling 22 subsidiaries located in 14 states of the United States and one in Canada.<sup>1</sup> On June 1, 1937, all of these subsidiaries except Washburn Crosby Company, Limited, of Port Colborne, Ontario, Canada, Frontier Elevator Company of Buffalo, New York, and The Pacific Coast Elevator Company of Portland, Oregon, were dissolved and their business taken over by the Company, which then became an operating company. In order to retain and protect the good will inherent in them, the corporate names of the dissolved subsidiaries are used as trade names by the Company.

The Company manufactures and sells flour, feed, and cereal products. It maintains sales offices in 73 cities and 30 States of the United States and the Territory of Hawaii, and in the District of Columbia.<sup>2</sup>

To facilitate operations the business has been divided into administrative divisions. The mill with which we are concerned here was formerly the Washburn Crosby Company mill and is located at Buffalo, New York. It constitutes the Eastern Division in the Company's administrative set-up. Its business is carried on under the name, Washburn Crosby Company, under the general policy of the Company of retaining the names of the dissolved subsidiaries as trade names. The mill at Buffalo employs approximately 550 persons and is the largest of the Company's plants.

<sup>1</sup> All of these subsidiaries were wholly owned by the Company except the Star Grain Company of Chicago, Illinois

<sup>2</sup> These are listed in the Ninth Annual Report of General Mills, Inc., for the year ending May 31, 1937, Board's Exhibit No. 4. At the hearing, H. B. Kelsey, assistant comptroller for the Company, testified that these were only the principal sales offices and that there were others.

In its Buffalo mill the Company manufactures flour and feed, two-thirds of which is shipped to points outside the State of New York to Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia. Of the one-third not shipped to those States, approximately three-fifths is sold in the State of New York and two-fifths is exported to South America, Central America, Europe, and Africa. The approximate cash value of the products of the Buffalo mill which are shipped out of the State of New York annually is \$15,000,000.

Five per cent of the product of the mill is shipped by boat, some by truck, but by far the largest proportion by railroad.

The Buffalo mill makes two types of flour, "Gold Medal" and first clear flour, both for human consumption. It also makes second clear flour, for use in foundry work and as feed and "middlings" for animal consumption. The mill at Buffalo also extracts the wheat germ from the wheat. This germ is sold for human consumption because of its medicinal properties.

Wheat is the only raw material used in the Buffalo mill. It is shipped to the mill by rail and water from the western states of the United States and from Canada. All of the wheat comes from outside the State of New York. By far the greater proportion is brought by boat.

All of the wheat used in the Company's Buffalo mill is delivered first to an elevator owned by the Frontier Elevator Company, a wholly owned subsidiary of the Company. Grain delivered by boat is lifted into the bins of the elevator by means of two legs, let down into the hold, which are equipped with endless belts carrying buckets. In the bins the grain is tested for quality and then taken to the Company's mill by means of an endless belt conveyor system. The elevator and the mill are run as one establishment. The Frontier elevator handles grain only for the Company's Buffalo mill.

## II. THE ORGANIZATIONS INVOLVED

### A. *Flour, Feed, and Cereal Workers' Federal Union No. 19184*

Flour, Feed, and Cereal Workers' Federal Union No. 19184 was a labor organization affiliated with the National Council of Grain Processors and Allied Industries and with the American Federation of Labor. It admitted to membership persons employed in the milling industry in Buffalo and vicinity. According to a stipulation entered into by all the parties on September 29, 1937, Flour, Feed, and Cereal Workers' Federal Union No. 19184 has been supplanted by Flour Mill Workers, Local No. 21021, a labor organization affiliated with the American Federation of Labor.

*B. United Grain and Cereal Workers, Local No. 240*

United Grain and Cereal Workers, Local No. 240, is a labor organization affiliated with the Committee for Industrial Organization admitting to membership persons employed in the milling industry in Buffalo and vicinity.

## III. THE QUESTION CONCERNING REPRESENTATION

In April 1937 the Company announced to its employees that the company union then existing was to be dissolved because it was illegal under the Act. Soon thereafter both the Federal Union and the United started to organize among the employees at the Buffalo mill.

On May 17, 1937, the Company, for itself and its subsidiaries, entered into a contract with the American Federation of Labor recognizing the American Federation of Labor as the representative of all employees of the Company who are members of the American Federation of Labor or its affiliated unions and agreeing to recognize it as the sole collective bargaining agent for the employees of those plants in which it has a majority.

Thereafter the organizing drive of the Federal Union proceeded apace. Sometime during June 1937 the Federal Union represented to the Company that it had enrolled a majority of the employees in the Company's Buffalo mill. The Company requested the Federal Union to prove its majority, and on June 30, 1937, the Federal Union filed its petition for investigation by the Board.

In the meantime, the United had also been organizing in the Company's Buffalo mill. At the hearing it did not claim that it had enrolled a majority of the employees at the Buffalo mill but did claim that a majority of the employees would designate it as their bargaining agent in an election by secret ballot.

The contention of the Company at the argument before the Board that the May 17, 1937, contract, mentioned above, bars investigation by the Board is without foundation. The question of majority representation is an issue under that contract and this is a proceeding to settle that issue.

Neither union introduced sufficient evidence of a majority membership at the hearing to enable the Board to certify without an election.<sup>3</sup> In view of the conflicting claims of the two unions claiming to represent the employees of the Company's Buffalo mill, and the apparent inability of either to prove at the hearing that it had a majority membership, we find that a question concerning representation has arisen in respect to employees of the Company at its Buffalo, New York, mill.

<sup>3</sup> Discussed under Section VI below.

## IV. THE APPROPRIATE UNIT

The unions agreed that all production employees at the Buffalo mill, exclusive of those working in a supervisory capacity, constituted a unit appropriate for the purposes of collective bargaining. They did not intend to include the employees in the Frontier elevator, which is operated as an integral part of the Buffalo mill.

The Company contended that all of its production employees in Buffalo, exclusive of supervisory employees, but including the employees in the Frontier elevator, constituted an appropriate unit.

The Frontier Elevator Company apparently has no employees. The men who work in the boats unloading grain and those who work in the elevator itself are all paid by the Company and are carried on the pay roll of the Buffalo mill. The duties of the men who work in the elevator are much the same as those of the men working in the mill itself. The elevator is a separate building connected to the mill only by the overhead conveyer conduit through which the grain is taken to the mill.

The International Longshoremen's Association in Buffalo is organized into two local unions, one of which embraces the stevedores, and the other, the elevator employees. The International Longshoremen's Association claims to have enrolled all of the stevedores and elevator employees of the Company in Buffalo in its local unions. Since 1933, the International Longshoremen's Association has had a contract with the Frontier Elevator Company which by its terms covered all persons employed in the elevator as well as those engaged in work on the boats while they are being unloaded. This is the standard contract which the International Longshoremen's Association has with all elevator companies in Buffalo. The contract with the Frontier Elevator Company was limited by an oral understanding excluding from the contract the men employed in the elevator, and confining its coverage to the stevedores. In the spring of 1937 the oral understanding was terminated and the full terms of the contract were put into effect as of April 13, 1937. At the present time, therefore, the International Longshoremen's Association is bargaining for the elevator employees, and they are covered by the contract which it has with the Company.

The employees of all elevator companies in Buffalo deal with their respective employers through the International Longshoremen's Association. Although the situation is slightly different in these companies in that no mills are operated in connection with their elevators, there is no reason why the same type of organization should not prevail in all elevators.

Since collective bargaining for the elevator employees has been carried on through the International Longshoremens' Association and neither of the unions involved here desired to include the elevator employees in the unit, they will be excluded.

The stevedores, employed by the Company in Buffalo also have dealt with the Company through their own organization. They will also be excluded from the unit embracing the employees of the mill.

The millers are in charge of a gang and have supervisory duties. The handymen are employed in a semi-supervisory capacity and have the power to recommend hiring and firing. The foremen and assistant foremen also are employed in a supervisory capacity and have the power to recommend hiring and firing. Those employees will be excluded from the unit on that account.

The watchmen are a separate group of employees, who are generally foremen who have been retired from active service in the mill. Neither union desired to include them in the unit, and they will be excluded.

The clerks are confidential employees of the Company. Their duties are like those of office employees. They are not engaged in production work. Neither union desired to include them in the unit, and they will be excluded.

The production employees of the Company at its Buffalo mill, with the exclusions mentioned above, have common interests and problems. They have evidenced their desire to be included in one unit by joining unions which admit all of them to membership on an industrial basis.

In the light of the facts above set forth, and in order to insure to the employees the full benefit of their right to collective bargaining, we find that the production employees of the Company at its Buffalo, New York, mill, except foremen, assistant foremen, millers, handymen with supervisory duties and authority, clerks, watchmen, elevator employees, and stevedores, constitute a unit appropriate for the purposes of collective bargaining.

#### V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

The question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate and substantial relation to trade, traffic, and commerce, among the several States and with foreign countries, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### VI. QUESTION OF MAJORITY

The Federal Union submitted some 355 cards alleged to have been signed by the Company's employees at its Buffalo mill. These cards

were checked against the Company's pay roll for the period ending August 14, 1937, and 43 of them could not be identified as employees of the Company. Of the 312 which were found on the pay roll, 20 had also signed cards of the United and cannot therefore be said to have expressed their preference for either union. Of the 292 remaining, 79 were in the nature of union record cards with a space at the top for the name but no place for a signature. Of these 79, 22 were obviously unsigned since the person's name was printed rather than written and these therefore must be deducted from the membership list. Of the same 292 cards, 213 were green slips signed by persons applying for membership in the Federal Union. Twenty-two of those slips were signed by persons not in the unit defined above. If the deductions indicated above are made, the Federal Union is left with applications signed by 248 persons in the appropriate unit, which embraces at least 501 employees on the August 14, 1937, pay roll.

When, in addition to the above, it is considered that a substantial number of those cards were undated, it is apparent that the Board could not certify the Federal Union as the representative of the majority of the employees in the appropriate unit on the basis of this evidence.

The United submitted only 89 cards alleged to have been signed by employees of the Company and made no claim to majority membership.

Since the Board found it impossible to determine the desires of a majority of the employees in the appropriate unit from the evidence submitted at the hearing, an election was ordered.

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of the Company at its Buffalo, New York, mill, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company at its Buffalo, New York, mill, except foremen, assistant foremen, millers, handymen with supervisory duties and authority, clerks, and watchmen, and excluding elevator employees and stevedores, constitute an appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

#### CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, and pursuant to Article III, Section 8 of

National Labor Relations Board Rules and Regulations—Series 1,  
as amended,

IT IS HEREBY CERTIFIED that Flour Mill Workers, Local No. 21021, has been selected by a majority of the production employees of General Mills, Inc., at its Buffalo, New York, mill, except foremen, assistant foremen, millers, handymen with supervisory duties and authority, clerks, and watchmen, and excluding elevator employees and stevedores, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Flour Mill Workers, Local No. 21021, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.