

In the Matter of LOOSE-WILES BISCUIT Co., INC. and UNITED BAKERY
AND CONFECTIONERY WORKERS

Case No. R-389.—Decided February 4, 1938

Bakery and Confectionery Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as exclusive representative—Unit Appropriate for Collective Bargaining: stipulation of parties; Election Ordered—Certification of Representatives.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On August 10, 1937, United Bakery and Confectionery Workers Local Industrial Union No. 184, herein called the United,¹ filed with the Regional Director for the 17th Region (Kansas City, Missouri) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Loose-Wiles Biscuit Company,² Kansas City, Missouri, a Missouri corporation, 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 September 11, 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 National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 11, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United, and upon Employees Independent Union, herein called the Independent Union, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on October 25 and 26, 1937, at Kansas City, Mis-

¹ The United was called United Bakery and Confectionery Workers in the petition and in the Direction of Election heretofore issued.

² The Company was called Loose-Wiles Biscuit Co., Inc. in the petition and in the Direction of Election heretofore issued.

souri, before William R. Ringer, the Trial Examiner duly designated by the Board. The Board, the Company, the United, and the Independent Union were represented by counsel and participated in the hearing. The Company filed an answer on the first day of the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. After the conclusion of the hearing the Company filed a brief, which has been given careful consideration. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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, and on the basis of such conclusion, and acting pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a Direction of Election on December 23, 1937,³ in which it found that all the employees of the Company at its Kansas City, Missouri, plant, of the classifications listed in Schedule "C" of Board Exhibit No. 6 admitted in evidence at the hearing in this matter held October 25 and 26, 1937, exclusive of (a) temporary employees, (b) engineers, firemen and other persons employed in and about the power plant, (c) supervisors and assistant supervisors, including working supervisors, (d) office employees, (e) sales managers, assistant sales managers and salesmen, (f) nurse, (g) stationery worker, (h) watchmen, and (i) matrons, constituted a unit appropriate for the purposes of collective bargaining. For the purpose of expediting the election and thus insuring to the employees of the Company the full benefit of their right to collective bargaining as early as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

Pursuant to the Direction of Election, an election by secret ballot was conducted on January 6, 1938, by the Regional Director for the Seventeenth Region among the employees of the Company constituting the unit found appropriate by the Board. Full opportunity was accorded all parties to this proceeding to participate in the conduct of the ballot and to make challenges. On January 6, 1938, the Regional Director issued his Intermediate Report upon the secret ballot, which was duly served upon the parties to the proceeding. No objections with respect to the conduct of the ballot or to the Intermediate Report have been filed.

³ 4 N. L. R. B. 714.

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

Total number eligible to vote-----	540
Total number of ballots cast-----	533
Total number of blank ballots-----	none
Total number of void ballots-----	none
Total number of ballots cast for United Bakery and Confectionery Workers, affiliated with the C. I. O-----	346
Total number of ballots cast for Employees Independent Union--	187

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Loose-Wiles Biscuit Company is a Missouri corporation with its principal place of business at Kansas City, Missouri. The Company is engaged primarily in the manufacture, sale and distribution of biscuits, crackers, cookies and candy. During the fiscal year 1936, the Company sold approximately six million dollars' worth of its products, of which more than 58 per cent were sold outside the State of Missouri. Substantially all the raw materials received by it for the manufacture of its products were received from sources outside the State of Missouri. The Company's counsel stated at the hearing that it is engaged in interstate commerce.

II. THE ORGANIZATIONS INVOLVED

United Bakery and Confectionery Workers Local Industrial Union No. 184 is a labor organization chartered by the Committee for Industrial Organization, admitting to its membership all employees of the Company excepting office employees, members of the sales force, and supervisory employees. Supervisory employees who perform manual labor are admitted to non-voting membership.

Employees Independent Union is a labor organization not affiliated with any other labor organization. It admits to its membership all employees of the Company excepting members of the sales force, supervisory employees, and office employees, the last of whom, however, are admitted to non-voting membership.

III. THE QUESTION CONCERNING REPRESENTATION

The United claimed the right to be the sole bargaining agency for all the employees of the Company, excluding office, sales and supervisory employees. The Company refused to bargain with it as such exclusive agency, first because it claimed not to be satisfied that the United, in fact, represented the majority of the Company's employees

in an appropriate unit, and second because on or about June 22, 1937, the Company had entered into two separate agreements, one with the United, and one with the Independent Union, which were identical in form, and each of which provided that the Company would bargain with the contracting union as the collective bargaining agency for such of the Company's employees as were members of that union. Both of those contracts provided that they would remain in effect until December 31, 1937, and that 15 days prior to that expiration date the parties should confer with the end in view of entering into a new contract.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that 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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The United alleged in its petition that "all production workers in [the] confectionery and baking department (excluding office workers, salesmen, foremen, straw bosses)" constituted an appropriate unit. The parties stipulated on December 22, 1937, and we find, that all the employees of the Company in its Kansas City, Missouri, plant, of the classifications listed in Schedule "C" of Board Exhibit No. 6 admitted in evidence at the hearing in this matter held October 25 and 26, 1937, exclusive of (a) temporary employees, (b) engineers, firemen, and other persons employed in and about the power plant, (c) supervisors and assistant supervisors, including working supervisors, (d) office employees, (e) sales managers, assistant sales managers and salesmen, (f) nurse, (g) stationery worker, (h) watchmen, and (i) matrons, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The record does not show accurately how many employees the Company had within the appropriate bargaining unit at any time. It does appear that on August 10, 1937, the day the petition was filed,

the employees within that unit, the temporary employees, the engineers, firemen and other persons employed in and about the power plant,⁴ the nurses, and the matrons, numbered 561 in all. The United introduced in evidence various lists of its members. Those lists show that in July 1937, the United had 326 "fully paid members"⁵ who were employed by the Company at its Kansas City plant; and that in October 1937, it had 513 members so employed, of whom 408 were "fully paid members". The United also submitted in evidence about 400 statements, allegedly signed by employees of the Company during the week preceding the hearing, authorizing the United to be the representative of the signers for the purposes of collective bargaining with the Company. However, the record fails to show how many of the members claimed by the United, or how many of the employees who signed the statements, were temporary employees, engineers, firemen or other persons employed in and about the power plant, nurses, or matrons, and were thus excluded from the bargaining unit. Furthermore, there was no testimony as to the genuineness of the signatures on the statements.

The Independent Union admitted at the hearing that its membership did not include a majority of the employees within the appropriate unit.

We concluded, therefore, that an election by secret ballot was necessary to determine the proper representatives for collective bargaining and thus resolve the question concerning representation, and we issued the Direction of Election accordingly. We directed that the employees in the appropriate unit who were on the Company's pay roll during the pay-roll period immediately preceding August 10, 1937, the date on which the petition was filed, should be eligible to vote in the election. The results of the election, set forth above, show that a majority of the employees within the appropriate unit have designated and selected the United as their representative for the purposes of collective bargaining.

On the basis of the above findings of fact, and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Loose-Wiles Biscuit Company, a Missouri corporation, at its Kansas City, Missouri, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

⁴ It is assumed that the Company had employees in this classification. The record is not clear on the point.

⁵ A "fully paid member", it was testified, is one who has paid an initiation fee of two dollars, plus at least one month's dues of one dollar.

2. All the employees of the Company at its Kansas City, Missouri, plant, of the classifications listed in Schedule "C" of Board Exhibit No. 6 admitted in evidence at the hearing in this matter held October 25 and 26, 1937, exclusive of (a) temporary employees, (b) engineers, firemen and other persons employed in and about the power plant, (c) supervisors and assistant supervisors, including working supervisors, (d) office employees, (e) sales managers, assistant sales managers and salesmen, (f) nurse, (g) stationery worker, (h) watchmen, and (i) matrons constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. United Bakery and Confectionery Workers Local Industrial Union No. 184 is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) 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 United Bakery and Confectionery Workers Local Industrial Union No. 184 has been designated and selected by a majority of the employees of Loose-Wiles Biscuit Company, a Missouri corporation, at its Kansas City, Missouri, plant, of the classifications listed in Schedule "C" of Board Exhibit No. 6 admitted in evidence at the hearing in this matter held October 25 and 26, 1937, exclusive of (a) temporary employees, (b) engineers, firemen and other persons employed in and about the power plant, (c) supervisors and assistant supervisors, including working supervisors, (d) office employees, (e) sales managers, assistant sales managers and salesmen, (f) nurse, (g) stationery worker, (h) watchmen, and (i) matrons, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, United Bakery and Confectionery Workers Local Industrial Union No. 184 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.