

In the Matter of A. ZEREGA'S SONS, INC. and COMMITTEE FOR INDUSTRIAL ORGANIZATION ON BEHALF OF THE EMPLOYEES OF A. ZEREGA'S SONS, INC.

*Case No. R-492.—Decided February 19, 1938*

*Macaroni and Noodle Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioner as exclusive bargaining representative without proof of majority—*Unit Appropriate for Collective Bargaining:* maintenance, production, shipping, and receiving employees; no controversy as to—*Election Ordered*

*Mr. Mark Lauter*, for the Board.

*Kotzen, Mann & Siegal*, by *Mr. Abraham Mann*, and *Mr. Joseph Yasper*, of New York City, for the Company.

*Liebman, Robbins, Pressman & Leider*, by *Mr. Harold I. Cammer*, of New York City, for the Macaroni and Noodle Workers.

*Mr. John D'Amico*, of Brooklyn, N. Y., for the Bakery and Confectionery Workers.

*Mr. D. R. Dimick*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 29, 1937, Committee for Industrial Organization<sup>1</sup> on behalf of the employees of A. Zerega's Sons, Inc., herein called the C. I. O., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of A. Zerega's Sons, Inc., Brooklyn, 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 October 25, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to

<sup>1</sup> Since the filing of the petition, Macaroni and Noodle Workers' Local Industrial Union, No 663, affiliated with the Committee for Industrial Organization, herein called the Macaroni and Noodle Workers, received a charter from the Committee for Industrial Organization, and at the hearing the name of the petitioning union was amended by substituting the Macaroni and Noodle Workers for the C. I. O.

Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulation—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 December 3, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the C. I. O., and upon the Bakery and Confectionery Workers' International Union of America,<sup>2</sup> a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on December 11, 1937, at New York City, before H. R. Korey, the Trial Examiner duly designated by the Board.

The Board, the Company, the Macaroni and Noodle Workers, and the Bakery and Confectionery Workers participated in the hearing, the first three being represented by counsel and the latter by its business agent. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. 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 no prejudicial errors were committed. The rulings are hereby affirmed.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

The Company is a New York corporation with its principal office and plant located in Brooklyn, New York. The Company is engaged in the manufacture, sale, and distribution of macaroni, noodles, and similar products. It maintains an office in Chicago, Illinois, and employs three salesmen who sell in New York, Pennsylvania, New Jersey, and New England.

Flour and eggs are the principal raw materials used in the manufacture of the Company's products. During the period from January 1, 1937 to November 30, 1937, the Company paid approximately \$500,000 for the raw materials used in its business, of which about 90 per cent were shipped from points outside of the State of New York. Over the same period the volume of business done by the Company amounted to \$890,000. The percentage of sales and shipments to

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<sup>2</sup> Service was made upon the International Union but Bakery and Confectionery Workers' International Union of America, Local No. 445, herein called the Bakery and Confectionery Workers, appeared and participated in the hearing

points outside of the State of New York amounted to 36.7 per cent of the total business, or in terms of dollars, approximately \$326,000.

Although there is some confusion in the record as to the number of workers the Company employs, there apparently are from 120 to 125 general production employees normally employed in the plant, exclusive of foremen, chauffeurs, foreladies, office workers, and salesmen.

## II. THE ORGANIZATIONS INVOLVED

Macaroni and Noodle Workers' Local Industrial Union, No. 663, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production, maintenance, shipping, and receiving employees of the Company, excluding supervisory employees, chauffeurs, clerical and office workers, and salesmen.

Bakery and Confectionery Workers' International Union of America, Local No 445, is a labor organization affiliated with the American Federation of Labor, admitting to its membership the same classes of employees as are eligible to membership in the Macaroni and Noodle Workers.

## III. THE QUESTION CONCERNING REPRESENTATION

During the latter part of August 1937 a committee of the employees of the Company called at the office of the Bakery and Confectionery Workers<sup>3</sup> and asked to be organized. Thereafter, between September 1 and September 15, 1937, two or three meetings were held by the Bakery and Confectionery Workers and a substantial number of application cards were obtained from the Zerega plant employees.

Shortly thereafter, on September 20, 1937, at a meeting conducted by the C. I. O., a majority of the employees of the Company, whose names appeared on the above-mentioned application cards, also signed C. I. O. membership cards. Michael Ricciardelli, a field representative for the C. I. O., testified during the hearing that between September 21 and September 27, 1937, he called on Frank Zerega, vice president of the Company, and stated that the C. I. O. represented a majority of the Company's employees, and requested recognition of the C. I. O. as the exclusive bargaining representative of such employees. Mr. Zerega refused to accept the representative's oral statement as proof of the contention that the C. I. O. represented a majority of the Company's employees. The C. I. O. submit-

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<sup>3</sup> At this time the Bakery and Confectionery Local was designated as Local No. 334. About October 10, 1937, the macaroni workers who were members of Local No. 334, obtained a charter from the A. F. L. International and are now known as the Bakery and Confectionery Workers' International Union of America, Local No. 445. Local No. 334 remained in existence after the macaroni workers severed their connection with it.

ted no other proof, and the Company refused to stipulate with the C. I. O. for an election conducted under the auspices of the Board.

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

Both the Macaroni and Noodle Workers, and the Bakery and Confectionery Workers claim that all maintenance, production, shipping and receiving employees of the Company, excluding supervisory employees, chauffeurs, clerical and office workers, and salesmen, constitute a unit appropriate for purposes of collective bargaining. Since both unions are in agreement as to the classes of employees constituting an appropriate unit, and since the record supports their contention that such a unit is appropriate, we see no reason for finding otherwise.

We find that the maintenance, production, shipping and receiving employees of the Company, excluding supervisory employees, chauffeurs, clerical and office workers, and salesmen, 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 shows that the Company employs approximately 120 to 125 employees within the unit we have found to be appropriate. Between September 1 and September 15, 1937, the employees of the Company signed 87 Bakery and Confectionery Workers' application cards.<sup>4</sup> John D'Amico, organizer for the Bakery and Confectionery Workers, testified that he knew the names of some of the workers who signed the application cards. Although such cards were admitted into evidence, the signatures appearing on the cards were not verified. However, the statement was made that the signatures could be authenticated. The implication is clear from the record that the 87 employees were workers within the appropriate unit.

<sup>4</sup> Bakery and Confectionery Workers (A. F. L.) Exhibit 1.

On September 20, 1937, the organizational activities of the C. I. O. terminated in a meeting conducted by the C. I. O. at which meeting approximately 100 to 105 of the employees of the plant attended. At this meeting 89<sup>5</sup> C. I. O. membership cards were signed by the workers of the Company, and thereafter on or about September 28, 1937, an additional card was signed. It was clearly established during the hearing that all of the names appearing on the C. I. O. cards represented workers within the appropriate unit, who were in the employ of the Company on the dates the cards were signed.<sup>6</sup>

Considering the above facts, it is apparent that a majority of the employees of the Company became affiliated with the two rival labor organizations during a period not to exceed 20 days. An examination of the cards submitted by the two organizations discloses that a great majority of the cards are duplications. We feel, therefore, that there is not sufficient evidence to certify either organization as the exclusive bargaining representative of the employees.

We find that the question which has arisen concerning the representation of employees of the Company can best be resolved by the holding of an election by secret ballot to determine which of the unions, if either, the employees herein concerned desire to represent them.

In accordance with our usual practice, eligibility to vote in the election will be extended to those who were in the employ of the Company, within the appropriate unit, during the pay-roll period immediately preceding September 29, 1937, the date of the filing of the petition, exclusive of those who since have voluntarily quit or have been discharged for cause.

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

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of A. Zerega's Sons, Inc., Brooklyn, New York, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The maintenance, production, shipping and receiving employees of A. Zerega's Sons, Inc., excluding supervisory employees, chauffeurs, clerical and office workers, and salesmen, constitute a unit ap-

<sup>5</sup> Macaroni and Noodle Workers (C. I. O.) Exhibits 1-A to 1-E inclusive.

<sup>6</sup> Just prior to the close of the hearing counsel for the Company presented a paper dated December 9, 1937, allegedly signed by 90 of the employees of the Company. This paper stated in substance, that the Company's employees were satisfied with their jobs; that they did not want the C. I. O. to represent them; and that they did not want an election. Upon objection the Trial Examiner refused to admit the paper into evidence because it was not competently proved.

propriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

### DIRECTION OF ELECTION

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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with A. Zerega's Sons, Inc., Brooklyn, New York, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the maintenance, production, shipping and receiving employees of said Company, exclusive of supervisory employees, chauffeurs, clerical and office workers, and salesmen, who were in the employ of the Company during the pay-roll period immediately preceding September 29, 1937, excluding those who since have voluntarily quit or have been discharged for cause, to determine whether they desire to be represented by Macaroni and Noodle Workers' Local Industrial Union, No. 663, affiliated with the Committee for Industrial Organization, or by the Bakery and Confectionery Workers' International Union of America, Local No. 445, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

### AMENDMENT TO DIRECTION OF ELECTION

*February 26, 1938*

On February 19, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. On February 24, 1938, the Bakery and Confectionery Workers' International Union of America, Local No. 445, affiliated with the American Federation of Labor, the intervenor in this proceeding, requested the Board to withdraw its name from the ballot in the election which the Board ordered in said Decision and Direction of Election.

After due consideration of this request, the Board hereby

DIRECTS that, the Direction of Election in the above-entitled matter, dated October 27, 1937, be amended by striking out the words, "to determine whether they desire to be represented by Macaroni and Noodle Workers' Local Industrial Union, No. 663, affiliated with the Committee for Industrial Organization, or by the Bakery and Confectionery Workers' International Union of America, Local No. 445, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither", which appear in the last sentence of the last paragraph of said Direction of Election, and by inserting in lieu thereof the words, "to determine whether or not they desire to be represented by Macaroni and Noodle Workers' Local Industrial Union, No. 663, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining."