

In the Matter of L. A. NUT HOUSE and UNITED CRACKER, BAKERY &
CONFECTIONERY WORKERS OF AMERICA

Case No. R-354.—Decided March 5, 1938.

Nut, Fruit and Candy Packing and Processing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as sole bargaining agency—*Unit Appropriate for Collective Bargaining:* plant-wide, excluding office and supervisory employees, truck drivers, salesmen soliciting orders outside place of business, and employees at branch store of employer; eligibility for membership in rival organizations; dissimilarity of interests; history of organization at plant—*Election Ordered*

Mr. David Persinger and Mr. David Sokol, for the Board.

Loeb, Walker & Loeb, by Mr. Edwin J. Loeb, of Los Angeles, Calif., for the Firm.

Mr. Carey McWilliams, of Los Angeles, Calif., for the United.

Rosecrans & Emme, by Mr. Leo H. Rosecrans, of Los Angeles, Calif., for the Teamsters Local.

Mr. J. H. Krug, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 25, 1937, United Cracker, Bakery and Confectionery Workers of America,¹ herein called the United, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Los Angeles Nut House,² Los Angeles, California, herein called the Firm, 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 4, 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

¹It appears from the record that the correct name of petitioner is United Cracker, Bakery and Confectionery Workers of America, Local Industrial Union No. 212.

²Los Angeles Nut House, referred to in the caption of the petition as L. A. Nut House, is a copartnership composed of Ralph W. Gold and Sam Gendel.

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 8, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Firm, upon the United, and upon the Central Labor Councils of Los Angeles, Santa Barbara, San Diego and Bakersfield, California. Pursuant to the notice, a hearing was held on October 13, 1937, at Los Angeles, California, before Clifford D. O'Brien, the Trial Examiner duly designated by the Board. The Board, the Firm, and the United were represented by counsel and participated in the hearing. Two days after the close of the hearing, on October 15, 1937, Produce Drivers and Employees, No. 630, affiliated with International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, herein called the Teamsters Local,³ filed with the Regional Director a motion in intervention, asking that the record be reopened and that the Teamsters Local be allowed to intervene, and alleging that it represented a majority of the Firm's employees and had received no formal notice of the hearing held on October 13, 1937.

On October 19, 1937, the Regional Director issued a notice that the hearing would be reopened, copies of which were duly served upon the Firm, the United, the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, herein called the Teamsters International, and the Central Labor Council, Los Angeles, California. Pursuant to the notice, the hearing was resumed on October 21, 1937, at Los Angeles, California, before the same Trial Examiner. The Board, the Firm, the United, and the Teamsters Local were represented by counsel and participated in the reopened 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. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE FIRM

The Firm is a copartnership, composed of Ralph W. Gold and Sam Gendel, trading under the name and style of Los Angeles Nut

³ It appears from the record that the correct name of the Teamsters Local is Produce Drivers and Employees Union, Local No. 630, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers.

House. The Firm is a packer, jobber and processor of nuts, dried fruits and candies. It occupies a six-story building in the Central Market,⁴ Los Angeles, California, which building serves as a combined warehouse and factory; the ground floor is used as a store. The Firm purchases all its raw materials from local brokers, but a substantial proportion is derived from sources outside the State of California. The principal raw materials are peanuts, dates, dried fruits and nuts. Peanuts constitute the chief raw material, and dates rank next in importance. One hundred per cent of the peanuts, 75 per cent of the dates, and 10 per cent of the nuts originate outside California; the dried fruits used by the Firm are all produced in that State. During the year prior to the hearing, the Firm did a gross business of slightly over \$1,000,000. Approximately 25 per cent of all sales are shipped to points outside the State of California. Shipments of appreciable size are made to Seattle, Washington; Portland, Oregon; Phoenix, Arizona; Utah; Colorado and Hawaii. The Firm sells extensively to a number of the larger chain store companies, which frequently order shipments to be made by the Firm directly to stores and warehouses in other States. The chain stores take, perhaps, 90 per cent of all candy manufactured by the Firm. It markets its product through a large number of brokers, most of whom are located outside the State of California.

II. THE ORGANIZATIONS INVOLVED

United Cracker, Bakery and Confectionery Workers of America, Local Industrial Union No. 212, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership employees of the Firm at the Central Market building, excluding truck drivers.

Produce Drivers and Employees Union, Local No. 630, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, is a labor organization affiliated with the American Federation of Labor. It admits to its membership employees of the Firm at the Central Market building, including truck drivers and floor salesmen but excluding supervisory employees with the power to hire and discharge.

III. THE QUESTION CONCERNING REPRESENTATION

In May 1937, the Teamsters Local, shortly after it was organized, signed as members all five truck drivers employed by the Firm. In June the United began to organize the rest of the employees. Prior

⁴On one occasion in the record the market is referred to as the Wholesale Terminal Market. Usually, however, it is called the Central Market, and that designation will be used herein.

to September 1, the employees of the Firm were approached by organizers from A. F. of L. unions other than the Teamsters Local, but at this time the Teamsters Local secured jurisdiction to organize all the employees, including floor salesmen. Early in September, the United successfully negotiated with the Firm a 10-per cent wage increase for its employees, but a few days later, the Firm refused to recognize the United as the sole bargaining agency for its employees on the ground that the Teamsters Local had signed up all the other establishments in the Central Market and claimed to represent the employees of the Firm.

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

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 Firm 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

Officials of the United claimed that it had jurisdiction to admit to membership all the employees of the Firm at the Central Market building. Neither the United nor the Teamsters Local sought to include in the bargaining unit salesmen who solicited orders in the City of Los Angeles, or employees at the branch store of the Firm. In the absence of any showing to the contrary, we find that these employees should be excluded. The record does not clearly reveal whether or not the office workers are admitted to membership in the United, or in the Teamsters Local. In accordance with our past decisions, we find that the interests of the office force are essentially dissimilar to those of the other employees, and, accordingly, we rule that they should not be embraced within the unit.⁵ The membership lists furnished by both labor organizations contain the name of a forelady, who is in charge of 25 employees in one of the packing departments, but does not have the power to hire and discharge. The interests of such a supervisory employee, although she does not hire or discharge, are closely identified with the management, and the forelady should, therefore, not be admitted to the bargaining unit.

⁵ See *In the Matter of R. C. A. Manufacturing Company, Inc., and United Electrical & Radio Workers of America*, 2 N. L. R. B. 159.

The five truck drivers all became members of the Teamsters Local as early as May 1937, and the United has made no effort to sign them. As this decision subsequently discloses, the Teamsters Local intends to retain the truck drivers as permanent members, but to transfer to another union the members it has obtained from other employees of the Firm. The nature of the duties performed by the truck drivers, the place of employment, and the history of organization at the Firm, prompt us to set the drivers apart from other employees. We find that the bargaining unit should exclude the truck drivers.

The Teamsters Local claimed to represent the floor salesmen at the Central Market building. The secretary-treasurer of the United made a general statement at the hearing that "everybody in the plant" was eligible for membership in his organization. Both labor organizations have endeavored to organize workers at the Firm on an industrial basis. The record fails to reveal the number of floor salesmen or the precise nature of their duties. Undoubtedly, there exists certain dissimilarities between them and the employees engaged in packaging and processing the products of the Firm, but, under the circumstances, we feel that these distinctions are not sufficient to justify exclusion of the floor salesmen from the bargaining unit.

On the record before us, we find that the appropriate bargaining unit should embrace employees at the Central Market building, including floor salesmen but excluding supervisors, truck drivers, office force, salesmen who solicit orders in the City of Los Angeles, and employees at the branch store of the Firm.

VI. THE DETERMINATION OF REPRESENTATIVES

The Teamsters Local business agent testified that while his union had obtained jurisdiction to organize employees of the Firm and the majority had been admitted to membership, their status was temporary. Ultimately they would be transferred to another American Federation of Labor union, or, possibly, they would receive a separate charter as an affiliate of the Teamsters Local. Relying upon this testimony, counsel for the United moved that all evidence presented by the intervenor be disregarded. He argued that the Firm employees, other than the truck drivers, who had signed with the intervenor, would be represented for collective bargaining by some other union, which had made no appearance in the proceeding, and, hence, that the Teamsters Local should not be considered as a possible collective bargaining agent. It is clear, however, that although workers at the Firm may not always be eligible to membership in the Teamsters Local, they may desire to be represented by that

Union for purposes of collective bargaining. The motion made by counsel for the United was taken under advisement by the Trial Examiner. It is hereby denied.

Counsel for the Teamsters Local contended that no election was necessary for the determination of representatives, because his organization had submitted evidence that it represented a majority of the employees in the appropriate unit. At the hearing, the Teamsters Local presented a list of names of members taken from 90 application cards, which were offered in evidence and withdrawn by consent of the parties. The list of members furnished by the United contained 54 names. The total number of employees at the Central Market building on October 21, 1937 was approximately 125, but this figure may include the office force and others who should be excluded from the bargaining unit. The membership lists presented by the rival organizations apparently contain 46 duplications. It is obvious, therefore, that neither the petitioner nor the intervenor has made a clear showing that it represents a majority.⁶ Furthermore, there is evidence in the record indicating that the Teamsters Local's membership drive at the Firm was accompanied by certain acts of violence. Under all these circumstances, we find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot.

It remains for us to decide what date should be used for the determination of eligibility to vote. Selection of the date must have regard to the highly seasonal character of the Firm's business. During the months of July and August the Firm employs approximately 70; with the beginning of September the number increases sharply, and in November and December, at the very peak, the Firm employs slightly more than 150; the number falls sharply in January, after which there is a gradual decrease until the low point is reached in the summer months. A number of persons are taken on as employees year after year during the busy season, and frequently workers hired for the first time in this period become permanent employees. At the present time, some of those employed by the Firm at the date of the filing of the petition have been discharged and, probably, a few others, not then working for the Firm, have been taken on with a permanent or semi-permanent status. Under all the circumstances, we conclude that the most suitable date for determining eligibility

⁶ Of the 54 names submitted by the United, 37 were taken from signed application cards which were offered in evidence and withdrawn by consent of the parties. The remaining 17 names were copied from unsigned application cards exhibited at the hearing. The secretary-treasurer of the United offered testimony to explain the absence of signatures, and we think this testimony warrants the view that at least 16 of the 17 have evidenced their desire to be represented by the United. But if we consider only the 37 signed cards, 32 are duplicates of names on the Teamsters Local list of 90, which leaves 58 not duplicated; we cannot say with assurance that this constitutes a majority in the appropriate unit.

of voters is the date of this Direction of Election. Accordingly we shall direct that those eligible to vote shall be those employees who are on the weekly pay roll immediately preceding the date of this Direction of Election, including floor salesmen but excluding the office force, supervisory employees, truck drivers, salesmen who solicit orders in the City of Los Angeles, employees at the branch store of the Firm, and those who have since 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 Ralph W. Gold and Sam Gendel, trading under the name and style of Los Angeles Nut House, Los Angeles, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of the Firm at its building in the Central Market, Los Angeles, California, including floor salesmen but excluding the office force, truck drivers, supervisory employees, salesmen who solicit orders in the City of Los Angeles, and employees at the branch store of the Firm, constitute a unit appropriate 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, 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 collective bargaining with Ralph W. Gold and Sam Gendel, a copartnership, trading under the name and style of Los Angeles Nut House, Los Angeles, California, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-first 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 employees, who are on the weekly pay roll immediately preceding the date of this Direction, employed by said copartnership at the building occupied by it in the Central Market, Los Angeles, California, including floor salesmen, but excluding the office force, truck drivers,

supervisory employees, salesmen who solicit orders in the City of Los Angeles, and employees at the branch store of said copartnership, and those who have since voluntarily quit or have been discharged for cause, to determine whether they desire to be represented for the purposes of collective bargaining by United Cracker, Bakery and Confectionery Workers of America, Local Industrial Union No. 212, affiliated with the Committee for Industrial Organization, or by Produce Drivers and Employees Union, Local No. 630, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, affiliated with the American Federation of Labor, or by neither.