

In the Matter of COTE BROS. INC. and INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA,
BAKERY DRIVERS LOCAL NO. 686

Case No. R-621.—Decided May 9, 1938

Bakery Industry—Investigation of Representatives: controversy concerning representation of employees: employer's refusal to grant recognition of union; rival organizations; strike—*Contract:* controversy concerning terms—*Unit Appropriate for Collective Bargaining:* route salesmen, including the van driver; no controversy as to—*Election Ordered:* pursuant to stipulation by all parties—*Certification of Representatives.*

Mr. Edward Schneider, for the Board.

Mr. Emile Lemelin, of Manchester, N. H., for the Company.

Mr. Harold R. Donaghue and *Mr. Nathan Efron*, of Boston, Mass., for the Union.

Mr. Daniel J. Healy, of Manchester, N. H., for the Association.

Mr. Richard Meigs, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 18, 1937, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Bakery Drivers Local No. 686, herein called the Union, filed with the Regional Director for the First Region (Boston, Massachusetts) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Cote Baking Company, Manchester, New Hampshire, 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 February 16, 1938, the Union filed with the Regional Director an amended petition, changing the name, Cote Baking Company, appearing in the original petition, to Cote Bros. Inc., herein called the Company, and making an alteration in the description in the original petition of the unit claimed to be appropriate for the purposes of collective bargaining. In other respects the amended petition conformed substantially to the original petition. On February 21, 1938, 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 March 1, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Union, and upon Association of Cote Bros. Inc. Employees, herein called the Association, a labor organization purporting to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on March 7 and 8, 1938, at Manchester, New Hampshire, before Henry W. Schmidt, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel throughout the hearing and participated therein. The Association was represented by counsel on the second day of the hearing.¹ Full opportunity to be heard, to examine and 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.

At the close of the hearing all the parties entered into a stipulation authorizing the Board to direct an election on specified terms. This stipulation is set forth in Section VI below.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Cote Bros. Inc., a corporation organized in 1921 under the laws of New Hampshire, is engaged in the baking and sale of rolls, bread, and doughnuts. Its business is principally wholesale. It maintains its principal office and place of business at Manchester, New Hampshire, and a small office and garage at Lowell, Massachusetts.

The principal raw materials used by the Company in its business are flour, sugar, salt, yeast, syrups, and shortening. During 1936 and 1937 the Company's annual purchases of raw materials aggregated approximately \$250,000 in value. At least 74 per cent of these raw materials were shipped to the Company from points outside New Hampshire, principally by rail. Flour, the largest single item used by the Company, is received mainly from Kansas.

¹No formal appearance was entered for the Association on the first day of the hearing.

The Company's customers are chiefly hotels, restaurants, and grocery stores lying within a radius of 50 miles of the baking plant at Manchester, New Hampshire. Included within the area marked out by this 50-mile radius is a portion of Massachusetts, which is the only State, other than New Hampshire, in which the Company markets its products. The Company distributes its products by means of route salesmen who operate company-owned trucks over approximately 30 distinct routes. Six of these routes are in Massachusetts, covering the towns and vicinity of Lowell, Lawrence, Haverhill, and Salem. The Massachusetts route salesmen are supplied from a company-owned van or trailer truck which travels daily from the Manchester plant in New Hampshire to Lowell, Massachusetts.

The Company's total annual sales during 1936 and 1937 amounted to approximately \$650,000. Sales made in Massachusetts accounted for \$170,000 of this amount in 1936, and for \$160,000 in 1937.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Bakery Drivers Local No. 686, is a labor organization affiliated with the American Federation of Labor. It admits to membership all truck drivers, helpers, warehousemen, washers of autos, and stablemen in the district extending from Manchester, New Hampshire, through and including Lowell, Lawrence, and Haverhill in Massachusetts.

Association of Cote Bros. Inc. Employees is a labor organization unaffiliated with any other labor organization. Its membership is limited exclusively to the Company's employees, all of whom are eligible for membership.

III. THE QUESTION CONCERNING REPRESENTATION

Early in July 1937, the Union notified the Company that it represented a majority of its route salesmen and submitted a contract containing provisions pertaining to hours, wages, and working conditions. Similar contracts were also submitted to various of the Company's competitors in Massachusetts.

In a letter dated July 26, 1937, the Company declined to execute the contract on the grounds that an association of "Cote Bros. employees" had been formed and that 90 per cent of its employees were members of that organization. The Company asserted that it had orally recognized this association as the sole collective bargaining agency of its employees.

Thereafter, the Union began negotiations with a representative of the Master Bakers Association of Massachusetts, an association of

all Massachusetts employers in the baking industry, including Cote Bros. Inc., regarding the contracts which it had submitted to the several employers. The negotiations having proved unsatisfactory to the Union, it called a strike which involved the Company's route salesmen in Massachusetts. At the conclusion of the strike, which was short-lived, the Company signed a contract with the Union, at the end of which appeared a written notation, "For Lowell Drivers." Subsequently, on August 16, 1937, another contract, substantially the same as the first, but omitting the notation, "For Lowell Drivers," was executed by the Union and the Company and substituted for the first contract. A clause in the second contract provided that it should remain in effect until July 26, 1938, "and thereafter until terminated by either Party on thirty (30) days' written notice given to the other Party." Subsequently the Union encountered difficulty in dealing with the Company under this contract because the Company contended that the notation, "For Lowell Drivers", appearing in the first contract limited its applicability solely to Lowell route salesmen and that it had been the Company's understanding in signing the second contract that it, also, applied to Lowell route salesmen only, despite the omission therefrom of the notation so limiting it. For this reason and also on the ground that the Union did not represent its New Hampshire route salesmen, the Company denied the Union's right to bargain for the New Hampshire route salesmen. The Union, claiming to represent a majority of all the Company's route salesmen, both those operating in New Hampshire and those operating in Massachusetts, applied to the Regional Office of the Board at Boston, Massachusetts. Attempts to arrange a consent election were unsuccessful.

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 has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Union alleged in its amended petition that a unit composed of 37 route salesmen is appropriate for the purposes of collective

bargaining. While there may be some suggestion in its conferences with the Union regarding the contract that the Company considered all its employees to constitute an appropriate unit, neither the Company nor the Association at the hearing opposed the Union's claims with respect to the appropriate unit or made any claims for a different appropriate unit. Moreover, at the close of the hearing all parties entered into a stipulation authorizing the Board to direct an election among the Company's route salesmen, including the one van driver, to determine whether they desire to be represented by the Union or by the Association. In view of these facts we see no reason for deviating from the Union's claim as to the appropriate unit.

We find that the 37 route salesmen, including the van driver, employed by the Company 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 Union claimed that 22 of the Company's 37 route salesmen had designated it as their representative for the purposes of collective bargaining. The Union introduced membership cards in evidence to substantiate its claim. It is unnecessary for us, however, to consider these membership cards in resolving the question concerning representation, since at the conclusion of the hearing all the parties entered into a stipulation authorizing the direction of an election by the Board on the following terms:

1. The election shall be held among all the route salesmen, including the van driver, employed by the Cote Bros. Inc., and appearing on the pay roll of the Company as of February 12, 1938.²

2. The ballot shall permit the voters to choose between the bakery drivers' local No. 686 of the A. F. of L., and the Association of Cote Brothers, Inc., employees.

3. The election shall be held on a Saturday. The polls shall be open at 7:30 p. m. There shall be a polling place both in Manchester, New Hampshire, and in Lowell, Massachusetts, and the hours for voting shall be the same in both places. This paragraph, No. 3, shall be subject to the approval and discretion of the Regional Director for the First Region.

²The stipulation lists the names of the persons eligible to vote. This list of names appears in appendix A annexed hereto.

4. The election shall be conducted by the Regional Director of the National Labor Relations Board for the First Region, and all other procedural details, including the place for the voting, other than as provided in paragraph 3, the preparation of ballots, the number of tellers, etc., shall be determined by him. His decision in these matters shall be final. Notices of election shall be posted not less than 48 hours prior to the election in the Manchester plant of Cote Bros. Inc., and in the garage of Cote Bros. Inc., at Lowell, Massachusetts.

5. The parties herein hereby agree to abide by an order and decision of the National Labor Relations Board in accordance with the above terms and conditions.

On the basis of the above findings of fact, the above stipulation, 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 Cote Bros. Inc., Manchester, New Hampshire, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The route salesmen, including the van driver, of Cote Bros. Inc., 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 its investigation to ascertain representatives for the purposes of collective bargaining with Cote Bros. Inc., Manchester, New Hampshire, an election by secret ballot be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the First 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, and in accordance with the stipulation entered into in this proceeding, among all the route salesmen, including the van driver, employed by the Company who were on the Company's pay-roll list of February 12, 1938, a copy of which is annexed hereto as appendix

A, excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Bakery Drivers Local No. 686, or by Association of Cote Bros. Inc. Employees, for the purposes of collective bargaining, or by neither.

APPENDIX A

Joseph Gaudneault	Harvey Trudeau
Conrad Lavallo	Antonio Chauvette
Henry Lavallo	Rosario Monast
Henry Mullen	Jean Chenard
Leon Rochette	Alpha Campbell
Philip Thebeault	Oliver Vien
Morse Marcoux	Lucien Chaput
James J. Connors	Archille Beaulac
Leon L. Gilbert	Alphonse Mortel
Henry O. Perreault	Arthur Perreault
Armand Tessier	Arthur Gelinac
Philip Beaudet	Armand Caron
Leon V. Alliere	Leonidas Leblanc
Laurent Adam	Albert Mesropian
Armand Adam	Alfred Kelly
Leo LaFlamme	Shirley Morgrage
Agenor De Ziel	Salvatore Garceau

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

June 13, 1938

On May 9, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot be conducted among all the route salesmen, including the van driver, employed by Cote Bros. Inc.

Pursuant to the Decision and Direction of Election, an election by secret ballot was conducted on May 21, 1938, under the direction and supervision of A. Howard Myers, the Regional Director for the First Region (Boston, Massachusetts), among the eligible employees of Cote Bros. Inc. On May 24, 1938, the said Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and, on May 25, 1938, duly served upon the parties an Intermediate Report on the election.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote.....	34
Total number of ballots cast.....	31
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of challenged ballots.....	0
Total number of votes in favor of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Bakery Drivers Local No. 686.....	7
Total number of votes in favor of Association of Cote Bros. Inc. Employees.....	24
Total number of votes in favor of neither organization.....	0

No objections to the Intermediate Report on the election were filed by any of the parties.

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, herein called the Act, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Association of Cote Bros. Inc. Employees has been designated and selected by a majority of the route salesmen, including the van driver, employed by Cote Bros. Inc., Manchester, New Hampshire, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Association of Cote Bros. Inc. Employees 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.