

In the Matter of ROMA WINE COMPANY and INTERNATIONAL
LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

Case No. R-639.—Decided May 11, 1938

Wine Industry—Investigation of Representatives: controversy concerning representation of employees: employer's refusal to grant recognition of union; rival organizations—*Unit Appropriate for Collective Bargaining:* all manual workers, excluding office workers, teamsters, and foremen; foremen excluded although both unions admitted them to membership, where unions contended that only those foremen belonging to either union should be included in unit—*Election Ordered:* among employees on stipulated list.

Mr. Weldon P. Monson, for the Board.

Mr. Albert Picard, of San Francisco, Calif., for the Company.

Mr. Louis Goldblatt, of San Francisco, Calif., for the I. L. W. U.

Mr. P. M. Milloglav, of Woodbridge, Calif., for the Winery Workers.

Mr. Richard A. Perkins, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On February 4, 1938, International Longshoremen's and Warehousemen's Union, herein called the I. L. W. U., filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Roma Wine Company, Inc., Lodi, California, 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.¹ On March 8, 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 Rela-

¹The petition of the I. L. W. U. and the order of the Board authorizing the investigation erroneously designated the Company as "Roma Wine Company," and the I. L. W. U. as "International Longshoremen's & Warehousemen's Union."

tions Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and provide for an appropriate hearing upon due notice.

On March 15, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the I. L. W. U., and upon Winery & Distillery Workers Union, Local 20574, herein called the Winery Workers, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on March 24, 1938, at Lodi, California, before Thomas H. Kennedy, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel; and the I. L. W. U. and the Winery Workers were represented by union officials. All participated in 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. 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 COMPANY

Roma Wine Company, Inc., a California corporation, produces wine, brandy, and grape concentrates. According to the testimony of its president, it is the largest wine producer in the United States. The Company operates four wineries in California, situated at Lodi, Weston, Fresno, and Healdsburg. Only the employees at the Lodi winery are involved in this proceeding. During the year 1937 the Company purchased outside the State of California supplies and equipment to the value of \$42,093.29. In the same year the Company sold products aggregating in value about \$4,000,000, approximately 70 per cent of which were shipped to purchasers outside California. The Lodi winery produced 4,637,707 gallons of wine and brandy in 1937. Of this total the Company sold 3,196,049 gallons outside of California.

The Company employs from 40 to 150 persons at the Lodi winery, depending upon seasonal fluctuations in its business.

II. THE ORGANIZATIONS INVOLVED

International Longshoremen's and Warehousemen's Union is a labor organization affiliated with the Committee for Industrial Organization. The I. L. W. U. has chartered Local 1-27, which admits employees of the Company to membership. The parties stipulated that I. L. W. U. Local 1-27 is the successor to International Longshoremen's Association, Weighers, Warehousemen and Cereal Workers Local 38-109, herein called Local 38-109, a labor organization affiliated with the American Federation of Labor.

Winery & Distillery Workers Union, Local 20574, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On May 20, 1937, the Company entered into a contract with Local 38-109, which then claimed to represent the Company's employees. The contract was to be effective until March 9, 1938. After the execution of the contract Local 38-109 became Local 1-27 of the I. L. W. U. and changed its affiliation from the American Federation of Labor to the Committee for Industrial Organization. While the contract was in force the Winery Workers commenced to organize the Company's employees. Pursuant to the provisions of the contract, the I. L. W. U. gave the Company due notice of its desire to negotiate a new agreement upon the expiration of the one in force. The Company replied to the notice by a letter dated January 27, 1938, informing the I. L. W. U. that further negotiations must await Board action designating which of the rival unions was entitled to represent the employees. It was stipulated at the hearing that a question had arisen concerning the representation of employees of the company.

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 I. L. W. U. alleged in its petition that a unit composed of "72 manual workers, excluding teamsters" was appropriate for the purposes of collective bargaining. The exclusion of teamsters is contested by neither the Winery Workers nor the Company. It was stipulated by all parties that office workers should be excluded from whatever unit was found to be appropriate.

Both unions admit foremen to membership and both claim that foremen who are members of either union should be included in the appropriate unit. The record does not indicate which foremen, if any, belong to either union. We might be disposed to adopt a recommendation by both unions for the inclusion of all foremen in the appropriate unit. We cannot, however, include merely those foremen who happen to belong to either union at this time, and thus embody in a definition of the appropriate unit the fortuitous state of organization existing among the foremen at present. We shall, therefore, follow our usual practice and exclude foremen.

We find that all manual workers employed by the Company at its Lodi, California, winery, excluding office workers, teamsters, and foremen, 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 collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

Although the I. L. W. U. alleged in its petition that it represented 72 of the Company's employees, it furnished no evidence at the hearing in support of its claim. Nor did the Winery Workers adduce proof that they represented a majority. The question which has arisen concerning representation of employees of the Company can best be resolved by holding an election by secret ballot. The I. L. W. U. wishes to be designated on the ballot as "International Longshoremen's and Warehousemen's Union, Local 1-27, Stockton, California"; and the Winery Workers desire that the number of their local union be included as part of their designation on the ballot. We shall so designate the unions on the ballot.

The I. L. W. U., the Winery Workers, and the Company agreed that, in the event of the issuance of a direction of election by the Board to determine representatives for collective bargaining, the persons listed in Appendix A annexed hereto should be eligible to vote. It seems likely that both unions and the Company proceeded on the assumption that some foremen, at least, would be eligible to

vote. Since the list furnished us does not indicate the positions held by the individuals named thereon, it is possible that some persons whose names appear on the list are not included in the unit which we have found to be appropriate. We shall, therefore, direct the election to be held among such of the persons listed in Appendix A as are included within the appropriate unit, excluding those who have quit or been discharged for cause since the hearing herein.

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 Roma Wine Company, Inc., Lodi, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All manual workers employed by the Company at its Lodi, California, winery, excluding office workers, teamsters, and foremen, 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 the purposes of collective bargaining with Roma Wine Company, Inc., Lodi, 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 Twentieth 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 such of the manual workers employed by said Company at its Lodi, California, winery as are listed in Appendix A annexed hereto, excluding office workers, teamsters, foremen, and those who have quit or been discharged for cause since March 24, 1938, to determine whether they desire to be represented by International Longshoremen's and Warehousemen's Union, Local 1-27, Stockton, California, or Winery & Distillery Workers Union, Local 20574, for the purposes of collective bargaining, or by neither.

APPENDIX A

A. Anderson	R. E. Mineck
J. Acker	Herb Mastel
H. Berglund	W. C. Netz
B. B. Bohn	J. C. Nibeck
T. M. Bianchi	Bernard Nystrom
J. Brazil	Vern Price
Pete Bekedam	E. Price
Leo Buckmaster	E. E. Powers
L. Bressani	Roy Pope
M. Berti	Albert Reisinger
A. Carda	N. Rivara
J. Capuccini	Peter Joseph Reiner
W. Contenti	Jaké Reisinger
Gene Cortapassi	M. Rossi
J. Clear	Herbert Schneider
Clif Coöper	T. E. Schmidt
Henry Fuqua	Henry Schneider
H. Forsch	Henry Sattler
Joe Funk	Jaké Sator
J. Graf	W. P. Steyaert
H. Gunch	Clarence Steyaert
W. Gasparini	Ted Schneider
Kenneth Hall	Theo. E. Schmidt
W. Heine	E. A. Schmidt
Dave Hallman	Walter Trolsen
Vernon Heine	D. D. Turner
Chester Kreis	Henry J. Voss
Alvin Krause	Fred Voelker
Wm. Luckey	Antonio Valenti
John Loney	John R. Veraguth
Harry Lerza	P. D. Wilcox
Christ Ladner	W. Waldon
Geo. McCormick	John Waldon, Jr.
Wm. Melhoff	T. Zapatini
Ugo Martinelli	E. Ryan
Lester Michels	J. Wall