

In the Matter of ARBUCKLE BROS. and COMMITTEE FOR INDUSTRIAL ORGANIZATION ON BEHALF OF EMPLOYEES OF ARBUCKLE BROS.

*Case No. R-824.—Decided June 28, 1938*

*Sugar Importing, Refining, and Selling Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organization; employer's refusal to grant recognition of union—*Unit Appropriate for Collective Bargaining:* samplers, checkers, watchmen, sugar warehouse and shipping employees, porters, elevator operators, boilerhouse employees, and production and maintenance employees, excluding foremen, clerical and supervisory employees, and technical, laboratory and hospital employees: no controversy as to—*Election Ordered*

*Mr. Albert Ornstein*, for the Board.

*Mr. Carl A. Sturken* and *Mr. Robert Ringel*, of New York City, for the Company.

*Leibman, Robbins, Pressman and Leider*, by *Mr. Harold I. Carnmer*, of New York City, for the C. I. O.

*Mr. Emil Camarda* and *Mr. Joseph G. Mariatz*, of New York City, for the I. L. A.

*Mr. Victor A. Pascal*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On May 12, 1938, the Committee for Industrial Organization on behalf of employees of Arbuckle Bros., 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 Margaret A. Jamison and Martha Jamison, partners doing business as Arbuckle Brothers, New York City, herein called the Company,<sup>1</sup> at their plant and warehouse at Adam and Jay Streets, Brooklyn, New York, 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 May 23, 1938, the National Labor Re-

<sup>1</sup> Incorrectly designated as Arbuckle Bros. in the notice of hearing.

lations 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 May 25, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the C. I. O., and upon Local 1476, Sugar Refinery Workers, of the International Longshoremen's Association, herein called the I. L. A., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to notice, a hearing was held on June 7, 1938, at Brooklyn, New York, before Webster Powell, the Trial Examiner duly designated by the Board. The Board, the C. I. O., and the I. L. A. were represented by counsel and the Company by its superintendent and assistant engineer, all of whom participated in the hearing. 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 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

Arbuckle Bros., a partnership consisting of Margaret A. Jamison and Martha Jamison, is engaged in importing, refining, and selling sugar at its plant and warehouse at Adam and Jay Streets, Brooklyn, New York. About three or four blocks away, the Company maintains warehouses which are not involved in this proceeding. During 1937, the Company purchased approximately 346,000,000 pounds of raw sugar, all of which it secured from sources outside the State of New York. During the same period, it shipped 63 per cent of its finished products to destinations outside the State of New York.

The Company temporarily discontinued its operations about March 19, 1938.

##### II. THE ORGANIZATIONS INVOLVED

The Committee for Industrial Organization is a labor organization admitting to membership the production and maintenance employees of the Company, excluding supervisory and clerical employees.

Local 1476, Sugar Refinery Workers, of the International Longshoremen's Association is a labor organization affiliated with the American Federation of Labor. It admits to membership "the employees of Arbuckle Bros. (Sugar Refinery) engaged in the refining process from the receipt of raw sugar at the string piece to the delivery of refined sugar for shipment."

### III. THE QUESTION CONCERNING REPRESENTATION

On July 22, 1937, the Company and I. L. A. entered into an agreement which will expire on July 18, 1938. In the early part of March 1938, the C. I. O. commenced organizational activities and now claims to represent a majority of the Company's employees. About May 7, 1938, the C. I. O. wrote to the Company requesting recognition as the employees' exclusive bargaining agent. The Company, however, refused to negotiate with it.

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

At the hearing the C. I. O. requested that the bargaining unit include samplers, checkers, watchmen, sugar warehouse and shipping employees, porters, elevator operators, boilerhouse employees, assistant foremen, and production and maintenance employees, excluding supervisory and clerical employees, foremen, and technical, laboratory, and hospital employees. The employees in the unit urged by the C. I. O. are covered by the contract between the Company and the I. L. A. The record indicates that some foremen may be included within the provisions of the contract. The I. L. A., however, did not urge their inclusion, and did not object to the bargaining unit requested by the C. I. O.

We find that the samplers, checkers, watchmen, sugar warehouse and shipping employees, porters, elevator operators, boilerhouse employees, assistant foremen, and production and maintenance em-

ployees of the Company at its plant and warehouse at Adam and Jay Streets, Brooklyn, New York, excluding foremen, clerical and supervisory employees, and technical, laboratory and hospital employees, 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

Although the Company's employment list for the period ending March 19, 1938, was introduced in evidence, neither the C. I. O. nor the I. L. A. represented application cards or other evidence of their membership among the employees. Under the circumstances the question concerning representation can be resolved only by means of an election by secret ballot. Those eligible to vote will be the employees of the Company within the appropriate bargaining unit during the pay-roll period ending March 19, 1938.

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 Margaret A. Jamison and Martha Jamison, partners doing business as Arbuckle Bros., New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All samplers, checkers, watchmen, sugar warehouse and shipping employees, porters, elevator operators, boilerhouse employees, assistant foremen, and production and maintenance employees of Margaret A. Jamison and Martha Jamison, partners doing business as Arbuckle Bros., at their plant and warehouse at Adam and Jay Streets, Brooklyn, New York, excluding foremen, clerical and supervisory employees, and technical, laboratory, and hospital employees, 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, 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 collective bargaining with Margaret A. Jamison and Martha Jamison, partners doing business as Arbuckle Bros., New York City, 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 samplers, checkers, watchmen, sugar-warehouse and shipping employees, porters, elevator operators, boilerhouse employees, assistant foremen, and production and maintenance employees of the Company at its plant and warehouse at Adam and Jay Streets, Brooklyn, New York, who were employed by the Company during the pay-roll period ending March 19, 1938, excluding foremen, clerical and supervisory employees, and technical, laboratory and hospital employees, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by the Committee for Industrial Organization or by Local 1476, Sugar Refinery Workers, of the International Longshoremen's Association for the purpose of collective bargaining, or by neither.

CHAIRMAN MADDEN took no part in the consideration of the above Decision and Direction of Election.