

In the Matter of TERMINAL FLOUR MILLS COMPANY and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION LOCAL 1-28

*Case No. R-603.—Decided July 18, 1938*

*Flour Milling Industry—Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union until question of representation is determined by Board; rival organizations—*Unit Appropriate for Collective Bargaining:* production employees, excluding clerical and supervisory employees; warehouse and mill employees represented in past by separate unions; physical segregation of two groups; absence of fundamental differences between work of two groups; warehouse employees not a craft; past jurisdictional agreement not controlling factor in determination of—*Representatives:* proof of choice: stipulation as to—*Certification of Representatives:* upon proof of majority representation.

*Mr. Patrick H. Walker*, for the Board.

*Mr. William P. Lord* and *Mr. Walter Gillard*, both of Portland, Ore., and *Mr. Anthony Wayne Smith*, of Washington, D. C., for the I. L. W. U.

*Mr. Fred Jensen*, *Mr. Charles Raymond*, *Mr. Leland B. Shaw*, and *Mr. C. W. Robison*, all of Portland, Ore., and *Mr. Joseph A. Padway* and *Mr. Herbert S. Tatcher*, both of Washington, D. C., for Union No. 20160.

*Mr. Sylvester Garrett*, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On October 27, 1937, International Longshoremen's and Warehousemen's Union, Local 1-28, herein called the I. L. W. U., filed with the Regional Director for the Nineteenth Region (Seattle, Washington) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Terminal Flour Mills Company, Portland, Oregon, 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 January 10, 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 January 13, 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 Flour and Cereal Workers Federal Labor Union, No. 20160, herein called Union No. 20160,<sup>1</sup> a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on January 19, 1938, at Portland, Oregon, before Madison Hill, the Trial Examiner duly designated by the Board. Upon motion by counsel for Union No. 20160, the hearing was adjourned until February 10, 1938, at which time, again upon motion by counsel for Union No. 20160, the hearing was adjourned until February 11, 1938. Thereafter, on February 11, 12, and 14, 1938, the balance of the hearing was conducted. The board, the I. L. W. U., and Union No. 20160 were represented by counsel and participated in the hearing. The Company was not represented and did not participate in the hearing other than to enter into a stipulation with all the parties as to the facts relevant to the case. Full opportunity to be heard, to examine and cross-examine the witnesses, and to introduce evidence bearing on the issues was afforded all parties. Thereafter oral argument participated in by counsel for the I. L. W. U. and Local No. 20160 was heard by the Board in Washington, D. C., on April 21, 1938, following due notice to 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

Terminal Flour Mills Company is an Oregon corporation, engaged in the business of buying and milling wheat, and in selling and distributing flour and byproducts thereof. The Company has its principal place of business and operates a mill at Portland, Oregon. Immediately adjacent to the mill are the tracks and sidings of railroads

<sup>1</sup> At different times during this proceeding, Union No. 20160 was erroneously designated as "Local 20160, Flour and Cereal Workers and National Grain Processors and Allied Industries," and as "Flour and Cereal Workers Union No. 20160."

which are engaged in interstate commerce. Through the facilities of these railroads, the Company both receives grain which it mills, and ships flour and its byproducts. In addition, the Company's plant is connected with a nearby municipal dock by means of a conveyor belt over which its finished products are run for shipment by water both in interstate and foreign commerce. The Company records show that 60 per cent of the wheat milled in its plants is obtained from sources outside of Oregon. Approximately 80 per cent of the finished flour and its byproducts are sold through brokers and are shipped to destinations outside of Oregon. In the year 1937, the Company purchased over a million bushels of wheat for milling. In an average year, it produces between 200,000 and 250,000 barrels of flour and byproducts.

The Company admits that it is engaged in interstate commerce.

## II. THE ORGANIZATIONS INVOLVED

International Longshoremen's and Warehousemen's Union Local 1-28, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all employees of the Company engaged in shipping, receiving, and warehousing work, excluding clerical and supervisory employees.

Flour and Cereal Workers Federal Union No. 20160, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all production employees of the Company, excluding supervisory and clerical employees.

## III. THE QUESTION CONCERNING REPRESENTATION

On November 2, 1936, the Company negotiated a contract with a labor organization known as Local No. 38-123, International Longshoremen's Association, hereinafter called Local 38-123, recognizing it as exclusive bargaining agent for the warehouse employees of the Company. This contract was by its terms operative until September 30, 1937. At some time prior to the latter date, Local No. 38-123 approached the Company to discuss a possible extension of the agreement. At that time, it developed that Union No. 20160 had made a claim to the Company that it was entitled to represent all the Company's production employees, including the warehouse employees previously covered by the Local No. 38-123 contract. In view of this fact the Company, in a letter to Local No. 38-123 dated September 30, 1937, took the position that it could not properly deal with it until the question of which labor organization was entitled to represent its employees was settled by a decision of the Board. Local No. 38-123 thereafter severed its connection with the American

Federation of Labor, with which it was affiliated, obtained a charter from the Committee for Industrial Organization as International Longshoremen's and Warehousemen's Union, Local 1-28, and filed the petition in this case.<sup>2</sup>

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 Company's milling plant in Portland is housed in two buildings located within a few hundred feet of the bank of the Willamette River. The mill proper is contained in the building further removed from the river bank. Sixty feet nearer the river is situated the warehouse building, connected with the mill proper by a conveyor belt system over which flour is run from the mill to the warehouse. A further conveyor connects the warehouse with a public dock on the river front.

The I. L. W. U. claims that the employees working in the warehouse, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. Union No. 20160 contends for a bargaining unit composed of all production employees of the Company, excluding clerical and supervisory employees, and seeks recognition as bargaining agent for the employees within such unit. The Company takes a neutral position as to what should constitute the appropriate unit. Both organizations relied on the Company's manufacturing process to substantiate their claims.

Wheat, arriving at the Company's mill by rail, is dumped directly from the freight cars into a hopper, and is elevated to the top of the mill. There it is stored, weighed, and washed, preparatory to being sent to grinding bins. Beyond this latter point, actual trituration of the grain commences, the wheat being passed through a series of successively finer rolls. During this process the grain is automatically sifted and bleached, so that by the end of the grinding process coarse byproducts already have been removed and the flour is passed

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<sup>2</sup> A more detailed account of events leading up to the obtaining of this charter may be found under Section V of this decision.

into packing bins. From these bins the flour then is run into sacks and other types of containers and is conveyed to an appropriate storage place preparatory to shipment. Before shipment, however, all flour is subjected to chemical tests which may result in its being sent back for reprocessing or its being blended with other flour in order to produce uniformity of quality.

In the Company's manufacturing process, all work up to and including the placing of the flour in sacks is carried on in the mill building. Immediately after the sacking, however, the flour is carried by the automatic conveyor over to the warehouse for storage pending shipment. The I. L. W. U. contends that at this point there is a definite line of demarcation between the work of the warehousemen and that of the mill employees, and that thus it is proper to separate the two groups into different units for the purposes of collective bargaining. In support of this contention, the I. L. W. U. points out that in addition to being physically separated from the mill employees, the warehousemen are less-experienced workers, have different working hours, and command less pay.

Union No. 20160 took the position at the hearing that the line of demarcation urged by the I. L. W. U. was more imaginary than real. Ordinarily, in other flour mills, there is no separate warehouse building, and no point at which it can be said that mill work ceases and warehouse work commences. Evidence on behalf of Union No. 20160 indicated an absence of any real difference between the kind of work done by the men in the warehouse and that done in the mill. Hiring of employees for the mill is accomplished by the advancement of men with prior experience in the warehouse. Moreover, not all of the flour packing is done in the mill building. Flour for export shipment in tin cans is packed in the center of the warehouse building, from a bin to which the flour is run directly from the mill. Occasionally, this flow of flour to the bin is supplemented by dumping in sacks of flour already in the warehouse. On many occasions actual packing and soldering of the cans is done by warehousemen who are paid at the same rate as the regular mill employees who otherwise would be brought over to conduct the operation. It is true, however, that such work is carried on only for a few days at three or four month intervals. The packing of feed, a flour byproduct, is likewise done in the warehouse, while all flour sacks are cleaned in the warehouse and the cleanings sent back to the mill for reprocessing. In other instances, incident to routine chemical testing of the flour in the warehouse, flour is sent back to the mill for reprocessing or blending.

At the hearing, Union No. 20160 pointed out that the I. L. W. U. had undertaken to represent all production employees in other milling companies in the Portland area on the basis of a single plant-

wide bargaining unit. The I. L. W. U. did not deny this, and indeed admitted that it would have sought recognition as bargaining agent for all of the production employees of the Company were it not for the fact that the employees in the mill were predominantly members of Union No. 20160. In explaining its position in this regard, the I. L. W. U. relied heavily on the history of the Company's labor relations.

As early as 1933 the American Federation of Labor, hereinafter called the A. F. of L., issued a charter to Federal Union, No. 18853, empowering it to organize among all employees in the flour, feed, and cereal milling industries in Portland, Oregon. Prior to December 1935, both warehouse and mill employees of the Company had become members of the union. On December 8, 1935, however, the membership of the union voted to abandon their charter. The International Longshoremen's Association, also affiliated with the A. F. of L., thereupon chartered Local No. 38-123, which was joined by nearly all of the Company's warehouse employees. Following this, a number of former members of Federal Union No. 18853, including mill employees of the Company, obtained a new charter from the A. F. of L. as Union No. 20160. Both Local No. 38-123 and Union No. 20160 thereafter claimed jurisdiction over all production employees of the Company. In the beginning of 1936, developing friction between the two groups required the intervention of the executive council of the A. F. of L. which resulted in a jurisdictional agreement between the two organizations. According to its terms, Local No. 38-123 was given exclusive jurisdiction over all of the Company's warehouse employees, while Union No. 20160 was granted jurisdiction over all of the mill employees. During 1936, Local No. 38-123 negotiated an oral contract with the Company covering hours, wages, and working conditions for the warehouse employees. On November 2, 1936, a similar written contract was negotiated between the parties, to remain operative until September 30, 1937. At the time Local No. 38-123 approached the Company to discuss a possible extension of this agreement, however, it was discovered that Union No. 20160 claimed to be entitled to act as bargaining agent for all of the Company's production employees, excluding clerical and supervisory employees. Thereafter, as noted above, Local No. 38-123 severed its connection with the A. F. of L. and received a charter from the Committee for Industrial Organization, as International Longshoremen's and Warehousemen's Union, Local 1-28, subsequently filing the petition in this case.

Relying on the fact that, since the 1936 jurisdictional agreement, the Company's warehouse and mill employees have been represented by separate labor organizations, the I. L. W. U. contends that the Board should not now combine the two groups into a single bar-

gaining unit. Although this contention is not without some merit, under all of the circumstances of this case, we are of the opinion that it should not be a factor of controlling significance. It is apparent that warehousemen do not constitute a distinct skilled craft in the Company's plant. The testimony in this case amply demonstrates that no fundamental difference exists between the types of work done by the two groups in the Company's plant, and that their interests in fact are closely allied. We are satisfied, upon all the evidence, that the most appropriate unit for the purposes of collective bargaining is that which would include both the warehousemen and the mill employees.

We find that all of the production employees of the Company, excluding clerical and supervisory 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

Evidence introduced at the hearing showed that the Company does not contest the right of either labor organization to represent its employees. Although not participating in the hearing, the Company entered into a stipulation with all of the other parties bearing upon facts relevant to the case. The stipulation was introduced in evidence, and showed that the Company's production employees normally numbered about 51 workers. As an exhibit attached to the stipulation, the Company submitted a pay-roll list for 1937 which included the names of 62 employees. The list showed that, of this number, one man was a chemist, one an office worker, one a supervisor and one had resigned from his job. The remaining 58 employees appeared to have been, at some time during 1937, within the unit which we have found to be appropriate for the purposes of collective bargaining. Of the 58, however, the list showed that 9 men had done no work for the Company subsequent to November 1937, and were listed as "irregular—part time" employees.

During the hearing the I. L. W. U. and Union No. 20160 entered into a stipulation that at that time there were actually 52 employees within the unit which we since have found to be appropriate. It also was stipulated that, of the 52 employees, 30 desired representation by Union No. 20160, and 20 desired representation by the I. L. W. U. Prior to the stipulation the I. L. W. U. produced cards signed by 19 employees within the unit, authorizing it to act as their agent for the purposes of collective bargaining, and further claimed to represent 1 other employee. Union No. 20160 produced signed

statements from 27 employees within the unit, authorizing it to act as their collective bargaining agency. It also introduced evidence in support of a claim to represent three additional employees within the unit. The names of all 30 of the men whom Union No. 20160 claimed to represent appeared upon the Company's 1937 pay roll.

We find that Union No. 20160 has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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 representation of employees of Terminal Flour Mills Company, Portland, Oregon, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Flour and Cereal Workers Federal Union No. 20160, affiliated with the American Federation of Labor, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

#### 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, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Flour and Cereal Workers Federal Union No. 20160, affiliated with the American Federation of Labor, has been designated and selected by a majority of the production employees of Terminal Flour Mills, Portland, Oregon, excluding clerical and supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Flour and Cereal Workers Federal Union No. 20160, affiliated with the American Federation of Labor, 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.