

In the Matter of HUBINGER COMPANY *and* CORN PRODUCTS WORKERS
UNION No. 19931 AND HUBINGER COMPANY EMPLOYEES REPRESENTATION PLAN

Case No. R-297.—Decided December 4, 1937

Corn Products Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal of employer to recognize petitioning union as exclusive representative of employees; prior collective agreement with one of rival organizations no bar to election; current strike; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; occupational differences; employees of special skill excluded—*Election Ordered:* employees on pay roll for period prior to strike eligible to vote—*Certification of Representatives.*

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On June 5, 1937, Corn Products Workers Union No. 19931, herein called the Union, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Hubinger Company, Keokuk, Iowa, 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 July 26, 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 and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for a hearing upon due notice.

On August 13, 1937, the Regional Director issued a notice of a hearing to be held on August 23, 1937, at Keokuk, Iowa. The notice was served upon the Union, the Company, and Hubinger Company Employees Representation Plan, herein called the Plan, a labor organization claiming to represent employees in the unit alleged in the petition to be appropriate. The Plan, on August 14, 1937, filed with the Regional Director an application for postponement of the hearing until ten days after September 7, 1937. The application

was denied; however, the hearing was ordered postponed to August 30, 1937. Notice of such postponement was duly served upon the Company, the Union, and the Plan. A renewed application for postponement filed by the Plan on August 24, 1937, was also denied by the Regional Director.

Prior to the date of the hearing the Company filed an answer and an amended answer, alleging in substance that a consent election had been held at its plant on November 16, 1935, as the result of which it was notified by the Regional Director that the Plan was the proper organization with which it should deal for the purposes of collective bargaining; that pursuant to such notice it negotiated and entered into an agreement with the Plan, as the representative of all its production and maintenance employees; that said agreement was to remain in full force and effect until January 1, 1938; that members of the Union had violated the terms of said agreement by calling a strike at the Company's plant without first attempting to settle the dispute which had arisen by peaceful means, and for such reason, said Union should be estopped from petitioning for another election prior to the expiration date of said agreement.

The Plan, prior to the date of the hearing, also filed an answer in which it denied that a question concerning representation had arisen, or that if such question had arisen, that it was a question affecting commerce within the meaning of the Act. The answer set forth facts substantially as stated by the Company in its answer.

Pursuant to the notice, a hearing was held on August 30 and 31, 1937, at Keokuk, Iowa, before William P. Webb, the Trial Examiner duly designated by the Board. The Board, the Company, the Union, and the Plan were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the commencement of the hearing a stipulation relating to the business of the Company and other jurisdictional facts, signed by counsel for the Board, the Company, the Union, and the Plan, was introduced into evidence. During the course of the hearing the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed. At the conclusion of the testimony the Company filed a motion to dismiss the proceedings on various grounds. A ruling on the motion was reserved by the Trial Examiner. The Board has considered the motion and hereby denies it.

Pursuant to permission granted by the Trial Examiner, briefs were submitted by the Company and the Plan. These briefs have been considered by the Board as a part of the record.

After examining the record in this matter, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a Direction of Election on October 5, 1937, in which it found that the production and maintenance employees of the Company, excluding those employees of the laboratory department who are engaged in research or experimental work, clerical and office employees, supervisors, foremen, and executives, constitute a unit appropriate for the purposes of collective bargaining. The Board designated the Regional Director for the Thirteenth Region as its agent to conduct the election among the employees of the Company in the appropriate unit who were on the pay roll records of said Company during the week ending May 22, 1937, excluding those employees who had since quit or been discharged for cause. Merely for the purpose of expediting the election and thus to insure to the employees of the Company the full benefit of their right to collective bargaining as soon as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

Pursuant to the Board's Direction of Election, an election by secret ballot was conducted on October 18, 1937, by the Regional Director for the Thirteenth Region among the employees of the Company constituting the bargaining unit found appropriate by the Board. Thereafter, the Regional Director issued and duly served upon the parties to the proceeding his Intermediate Report upon the secret ballot. Exceptions to the Intermediate Report were filed only by Corn Products Workers Union No. 19931 and were directed solely to the eligibility of employees whose ballots were challenged by the Plan. Since, as indicated below, the Union received a majority of the votes cast, it is unnecessary to consider these exceptions.

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

Total number eligible.....	289
Total number of ballots cast.....	287
Ballots cast for Corn Products Workers Union No. 19931.....	147
Ballots cast for Hubinger Company Employees Representation Plan	116
Ballots cast by employees desiring neither organization.....	4
Challenged ballots.....	20
Blank ballots.....	0
Void ballots.....	0

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Hubinger Company is a corporation organized under the laws of the State of Iowa. It operates a plant at Keokuk, Iowa, at which it manufactures corn syrup, corn starch, corn sugar, corn oil, and cattle feed. The Company, while operating, grinds approximately 10,000 bushels of corn a day. Its production is more than three per cent of the total production of the corn products industry in the United States.

The Company's plant consists of a number of buildings located upon three or four acres of ground. It is serviced by switch tracks over which three interstate railroads operate in delivering raw materials and transporting the finished products. The Company is given transit rates on both interstate and intrastate shipments by these railroads.

The principal raw materials used by the Company in the manufacture of its products are corn and coal; some hydrochloric acid, sulphur, and other chemicals are also used. The cost of these raw materials for the calendar year 1936 was approximately \$2,000,000. Only five to ten per cent of such materials are purchased outside the State of Iowa. However, from 80 to 85 per cent of the Company's finished products are shipped by it into states other than Iowa. For the calendar year 1936 the value of these finished products was approximately \$3,500,000.

The Company, in marketing its products, uses a number of trade names and a trade-mark registered for use in interstate commerce. Several magazines and farm journals of national circulation and "minute movies" are employed by it for advertising purposes. It sells through jobbers and brokers to both retail and wholesale trade. It maintains a sales office in New York City, and in Boston, Massachusetts, and is represented by commission brokers in all of the principal cities of the United States.

II. THE ORGANIZATIONS INVOLVED

Corn Products Workers Union No. 19931 is a labor organization affiliated with the American Federation of Labor, from which it received a charter on February 18, 1935. It admits to membership all production and maintenance employees of the Company below the grade of foreman.

Hubinger Company Employees Representation Plan is a labor organization affiliated with Amalgamated Employees Representation Plans of Southeastern Iowa. It was organized during the early part of the year 1935 and was incorporated on October 2, 1936. It likewise admits to membership all production and maintenance employees of the Company below the grade of foreman.

III. THE QUESTION CONCERNING REPRESENTATION

The present controversy grows out of, and is perhaps a continuation of, a dispute concerning representation which arose between members of the Plan and the Union during the year 1935. In November of that year a consent election was held under the supervision of the Regional Director of the Board for the Thirteenth Region to determine which of those labor organizations should represent all of the employees of Hubinger Company for collective bargaining purposes. The Plan won that election and the Regional Director so notified the Company on December 2, 1935. Thereupon a collective bargaining agreement was negotiated between the Plan and the Company, to become effective on December 15, 1935, and to continue in effect until January 1, 1938.¹

On June 1, 1937, after the contract had been in effect for approximately a year and a half, the Union, claiming a membership of a majority of the Company's employees, demanded recognition as sole collective bargaining agent for all of said employees. This demand was refused; however, the Company agreed to recognize any organization which the Board might decide should be recognized. The Plan refused to agree that a consent election be held prior to the expiration date of the agreement which it had negotiated with the Company.

On or about July 9, 1937, a strike was called by the Union. This strike was still in progress at the time of the hearing of this case.

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

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON
COMMERCE

The activities and conflicting claims of both unions before and after the petition for investigation was filed, caused considerable strife and unrest among the Company's employees. The strike which was called on July 9, 1937, resulted in a complete shut-down of the Company's plant. Its operations remained completely suspended until August 26, at which time about 100 of the Company's total of approximately 374 employees returned to work. Shipments of the Company's products in commerce were practically eliminated from July 9 to August 26 and were greatly curtailed at the date of the hearing.

We find that the question concerning representation which has arisen in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to

¹ Board Exhibit No. 16.

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 thereof.

V. THE APPROPRIATE UNIT

The Company and the Plan agreed that all production and maintenance employees of the Company, excluding clerical and office employees, foremen, supervisors, and executives, constitute a unit appropriate for the purposes of collective bargaining. The Union, however, contended that all employees of the laboratory department should be excluded for the reason that they are professional employees. There was no evidence in the record to indicate that any of the production or maintenance employees of that department are engaged in research, experimental, or any other kind of technical work. No special training other than a high school education is required, and most of the employees are engaged solely in gathering samples from the various departments of the Company. If, however, any employees of the laboratory department are engaged in research or experimental work, they should not be included in the same unit with the other production and maintenance employees.

Therefore, in order to insure to the employees of the Company the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that the production and maintenance employees of the Company, excluding those employees of the laboratory department who are engaged in research or experimental work, clerical and office employees, supervisors, foremen, and executives, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing the Union and the Plan each claimed as members a majority of all the production and maintenance employees of the Company, and each introduced in evidence membership lists which tended to substantiate its claim. Names of a large number of employees appeared on both lists, making it difficult to determine which organization, if either, represented a majority of all of the employees.

We find that the question concerning representation which has arisen can best be resolved by the holding of an election by secret ballot.

The pay roll of May 22, 1937, was the last pay roll preceding the date when the petition for investigation was filed. The subsequent occurrence of the strike and the consequent operation by the Com-

pany with a limited force make it inadvisable to attempt to select a later date for determining eligibility of employees to vote.

The May 22 pay roll list referred to at the hearing failed to include permanent employees who were absent on vacations or on account of illness but who were carried on the Company's pay roll records during that week. We therefore find that those employees in the appropriate unit who were on the pay roll records of the Company for the week ending May 22, 1937, except those who have since quit or been discharged for cause should be entitled to vote.

The election by secret ballot, which was conducted in conformity with the above findings and pursuant to the Direction of the Board, resulted in a vote for the Union by a majority of the employees in the appropriate unit.

We therefore find that Corn Products Workers Union No. 19931 has been designated and selected by a majority of the employees of Hubinger Company, Keokuk, Iowa, in the appropriate unit as their representative for the purposes of collective bargaining. Corn Products Workers Union No. 19931 is, therefore, by virtue of Section 9 (a) of the Act, 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.

CONCLUSIONS OF LAW

Upon the basis of the foregoing 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 Hubinger Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of Hubinger Company, excluding those employees of the laboratory department who are engaged in research or experimental work, clerical and office employees, supervisors, foremen, and executives, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) 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, 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 CERTIFIED that Corn Products Workers Union No. 19931 has been designated and selected by a majority of the production and maintenance employees of Hubinger Company, Keokuk, Iowa, excluding those employees of the laboratory department engaged in research or experimental work, clerical and office employees, supervisors, foremen, and executives, as their representative for the purposes of collective bargaining and that pursuant to the provisions of Section 9 (a) of the Act, Corn Products Workers Union No. 19931 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.