

In the Matter of BISHOP & COMPANY, INC., and UNITED CRACKER,  
BAKERY, AND CONFECTIONERY WORKERS, LOCAL INDUSTRIAL UNION  
No. 212

*Case No. R-382.—Decided December 15, 1937*

*Confectionery and Candy Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to bargain with either in absence of proof of majority representation—*Unit Appropriate for Collective Bargaining:* production employees, excluding "rush" season employees and those covered by collective bargaining agreement with a union representing employees in a separate unit; insufficient community of interest for collective bargaining as a unit between regular and "rush" season employees; election to be conducted among those on pay roll of approximate last day of regular production—*Election Ordered*

*Mr. David Persinger*, for the Board.

*Newlin & Ashburn*, by *Mr. C. J. Harrison*, of Los Angeles, Cal.;  
for the Company.

*Mr. Eli Epstein*, for the United.

*Rosencrans & Emme*, by *Mr. Otto J. Emme*, of Los Angeles, Cal.,  
for the International.

*Miss Ida Klaus*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 20, 1937, United Cracker, Bakery, and Confectionery Workers, Local Industrial Union No. 212, herein called the United, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Bishop & Company, Inc., Los Angeles, 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. On September 22, 1937, the United filed, in the same manner, an amended petition containing more detailed statements in support of its original allegations. On September 25, 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 an appropriate hearing upon due notice.

On October 19, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United, upon Bakery & Confectionery Workers' International Union of America, Local 37, herein called the International, a labor organization claiming to represent employees directly affected by the investigation, and upon the Central Labor Council of Los Angeles, in which the International is represented. Pursuant to the notice, a hearing was held on November 1, 1937, at Los Angeles, California, before George W. Rochester, the Trial Examiner duly designated by the Board. The Board, the Company, and the International were represented by counsel. The United was represented by one of its organizers. 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.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

At the commencement of the hearing, a stipulation was entered into between counsel for the Board and counsel for the Company that Bishop & Company, Inc., is engaged in interstate commerce.

In addition, we find the following:

The Company, a California corporation and a wholly-owned subsidiary of the National Biscuit Company whose principal plant and offices are in New York, is engaged in the manufacture of confectionery, chocolate, cocoa, and peanut butter. Most of its raw materials are derived from sources outside the State and purchased, upon requisition, by the purchasing department of the National Biscuit Company in New York; cocoa beans, from Africa and South America; peanuts, from Georgia, Texas, Virginia, and North Carolina; corn syrup, from Illinois. About ten per cent of its finished products are sold for shipment outside the State, principally, to Arizona and Hawaii. Advertising policies are formulated by the National Biscuit Company and monthly reports of production and price changes are made by the Company to the National Biscuit Company.

## II. THE ORGANIZATIONS INVOLVED

United Cracker, Bakery, and Confectionery Workers, Local Industrial Union No. 212, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production employees of the Company, excluding teamsters, drivers, delivery men, shipping room, maintenance, office, clerical, and supervisory employees.

Bakery & Confectionery Workers' International Union of America, Local 37, is a labor organization affiliated with the American Federation of Labor. The record is silent as to the classes of the Company's employees eligible for membership in this organization.

## III. THE QUESTION CONCERNING REPRESENTATION

Prior to the Board's investigation, both the United and the International attempted to bargain collectively with the Company, each contending that it represented a majority of the production employees. The Company refused to bargain collectively with either of them, stating that it had no knowledge that either represented a majority of such employees. It refused to accept an offer of proof of majority representation by the United, saying that that fact would have to be ascertained by the National Labor Relations Board. At the hearing, the United repeated its contention, but offered no substantiating proof, and the Company again refused to recognize the United as the representative of its employees, in the absence of such proof. The Company's present refusal to recognize either of these unions as sole bargaining agent tends to create resentment and dissatisfaction among its employees who are members of the unions.

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 United contends, and the International does not deny, that the production employees, excluding teamsters, drivers, delivery men, shipping room, maintenance, office, clerical, and supervisory employees, constitute the appropriate bargaining unit. Teamsters, de-

livery men, drivers, and those employed in the shipping room are covered by a written collective bargaining agreement between the Company and the Bakery Drivers' Union of the International Brotherhood of Teamsters, affiliated with the American Federation of Labor. The United does not consider the maintenance, office, and clerical workers, nor the employees covered by the Bakery Drivers' agreement, as production employees, and there is no objection on the part of the International to their exclusion.

The testimony given at the hearing shows that the Company regularly employs about 100 production employees and that during the last quarter of the year, its peak production season, it takes on extra people to handle its extraordinary business. These people are regarded by the Company as "extras" and "make shift" and are discharged at the close of the rush season. About 25 per cent of the extras have returned from year to year for rush season work. The United urges that, since the extra people are not considered regular, steady employees and do not, typically, return each year for seasonal employment, the casualness of their relationship with the Company should exclude them from any election which the Board might order in connection with the present investigation. It desires, therefore, that the election be conducted among those in the appropriate unit who were in the employ of the Company on September 22, 1937, the date of the United's amended petition, and the date representing the approximate end of the normal production season. We conclude that the difference in the employment relationship of the extra employees and of those employed by the Company throughout the year is such that there is not a sufficient community of interest between these groups for collective bargaining as a unit.

We therefore find that the regular production employees of the Company, excluding those hired for the October through December season, teamsters, drivers, delivery men, shipping room, maintenance, office, 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.

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 Bishop & Company, Inc., Los Angeles, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The regular production employees of the Company, excluding those hired for the October through December season, teamsters, drivers, delivery men, shipping room, maintenance, office, 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.

### 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 ordered to ascertain representatives for the purposes of collective bargaining with Bishop & Company, Inc., Los Angeles, California, an election by secret ballot shall be conducted within a period of ten (10) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the production employees of said company who were employed by it on September 22, 1937, excluding teamsters, drivers, delivery men, shipping room, maintenance, office, clerical, and supervisory employees, and excluding also those employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented, for the purposes of collective bargaining, by United Cracker, Bakery, and Confectionery Workers, Local Industrial Union No. 212, affiliated with the Committee for Industrial Organization, or by Bakery & Confectionery Workers' International Union of America, Local 37, or its successor, affiliated with the American Federation of Labor, or by neither.

[SAME TITLE]

### AMENDMENT TO DIRECTION OF ELECTION

*December 23, 1937*

On December 15, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election, in the above-entitled proceeding, the election to be held within ten (10) days from the date of the Direction, under the supervision of the Regional Director for the Twenty-first Region, (Los Angeles, California).

United Cracker, Bakery and Confectionery Workers, Local Industrial Union No. 212, the petitioner herein, with the agreement of Bakery and Confectionery Workers' International Union of America, Local 37, intervenor herein, has requested the Board to defer the election until some time during the first week of January 1938, when the lay-off of the seasonal workers will have been perfected, thereby facilitating the conduct of the election among the employees in the appropriate unit.

The Board hereby amends its Direction of Election by striking out the words "within a period of ten (10) days from the date of this Direction of Election", and substituting therefor the words, "on or before January 8, 1938."

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Direction of Election.