

In the Matter of AMERICAN SUGAR REFINING COMPANY and COMMITTEE
FOR INDUSTRIAL ORGANIZATION

In the Matter of AMERICAN SUGAR REFINING COMPANY and UNITED
SUGAR WORKERS UNION, LOCAL 21023

Cases Nos. R-363 and R-364.—Decided January 13, 1938

Sugar Refining Industry—Investigation of Representatives: controversy concerning representation: rival organizations; conflicting claims of rival organizations as to appropriate bargaining unit—*Unit Appropriate for Collective Bargaining:* production employees excluding longshoremen, guards, and laboratory workers—*Election Ordered*

Mr. Samuel M. Spencer, for the Board.

Mr. Abbott Southall, of New York City, for the Company.

Mr. Frank J. Bender, of Baltimore, Md., for the C. I. O.

Mr. Henry A. McFarland, of Philadelphia, Pa., for the Federal Union.

Mr. O. L. Bonifay, of Baltimore, Md., for the A. F. of L. and the I. L. A.

Mr. Henry W. Lehmann, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 14, 1937, the Committee for Industrial Organization, herein called the C. I. O., and United Sugar Workers Union, Local 21023, herein called the Federal Union, each filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of American Sugar Refining Company, herein called the Company, at its refinery located in Baltimore, Maryland, 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 25, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, directed that the cases be consolidated for the purposes of a hearing,

and acting pursuant to Article III, Section 3, of said Rules and Regulations, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 7, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the C. I. O., and upon the Federal Union. On October 20, 1937, the Regional Director also issued to the International Longshoremen's Association, herein called the I. L. A., and to the Truck Drivers' & Helpers Union, notices advising both such organizations of their right to intervene in this case. Pursuant to the notice, a hearing was held on October 25, 1937, at Baltimore, Maryland, before Leo J. Kriz, the Trial Examiner duly designated by the Board. The Board and the Company were both represented by counsel, the C. I. O. by its organizing director in the State of Maryland, the Federal Union by its president, and the I. L. A. by one of the organizers of the American Federation of Labor who is also secretary of Local No. 1503 of the I. L. A. All participated in the hearing. The Truck Drivers' & Helpers Union did not appear. 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 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 COMPANY¹

The Company, a New Jersey corporation, is the largest refiner of cane sugar in the United States. It is engaged in the refining and sale of cane sugar of approximately 61 types. The Baltimore plant is one of the five refineries operated by the Company on the Atlantic seaboard. The principal raw material used at the Company's Baltimore refinery is raw sugar. All of the raw sugar comes from outside the State of Maryland, mostly from Cuba, the Philippine Islands, Hawaii, and Puerto Rico. The raw materials are shipped to the plant in Baltimore by sugar cargo vessels, two of which are owned by a subsidiary of the Company. More than 50 per cent of the refined sugar is shipped to points outside the State of Maryland. The sugar is sold through brokers in the District of Columbia, Delaware, Kentucky, Maryland, North Carolina, Ohio, Tennessee, Virginia, and West Virginia, as

¹ The Company stipulated for the record the facts set forth in this Section.

well as in other States. Sugars refined at the Baltimore refinery of the Company require no further finishing processes elsewhere.

The average monthly production of the Baltimore refinery ranges from approximately 40 to 45 million pounds of sugar. In a peak month this volume is considerably increased.

II. THE ORGANIZATIONS INVOLVED

The Committee for Industrial Organization is a labor organization composed of many national and local unions, including Local Industrial Union No. 276 which admits to its membership all production employees of the Company, excluding supervisory and clerical employees.

The United Sugar Workers Union, Local 21023, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all employees of the Company, excluding office workers and supervisory employees.

The International Longshoremen's Association is an organization affiliated with the American Federation of Labor. It admits to its membership longshoremen employed by the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The C. I. O. and the Federal Union each claims to represent a majority of the employees of the Company. Each desires to be declared the exclusive representative of employees of the Company at its Baltimore refinery for the purposes of collective bargaining.

We find that a question has arisen concerning representation of employees of the Company at its refinery in Baltimore, Maryland.

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 Federal Union maintains that all employees of the Company at its Baltimore, Maryland, refinery, exclusive of executives, supervisory and office workers, constitute a unit appropriate for the purposes of collective bargaining. The C. I. O. contends that there should be excluded from the unit supervisory and clerical employees, longshoremen, weighers, checkers, samplers, guards, chauffeurs, and laboratory workers. The reference in the petition of the Federal

Union to office workers and in the petition of the C. I. O. to clerical employees apparently is to the same employees. The two organizations, therefore, differ only concerning the exclusion or inclusion of longshoremen, weighers, checkers, samplers, guards, chauffeurs, and laboratory workers.

Longshoremen. Testimony offered by the Company indicates that it employed 67 longshoremen during the week of October 16, 1937. The Federal Union contends that the longshoremen of the Company should be included within the bargaining unit since they work as production workers in the raw sugar sheds of the Company when not engaged as longshoremen. However, since April 1937, at which time the I. L. A. began to organize the Company's longshoremen, the practice of working in the refinery when longshoremen's work was not available has diminished considerably. At the time of the hearing, an average of only six longshoremen per day worked in the raw sugar sheds. The Federal Union also stated that the longshoremen employed by a sugar refinery in Boston had participated with production employees in an election held to choose representatives for the purposes of collective bargaining.

Other considerations persuade us to the view, however, that the longshoremen should not be included in the same bargaining unit with the production employees of the Company. The longshoremen of the Company are eligible to membership in the I. L. A. and almost 50 per cent of them are members of the I. L. A. The president of the Federal Union testified that at the time of the hearing no longshoremen were members of the Federal Union. The Company pays the longshoremen \$1.05 per hour, which is the I. L. A. scale for longshoremen in the Baltimore area, whereas the production workers of the Company are paid only 50 or 55 cents per hour.

Upon the basis of all the evidence, we find that the longshoremen should not be included in the unit.

*Weighers.*² The C. I. O. contends that the two weighers employed by the Company are part of the clerical force and as such should be excluded from the bargaining unit. Such employees are paid weekly wages, whereas the production employees are paid on an hourly basis. The weighers check the results obtained by public weighers or seller's representatives who weigh the raw sugar when a cargo arrives at the docks of the Company. In addition to checking the weights, they record them as well. When there is no ship cargo which requires weighing and checking, the weighers perform other duties such as running electric trucks on the dock, and taking slings of sugar from storage to the place where the sugar bags are cut and emptied for refining purposes. On occasion, they also do some check weighing of refined sugar.

² In the record the weighers are also referred to as check-weighers.

We feel that, under all the circumstances, the duties and interests of the weighers are closely related to those of the production workers, and that the weighers should be included in the bargaining unit.

Checkers. The ten checkers employed by the Company are principally engaged in checking outgoing refined sugar. Like the check weighers, they are paid on a weekly basis. The record does not clearly disclose the nature of their duties. It appears, however, that they receive shipping papers in accordance with which they make loadings, and fill in shipping papers. Inasmuch as refined sugar is continually shipped out, they rarely perform any other duties than checking the outgoing sugar.

We feel that no sufficient reason has been presented for excluding the checkers from the bargaining unit and we, therefore, include them in the unit.

Samplers. The two samplers employed by the Company are paid on a weekly basis. The record does not clearly describe their duties, but it appears that among other things they send samples of raw sugar to laboratories located in New York where the samples are tested to determine the percentage of sucrose. When not engaged in the performance of their regular duties, the samplers perform other duties such as running the electric truck on the dock and moving slings of sugar.

In the absence of any further evidence, we are not warranted in excluding the samplers from the unit.

Guards. The Company employs seven uniformed men who are charged with the duty of protecting its property. It is evident that these employees are closely associated with the management and that their interests differ materially from those of the production employees. In accordance with our decisions in other cases, we find that the guards should be excluded from the unit.³

Chauffeurs. The Company employs three chauffeurs whose work consists of driving trucks outside the Company's property. The chauffeurs are paid on a weekly salary basis and receive approximately the same pay as other chauffeurs or teamsters in the Baltimore area. It was not shown at the hearing that such employees are members of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America or that they have any other union affiliation. In the absence of any further evidence, we feel that the chauffeurs employed by the Company should be included in the bargaining unit.

Laboratory workers. The Federal Union claims that the four employees working in the Company's laboratory should be included

³ See *Matter of R. C. A. Manufacturing Company, Inc.*, and *United Electrical and Radio Workers of America*, 2 N. L. R. B. 159. See also *Matter of Bendix Products Corporation* and *International Union, United Automobile Workers of America, Bendix Local No. 9*, 3 N. L. R. B. 682.

within the bargaining unit, while the C. I. O. asserts that they should be excluded. One worker keeps the laboratory records; the other three are routine analysts who make tests during the various stages in the production of refined sugar. The three employees also at times make other tests incidental to the operation of the refinery. All four employees are paid on a weekly salary basis. In so far as possible, the Company fills vacancies in the laboratory by promoting refinery employees who possess a high school education. We find that the qualifications and activities of the laboratory workers differ essentially from those of the other workers whom we have included in the unit, and such employees should not be included within the bargaining unit.⁴

We find that the production employees of the Company, including weighers, checkers, samplers, and chauffeurs, but excluding long-shoremen, guards, laboratory workers, and supervisory and clerical 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 policy of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

Although the Federal Union and the C. I. O. each claims to represent a majority of the employees of the Company within the appropriate unit, neither introduced membership cards or other evidence in proof of its claim. We find, therefore, that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and thus to resolve the question concerning representation.

Both the C. I. O. and the Federal Union contend that employees of the Company on its pay roll of August 14, 1937, the date of the filing of the petitions, should be entitled to vote in the election. The Company, however, objects for the reason that the number of employees has been substantially reduced since that time. The superintendent of the Company stated without contradiction that August 1937 was a peak production period during which the Company employed between 150 and 175 more employees than at the time of the hearing. It was further stated that the pay roll of October 16, 1937, containing the names of 808 employees, was approximately representative of the number of persons normally employed by the Company. The employees selected for dismissal after the production peak had passed were those who had been hired to perform the additional work created by increased production, and seniority governed the order of dismissal.

⁴ See *Matter of Southern Chemical Cotton Company and Textile Workers Organizing Committee*, 3 N. L. R. B. 839.

In view of these circumstances, those eligible to vote shall be the employees in the appropriate unit who were on the Company's pay roll of October 16, 1937, exclusive of those who since have voluntarily quit or been discharged for cause.

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 American Sugar Refining Company at its plant in Baltimore, Maryland, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of American Sugar Refining Company at its plant in Baltimore, Maryland, including weighers, checkers, samplers, and chauffeurs, but excluding longshoremen, guards, laboratory workers, and supervisory and clerical 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 American Sugar Refining Company, Baltimore, Maryland, 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 Fifth 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 production employees of American Sugar Refining Company at its plant in Baltimore, Maryland, who were on the Company's pay roll of October 16, 1937, including weighers, checkers, samplers, and chauffeurs, but excluding longshoremen, guards, laboratory workers, supervisory and clerical employees, and those who since have voluntarily quit or have been discharged for cause, to determine whether they desire to be represented by the Committee for Industrial Organization or by United Sugar Workers Union, Local 21023, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.