

In the Matter of DAN LOGAN AND J. R. PAXTON, CO-PARTNERS, D/B/A LOGAN AND PAXTON *and* TEXAS FRUIT & VEGETABLE WORKERS UNION, LOCAL 35, UCAPAWA-CIO

In the Matter of C. B. WILLIAMS *and* TEXAS FRUIT & VEGETABLE WORKERS UNION, LOCAL 35, UCAPAWA-CIO

In the Matter of JAMES G. McCARRICK AND W. A. RICHARDSON, CO-PARTNERS, D/B/A JAMES G. McCARRICK COMPANY *and* TEXAS FRUIT & VEGETABLE WORKERS UNION, LOCAL 35, UCAPAWA-CIO

Cases Nos. 16-R-798, 16-R-801 and 16-R-819, respectively.—Decided March 8, 1944

Strickland, Ewers, and Wilkins, by Messrs. J. F. Ewers, J. E. Wilkins, and Scott Toothaker, of Mission, Tex., and Texas Citrus and Vegetable Growers and Shippers Association, by Mr. Austin G. Anson, of Westaco, Tex., for the Companies, and

Greer and Cox, by Mr. Roy Greer, of McAllen, Tex., additionally for Williams.

Mr. Otis G. Nation, of Mercedes, Tex., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions filed by Texas Fruit & Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that questions affecting commerce had arisen concerning the representation of employees of Dan Logan and J. R. Paxton, Co-partners, doing business as Logan and Paxton, Mercedes, Texas, herein called Logan and Paxton; of James G. McCarrick and W. A. Richards, Co-partners, doing business as James G. McCarrick Company, Mercedes, Texas, herein called McCarrick; and C. B. Williams, Mercedes, Texas, herein called Williams, and collectively referred to as the Companies, the National Labor Relations Board provided for appropriate hearings upon due

notice before Gustaf B. Erickson, Trial Examiner. Separate hearings in these cases were held at Edinburg, Texas, on February 3, 4, and 5, 1944. The Companies and the Union appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.² The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board. At the hearings the Companies made motions that the petitions be dismissed. The Trial Examiner reserved rulings on those motions for the Board. The motions are hereby denied.³

The three cases are hereby consolidated for the purpose of decision. Upon the entire record in the cases, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Logan and Paxton is engaged at Mercedes, Texas, in purchasing, processing, packing, and selling citrus fruits. All of Logan and Paxton's supplies of raw materials come from points outside the State of Texas. During 1943, Logan and Paxton's total sales exceeded \$1,000,000.

Williams is engaged at Mercedes, Texas, in purchasing, processing, packing, and selling citrus fruits and vegetables. During 1943, about 95 percent of Williams' shipments of fruits and vegetables was to points outside the State of Texas. From October 15 to December 31, 1943, approximately 3 percent of the boxing and packaging materials used by Williams, valued at about \$1,150, was purchased outside that State.

McCarrick is engaged at Mercedes, Texas, in purchasing, processing, packing, and selling fresh vegetables. It has its main office at Robstown, Texas, and, in addition to its plant at Mercedes, operates plants at Robstown and Laueles, Texas. During 1943 McCarrick shipped approximately 600 carloads of vegetables, about 90 percent of which was shipped in interstate commerce.

We find that each of the Companies is engaged in commerce within the meaning of the National Labor Relations Act.⁴

¹ Although the Texas Citrus and Vegetable Growers and Shippers Association, herein called the Association, did not intervene in these proceedings, its representative participated as representing both the Association and the Companies

² Subsequent to the hearings, the Companies filed written motions with the Board for correction of the records in certain respects. The motions are granted

³ In their briefs the Companies made further motions, some upon additional grounds, for dismissal of the petitions. The motions are denied.

⁴ The Companies assert in their briefs that the Board is without jurisdiction because the employees of the Companies fall within the definition of the term "agricultural laborer" in Section 2 (3) of the Act. We find no merit in this contention. See e. g., *North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), cert. den. 310 U. S. 632.

II. THE ORGANIZATION INVOLVED

Texas Fruit & Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

Each of the Companies has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Companies' employees, in effect until the Union has been certified by the Board in appropriate units.

Statements of a Board agent introduced into evidence at the hearings indicate that the Union represents a substantial number of employees in each of the units hereinafter found to be appropriate.⁵

We find that questions affecting commerce have arisen concerning the representation of employees of each of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

The Union seeks three separate units, one for each of the three Companies, consisting of all employees of each Company at its Mercedes plant, exclusive of clerical and supervisory employees.⁶ The Companies, through the Association, assert that an appropriate unit should consist of all employees of all employer members of the Association. In addition, although the records are somewhat ambiguous in this respect, the Companies apparently contend that a separate unit on an Association-wide basis should be held appropriate for the employees who handle citrus fruits, and another for those who handle tomatoes.⁷

⁵ The Field Examiner reported that as to Logan and Paxton, the Union submitted 45 authorization and membership application cards; that the names of 42 persons appear on Logan and Paxton's pay roll of January 8, 1944; and that there were 96 employees in the alleged appropriate unit at Logan and Paxton.

The Field Examiner reported that, as to Williams, the Union submitted 30 authorization and membership application cards; that the names of 24 such persons appear on Williams' pay roll of January 13, 1944; and that there were 43 employees in the alleged appropriate unit at Williams.

The Field Examiner reported that, as to McCarrick, the Union submitted 26 authorization and membership application cards; that the names of all such persons appear on McCarrick's pay roll of January 6, 1944; and that there are 70 persons in the alleged appropriate unit at McCarrick.

⁶ The units sought by the Union would include all employees, except those excluded, who work in the shed of each Company, from the unloading of fruits and vegetables to their loading for transportation out of the plant after processing and packing.

⁷ At their respective plants at Mercedes, Texas, Logan and Paxton handles only citrus fruits, Williams handles both citrus fruits and tomatoes, and McCarrick handles fresh vegetables. The record fails to show whether McCarrick handles tomatoes, although it does show that McCarrick handles beets, carrots, broccoli, cabbage, "and all that kind of vegetables." It is not clear whether McCarrick would fall within the Association's citrus fruit unit or tomato unit.

In support of their contentions the Companies, through the Association, point to the fact that the Association is their representative in various matters, including collective bargaining; that wage increase applications have heretofore been filed with the National War Labor Board by the Association for permission to institute wage increases for tomato packers and handlers employed by all the members of the Association; and that the National War Labor Board approved certain wage increases on such an Association-wide basis. They also assert that the rates of pay for the packing of citrus fruits differ from those paid in the packing of tomatoes, and that separate negotiations would be required to fix these different rates.

While on January 1, 1944, the Association had 105 employer members engaged in a fruit or vegetable business similar to that of the Companies, these employers did not, however, constitute all concerns thus engaged in Texas.

While each member of the Association, by virtue of his membership therein and the terms of individual contracts with the Association, authorizes the latter to represent it in various matters including "labor problems," there is no evidence that the Association has in the past represented its members in collective bargaining on the basis of an Association-wide unit, or that any collective bargaining in the past has proceeded on such a basis.⁸ On the contrary, the record reveals that subsequent to the formation of the Association, various of its employer members, including at least one of the Companies, engaged in collective bargaining with Fruit Packers Federal Labor Union No. 22981, affiliated with the American Federation of Labor, and that in each instance the unit recognized by the parties was the single employer unit. There is nothing to indicate any managerial interrelation between members of the Association, which operate as separate and distinct business enterprises. There is no interchange of employees between the members, except that which arises from the employees' voluntary transfer from one employer to another.⁹

We see no reason to withhold from employees at individual plants the benefits of collective bargaining under the Act simply because the entire industry has not been unionized. While it cannot be said that under no circumstances would an industry-wide unit be appropriate, under all the circumstances here present, including the absence of a history of collective bargaining on an Association- or industry-

⁸ The Association's applications to the National War Labor Board, and subsequent steps, and representation by the Association of its members before other Government agencies, do not constitute negotiations with labor organizations within the meaning of the phrase "collective bargaining" as ordinarily employed. The Companies, through the Association, specifically denied that any negotiations with a labor organization preceded or accompanied the wage increase applications. Consequently, the Association's acts in these respects do not establish any history of collective bargaining on an Association-wide unit basis.

⁹ When work is slack or upon conclusion of a particular fruit or vegetable season, the workers seek employment elsewhere.

wide basis, and the past bargaining on an individual employer basis, we are of the opinion that the rights of the employees here involved to bargain collectively through representatives of their own choosing will be most effectively preserved through separate bargaining units covering the employees of each of the Companies.¹⁰

We likewise see no basis for establishing separate units for citrus fruit workers and tomato workers, either on an Association-wide basis or at each plant. While the working conditions and pay relative to each of these products may differ, there is no reason to require the selection of separate collective bargaining agents to represent the employees at the same plant in their handling of the different products.¹¹ The same bargaining representative which represents employees in a multi-classification unit is often required to negotiate a variety of working conditions, wage rates, and other matters. No unusual situation or problem is presented here. We conclude, therefore, that the employees included in the appropriate unit at each plant shall remain in that unit for the purposes of this proceeding regardless of the particular fruit or vegetable which these employees may be packing at different seasons during the year.

We find that all employees of Logan and Paxton at its Mercedes, Texas, plant, excluding office employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We find that all employees of Williams at its Mercedes, Texas, plant, excluding office employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We find that all employees of McCarrick at its Mercedes, Texas, plant, excluding office employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the em-

¹⁰ See *Matter of Chapman Dehydrator Company, Inc.*, 51 N. L. R. B. 664, and cases cited therein.

¹¹ The same workers are generally employed on both operations, since the tomato season starts at the end of the citrus fruit season.

ployees in the appropriate units who were employed during the pay-roll periods immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.¹²

DIRECTION OF ELECTIONS

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 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Dan Logan and J. R. Paxton, Co-partners, doing business as Logan and Paxton, Mercedes, Texas; of James G. McCarrick and W. A. Richards, Co-partners, doing business as James G. McCarrick Company, Mercedes, Texas; and C. B. Williams, Mercedes, Texas, separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the units found appropriate in Section IV, above, who were employed during the pay-roll periods immediately preceding the date of this Direction, including employees who did not work during said pay-roll periods because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those who have since quit or been discharged for cause and have not been rehired or reinstated prior to the dates of the elections, to determine whether or not they desire to be represented by Texas Fruit & Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

¹² While no direct issue was made at the hearings as to the inclusion in the units of non-citizen employees and their eligibility to participate in the elections, it is evident from the record that such an issue may arise at the time of the elections. The Act does not differentiate between citizens and non-citizens. In order to effectively carry out the purposes of the Act, we conclude that no distinction should be drawn on such a basis. (Cf. *Matter of U S Bedding Co.*, 52 N. L. R. B. 382.) Non-citizenship of an employee shall not, consequently, constitute a disqualification for participation in the elections.