

In the Matter of LIBBY, McNEILL & LIBBY and CANNERY WORKERS
UNION, LOCAL 20324, AFL

Case No. 20-R-977.—Decided March 23, 1944

Mr. Paul St. Sure, of Oakland, Calif., and *Mr. F. L. Smart*, of San Francisco, Calif., for the Company.

Mr. Albert E. Bilger, of Sacramento, Calif., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Cannery Workers Union, Local 20324, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Libby, McNeill & Libby, Sacramento, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gerald P. Leicht, Trial Examiner. Said hearing was held at San Francisco, California, on February 17, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a Maine corporation having its principal office and place of business in Chicago, Illinois, is engaged in the operation of various fruit and vegetable canneries in the State of California. This proceeding involves only the Company's plant in Sacramento, Cali-

ifornia, where during 1943 it canned in excess of 1,500,000 cases of fruit and vegetables, over 80 percent of which was shipped to points outside the State of California.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Cannery Workers Union, Local 20324, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees on the ground that the unit sought by the Union is inappropriate.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union seeks a unit composed of all employees in the cost control department of the Company including checkers, office and clerical employees, but excluding supervisors. The Company asserts that this unit is inappropriate on the grounds that the checkers are already within an appropriate unit and are covered by an existing collective agreement, that the office and clerical employees are outside of that agreement, and that a unit ought not be composed of office and clerical employees in only one department of the Company.²

The Union is a member of the California Council of Cannery Unions, and the Company is a member of the California Processors and Growers, Inc. There is a master contract between the Council, the American Federation of Labor, and the Growers which operates as an agreement also between individual companies and individual unions which are members of the contracting parties, and which covers production workers of the Company. The Union has heretofore sought to include

¹ The Field Examiner reported that the Union submitted a designation bearing 19 signatures, and that there are 20 employees in the alleged appropriate unit during the peak season, and 10 during the balance of the year.

² The number varies with the seasons

the cost control employees under the terms of that contract, but the Company has rejected that request. The matter was referred to a Central Adjustment Board set up under the contract, but no agreement was reached.³ Subsequently the Company again indicated its unwillingness to treat with the Union on behalf of the cost control employees. At the hearing, however, the Company stated that its present position is that the checkers come within the contract provisions. The Union thereupon disputed this construction of the contract.

While in addition to the office and clerical employees in the cost control department the Company employs other office and clerical employees in its general office and elsewhere in the plant, the cost control department and the general office have separate managers, and there is no substantial interchange of employees between the departments. The cost control department employees constitute a homogeneous group engaged in specialized duties unlike those performed by other clerical and office employees of the Company. In the light of all the circumstances before us, we conclude that the cost control department employees may properly constitute a separate unit.

The Union would exclude, and the Company would include the assistant manager of standards. This employee has the power to recommend the hiring, discharging, promoting, and disciplining of employees. He, the manager of standards, and the head of the cost control department are paid on a weekly basis; the rest of the employees in that department are paid on an hourly basis. We shall exclude the assistant manager of standards.

We find that all the employees in the cost control department of the Company, excluding 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 question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

³The cost control department has in it 11 or 12 office workers, clerks, and checkers. Apparently the only employees in dispute on that occasion were the cost control department checkers and not the office and clerical employees in the cost control department.

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, 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 Libby, McNeill & Libby, Sacramento, California, an election 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 Twentieth 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 unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during the said pay-roll period 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 employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Cannery Workers Union, Local 20324, affiliated with the American Federation of Labor, for the purposes of collective bargaining.