

In the Matter of NEWDAY SEEDS, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION 116, A. F. OF L.

*Case No. 18-R-922.—Decided April 7, 1944*

*Mr. L. U. Stambaugh*, of Fargo, N. Dak., for the Company.

*Messrs. N. E. Kragerud* and *J. M. O'Laughlin*, of Fargo, N. Dak., for the Union.

*Miss Fannie M. Boyls*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 116, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Newday Seeds, Inc., Fargo, North Dakota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Fargo, North Dakota, on February 11, 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. At the close of the hearing the Company moved to dismiss the Union's petition, on the ground that the employees claimed by the Union to be within the appropriate unit are agricultural laborers. The Trial Examiner reserved ruling on this motion. For reasons hereinafter stated, the motion is hereby denied. 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

Newday Seeds, Inc., is a North Dakota corporation, maintaining its offices and its principal place of business in Fargo, North Dakota. It is engaged in the growing, purchasing, processing, sale, and shipment of farm product seeds. Most of the seeds are purchased from farmers who have already harvested the seeds and who, in some cases, have also processed or partially processed them. In other cases, however, the Company buys or leases the matured crop or the seed-bearing portion of it and employs local laborers who, with the assistance of the Company's regular employees, harvest it. In addition, some of the seed is obtained from contract growers who are partially financed and supervised by the Company in the planting and harvesting operations.

During the year 1943 the Company obtained its seed from several sources in amounts approximately as follows: 10 percent from crops in North Dakota, bought or leased, and harvested by the Company; 10 percent from contract growers in North Dakota; 25 percent from independent growers in North Dakota (including about 1 percent bought from the Company's president); 30 percent from growers or processors in Canada, and 25 percent from growers or processors in States other than North Dakota. About 65 percent of the seed was sold and shipped by the Company to farmers and retail stores located outside North Dakota. Included in the 65 percent was approximately 5 percent sold to the United States Government under lend-lease arrangements with Russia. The total volume of business handled by the Company in 1943 was valued at about \$900,000.

In December 1943 the Company purchased a 525-acre farm near Fargo on which it expects to produce between 5 and 10 percent of the seed which it will process in 1944. Otherwise the sources of its seed for 1944 are not expected to be materially different from the 1943 sources.

#### II. THE EMPLOYEES OF THE COMPANY

As noted above, the Company contends that the employees claimed by the Union to be within the appropriate unit are agricultural laborers. We find this contention to be without merit.

The employees whom the Union seeks to represent are only those employed at the Company's processing plant in Fargo and do not include any employees hired solely for planting or harvesting operations. The plant employees are employed for 8 months or more of each year in the operation of various machinery used in the cleaning,

blending, and other processing steps, in the maintenance and repair of the machinery, in the operation of trucks owned by the Company, in the repair of bags used in packaging of seeds, and in the packaging and handling of the processed seeds for shipment. In addition, several employees operate a threshing machine inside the plant for a short time in the fall in connection with the threshing of blue grass.<sup>1</sup>

The work of processing seed at the Company's plant is somewhat seasonable, the employment fluctuating between 18 and 21 workers during the winter months, dropping to 8 or 12 during March, and to as low as 5 to 7 during May and the summer months. During the summer months there is very little work to be done at the plant and the 5 to 7 plant employees, who are retained on the Company's pay roll as a nucleus with which to start operations and train new employees in the fall, are given some farm work to do,—such as raking, threshing, driving trucks on the farms, and repairing and maintaining farm machinery and setting it up for operation. Some of these regular employees spend only about a week at farm work and others spend most of the summer at it. All are paid the same scale of wages while in the fields as while at the plant. They are also protected by Workmen's Compensation Insurance for the entire year, notwithstanding the fact that the Workmen's Compensation Law of the State of North Dakota makes optional the carrying of such insurance on agricultural laborers. The employees are also considered by the Company to be subject to the Social Security and Wage and Hour laws of the United States.

The Company concedes that the processing and sale of seeds is a well recognized commercial enterprise in the Northwest. It is clear that the operations of the Company are primarily industrial and commercial. The fact that the Company now owns a farm from which it expects to secure from 5 to 10 percent of the seeds which it will process this year, and the fact that it has in the past obtained and will continue to obtain some of the seeds from farms leased by it or operated under contracts with growers does not deprive the Board of jurisdiction over its plant employees.<sup>2</sup>

During the major portion of the year when these employees are engaged in the seed-processing operations, their work is clearly an incident to the industrial and commercial activities of the Company,

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<sup>1</sup> The fact that an employee operates a threshing machine, does not, of course make him an agricultural employee, for it is well recognized that threshing may be "a business or industrial pursuit in and of itself, entirely separate and independent of farming." *In Re Boyer*, 65 Ind App 408, 117 N. E. 507; *Hart-Parr Co. v. Barkley, et al.*, 231 F 913 (C. C. A. 8); *North Whittier Heights Citrus Assn. v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9).

<sup>2</sup> *Matter of Jameson Company*, 25 N. L. R. B. 64; *Matter of H. J. Heinz Company*, 49 N. L. R. B. 573.

and they are therefore entitled to the benefits of the Act.<sup>3</sup> However, during that period an employee is working on a farm, he is an agricultural employee and, as such, is excluded from the bargaining unit hereinafter found to be appropriate.<sup>4</sup>

This division of the employees' time between plant and agricultural work raises a question as to the scope of a labor organization's authority to represent the employees who, unquestionably, during the major portion of year belong within an appropriate bargaining unit. The requirement of the Act (Sec. 8 (5) and 9 (a)) that employees must constitute an appropriate bargaining unit before an employer is obliged to bargain with the representative chosen by a majority of them correlatively implies that the scope of authority which the employees may confer upon their majority representative is limited to those matters which affect their interests in the appropriate unit. The Union, therefore, if chosen by a majority of the employees as their representative, will be authorized to represent them only on matters affecting their interests as plant employees and not on matters affecting their interests solely as agricultural employees.<sup>5</sup>

### III. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America, Local Union 116, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

### IV. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union proves to the satisfaction of the Company that it is entitled to such recognition.

During the hearing, the Union submitted its authorization cards to the Trial Examiner who, after checking the cards against the Company's pay roll of February 11, 1944, stated that the check indicated that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>6</sup>

<sup>3</sup> Cf. *North Whittier Heights Citrus Assn. v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9); *Matter of Geo. G. Averill, et al.*, 13 N. L. R. B. 411; *Matter of Tovrea Packing Company, a corporation*, 12 N. L. R. B. 1063; *Matter of California Walnut Growers Association*, 18 N. L. R. B. 493.

<sup>4</sup> *Matter of H. J. Heinz Company*, 49 N. L. R. B. 573.

<sup>5</sup> *Matter of Edward C. Fiedler, et al.*, 55 N. L. R. B. 678.

<sup>6</sup> The Trial Examiner reported that the Union submitted 21 authorization cards, all of which bore apparently genuine original signatures; that the names of 11 persons appearing on the cards were listed on the Company's pay roll of February 11, 1944, which contained the names of 21 employees in the appropriate unit; and that the cards were dated December 1943 and January 1944.

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.

#### V. THE APPROPRIATE UNIT

In its petition, the Union contended that the Company's truck drivers, warehousemen, millmen, and helpers, excluding supervisory help with the right to discharge other employees, and office help, constitute a unit appropriate for the purposes of collective bargaining. The Company refused to take any position with respect to the proper unit, except that it was an issue for the Board to decide.

The Company's employees are not classified into the categories named in the Union's petition, but its production and maintenance employees perform the duties ordinarily performed by employees so designated. It is clear from the record that the Union seeks to represent all of the Company's Fargo plant employees, excluding supervisory and clerical employees.

We find that all employees of the Company employed at its Fargo plant, excluding clerical employees and 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.

#### VI. THE DETERMINATION OF REPRESENTATIVES

The Union requested that the pay roll of February 11, 1944, serve as the basis for determining eligibility of employees to vote. However, the record discloses no valid reason for departing from our usual practice of selecting a current pay-roll date.

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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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 Newday Seeds, Inc., Fargo, North Dakota, 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 Eighteenth 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 V, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during 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 International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 116, A. F. of L., for the purposes of collective bargaining.