

In the Matter of J. R. SIMPLOT, BURDELL CURTIS, MRS. R. A. SIMPLOT, AND JOHN D. SNOW, D/B/A J. R. SIMPLOT PRODUCE COMPANY, PAUL, IDAHO; J. R. SIMPLOT, BURDELL CURTIS, MRS. R. A. SIMPLOT, AND JOHN D. SNOW, D/B/A J. R. SIMPLOT PRODUCE COMPANY, DELCO, IDAHO; CHARLES N. CAMPBELL AND FRANK S. CAMPBELL, D/B/A C. N. CAMPBELL PRODUCE COMPANY, BURLEY, IDAHO; CHARLES N. CAMPBELL AND FRANK S. CAMPBELL, D/B/A C. N. CAMPBELL PRODUCE COMPANY, RUPERT, IDAHO; L. L. CULBERTSON, RUPERT, IDAHO; J. R. SIMPLOT, BURDELL CURTIS, MRS. R. A. SIMPLOT, AND JOHN D. SNOW, D/B/A J. R. SIMPLOT PRODUCE COMPANY, RUPERT, IDAHO and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, LOCAL 483, AND JOINT COUNCIL 67, A. F. OF L.

*Cases Nos. 19-R-1242 to 19-R-1246, inclusive, and 19-R-1269.—
Decided April 12, 1944*

Mr. Eli Weston, of Boise, Idaho, for the Companies.

Messrs. F. T. Baldwin and *T. H. Morris*, of Boise, Idaho, and *Mr. Ray Jones*, of Idaho Falls, Idaho, for the Union.

Mrs. Catherine W. Goldman, of Counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 483, and Joint Council 67, A. F. of L., herein called the Union, alleging that questions affecting commerce had arisen concerning the representation of employees of J. R. Simplot, Burdell Curtis, Mrs. R. A. Simplot, and John D. Snow, doing business as J. R. Simplot Produce Company, at Paul, Delco, and Rupert, Idaho; of Charles N. Campbell and Frank S. Campbell, doing business as C. N. Campbell Produce Company, at Burley and Rupert, Idaho; and of L. L. Culbertson, Rupert, Idaho; herein called the Companies, the National Labor Relations Board provided for an appropriate consoli-

dated hearing upon due notice before Maurice M. Miller, Trial Examiner. Said hearing was held at Burley, Idaho, on February 11, 1944. The Companies and the Union appeared and participated. The Companies moved to dismiss the petitions, and the Trial Examiner referred the motions to the Board. For reasons stated hereinafter, the motions are hereby denied. 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 COMPANIES

J. R. Simplot, Burdell Curtis, Mrs. R. A. Simplot, and John D. Snow, doing business as J. R. Simplot Produce Company with its main office at Burley, Idaho, are engaged within the State of Idaho in the purchasing, packing, and distribution of potatoes and onions. The Company maintains warehouses at Paul, Declo, and Rupert, Idaho, its only operations involved in this proceeding. During the 1942-1943 season it shipped approximately 5,000 cars of potatoes, of which approximately 3,500 cars were sent outside the State of Idaho. It is anticipated that an equivalent amount will be distributed outside the State by the close of the present season. The Company furnishes some potatoes to the Quartermaster's Market Center Purchasing Office, at Idaho Falls, Idaho.

Charles N. Campbell and Frank S. Campbell, doing business as C. N. Campbell Produce Company, and L. L. Culbertson, are engaged at Burley and Rupert, Idaho, in operations similar to those of J. R. Simplot Produce Company.¹

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

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 483, and Joint Council 67, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Companies.

¹ At the hearing C. N. Campbell Produce Company and L. L. Culbertson stipulated that their operations were substantially similar in nature to those of J. R. Simplot Produce Company.

III. THE EMPLOYEES, WITHIN THE MEANING OF SECTION 2 (3) OF THE ACT

The Companies contend that the workers involved in this proceeding are beyond the jurisdiction of the Board because (1) they are agricultural employees,² and (2) they are independent contractors or employees of independent contractors.

In the conduct of their businesses the Companies purchase from growers quantities of unsorted potatoes, which are then separated, sorted, and packed by seasonal workers known as sorters, who are engaged solely in the grading operation. They work in crews at sorting machines generally owned by the Companies,³ performing their duties either in the Companies' warehouses or in the growers' cellars. They possess a certain degree of skill and experience, and tend to return to the work each season.

It appears that the sorters prepare agricultural products for distribution, and are in no way engaged in the planting or cultivation of such products nor in services incident to ordinary farming operations. Their work begins after the crops are harvested, and does not add to or change the nature of the produce. Their services contribute to the process of distribution and not the process of growth. We find, therefore, that the workers are not agricultural laborers,⁴ and that they are employees within the meaning of Section 2 (3) of the Act.⁵

Each crew of sorters has a head sorter, who the Companies contend are independent contractors and employers of the sorters. There is no arrangement between the Companies and the head sorters whereby the latter contract to perform certain work and accept responsibility for the completion of the project. The head sorters, first contacted through the Companies' warehouse managers, merely hire the sorters, assemble the crews, and direct their activity. The Companies' warehouse managers assign the crews to their work and transfer them at their discretion. Growers who desire that a particular crew sort their potatoes, make requests of these managers and complain to them if they are dissatisfied with the work of the crews assigned to them and are unable to adjust their complaints through the head sorters. Federal and State inspection authorities report errors in grading

² Section 2 (3) of the National Labor Relations Act excludes agricultural laborers from the term "employee" as defined in that section, and, consequently, from the jurisdiction of the Board

³ Although a few head sorters and growers own such machinery, it appears to be the practice for the Companies to furnish this equipment, which is of a specialized character and not suited to any other use on a farm.

⁴ The record indicates that Local Selective Service Boards have informed the workers who were granted draft deferments as agricultural laborers, that their deferments will expire in March 1944, unless they return to farm labor.

⁵ See *Matter of Grower-Shipper Vegetable Association*, 43 N. L. R. B. 1389; *Matter of Bauske*, 38 N. L. R. B. 435, and cases cited therein.

to the Companies, which communicate them to the head sorters or to the crews. The Companies pay the individual sorters by separate checks, computing their wages on a piece-work basis from weekly time reports⁶ compiled by the head sorters. The head sorters are paid upon the same basis as the sorters, but at a slightly higher rate.

From the above facts, we are of the opinion that the head sorters are not independent contractors and that they and their crew members are employees of the Companies. The sorting operation is an integral part of the Companies' business of purchasing and shipping potatoes; the Companies furnish the equipment and facilities for carrying out the operation; they exercise control over the assignment and location of work; they handle complaints in regard to the quality of work performed. These factors, together with the manner of payment, convince us, and we find, that the relationship between the Companies and the sorters is that of employer and employee.

IV. THE QUESTIONS CONCERNING REPRESENTATION

In October 1943 the Union began organizational activity among the employees involved. It requested and was refused recognition at C. N. Campbell Produce Company, and then attempted unsuccessfully to reach an agreement with all the Companies upon an industry-wide basis. Thereafter it filed the petitions in the present proceeding.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the units hereinafter found appropriate.⁷

⁶ The evidence reveals that J. R. Simplot Produce Company furnishes printed time sheets for such reports, bearing the name of the Company

⁷ The Field Examiner reported that the Union submitted membership applications and authorizations showing the following representation in the appropriate units:

Employer	Number of employees in unit	Number of designations submitted	Number of designations, the names of which appear on pay roll	Date of pay roll checked	Date of designations
J. R. Simplot Produce Company, Paul, Idaho.....	7	8	6	Jan 8, 1944	Oct. 1943
J. R. Simplot Produce Company, Declo, Idaho.....	21	11	11	Jan. 8, 1944	Nov 1943
C N Campbell Produce Company, Burley, Idaho.....	21	14	9	Dec 3, 1943	{Oct 1943 Dec 1943
C N Campbell Produce Company, Rupert, Idaho.....	20	12	11	Dec 3, 1943	Nov. 1943
L L Culbertson, Rupert, Idaho.....	9	12	6	Jan 8, 1944	Nov 1943
J. R. Simplot Produce Company, Rupert, Idaho.....	24	9	8	Jan 8, 1944	{Oct 1943 Nov 1943

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

°
V. THE APPROPRIATE UNITS

The Union desires the establishment of a separate unit at each of the operations involved herein. It contends that each of these units should include sorters, head sorters, warehousemen, truck drivers, and helpers, exclusive of clerical and supervisory employees. The Companies agree that if elections are to be conducted the units requested are appropriate with the exception of the inclusion of the head sorters. The Companies contend that the head sorters should be excluded as supervisory employees.

The head sorters work along with the sorter crews, but as indicated above, they direct their work and hire their members. They also exercise the authority to discharge, and possess the power to discipline. We find that head sorters fall within our customary definition of supervisory employees, and, accordingly, we shall exclude them from the appropriate units.

We find that sorters, warehousemen, truck drivers and helpers, of J. R. Simplot Produce Company, at Paul, Declo, and Rupert, Idaho, respectively, excluding clerical employees, head sorters, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We find that sorters, warehousemen, truck drivers and helpers, of C. N. Campbell Produce Company, at Burley and Rupert, Idaho, respectively, excluding clerical employees, head sorters, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We find that sorters, warehousemen, truck drivers and helpers, of L. L. Culbertson, Rupert, Idaho, excluding clerical employees, head sorters, and all other 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

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

The Union requests that its name appear on the ballots as International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 483, and Joint Council 67, A. F. of L. The request is hereby granted.

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 J. R. Simplot, Burdell Curtis, Mrs. R. A. Simplot, and John D. Snow, doing business as J. R. Simplot Produce Company, at Paul, Declo, and Rupert, Idaho, Charles N. Campbell and Frank S. Campbell, doing business as C. N. Campbell Produce Company, at Burley and Rupert, Idaho, and L. L. Culbertson, Rupert, Idaho, 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 Nineteenth 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 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 employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine whether or not they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 483, and Joint Council 67, affiliated with the American Federation of Labor, for the purpose of collective bargaining.