

In the Matter of HUSTON & BAETZ and UNITED CANNERY, AGRICULTURAL  
PACKING AND ALLIED WORKERS OF AMERICA, LOCAL 2, C. I. O.

*Case No. 21-R-2255.—Decided April 13, 1944*

*Mr. William H. Carter*, of Santa Ana, Calif., for the Company.

*Mr. Abraham J. Isserman*, of Los Angeles, Calif., for the CIO.

*Mr. H. C. Torreano*, of Corona, Calif., for the AFL.

*Mr. Isadore Greenberg*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Cannery, Agricultural Packing and Allied Workers of America, Local 2, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Huston & Baetz, of Santa Ana, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Santa Ana, California, on March 3, 1944. The Company, the CIO, and Citrus Warehouse Workers and Helpers Union, Local 979, A. F. L., herein called the AFL, 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

Huston & Baetz is a partnership engaged at Santa Ana, California, in the dehydration of cabbage. Under contract with the United States Government, all of its product is delivered to the United States Army Quartermaster Corps, which in turn ships practically all of it to

various points outside the State of California. During 1943 the Company sold to the United States Government \$475,000 worth of its product. During the same year the Company purchased from points outside California 1 percent of the cabbage it dehydrated, and \$5,000 worth of supplies, such as cans and other packaging materials.

We find, despite its contention to the contrary, that the Company is engaged in commerce within the meaning of the National Labor Relations Act.<sup>1</sup>

## II. THE ORGANIZATIONS INVOLVED

United Cannery, Agricultural Packing and Allied Workers of America, Local 2, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Citrus Warehouse Workers and Helpers Union, Local 979, 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 either the CIO or the AFL as the exclusive bargaining representative of its employees until one of them has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that both the CIO and the AFL represent a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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 CIO seeks a unit composed of all production and maintenance employees of the Company, including warehousemen and truck drivers, but excluding employees doing laboratory work, office employees, and supervisory employees with the right to hire or discharge.

<sup>1</sup> See *Matter of Chapman Dehydrator Company, Inc*, 51 N. L. R. B. 664.

<sup>2</sup> The Field Examiner reported that the CIO submitted 28 application cards, all of which bore apparently genuine original signatures, and that the names of 23 persons appearing on the cards were listed on the Company's pay roll of December 29, 1943, which contained the names of 118 employees in the appropriate unit. At the hearing the CIO submitted 23 additional signed application cards to the Trial Examiner. Of these, 16 bore names of persons whose names appeared on the aforesaid pay roll.

The Field Examiner also reported that the AFL submitted 54 application cards, all of which bore apparently genuine original signatures. The names of 44 persons appearing on the cards were contained on the aforesaid pay roll.

The AFL is in accord with the CIO in regard to the appropriateness of the above-described unit. The Company contends that the above description should be amended so as to include the Board's conventional language in describing supervisory employees, to wit: "all supervisory employees with authority to hire, promote, discipline, discharge, or otherwise effect changes in the status of employees, or effectively recommend such action."

A question arose at the hearing as to whether three of the Company's employees, described as shift foreladies, should be included in the unit. The CIO and the AFL desire their inclusion; the Company contends that they are supervisory employees, and should be excluded. Each of these three foreladies is in charge of a shift. There are no other supervisory employees on these shifts, except for one of the partners of the Company who is in charge of the entire operation of the plant. Each forelady has charge of from 5 to 20 employees. It appears from the record that these foreladies can effectively recommend wage increases for the employees on their respective shifts as well as their hire and discharge. We are of the opinion that the shift foreladies possess sufficient supervisory authority to warrant their exclusion from the unit.

The Company also seeks to exclude, and the CIO to include, an employee whom the Company describes as its "superintendent of maintenance." This employee's duties are to overhaul, repair, and build equipment, and generally to keep the physical plant in running order. Two of the Company's employees spend nearly all their time helping him to do such maintenance work. On occasion other employees are assigned to assist him. While it appears that he does not have the power to hire or discharge, the record is vague as to whether or not he may effectively recommend such hire or discharge, or other changes in status of employees. In view of this state of the record, his exclusion or inclusion will depend upon whether or not he falls within our customary definition of a supervisory employee.

We find that all production and maintenance employees of the Company, including warehousemen and truck drivers, but excluding office employees, employees performing laboratory work, shift foreladies, 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.

#### 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 em-

ployees 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 Huston & Baetz, Santa Ana, 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 Twenty-first 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 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 they desire to be represented by United Cannery, Agricultural Packing and Allied Workers of America, Local 2, affiliated with the Congress of Industrial Organizations, or by Citrus Warehouse Workers and Helpers Union, Local 979, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.