

In the Matter of REID, MURDOCH & Co. and UNITED CANNERY, AGRICULTURAL, PACKING AND ALLIED WORKERS OF AMERICA, CIO

Case No. 7-R-1689.—Decided May 5, 1944

Mr. Edwin F. Steffen, of Lansing, Mich.; and Mr. E. H. Rood, and Mr. H. E. Ruus, of Ellsworth, Mich., for the Company.

Mr. C. K. Armstrong, of Traverse City, Mich., for the Union.

Mrs. Augusta Spaulding, 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, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Reid, Murdoch & Co., Ellsworth, Michigan, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Frederick P. Mett, Trial Examiner. Said hearing was held at Charlevoix, Michigan, on March 3 and 10, 1944. The Company and the Union appeared, participated, and 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

Reid, Murdoch & Co. is engaged in operating a branch canning plant at Ellsworth, Michigan, the only plant of the Company involved in this proceeding. During 1943, the Company purchased for use at

¹ The petition and other formal papers were amended at the hearing to show the correct name of the Company.

this plant raw materials valued at approximately \$400,000, approximately 36 percent of which was shipped from points outside Michigan. During the same period, the Company processed at this plant products valued at approximately \$800,000, approximately all of which was shipped from the plant to points outside Michigan.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The Union began organizing the Company's employees in January 1944. On or about January 15, the Union asked the Company for a bargaining conference, alleging that it represented a majority of the Company's employees. After a discussion, the Company specified that it would prefer that the matter be referred to the Board. Thereupon, the Union filed the petition in this proceeding.

A statement prepared by the Regional Director and introduced into evidence at the hearing indicates that the Union represents a substantial number of employees of the Company in the unit herein found appropriate for bargaining.²

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 Company operates a branch cannery at Ellsworth, Michigan. The Company and the Union agree, and we find, that employees at the Ellsworth cannery constitute an appropriate bargaining unit apart from employees at the Company's other plants. They further agree, and we find, that salesmen, field workers, office clerical employees, and supervisory employees should be excluded from the bargaining unit. The Union would describe employees to be included in the bargaining unit in general terms, neither excluding nor including, specifically, seasonal employees whom it wishes to cover in a bargaining

² In support of its claim to represent the Company's employees, the Union submitted 36 cards, 35 of which bear apparently genuine signatures of employees listed on the Company's pay roll of January 22, 1944. Eight of these cards are undated, 26 are dated in January, and 1 in February 1944.

There are approximately 30 employees in the appropriate unit.

contract, but exclude from participation in the election which it desires that the Board conduct among the Company's employees. The Company would specifically include seasonal employees in the plant unit and permit them to vote in the selection of their bargaining representative. The parties further disagree with respect to the status of 12 certain employees, characterized by the Union as "gang leaders" and by the Company as "supervisory" employees. The Union would include, and the Company exclude, these employees.

Seasonal employees: The Company is engaged in canning fruits and vegetables in their respective seasons, beginning in July with cherries and ending in December with carrots. When the canning season begins in July, the Company lists upon its pay roll 150 to 200 employees. As the canning season progresses, the pay roll increases to approximately 300 employees in October and November. After November the pay roll decreases until the close of the canning season in December. On its peak pay roll in 1941 the Company listed 340 employees; in 1942, 318 employees; and in 1943, 408 employees. In 1943 the packing season lasted 19 weeks, from July 19 to December 6. For 14 weeks there were 300 or more employees listed on the pay roll. Approximately 86 percent of the employees who began to work at the cannery in July remained at work during the peak season. A very substantial number of the Company's seasonal employees reside in the vicinity and return to work at the cannery season after season. In February 1944 the Company sent postcards to its seasonal employees asking them to indicate their intention to return to work for the 1944 season. At the time of the hearing, 203 employees had already indicated their desire for such employment.

In addition to the seasonal employees thus described, whose work is chiefly concerned with the handling and processing of raw fruit and vegetables and the disposition of the finished products in shipment or storage at the Company's warehouse over a 5 to 6 months' period, the Company employs on a 12-month basis approximately 35 regular employees, of whom approximately 30 are production and maintenance workers, not expressly excluded by the agreement of the parties from the bargaining unit. During the canning season these employees occupy key positions in the processing work involved in the Company's canning operations, or maintain its machines. During the off-season from December to July, when the Company's processing operations are stopped, these employees serve on labeling and loading crews, repair machinery, and recondition the plant for effective use during the next canning season.

The Union began organizing the Company's regular or year-around employees in January, after the close of the regular canning season and the lay-off of the seasonal employees. It does not claim to represent

any seasonal employees listed on the canning season pay rolls. As their employment records clearly indicate, the Company's seasonal employees, as well as its regular employees, have a substantial employment interest at the cannery. The year-round employees, however, have a common interest in their continuous employment at the cannery, not shared by the seasonal employees who come to work for the Company for approximately 5 months in the year and who, for the larger part of the year, look elsewhere than to the Company for their livelihood. While a single unit including the regular and seasonal employees at the Ellsworth cannery would not be inappropriate for bargaining, no labor organization has presently organized them on an all-plant basis. For the reasons noted, and upon the entire record herein, we find that the regular employees at the cannery presently constitute an appropriate bargaining unit apart from the employees who work on a seasonal basis only.

Supervisory employees: The Company and the Union agree, and we find, that the superintendent, assistant superintendent, and foremen are supervisory employees within the Board's definition of that term and should be excluded from the bargaining unit. As noted above, the Company and the Union disagree with respect to 12 employees whom the Union calls "gang leaders," and would include in the unit, and the Company "supervisory employees," and would exclude from the unit.

Lyle Danforth, Earl Denny, Max Kamradt, Maynard Alward, Miller Young, Leo LaCroix, William Potter, John Ruis, and Raymond Seaton during the "off" or closed season are engaged in ordinary production or maintenance work about the Company's cannery. They overhaul machines or work as members of a labeling and loading crew. They have no employees under their direction. During the processing season they are variously engaged. Each one has a small group of helpers or new employees working with him who look to him for direction, assistance, or information. Danforth operates a closing machine. He is a skilled operator and he instructs new helpers and operators in the work with which he is familiar. His duty includes the oversight of temperatures on exhaust boxes. Denny and Kamradt, also closing machine operators, work on day and night shifts, respectively. Each has two or three helpers whose work he supervises and whom he instructs, noting that cans are properly sealed and that code marks are correct. Alward and Young work on day and night crews, respectively, in the warehouse under the direction of the warehouse foreman. They instruct new employees unfamiliar with the code marks and the warehouse operations. Under direction, they assign work to helpers sent to them. They particularly watch for damaged cans. LaCroix also works with a crew in the warehouse. He directs

the piling of cases and keeps records. Potter, Ruis, and Sexton³ serve as receiving clerks with approximately six helpers. They weigh and sample fresh produce. They instruct new employees in its handling. With respect to the nine employees listed, it is admitted that none of them has any supervisory authority during the off-season. During the canning season, it does not clearly appear that any of them is more than a skilled and experienced employee, subject himself to immediate supervision while directing a few helpers whom he assists and instructs and whose inefficiency he may be expected to report to his superior for investigation. On the Company's pay roll, they have no special designation indicating supervisory authority. They receive 60 to 65 cents per hour. Employees working in their crews receive, from 50 to 60 cents per hour, depending upon their experience and skills. It does not appear that the Company has delegated to these disputed employees any substantial supervisory authority over their helpers or that they have exercised such authority. The Union has included keymen of similar work status in its bargaining contracts with the Company's competitors. We distinguish between supervisory employees upon whose decisions and judgments the employer relies for his employment policies and skilled and experienced employees to whom certain work is assigned to be performed with the assistance of less trained helpers.⁴ We shall include the above-named employees within the bargaining unit as ordinary 'production and maintenance' employees of the Company.

Emery Wilson: During the 1943 canning season, Wilson was accorded the title of assistant production superintendent. He gave particular attention to machine breakdowns. On one day each week, when the production superintendent was away from the plant, Wilson took his place. After the close of the packing season, with the lay-off of the seasonal employees over whose work he was specifically in charge, Wilson was assigned to ordinary maintenance work about the cannery. In January 1944 he expressly requested that the Company temporarily relieve him of his title as assistant production superintendent, alleging that he found this designation inconsistent with his new position as president of the Union. He retained, however, his wage rate of 70 cents per hour, which is 5 cents per hour more than that of any ordinary production or maintenance employee. It is understood that when the processing season reopens in June 1944, Wilson will resume his supervisory title and with it supervisory authority

³ At the time of the hearing Potter and Ruis were listed on current pay rolls. Sexton, who was transferred by the Company at the close of the 1943 season to another plant, was subsequently laid off. He will be reemployed at the Ellsworth cannery when work is available for him.

⁴ *Matter of Duval Texas Sulphur Company*, 53 N. L. R. B. 1387; *Matter of The New York Association of Wholesalers of Ladies' and Children's Hats, Inc.*, 53 N. L. R. B. 38.

over production employees under the general direction of the production superintendent. Although Wilson denies that he has been formally invested with express authority either to hire or to discharge employees, or make recommendations to such effect, it is clear that Wilson is by title and function a supervisory employee within our definition of that term, and we shall exclude him from the bargaining unit.⁵

Joseph Tornga and Peter J. Drenth: Tornga is in charge of a labeling and loading crew throughout the year, having direct supervision of a crew of six to eight men. When the Company needs two such crews, Drenth occupies by night the position which Tornga holds by day. Tornga receives 65 cents per hour throughout the year and Drenth 60 cents. Some employees on the labeling crews earn as high as 65 cents per hour. Although Tornga and Drenth have not been specifically instructed by the Company that they are invested with power to hire or discharge employees working on their gangs, or make effective recommendations, it appears significant that the Company has singled out these two men from the keymen discussed above and has given them leading authority extending beyond its strictly seasonal operations. For this reason, we shall exclude Tornga and Drenth from the bargaining unit as supervisory employees.

We find that all regular employees⁶ at the Company's Ellsworth cannery, excluding seasonal employees, salesmen, field workers, office clerical employees, and all supervisory employees⁷ 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 find that the question which has arisen concerning the representation of the Company's employees may best be resolved by an election by secret ballot.

The Union requests that eligibility be determined by the Company's pay roll of January 15, the day when it made its demand for recognition. At the hearing the Company opposed the Union's contention and particularly desired that eligibility be determined by means which would insure that a substantial number of its seasonal employees would be given an opportunity to vote. Since we have expressly ex-

⁵ *The Maryland Drydock Company*, 49 N. L. R. B. 733.

⁶ We deem included within this term, and as such included in the unit, Danforth, Alward, Young, LaCroix, Denny, Kamradt, Potter, Ruis, and Sexton.

⁷ We deem included in this term, and as such excluded from the unit, the superintendent, foremen, Wilson, Tornga, and Drenth.

cluded seasonal employees from the bargaining unit, and the Union will receive no sanction to represent the seasonal employees for the purposes of collective bargaining by virtue of any certification resulting from our investigation herein, we find it unnecessary to consider the various suggestions made by the Company to secure their adequate representation at the polls. The Union has presented no evidence to indicate that our usual method for determining eligibility is not appropriate herein. Raymond Sexton, a regular employee, not presently working at the plant, will be employed as soon as work is available for him. As provided in our Direction of Election, Sexton will be eligible to vote as a regular employee, laid off.

Those eligible to vote in the election shall be all 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 Reid, Murdoch & Co., Ellsworth, Michigan, 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 Seventh 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 United Cannery, Agricultural, Packing and Allied Workers of America, CIO, for the purposes of collective bargaining.