

In the Matter of NATIONAL FRUIT PRODUCT COMPANY, INCORPORATED  
and CANNERY WORKERS LOCAL UNION No. 23636, AMERICAN FEDERATION OF LABOR

*Case No. 5-R-1548.—Decided July 7, 1944*

*Mr. W. W. Hunt*, of Winchester, Va., and *Mr. E. F. Rosenkrans*, of Waynesboro, Va., for the Company.

*Mr. Charles A. Coakwell*, of Richmond, Va., and *Mr. Jones P. Armstrong*, of Fishersville, Va., for the Union.

*Mr. Seymour J. Spelman*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Cannery Workers Local Union No. 23636, American Federation of Labor, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of National Fruit Product Company, Incorporated, Waynesboro, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George L. Weasler, Trial Examiner. Said hearing was held at Waynesboro, Virginia, on May 11, 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

National Fruit Product Company, Incorporated, a Virginia corporation with its principal office at Alexandria, Virginia, is engaged

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in the processing, sale, and distribution of various fruit products at plants located in the States of Virginia, West Virginia, Maryland, Georgia, and New Jersey. The present proceeding is concerned solely with the Company's plant at Waynesboro, Virginia, where, during the year 1943, the Company used raw materials valued at approximately \$150,000, of which approximately 50 percent was shipped from points outside the State of Virginia. During the same year, the finished products manufactured at the Waynesboro plant were valued at approximately \$350,000, of which approximately 80 percent was shipped to points outside the State of Virginia.

The Company admits, and we find, that at its Waynesboro plant it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Cannery Workers Local Union No. 23636, 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 the employees at its Waynesboro plant until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</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 Union and the Company agree, and we find, that all production and maintenance employees at the Waynesboro plant, excluding clerical and supervisory employees, constitute an appropriate bargaining unit. However, the parties are in disagreement with respect to seasonal employees, watchmen, and the generator operator, the Company seeking the inclusion of seasonal employees in the unit and the exclusion of the others.

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<sup>1</sup> The Field Examiner reported that the Union submitted 37 application-for-membership cards; that the names of 37 persons appearing on the cards were listed on the Company's current pay roll which contained the names of 37 employees in the appropriate unit; and that the cards were all dated in March 1944.

*Seasonal employees:* The Waynesboro plant is engaged in the production of cider, vinegar, and apple butter. It is operated continuously throughout the year by a permanent staff of approximately 40 production and maintenance employees. During the annual peak (apple) season of the Company's operation which runs from September through December or January, depending upon the size of the apple crop, the Company employs approximately 85 to 125 additional employees. These employees are hired each year on a temporary basis for the duration of the peak season and are not carried on the pay roll as regular employees. A substantial portion of them are persons who operate neighboring subsistence farms during the rest of the year. In the past few years, only a small percentage of the temporary employees working during the seasonal peak of 1 year has returned to work for the following season. The Company customarily secures its temporary employees through newspaper advertisements, or by word-of-mouth publicity.

The Union has confined its organizational efforts to the regular or year-round employees, and does not claim or seek to represent any seasonal employees. Although temporary employees, during a particular season, have a substantial employment interest in the plant, during the larger part of the year they look elsewhere than to the Company for their livelihood and do not share with the permanent employees a common interest in continuous employment. Moreover, as noted above, there is a high rate of turn-over from year to year among the seasonal employees. For these reasons, and upon the entire record herein, we shall exclude the seasonal employees from the unit.<sup>2</sup>

*Watchmen:* There are three or four watchmen who make hourly rounds throughout the plant each day from 6 p. m. until 6 a. m. They are hourly paid, do not bear arms or wear uniforms, and are not sworn into the auxiliary of any of the armed services of the United States. The Union seeks to include them in the unit as maintenance employees. In view of their non-militarized status, and the other facts herein, we shall include the watchmen in the unit.<sup>3</sup>

*Generator operator:* The Company employs one person classified as generator operator. His duties involve the making of chemical analyses to determine the amount of alcohol to be fed into the generators. Although the job does not require a formal education in chemistry, a period of at least 6 months' training on the job is necessary for competent performance. He is paid on an hourly basis, at a rate substantially higher than that of the other production employees. At the present time, he is assisted by one employee; during the peak season there will be several under his direction. As to such employees, he

<sup>2</sup> See *Matter of Reid, Murdock & Co.*, 56 N. L. R. B. 284; *Matter of Ladoga Canning Company*, 41 N. L. R. B. 51; *Matter of California Packing Corp.*, 48 N. L. R. B. 693

<sup>3</sup> Cf. *Matter of Diavo Corporation*, 52 N. L. R. B. 322.

may make effective recommendations regarding discipline or discharge. In view of the technical and supervisory character of his work, we shall exclude the generator operator from the unit.

We find that all production and maintenance employees at the Company's Waynesboro plant, including watchmen, but excluding seasonal employees, the generator operator and all or any 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 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 National Fruit Product Company Incorporated, Waynesboro, Virginia, 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 Fifth 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 Local Union No. 23636, American Federation of Labor, for the purposes of collective bargaining.