

In the Matter of *Stokely Foods, Inc. and Teamsters, Chauffeurs,
Warehousemen and Helpers, Local No. 910, A. F. of L.*

Case No. 19-R-1368.—Decided September 8, 1944

Mr. R. J. Venables, of Seattle, Wash., for the Company.

Mr. Samuel B. Bassett, of Seattle, Wash., and *Mr. John J. Steiner*, of Auburn, Wash., for the Union.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 910, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Stokely Foods, Inc., Kent, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Maurice M. Miller, Trial Examiner. Said hearing was held at Seattle, Washington, on July 24 and 25, 1944. All parties 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 Company requested and was granted permission to submit after the close of the hearing as Company's Exhibit No. 6, a copy of the Report and Recommendations of the Panel of the Regional War Labor Board relating to a dispute between the California Processors and Growers, Inc., and the California State Council of Cannery Unions. In lieu thereof, the Company submitted a letter dated July 26, 1944, containing a quotation from an alleged telephone conversation which purported to report the Panel's recommendation with regard to the matter in issue. Since the letter is not the document that the Company requested and was granted permission to submit as Company's Exhibit No. 6, and since its contents are of doubtful relevancy to the issues here presented, we shall reject the Company's offer of the letter as evidence. The Trial Examiner's rulings made at the hearing are free from

58 N. L. R. B., No. 24.

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

Stokely Foods, Inc., is a corporation having its principal place of business at Indianapolis, Indiana. Its West Coast operations are handled by a division of the Company known as the Santa Cruz Fruit Packing Company, with its principal offices in Oakland, California. This division of the Company owns and operates three food processing plants in the State of Washington, located at Bellingham, Yakima, and Kent, Washington, respectively. The Company's operation at Kent is the only one involved in the present proceeding. The Kent plant is engaged in the processing and quick freezing of fresh fruits and vegetables. All of the fruits and vegetables processed at Kent are purchased in the State of Washington. During the year 1943, the Company processed 3,500,000 pounds of quick frozen foods, of which a substantial amount was shipped to points outside the State of Washington.

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

II. THE ORGANIZATION INVOLVED

Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 910, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and 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 of Stokely Foods, Inc., Kent, Washington, until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

¹The Field Examiner reported that the Union submitted 12 cards, all of which bore apparently genuine signatures; that the names of 12 persons appearing on the cards were listed on the Company's pay roll, which contained the names of 17 employees in the alleged appropriate unit; and that 10 cards were dated April 1944, and 2 cards were dated May 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.

IV. THE APPROPRIATE UNIT

The Union requests a unit consisting of regular, or so-called "year-round," employees of the Company, including field mechanics, mechanics, repairmen, truck drivers, laborers, and cello bag makers. The Company would include all production and maintenance employees in the unit, including persons employed at production work during the Company's processing season. Both would exclude clerical and supervisory employees.

The Company is engaged in the processing and quick freezing of fresh fruits and vegetables during a seasonal period that extends from June until October. On its peak pay roll, it numbers about 150 employees who engage in the processing of fruits and vegetables during the season. The regular employees on its pay roll, approximately 17 in number, are distinguished from the seasonal employees in that, with the exception of the cello bag makers who operate machines that produce cello bags, they engage in maintenance work.

The Company contends that the regular employees do not constitute a separate group since they do not retain their specific job classifications throughout the entire period of their employment, nor are they identified on the Company's pay roll under any specific job classification. It refers to the general pattern of collective bargaining in the fruit and vegetable processing industry of the Puget Sound area, in which the Company's Kent plant is located, as evidence that contracts generally executed in this area include all production and maintenance employees, including seasonal employees, in a single unit.² Both the Company and the Union introduced into evidence copies of contracts that are typical of the contracts above referred to by the Company.³ In addition, the Company also maintained that such contracts do not contain any substantial distinction between production and maintenance employees, although in practice, the plants in the area often pay the regular employees a higher remuneration by reason of their greater skill and experience.

² A witness for the Company testified that the majority of the contracts were entered into between members of the Associated Producers, Inc., and labor organizations associated with the Washington State Council of Cannery Unions. The Unions associated with the Council are Federal Unions, affiliated with the A. F. of L., with the exception of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 195, affiliated with the International Brotherhood of Teamsters, and the A. F. of L., which represents the employees of two plants in the area.

³ Joint exhibit 1, introduced into evidence by both parties, is an instance of a typical contract entered into in the Puget Sound Area, and in fact, represents a copy of a contract entered into between the Union herein and the Washington Frosted Foods, a plant located in Kent, Washington. This plant, however, has also a separate contract for its refrigeration engineers with the Operating Engineers' union.

The record discloses that the need for maintenance work and cello bag work diminishes during the processing season, at which time the Company assigns these employees both to maintenance tasks and duties performed by the seasonal employees, depending upon the conditions with which the Company is daily confronted. At the close of the season, these employees resume their normal activities and are retained until their post-seasonal responsibilities are completed. The record also discloses that the seasonal employees consist, in large part, of housewives, high school students, and other workers who do not look upon the fruit and vegetable processing industry as their primary source of income or livelihood. Although the Company has adopted the policy of canvassing this group each year and has had some measure of success in securing the yearly return of such employees,⁴ recent efforts in this vein have largely proven unsuccessful because of conditions created by the war. The Company's employment experience in 1943 indicated an unusually heavy turn-over among this group during the course of the processing season.⁵ As a result, it has had to resort to the practice of engaging men and women, called "victory workers," who generally have other means of livelihood and who offer their services because of patriotic considerations. By reason of the foregoing facts, the Union confined its organizational activities to the regular, or so-called "year-round," employees and submitted its request for recognition to the Company prior to the commencement of the processing season. Although the Union subsequently accepted membership applications from the seasonal employees, there is no evidence that it represents any substantial number of such employees and it has never requested recognition as their bargaining representative.

While it is true that contracts entered into for collective bargaining in the area in which the Company's plant at Kent, Washington, is located, generally include all production and maintenance employees in a single unit, and that the employment records of the seasonal employees, under normal conditions, indicate that they have a substantial employment interest at the Company's Kent plant, the relatively short periods of employment and the high turn-over which characterizes the employment record of the majority of the Company's seasonal employees under present conditions, would render collective bargaining on behalf of this group difficult, if not impossible.⁶ On the other hand, the regular employees have a common interest in their continuous employment at the Company's Kent plant, not shared by the seasonal employees who come to work for the Company for approximately 5

⁴ The record does not disclose any estimate of the number of persons in this group who customarily returned to work at the Kent, Washington, plant, from year to year, other than the statement of the regional manager for the Company who testified that a "good percentage" customarily returned each year.

⁵ During the 1943 season the Company had approximately 700 persons in its employ.

⁶ *Matter of Stokely Brothers and Company, Inc.*, 15 N. L. R. B. 872.

months in the year and who, for the larger part of the year, look elsewhere than to the Company for their livelihood. While it is also true that a single unit including the regular employees and the seasonal employees at the Company's Kent plant would not be inappropriate for bargaining, no labor organization has presently organized them on an all-plant basis. We are of the opinion, therefore, that the regular, or so-called "year-round," employees constitute a separate appropriate unit for collective bargaining purposes.⁷

We find that all regular, or so-called "year-round," employees at the Company's plant at Kent, Washington, including field mechanics, repairmen, truck drivers, laborers, and cello bag makers,⁸ but excluding clerical employees, and supervisory employees with authority to hire, promote, discharge, discipline or otherwise 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

In view of the fact that the Company is now in the midst of its processing season, during which period the number of employees, who are employed in the job classifications included in the unit herein found to be appropriate, is considerably less than the number of employees employed prior to the commencement of the processing season, the Union requests that eligibility be established on the basis of employment as of June 15, 1944, at which time the processing season had not commenced. Since the unit hereinabove found to be appropriate includes only regular employees in the job classifications sought by the Union, we see no reason to depart from our usual eligibility practice; we shall therefore deny the Union's request.

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 payroll 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, as amended, it is hereby

⁷ *Matter of Reid, Murdock & Co.*, 56 N. L. R. B. 284; *Matter of California Packing Corporation*, 48 N. L. R. B. 693; *Matter of Ladoga Canning Company*, 41 N. L. R. B. 51; *Matter of James Vernor Company*, 37 N. L. R. B. 388; *Matter of Stokely Brothers and Company, Inc.*, *supra*; *Matter of Seymour Packing Company*, 12 N. L. R. B. 1098.

⁸ While the cello bag makers direct and instruct seasonal employees, it does not appear that they possess substantial supervisory authority within our customary definition.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Stokely Foods, Inc., Kent, Washington, 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 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 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 the Teamsters, Chauffeurs, Warehousemen and Helpers, Local 910, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

[See *infra*, 58 N. L. R. B. 640 for Supplemental Decision and Amendment to Decision.]