

In the Matter of COUBOURNE & JEWETT; A. B. HARRIS; W. L. DONOHO & CO.; W. H. VALLIANT & BRO.; WILLIAM A. TURNER & SON; THE TILGHMAN PACKING CO.; HARRISON AND JARBOE SEAFOOD CO.; GEORGE R. CAULK & CO.; IVENS & HUDSON OYSTER CO.; A. N. FAULKNER & CO.; I. L. LEONARD & COMPANY; J. M. CLAYTON CO.; CHOPTANK OYSTER CO.; WILLIAM MERCER; C. H. ASHLEY & SON; C. S. VAN SANT and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, SEAFOOD WORKERS UNION, LOCAL 453, AFL

Cases Nos. 5-R-1706 to 5-R-1715 inclusive, 5-R-1729 to 5-R-1731 inclusive, and 5-R-1738 to 5-R-1740 inclusive.—Decided November 9, 1944

Mr. Herman Goldberg, for the Board.

Mr. Hugh Frampton, of Washington, D. C., and *Mr. William V. MacMillan*, of Baltimore, Md., for the Employers, except *Mercer and Van Sant*.

Mr. Albert K. Plone, of Camden, N. J., and *Mr. Harry Poole*, of Philadelphia, Pa., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by Amalgamated Meat Cutters and Butcher Workmen of North America, Seafood Workers Union, Local 453, AFL, herein called the Union, alleging that questions affecting commerce had arisen concerning the representation of employees of Coubourne & Jewett, St. Michaels, Maryland, herein called Coubourne; A. B. Harris, Oxford, Maryland, herein called Harris; W. L. Donoho & Company, Oxford, Maryland, herein called Donoho; W. H. Valliant & Bro., Bellevue, Maryland, herein called Valliant; William A. Turner & Son, Bellevue, Maryland, herein called Turner; The Tilghman Packing Co., Tilghman, Maryland, herein called Tilghman; Harrison and Jarboe Seafood Co., St. Michaels, Maryland, herein called Harrison; George R. Caulk & Co., St. Michaels, Maryland,

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herein called Caulk; Ivens & Hudson Oyster Co., Rock Hall, Maryland, herein called Ivens; A. N. Faulkner & Co., Tilghman, Maryland, herein called Faulkner; I. L. Leonard & Company, Cambridge, Maryland, herein called Leonard; J. M. Clayton Co., Cambridge, Maryland, herein called Clayton; Choptank Oyster Co., Cambridge, Maryland, herein called Choptank; William Mercer, Rock Hall, Maryland, herein called Mercer; C. H. Ashley & Son, Rock Hall, Maryland, herein called Ashley; and C. S. Van Sant, Rock Hall, Maryland, herein called Van Sant,¹ the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Earle K. Shawe, Trial Examiner. Said hearing was held at Baltimore, Maryland, on October 27, 1944. The Employers, with the exception of Mercer and Van Sant, 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 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 EMPLOYERS

Coubourne & Jewett is a partnership operating a plant at St. Michaels, Maryland, where it is engaged in the processing and distribution of seafood products. From September 1, 1943, to April 30, 1944, the Company obtained from waters inside the State of Maryland, 20,731 bushels of oysters, and from waters outside the State of Maryland, 428 bushels of oysters. During the same period the Company purchased raw materials from points outside the State of Maryland valued at about \$2,000. During this same period the Company processed seafood valued at about \$40,000, approximately 20 percent of which was shipped by it to points outside the State of Maryland.

A. B. Harris is an individual operating a plant at Oxford, Maryland, where he is engaged in the processing and distribution of seafood products. From September 1, 1943, to April 30, 1944, he obtained from waters inside the State of Maryland, 39,187 bushels of oysters, and from waters outside the State of Maryland, 4,238 bushels of oysters. During the same period he purchased materials and equipment from points outside the State of Maryland valued at \$4,000, and shipped processed seafood valued at approximately \$35,000, about 33 percent of which was shipped to points outside the State of Maryland.

¹ The companies are hereinafter collectively referred to as the Employers.

W. L. Donoho & Co. is a partnership operating a plant at Oxford, Maryland, where it is engaged in the processing and distribution of seafood. From September 1, 1943, to April 30, 1944, it obtained from waters inside the State of Maryland, 29,538 bushels of oysters, and from waters outside the State of Maryland, 675 bushels of oysters. During the same period the Company purchased materials and equipment from points outside the State of Maryland valued at about \$1,000. During this same period the Company processed seafood valued at about \$20,000, all of which was sold and delivered to Blue Point Oyster Co., at Cambridge, Maryland, who, in turn, shipped about 20 percent of said processed seafood to points outside the State of Maryland.

W. H. Valliant & Bro. is a firm name used by an individual, W. H. Valliant, who operates a seafood processing plant at Bellevue, Maryland. From September 1, 1943, to April 30, 1944, Valliant obtained from waters inside the State of Maryland, 11,947 bushels of oysters. During the same period the Company processed seafood valued at about \$50,000, approximately 15 percent of which was shipped to points outside the State of Maryland.

William A. Turner & Son is a firm name used by an individual, William A. Turner, who operates a seafood processing plant at Bellevue, Maryland, where from September 1, 1943, to April 30, 1944, he received raw materials from points outside the State of Maryland valued at \$2,600. During this same period Turner obtained from waters inside the State of Maryland, 18,031 bushels of oysters, and from waters outside the State of Maryland, 1,290 bushels of oysters. During this same period he processed seafood valued at about \$40,000, approximately two-thirds of which was sold to Clayton, and one-third to Harrison. The latter two in turn shipped about 10 percent of said processed seafood to points outside the State of Maryland.

The Tilghman Packing Co. is a Maryland corporation operating plants at Tilghman and Knapp Narrows, Maryland. From September 1, 1943, to April 30, 1944, it obtained from waters inside the State of Maryland, 78,181 bushels of oysters, and from waters outside the State of Maryland, 2,868 bushels of oysters. During the same period the Company purchased raw materials and equipment valued at about \$5,600, approximately 3 percent of which was shipped to it from points outside the State of Maryland. From September 1, 1943, to April 30, 1944, the Company processed seafood valued at about \$150,000, approximately 95 percent of which was shipped to points outside the State of Maryland.

Harrison and Jarboe Seafood Co. is a partnership operating a seafood processing plant at St. Michaels, Maryland. From September 1, 1943, to April 30, 1944, it obtained from waters inside the State of Maryland, 30,863 bushels of oysters. During the same period the

Company processed seafood valued at approximately \$200,000, about 50 percent of which was shipped to points outside the State of Maryland.

George R. Caulk & Co. is a partnership operating a seafood processing plant at St. Michaels, Maryland. From September 1, 1943, to April 30, 1944, it obtained from waters inside the State of Maryland, 33,946 bushels of oysters, and from waters outside the State of Maryland, 1,277 bushels of oysters. During the same period, the Company received raw materials and equipment from points outside the State of Maryland valued at \$2,500. The Company processed seafood from September 1, 1943, to April 30, 1944, valued at about \$100,000, 50 percent of which was shipped to points outside the State of Maryland.

Ivens & Hudson Oyster Co. is a partnership operating three seafood processing plants at Rock Hall, Maryland. From September 1, 1943, to April 30, 1944, it obtained from waters inside the State of Maryland, 83,119 bushels of oysters and processed seafood valued at about \$200,000, approximately 50 percent of which was shipped to points outside the State of Maryland.

A. N. Faulkner & Co. is a partnership operating seafood processing plants at Tilghman and Claiborne, Maryland. From September 1, 1943, to April 30, 1944, it obtained from waters inside the State of Maryland 8,163 bushels of oysters and processed seafood valued at about \$22,000, approximately 75 percent of which was shipped to points outside the State of Maryland.

I. L. Leonard & Company is the firm name used by an individual, T. B. Leonard, who operates a seafood processing plant at Cambridge, Maryland. From September 1, 1943, to April 30, 1944, Leonard obtained from waters inside the State of Maryland, 72,405 bushels of oysters and from waters outside the State of Maryland, 6,665 bushels of oysters. During the same period, Leonard purchased raw materials and equipment from points outside the State of Maryland valued at \$7,500. From September 1, 1943, to April 30, 1944, Leonard processed seafood valued at approximately \$200,000, about 98 percent of which was shipped to points outside the State of Maryland.

J. M. Clayton Co. is a partnership operating a seafood processing plant at Cambridge, Maryland. From September 1, 1943, to April 30, 1944, it obtained from waters inside the State of Maryland, 82,922 bushels of oysters, and from waters outside the State of Maryland, 4,107 bushels of oysters. During the same period, the Company received from points outside the State of Maryland raw materials and equipment valued at \$5,000. During the same period, the Company processed seafood valued at about \$500,000, approximately 90 percent of which was shipped to points outside the State of Maryland.

Choptank Oyster Co. is a partnership operating a seafood plant at Cambridge, Maryland. From September 1, 1943, to April 30, 1944, it obtained from waters inside the State of Maryland, 41,573 bushels of oysters and from waters outside the State of Maryland, 6,945 bushels of oysters. During the same period, the Company processed seafood valued at about \$120,000, all of which was sold to Blue Point Oyster Co. at Cambridge, Maryland. The latter company shipped about 20 percent of said processed seafood to points outside the State of Maryland. From September 1, 1943, to April 30, 1944, Choptank purchased raw materials and equipment from points outside the State of Maryland, valued at about \$1,400.

C. H. Ashley & Son is a firm name used by an individual, Gilbert Ashley, who operates a seafood processing plant at Rock Hall, Maryland. From September 1, 1943, to April 30, 1944, Ashley obtained from waters inside the State of Maryland, 22,059 bushels of oysters. During the same period he processed seafood valued at approximately \$45,000, all of which was sold to Leib Packing Co., Baltimore, Maryland. About 20 percent of said processed seafood was in turn shipped by Leib Packing Co. to points outside the State of Maryland.

William Mercer is an individual operating a seafood processing plant at Rock Hall, Maryland. From October 12, 1943, to April 3, 1944, he obtained from waters inside the State of Maryland, 5,800 bushels of oysters. During the same period, he processed seafood valued at about \$16,000, all of which was sold to McNaney Oyster Co., Baltimore, Maryland. The latter company in turn shipped all of said processed seafood to points outside the State of Maryland.

C. S. Van Sant is an individual operating a seafood processing plant at Rock Hall, Maryland. From September 8, 1943, to March 8, 1944, he obtained from waters inside the State of Maryland, 5,663 bushels of oysters. During the same period, he processed seafood valued at about \$13,500, approximately \$5,500 of which was sold to McNaney Oyster Co., Baltimore, Maryland. The latter company in turn shipped all of said processed seafood to points outside the State of Maryland. The remaining processed seafood was sold to J. J. Scoggins & Co., Baltimore, Maryland, which in turn shipped approximately 25 percent to points outside the State of Maryland.

We find that each of the Employers is engaged in, or his operations affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, Seafood Workers Union, Local 453, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Employers.

III. THE QUESTIONS CONCERNING REPRESENTATION

Each of the Employers refuses to recognize the Union as the exclusive collective bargaining representative of its employees until such time as the Union is certified by the Board. The Employers contend that the Board is without jurisdiction in this matter for the reason that there is no continuing employer-employee relationship between the employees and the employer, since their work is seasonal in nature and the workers do not necessarily return to the same seafood processing plants each year. The Employers further contend that the employees involved herein are "agricultural laborers" within the meaning of the Act and that therefore they come without the jurisdiction of the Board.

The record discloses that in many instances the employees involved live close to the seafood processing plants wherein they work and maintain their permanent homes within a small radius of the plants. It also appears that a substantial number of the employees work for the same employers year after year or for one of the Employers involved herein. The fact that as individuals they may not work for the same employer season after season does not in any way deprive them of the relationship which they have with the Employers as a group. The record indicates that they constitute a clearly defined group of men and women to whom the Employers turn year after year for their requirements.²

Each of the Employers purchases oysters from fishermen who bring them into the packing plants. At the packing plants, the oysters are stored in bins, shucked, and brought up to skimmers where they are washed, packed in various size containers, and shipped out in ice. The employees involved herein are the persons who perform the above-enumerated tasks in the packing sheds. The mere fact that an employee is engaged in handling products taken from the sea does not of itself classify him as an "agricultural laborer." The employees involved herein work only in the packing plants and their services are devoted entirely to the handling of oysters as they are being prepared for shipment to market. It is our conclusion that the services which are performed by the employees involved herein in the shucking, packing, and shipping of oysters are not "agricultural" in nature, but are performed in connection with commercial packaging and shipping enterprises.³ We find that the packing shed employees are employees within the meaning of Section 2 (3) of the Act.

Statements of a Field Examiner of the Board, introduced into evidence at the hearing, indicate that the Union represents a substantial number of employees in each of the units hereinafter found to be appropriate, with the exception of the units at Turner, Tilghman,

² See *Matter of Alaska Salmon Industry, Inc., et al.*, 33 N. L. R. B. 727.

³ See *Matter of George G. Averill, et al.*, 13 N. L. R. B. 411.

Mercer, Ashley, and Van Sant.⁴ The Union submitted cards for the employees of Turner, Tilghman, Mercer, Ashley, and Van Sant, also, but in each instance said cards constituted less than 30 percent of the employees employed by each. Under usual circumstances the authorization evidence submitted by the Union for the last five enumerated employers would not be enough to justify the Board in conducting elections among those groups. There is a total of 495 employees employed by the 16 employers involved herein. The Union submitted a total number of 414 authorization cards, thus making a preliminary showing that it represents a substantial number of the employees involved herein taken as a whole. However, since we are directing elections among the other employers, and since the record discloses, as set forth above, that all of the workers involved constitute a clearly defined group to whom the Employers turn year after year for their requirements, we are of the opinion that, as a matter of expediency, our customary rule should be relaxed in order to afford all employees an opportunity to vote in the elections.⁵

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

IV. THE APPROPRIATE UNITS

We find, in substantial agreement with the parties, that all packing room employees, shell wheelers, oyster carriers, and shuckers, of Coubourne, Harris, Donoho, Valliant, Caulk, Leonard, Clayton at Cambridge, Mercer, Choptank, Ashley, and Van Sant, excluding clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute 11 separate units appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

We further find, in agreement with the parties, that all packing room employees, shell wheelers, oyster carriers, and shuckers at the Tilghman and Claiborne plants of Faulkner, excluding clerical employees and all 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.

⁴ The Field Examiner reported that the Union presented 35 authorization cards for the employees at Coubourne, 31 for Harris, 20 for Donoho, 15 for Valliant, 55 for Harrison, 50 for Caulk, 55 for Ivens, 13 for Faulkner, 50 for Leonard, 49 for Clayton, and 16 for Choptank. There are approximately 12 employees in the appropriate unit at Coubourne, 22 at Harris, 30 at Donoho, 14 at Valliant, 33 at Harrison, 19 at Caulk, 77 at Ivens, 29 at Faulkner, 60 at Leonard, 64 at Clayton, and 31 at Choptank.

⁵ *Matter of Sherwin-Williams Defense Corporation, et al.*, 46 N. L. R. B. 325.

Turner, Tilghman, Harrison, and Ivens each employs a head shucker. The head shuckers keep the fires going, call the shuckers to work, and in between times engage in shucking operations themselves. None of them has any authority effectively to recommend changes in the status of any employees. Accordingly, we shall include the head shuckers in the units.

We find that all packing room employees, shell wheelers, oyster carriers, and shuckers of Turner and at the St. Michaels, Maryland, plant of Harrison, including head shuckers, but excluding clerical employees and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute two separate units appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

We further find that all packing room employees, shell wheelers, oyster carriers, and shuckers at the three plants of Ivens, including head shuckers, but excluding clerical employees and all 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 single unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

Tilghman operates two plants, one at Dogwood Harbor, and one at Knapps Narrows. The plants are 2 miles apart. The Union urges a single unit of the employees of both plants, while Tilghman seeks two separate units. Employees of both plants are engaged in shucking oysters, receive the same rate of pay, and orders received by Tilghman are filled from both plants. Separate pay rolls are maintained for each plant and there is little interchange of employees between them. Under all the circumstances, we conclude that a single unit of the two plants is appropriate.

We find that all packing room employees, shell wheelers, oyster carriers, and shuckers at the Dogwood Harbor and Knapps Narrows plants of Tilghman, including head shuckers, but excluding clerical employees and all 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 single 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 questions concerning representation which have arisen be resolved by means of elections by secret ballot among the employees in the appropriate units who were employed during

the pay-roll period or periods 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 it appear on the ballot as "Seafood Workers Union, Local 453, 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, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Coubourne & Jewett, St. Michaels, Maryland; A. B. Harris, Oxford, Maryland; W. L. Donoho & Company, Oxford, Maryland; W. H. Valliant & Bro., Bellevue, Maryland; William A. Turner & Son, Bellevue, Maryland; The Tilghman Packing Co., Tilghman, Maryland; Harrison and Jarboe Seafood Co., St. Michaels, Maryland; George R. Caulk & Co., St. Michaels, Maryland; Ivens & Hudson Oyster Co., Rock Hall, Maryland; A. N. Faulkner & Co., Tilghman, Maryland; I. L. Leonard & Company, Cambridge, Maryland; J. M. Clayton Co., Cambridge, Maryland; Choptank Oyster Co., Cambridge, Maryland; William Mercer, Rock Hall, Maryland; C. H. Ashley & Son, Rock Hall, Maryland; and C. S. Van Sant, Rock Hall, Maryland, 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 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 each of the units found appropriate in Section IV, above, who were employed during the pay-roll period or periods immediately preceding the date of this Direction, including employees who did not work during said pay-roll period or periods 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 any 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, in each instance, whether or not they desire to be represented by Seafood Workers Union, Local 453, A. F. of L., for the purposes of collective bargaining.