

In the Matter of LIBBY, McNEILL AND LIBBY and LOCAL 760, FRUIT AND VEGETABLE PACKERS AND WAREHOUSEMEN'S UNION, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. OF L.

Case No. 19-R-1387.—Decided December 12, 1944

Mr. T. L. Smart, of San Francisco, Calif., and *Mr. William H. Long*, of Chicago, Ill., for the Company.

Mrs. Ethel Way, and *Mr. C. V. McCoy*, of Yakima, Wash., for the Union.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Local 760, Fruit and Vegetable Packers and Warehousemen's Union, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Libby, McNeill and Libby, Yakima, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William E. Spencer, Trial Examiner. Said hearing was held at Yakima, Washington, on October 11, 1944. The Company and the Union 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

Libby, McNeill and Libby is a Maine corporation having its principal office for its northwest operations in San Francisco, California.

59 N. L. R. B., No. 172.

At its cannery in Yakima, Washington, with which we are solely concerned in this proceeding, the Company is engaged in the processing, canning, and packing of fruit. In addition to fresh fruits, the Company annually uses in its operations at said plant, sugar, salt, labels, and miscellaneous supplies exceeding \$100,000 in value, which are obtained from sources outside the State of Washington. Products finished at the Yakima plant annually exceed \$1,000,000 in value, of which at least 60 percent is sold to various branches of the armed services of the United States and shipped to points outside the State.

The Company does not deny, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Local 760, Fruit and Vegetable Packers and Warehousemen's Union, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in turn 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 certain of its employees until the Union has been certified by the Board in an appropriate unit.

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

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 seeks a unit of all production, maintenance, and warehouse employees at the Company's Yakima, Washington, plant, excluding seasonal workers, field men, test clerks, office and clerical employees, the superintendent, the assistant superintendent, the general foreman, department foremen, and all other supervisory personnel. The Company contends that without seasonal workers the proposed unit is inappropriate.

The Company is engaged in processing, canning, and packing fruit during a season which normally extends from the middle of June

¹The Field Examiner reported that the Union submitted 35 membership applications bearing the names of persons listed on the Company's pay roll of August 15, 1944, which contained the names of 61 employees in the alleged appropriate unit.

to the middle of December of each year.² The season is continuous except for a 4- to 6-week period between the processing of cherries and pears. There is practically no break between the processing of pears and apples which is the last seasonal operation. The number of persons employed varies with the particular fruit processed. Thus, the Company employs approximately 175 workers during the cherry operation, 600 during the pear operation, and 375 during the apple operation. A large number of seasonal workers are housewives and students. The record indicates that between 20 to 50 percent of the seasonal workers of a given year return to their jobs the following year, and that during the processing season itself there is a high rate of labor turn-over.

In addition to seasonal workers, the Company has a regular force of approximately 65 employees whom the Company regards as regular or "year around" employees. This group includes mechanics, keymen in various departments who have been in the Company's employ for a number of years, and others.³ While a great many of these employees may be engaged in processing during the season, they may perform maintenance, shipping or other work during the non-processing season. The Company maintains a vacation plan primarily intended for these regular employees and not for seasonal workers, inasmuch as benefits are available only to those employees who have continuously worked for an entire year.

From the foregoing facts, it is evident that seasonal workers lack the substantial, continuing interest in their jobs which regular or "year around" employees possess. Under the circumstances, and in view of the fact that the Union has confined its organizational efforts to the regular or "year around" employees, and does not claim or seek to represent seasonal workers, we shall exclude seasonal workers solely engaged for the duration of the processing season.⁴

Accordingly, we find that all production, maintenance, and warehouse employees at the Company's Yakima, Washington plant, excluding seasonal workers solely engaged for the duration of the processing season, field men, test clerks, office and clerical employees, the superintendent, the assistant superintendent, the general foreman, department foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect

² It appears that the 1943 processing season abnormally ran until about February 14, 1944.

³ In order to fill its personnel requirements for the non-processing season, the Company, at the close of the processing season, retains in its employ the most capable seasonal workers.

⁴ *Matter of Stokely Foods, Inc.*, 58 N. L. R. B. 130; *Matter of National Fruit Products Company, Incorporated*, 57 N. L. R. B. 100; *Matter of Reid, Murdock & Co.*, 56 N. L. R. B. 284.

The employees described in footnote 3 are included in the unit and shall be eligible to vote as provided in Section V, *infra*.

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

The record discloses that there are certain workers employed during the processing season whom the Company will retain in its employ after the season closes for such manual work as may be available during the non-processing season.⁵ These employees apparently possess a sufficient interest to warrant their participation in the selection of a bargaining representative. Since the evidence indicates that the season normally ends the middle of December, it appears that the identification of such employees who would be eligible to vote may best be achieved by deferring the election to a date subsequent to January 1, 1945, and by using a pay roll for a period subsequent to January 1, 1945.

Accordingly, we shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot to be held within 60 days from the date of this Direction, among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding January 25, 1945, 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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Libby, McNeill and Libby, Yakima, Washington, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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 January 25, 1945, including employees who did not work during said pay-roll period because they were ill or on vacation or

⁵ They are the employees mentioned in footnotes 3 and 4, who, according to the record, may or may not be seasonal workers.

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 Local 760, Fruit and Vegetable Packers and Warehousemen's Union, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., for the purposes of collective bargaining.