

In the Matter of CALIFORNIA PACKING COMPANY 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-1388.—Decided December 13, 1944*

*Mr. R. R. Morris*, of Portland, Oreg., for the Company.

*Mr. C. V. McCoy* and *Mrs. Ethel Way*, 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 California Packing Corporation, 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 10, 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

California Packing Corporation is a New York corporation, having its principal office for its Northwest operations in Portland, Oregon.

At its plant in Yakima, Washington, with which we are solely concerned in this proceeding, the Company is engaged in the processing and canning of fruit. In addition to fresh fruit, the Company annually uses in its operations at said plant sugar, salt, cans, cartons, labels, and glass jars exceeding \$100,000 in value, of which approximately 25 percent is shipped from points outside the State of Washington. Products finished at the Yakima plant annually exceed \$500,000 in value, of which at least 70 percent is shipped to points outside that State.

The Company admits 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 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.

The Company argues in its brief that the petition should be dismissed on the authority of *Matter of The Toledo Stamping & Manufacturing Company*,<sup>1</sup> and *Matter of Rochester and Pittsburgh Coal Company*,<sup>2</sup> for the reason that supervisory employees allegedly participated in the organization of its employees. The sole evidence in the record having any bearing on the Company's contention is the testimony of C. V. McCoy, a union representative, merely to the effect that several unidentified employees approached the Union and requested it to call a meeting. Moreover, we are not persuaded that simply because some foremen or assistant foremen may be members of the Union, its petition should be dismissed. The *Toledo Stamping and Rochester and Pittsburgh Coal* cases, as well as others cited by the Company, are distinguishable from the instant case. In the *Toledo Stamping* case, we declined to direct an election where a supervisory employee admitted that he sponsored the petitioning union's membership drive, and that his name appeared on "a majority" of the cards submitted by the Union to the Board's agent. However, the dismissal was "without prejudice to the [petitioning union's] right to

<sup>1</sup> *Matter of The Toledo Stamping & Manufacturing Company*, 55 N. L. R. B. 865.

<sup>2</sup> *Matter of Rochester and Pittsburgh Coal Company*, 56 N. L. R. B. 1760.

seek an investigation and determination of representatives when it can produce satisfactory *prima facie* evidence of its designation as collective bargaining representative of the employees of the Company, secured without the assistance of any supervisory employees." In the *Rochester and Pittsburgh Coal* case, we dismissed the petition because the evidence disclosed that the members of the petitioning union who occupied supervisory positions outnumbered those who occupied non-supervisory positions; that the former were in control of union affairs; and that the supervisory employees had brought pressure upon their subordinates to join the Union. Manifestly, these cases are not analogous to the instant case.

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.<sup>3</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 seeks a unit of all production, maintenance, and warehouse employees at the Company's Yakima, Washington, plant, including foremen, assistant foremen, bosses, the head scaleman, weighers, watchmen, sample graders, and cannery students, but excluding seasonal workers, office and clerical employees, the shipping clerk,<sup>4</sup> green fruit department employees (fieldmen), police,<sup>5</sup> laboratory employees, the superintendent, the assistant superintendent, and the general foreman. The Company contends that seasonal workers should be included, and that foremen, assistant foremen, bosses, the head scaleman, watchmen, sample graders, and cannery students should be excluded. With respect to the other employees, there apparently is no dispute between the parties.

*Seasonal workers:* The Company is engaged in processing and canning fruit during a season which normally extends from about June 15 to December 15 of each year. The season is continuous except for a 4- to 6-week period between the processing of cherries and the processing of pears and peaches. There is practically no break between the pear and peach operation and the apple operation which is the last seasonal process. The number of seasonal workers varies with the particular fruit that is processed. The pay roll is smallest at the beginning of the season with the cherry "run," reaches its peak with the

<sup>3</sup> The Field Examiner reported that the Union submitted 45 membership cards bearing the names of persons listed on the Company's pay roll which contained the names of 68 employees in the alleged appropriate unit.

<sup>4</sup> The shipping clerk's duties are essentially clerical.

<sup>5</sup> They are employed only during the processing season.

pear and peach "runs," and decreases with the apple "run." The bulk of seasonal workers are women and high school students.<sup>6</sup> While, normally, about 60 percent of seasonal workers of a given year return to work the following year, the record indicates that merely about 20 percent have returned the past 2 years. Furthermore, it appears that there is a high rate of labor turn-over during the processing season so that comparatively few employees who were hired at the start of the season remain to the end.

In addition to seasonal workers, the Company employs a regular force of men in specified job classifications who work, as a witness for the Company testified, "12 months of the year."<sup>7</sup> These employees, irrespective of their job classifications, perform varying types of work during the "slack" in their particular functions. Thus, while some of them may be engaged in processing during the canning season, they may perform maintenance, shipping, or other work during the non-processing season. The Company maintains vacation and group insurance plans primarily intended for these regular employees and not for seasonal workers, inasmuch as benefits are available only to employees who have worked the equivalent of forty 40-hour weeks within a fiscal year.

From the foregoing facts, it is evident that seasonal workers lack the substantial, continuing interest in their jobs which regular or "12-months of the year" employees possess. Under the circumstances, and in view of the fact that the Union has confined its organizational efforts to the regular or "12-months of the year" employees, and does not claim or seek to represent purely seasonal workers, we shall exclude seasonal workers solely engaged for the duration of the processing season.<sup>8</sup>

*Foremen, assistant foremen, and bosses:*<sup>9</sup> The Company's operations are divided into departments<sup>10</sup> which are supervised by foremen, under some of whom in the line of authority, are assistant foremen and bosses in charge of groups of employees. Foremen and assistant

<sup>6</sup> At the peak of the season, the Company employs between 1,000 to 1,200 women, most of whom are married. In addition, high school students, who work only during the summer vacation months, constitute from 10 to 15 percent of the seasonal employees.

<sup>7</sup> Cook room mechanics, syrup makers, label machine operators, label checker, car checker, several unspecified warehouse employees, the head scaleman, and construction and maintenance men.

<sup>8</sup> See *Matter of Stokely Foods, Inc.*, 58 N. L. R. B. 130; *Matter of National Fruit Product Company, Incorporated*, 57 N. L. R. B. 100; *Matter of Reid, Murdock & Co.*, 56 N. L. R. B. 284.

In addition to women, high school students, and others who are employed solely during the processing season, there are certain employees whom the Company retains for work during the non-processing season,<sup>9</sup> who are included in the unit and shall be eligible to vote as hereinafter provided in Section V.

<sup>9</sup> The Company and Union agree to the exclusion of head foreladies and table foreladies. They are seasonal workers.

<sup>10</sup> They are the receiving preparation, canning, cook room, warehouse, and maintenance departments.

foremen receive a salary, while bosses are hourly paid at a rate of from 20 to 25 percent more than the persons whom they supervise. During the processing season, on the requisition of foremen, assistant foremen, and bosses, the employment supervisor assigns workers to them. Foremen, assistant foremen, and bosses have the power to reject any of these workers, or at any time, to remove them from their jobs if they are unsatisfactory. In the latter event they are returned to the employment office for possible placement elsewhere in the plant. Foremen, assistant foremen, and bosses have power to discharge in case of insubordination, drunkenness, and the like, and their recommendation with respect to promotions and other changes in status are almost always the deciding factor. At the close of the processing season, foremen, and probably assistant foremen and bosses too, submit lists of employees recommended for retention during the non-processing season, from which the Company makes its selections.<sup>11</sup> Since it is clear that foremen, assistant foremen, and bosses fall within our customary definition of supervisory employees, we shall exclude them.<sup>12</sup>

*The head scaleman:* During the processing season, he weighs and makes reports of the fruit as it is received, and keeps an inventory of the fruit that is used and processed. In rush periods, the actual weighing is done by subordinates called weighers. Since the head scaleman comes under the supervision of the receiving department foreman, apparently has no supervisory authority, and performs shipping and maintenance work during the non-processing season, he will be included.

*Watchmen:* During the non-processing season, the Company may use either bosses or non-supervisory employees to act as watchmen to guard its warehouses. Since it does not appear that watchmen are armed, militarized, or deputized, we shall include them,<sup>13</sup> except such watchmen who are hereinabove excluded as bosses.

*Sample graders:* They make sample tests of the specific gravity of syrup and check that processed products conform to Federal specifications. Functionally, sample graders may properly be part of a plant unit, and we shall include them.

*Cannery students:* Inasmuch as the Company does not employ cannery students at present, and there is no prospect of their employment in the near future, we deem it unnecessary, at this time, to determine their inclusion or exclusion.

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<sup>11</sup> Foremen, assistant foremen, and bosses also perform maintenance, shipping or other work during the non-processing season, when, they, except for several foremen, exercise no supervisory functions.

<sup>12</sup> See *Matter of Reid, Murdock & Co.*, *supra*.

<sup>13</sup> See *Matter of National Fruit Product Company, Incorporated*, *supra*.

We find that all production, maintenance, and warehouse employees at the Company's Yakima, Washington, plant, including the head scaleman, watchmen (except such watchmen who are hereinafter excluded as bosses), weighers, and sample graders, but excluding seasonal workers solely engaged for the duration of the processing season,<sup>14</sup> office and clerical employees, the shipping clerk, green fruit department employees (fieldmen), police, laboratory employees, the superintendent, the assistant superintendent, the general foreman, foremen, assistant foremen, bosses, and all 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

The record discloses that there are certain employees who were employed prior to or during the processing season whom the Company will retain in its employ after the season closes for such work as shipping, maintenance, or general labor which may be available during the nonprocessing season.<sup>15</sup> These employees apparently possess a sufficient interest to warrant their participation in the selection of a bargaining representative. Since the record 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 payroll period immediately preceding January 25, 1945, subject to the limitation 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

<sup>14</sup> While the parties have agreed to the exclusion of Mexican Nationals, we shall include them unless they are seasonal workers solely engaged for the duration of the processing season. *Matter of Allen and Sandilands*, 59 N. L. R. B. 724, and *Matter of Logan and Paxton*, 55 N. L. R. B. 310.

<sup>15</sup> They are the employees mentioned in footnote 8, who, according to the record, may or may not be seasonal workers.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with California Packing Corporation, 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 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 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.