

In the Matter of GERBER PRODUCTS COMPANY and LOCAL 30, UNITED
CANNERY, AGRICULTURAL, PACKING AND ALLIED WORKERS OF AMERICA,
C. I. O.

Case No. 7-R-1846.—Decided January 1, 1945

Mr. Edwin F. Steffen, of Lansing, Mich., and *Mr. Frank Gerber*, of Fremont, Mich., for the Company.

Mr. C. K. Armstrong, of Traverse City, Mich., and *Mr. Charles Bowers*, of Muskegon, Mich., for the Union.

Mr. Julius Kirle, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 30, United Cannery, Agricultural, Packing and Allied Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Gerber Products Company, Fremont, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cecil Pearl, Trial Examiner. Said hearing was held at Muskegon, Michigan, on November 1, 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. At the hearing, the Company moved to dismiss the petition on the ground that its presently existing contract with the Union is a bar to any change in the appropriate unit. Ruling on the motion was reserved for the Board. For reasons hereinafter set forth, the motion is hereby denied. 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

Gerber Products Company, a Michigan corporation having its plant at Fremont, Michigan, is engaged in the manufacture of canned and packaged baby foods and dry cereals. The Company purchases annually raw materials valued in excess of \$1,000,000, of which 73 percent is obtained from sources outside the State of Michigan. The Company produces annually finished products valued in excess of \$1,000,000, of which 72 percent is sold to sources 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 30, United Cannery, Agricultural, Packing and Allied Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On May 10, 1943, the parties entered into a collective bargaining agreement which provided that it was to remain in effect for 1 year and thereafter until either party should desire to terminate, modify, or amend the contract upon 30 days prior notice in writing. Neither party has given such written notice. In June 1944, and subsequent thereto, the Union sought to enlarge its present unit and requested recognition as the exclusive bargaining representative of certain additional employees of the Company. The Company refused to grant recognition to the Union as to these employees, contending that its presently existing contract with the Union was a bar to any such enlargement of the unit. We do not agree with this contention. Inasmuch as the original term of the contract has expired and the contract is now terminable at any time upon 30 days prior notice, the contract is one of indefinite duration and, therefore, can not be said to constitute a bar to the instant proceeding.¹

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.²

¹ See *Matter of American Type Founders, Inc.*, 52 N. L. R. B. 410.

² The Field Examiner reported that the Union submitted 269 cards; that the names of 210 persons appearing on the cards were listed on the Company's pay roll, which contained the names of 624 employees in the claimed appropriate unit; and that the cards were dated June 1943, through September 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 seeks a unit of all the Company's production and maintenance employees, including seasonal employees and cafeteria workers, but excluding office employees, clerical workers in the warehouse and in the factory, truck drivers, demonstrators, salesmen, farm laborers,³ laboratory technicians, foremen, and all other supervisory employees. The Company, while in general agreement with the unit sought by the Union, would exclude seasonal employees and cafeteria workers, and limit eligibility in the unit, as delineated by the Union's contract, to male employees who have worked 1,800 hours in 46 weeks and female employees who worked 1,600 hours in 43 weeks, out of the preceding 52 weeks.⁴

The Company is engaged in the manufacture of canned and packaged baby foods and dry cereals. In its operations, the Company uses vegetables and fruits harvested and packed in season, starting with the asparagus crop in May and continuing through various other crops to December. Due to the labor shortage, the season now extends to January and February. Products received and stored by the Company during the summer months are processed during the remainder of the year. The Company hires additional employees to work during these seasonal or "pack" periods, included among whom are high school and college students, farmers, housewives, and others.

The seasonal employees, with the exception of the high school and college students, hereinafter discussed, perform the same work, have the same starting rate of pay, are entitled to the same increases, and accumulate the same seniority as the so-called regular employees. Many of them have been bargained for by the Union after they have worked a sufficient number of hours under the Union's contract to be designated as regular employees. The Company has a planned policy of recruiting the same seasonal employees from year to year. Since 1943, no employee has had his employment terminated due to the lack of work between the seasonal periods or "packs," the Company's production having expanded and the production requirements having exceeded the labor supply. With the exception of the high school and college students, none of the seasonal employees hired by the

³ Farm laborers are employees on the factory pay roll who are engaged in agricultural pursuits about the Company's plant and are not to be confused with farmers who obtain seasonal or regular employment in the factory.

⁴ At the hearing, the Company also indicated that it is agreeable to the inclusion in the unit of all employees, male and female, who have worked more than 1,300 hours (28 weeks) in any 1 year.

Company during the year 1944, were hired on the assumption that they were part-time or seasonal employees and would be laid off at the end of any seasonal period or "pack." The average length of employment of the seasonal workers per year is unknown.⁵ In view of the foregoing, we are of the opinion that the seasonal employees have a sufficient community of interest with the so-called regular employees that would warrant their inclusion in the same unit.⁶

Cafeteria workers. The Company employs approximately 18 to 20 cafeteria workers whose duties are those normally associated with cafeteria workers. When necessary, they are transferred from production to cafeteria work, and vice versa, at the same basic rate of pay as the other production employees, and have been bargained for by the Union after they have worked a sufficient length of time to attain the status of so-called regular employees under the Union's contract. We are of the opinion that their interests are closely allied to those of the production and maintenance employees and, accordingly, we shall include them in the appropriate unit.

We find that all of the Company's production and maintenance employees, including cafeteria workers, but excluding office employees, clerical workers in the warehouse and in the factory, truck drivers, demonstrators, salesmen, farm laborers, laboratory technicians, foremen, 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 Union seeks, over the objection of the Company, to include high school and college students who work during summer vacations. Unlike so-called seasonal employees, the high school and college students are expressly hired for the vacation period beginning with the closing of school in June and ending with the reopening of school in the fall. Some of the students, due to their age, are required to obtain working permits before they are permitted to work for the Company, are under strict regulations as to hours and types of employment, and receive specially colored badges to identify them. We are of the opinion that they lack that community of interest with the so-called regular employees which would entitle them to vote.

⁵ In 1943, the Company employed a total of 2,513 employees of whom 1,709 had worked from 1 to 20 weeks, 1,885 from 1 to 30 weeks, 2,010 from 1 to 40 weeks, and 503 from 41 to 52 weeks. In 1944, for the 9 months ending September 24, 1944, the Company had employed a total of 1,657 employees of whom 979 had worked from 1 to 20 weeks, 1,161 from 1 to 30 weeks, and 496 from 31 to 39 weeks.

⁶ See *Matter of Richard Wilcox Manufacturing Company*, 21 N. L. R. B. 97; *Matter of Reid-Murdoch & Company*, 56 N. L. R. B. 57.

Accordingly, we find the high school and college students ineligible to participate in the election. We also find, pursuant to the request of the Union, that production and maintenance employees who have been employed less than 30 days during the year immediately preceding the date of this Direction, do not possess a sufficient interest in the result of the election to justify their participation therein; accordingly such employees shall be ineligible to vote.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Gerber Products Company, Fremont, Michigan, 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 Seventh 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 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 high school and college students who work during summer vacations, employees who have been employed less than 30 days during the year immediately preceding the date of this Direction, and 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 30, United Cannery, Agricultural, Packing and Allied Workers of America, C. I. O., for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.