

In the Matter of MCGEE AND DURM COMPANY, INC., and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, SEAFOOD WORKERS UNION, LOCAL 453, AFL

In the Matter of WALTER V. WENTWORTH AND RAYMOND F. WENTWORTH, COPARTNERS D/B/A O. E. WENTWORTH & COMPANY and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, SEAFOOD WORKERS UNION, LOCAL 453, AFL

*Cases Nos. 5-R-1761 and 5-R-1762 respectively.—Decided
January 9, 1945*

Mr. William V. MacMillan, of Baltimore, Md., for the Employers.

Mr. Albert K. Plone, of Camden, N. J., 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 McGee and Durm Company, Inc., Baltimore, Maryland, herein called McGee, and Walter V. Wentworth and Raymond F. Wentworth, copartners d/b/a O. E. Wentworth & Company, Baltimore, Maryland, herein called Wentworth,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 December 20, 1944. The Employers 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

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

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

McGee and Durm Company, Inc., is a Maryland corporation operating a plant at Baltimore, Maryland, where it is engaged in the processing and distribution of seafood products. From September 1, 1943, to April 30, 1944, McGee obtained from waters inside the State of Maryland approximately 15,000 bushels of oysters. During the same period McGee purchased about 25,000 gallons of shucked oysters from two companies located in the Commonwealth of Virginia. During the same period McGee sold seafood valued at about \$500,000, approximately 99 percent of which was shipped by it to points outside the State of Maryland.

O. E. Wentworth & Company is a partnership operating a plant at Baltimore, Maryland, where it is engaged in the processing of seafood. From September 1, 1943, to April 30, 1944, it obtained from waters outside the State of Maryland, about 50,000 bushels of oysters. During the same period Wentworth sold seafood valued at about \$500,000, approximately 99 percent of which was shipped to points outside the State of Maryland.

Each of the Employers admits, for the purpose of this proceeding, that it is engaged in 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 furnishes proof of its majority claims. The Employers contend that the Board is without jurisdiction in this matter for the reason that there is no continuing employer-employee relationship between them and the employees, since their work is seasonal in nature and the workers do not necessarily return each year.

The record discloses that about 50 percent of the employees involved live in Baltimore where the seafood processing plants wherein they

work are located. It also appears that about half of the employees work for the same employer year after year. 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

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.³

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 McGee and the Union, that all packing room employees, shell wheelers, oyster carriers, and shuckers of McGee, excluding part-time employees, clerical employees, 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.

Wentworth employs six employees classified as boat laborers. The Union would exclude them from the unit while the Company would include them. They work on docks located about a mile from the packing plant unloading oyster boats. They work under the supervision of the boat captains who are not employees of Wentworth. The general practice in the industry is that such persons are in the employ of the boat captains. The boat laborers do not come in contact with the employees at the plant and their work is dissimilar. The Union has not attempted to organize the boat laborers and it appears that they are eligible to membership in another labor organization affiliated with the American Federation of Labor. Under all the circumstances, we shall exclude the boat laborers from the unit at Wentworth.

We find that all packing room employees, shell wheelers, oyster carriers, and shuckers of Wentworth, excluding clerical employees, boat laborers, truck drivers, foremen, 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.

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

³ The Field Examiner reported that the Union presented 44 application cards for the employees at McGee and 69 for the employees at Wentworth. There are approximately 73 employees in the appropriate unit at McGee and 92 at Wentworth.

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.

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 McGee and Durm Company, Inc., and Walter V. Wentworth and Raymond F. Wentworth, copartners d/b/a O. E. Wentworth & Company, Baltimore, 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 Amalgamated Meat Cutters and Butcher Workmen of North America, Seafood Workers Union, Local 453, A. F. of L., for the purposes of collective bargaining.