

In the Matter of CALIFORNIA VEGETABLE GROWERS *and* FRESH FRUIT & VEGETABLE WORKERS UNION, LOCAL 78, FTA-CIO

In the Matter of CALIFORNIA PRODUCE CO., INC. *and* FRESH FRUIT & VEGETABLE WORKERS UNION, LOCAL 78, FTA-CIO

In the Matter of COLORADO RIVER FARMS *and* FRESH FRUIT & VEGETABLE WORKERS UNION, LOCAL 78, FTA-CIO

In the Matter of RAY EATON, RALPH EATON, AND SAXON L. EATON, A CO-PARTNERSHIP DOING BUSINESS AS EATON FRUIT COMPANY¹ *and* FRESH FRUIT & VEGETABLE WORKERS UNION, LOCAL 78, FTA-CIO

Cases Nos. 21-R-2654 through 21-R-2657, respectively.—Decided March 5, 1945.

Messrs. T. B. Flynn, and A. D. Haines, of Guadalupe, Calif., Messrs. Angelo Micalizio and Harry Gibson, of Blythe, Calif., and Mr. Ray Eaton, of Phoenix, Ariz., for the Companies.

Mr. Dixie Tiller, of Los Angeles, Calif., and Mr. C. J. Feller, of El Centro, Calif., for the CIO.

Mr. Albert Harris, of Los Angeles, Calif., for the AFL.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon four separate petitions duly filed by Fresh Fruits & Vegetable Workers Union, Local 78, FTA-CIO, herein called the C. I. O., alleging that questions affecting commerce had arisen concerning the representation of employees of California Vegetable Growers, Blythe, California; California Produce Co., Inc., Blythe, California; Colorado River Farms, Blythe, California; and Ray Eaton, Ralph Eaton, and Saxon L. Eaton, a co-partnership doing business as Eaton Fruit Company, Blythe, California, herein collectively referred to as the Companies, the National Labor Relations Board consolidated the cases by an order dated February 9, 1945, and provided for an appropriate

¹ The record indicates that this is the correct designation of the employer involved
60 N. L. R. B., No. 178.

hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Blythe, California, on February 19, 1945. The Companies, the C. I. O., and Western Warehouse & Produce Council and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Truck Drivers, Warehousemen and Helpers Union, Local #898, herein collectively referred to as the A. F. L., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, California Vegetable Growers moved to sever Case No. 21-R-2654 from the remaining cases in this consolidated proceeding. The Trial Examiner referred this motion to the Board for ruling. 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 COMPANIES

California Vegetable Growers, a cooperative harvesting and marketing organization; California Produce Co., Inc., a corporation; Colorado River Farms, a California corporation; and Ray Eaton, Ralph Eaton, and Saxon L. Eaton, a co-partnership doing business as Eaton Fruit Company, are engaged in the harvesting, packing, and marketing of fruits and vegetables. Each of the Companies during the last season packed and shipped in interstate commerce a substantial portion of their products.

We find that the Companies are engaged in commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATIONS INVOLVED

Fresh Fruit & Vegetable Workers Union, Local 78, FTA-CIO, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Companies.

Western Warehouse & Produce Council and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Truck Drivers, Warehousemen & Helpers Union, Local #898, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Companies.

² *Matter of Allen and Sandilands Packing Company, et al*, 59 N. L. R. B. 724

III. THE QUESTIONS CONCERNING REPRESENTATION

The Companies are unwilling to recognize either the C. I. O. or the A. F. L. as the collective bargaining representative of certain of their employees in the absence of certification by the Board.

On January 12, 1945, as a result of a cross-check, held under Board auspices, which was initiated by a representation petition filed by the A. F. L.,³ that organization was designated as a collective bargaining representative of the packing shed employees of California Vegetable Growers. However, the record indicates that at that time the C. I. O. had substantial membership among these employees and was not notified of the proceeding. Accordingly, we find that the designation of the A. F. L. does not constitute a bar to a current determination of representatives of employees of California Vegetable Growers.

The C. I. O. and the A. F. L. each adduced testimony concerning the extent of its membership among the persons who work in the packing sheds in the area in which the Companies are located. This testimony indicates that each of these organizations represents a substantial number of the persons who are or will be employed by the Companies.

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

IV. THE APPROPRIATE UNITS

The C. I. O. and the A. F. L. agree, without objection by the Companies, that all packing shed employees of each of the Companies, excluding over-the-road drivers,⁴ and office and supervisory employees, constitute appropriate units. In addition, the C. I. O. would include within these units drivers who drive trucks from the harvesting grounds to the packing sheds. The A. F. L. contends that such drivers employed by California Vegetable Growers should be excluded from the bargaining unit of that Company's employees;⁵ however, it makes no specific contention with respect to similar drivers employed by the other Companies involved herein. The Companies take no position with respect to the inclusion or exclusion of these employees.

The record indicates that, with the exception of Colorado River Farms, truck drivers who haul fruits and vegetables from the harvest-

³ Case No. 21-R-2632.

⁴ Over-the-road drivers haul the Company's products from the sheds to the market.

⁵ The record indicates that California Vegetable Growers currently recognizes the A. F. L. as the representative of these employees pursuant to the terms of an existing written agreement.

ing grounds to the packing sheds are under the supervision of persons other than those who supervise the packing shed employees, and that they are either salaried or hourly paid workers, whereas the packing shed employees are compensated on a piece-rate basis.⁶ We shall exclude the truck drivers who haul produce from the harvesting grounds to the packing sheds.

Accordingly, we find that all packing shed employees of each of the Companies, excluding all drivers, office 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 four separate units 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 separate elections by secret ballot among the employees in the four appropriate units who were employed during the pay-roll period 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 to ascertain representatives for the purposes of collective bargaining with California Vegetable Growers, Blythe, California; California Produce Co., Inc., Blythe, California; Colorado River Farms, Blythe, California; and Ray Eaton, Ralph Eaton, and Saxon L. Eaton, a co-partnership doing business as Eaton Fruit Company, Blythe, California, four separate elections 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 Twenty-first 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 units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including

⁶ The operations of the Colorado River Farms are not, at the present time, sufficiently extensive to warrant the employment of more than one supervisory employee.

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 those employees 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 whether they desire to be represented by Fresh Fruit & Vegetable Workers Union, Local 78, FTA-CIO, affiliated with the Congress of Industrial Organizations, or by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Truck Drivers, Warehousemen & Helpers Union, Local #898, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.