

In the Matter of AREANA-NORTON CO.; ARIZONA VEGETABLE DISTRIBUTORS; BODINE PRODUCE CO.; COMER PRODUCE CO.; H. D. CONNER; E. E. DAVIS CO.; EATON FRUIT CO.; FRANK FERNANDEZ; S. A. GERRARD CO.; W. M. HEYMAN; FRED G. HILVERT CO.; HOLMES FARMS; ISABELL HARTNER CO.; JOHN JACOBS FARMS; MBM FARMS CO.; L. T. MALONE CO.; MILLER-JONES CO.; JOSEPH PALMISANO CO.; O. R. RECKER CO.; RICHMAN-JUSTMAN-FRANKENTHAL CO.; SALINAS VALLEY VEGETABLE EXCHANGE; FLOYD N. SMITH CO.; SMITH VEGETABLE CO.; STANLEY & McDANIELS; W. L. THOMPSON CO.; BURREL COLLINS; and VALLEY PRODUCE DISTRIBUTORS and FRESH FRUIT AND VEGETABLE WORKERS UNION, LOCAL 78, FTA-CIO

*Cases Nos. 21-R-2595 to 21-R-2620, inclusive, and 21-R-2636.—
Decided March 12, 1945*

Messrs. Jennings and Salmon, by Mr. Reney B. Salmon, of Phoenix, Ariz., for all the Companies except Stanley & McDaniels.¹

Mr. Dixie Tiller, of Los Angeles, Calif., Mr. Charles Law, of Phoenix, Ariz., and Gladstein, Grossman, Sawyer and Edises, of San Francisco, Calif., for the Union.

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

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon 27 separate petitions filed by Fresh Fruit and Vegetable Workers Union, Local 78, FTA-CIO, herein called the Union, alleging that questions affecting commerce had arisen concerning the representation of employees of Areana-Norton Co., Phoenix, Arizona; Arizona Vegetable Distributors, Phoenix, Arizona; Bodine Produce Co., Phoenix, Arizona; Comer Produce Co., Phoenix, Arizona; H. D. Conner, Phoenix, Arizona; E. E. Davis Co., Phoenix, Arizona; Eaton Fruit Co., Phoenix, Arizona; Frank Fernandez, Phoenix, Arizona; S. A. Gerrard Co., Phoenix, Arizona; W. M. Heyman, Phoenix, Arizona; Fred G. Hilvert Co., Phoenix, Arizona; Holmes Farms, Phoenix,

¹ Stanley & McDaniels was not represented by counsel at the hearing.

Arizona; Isabell Hartner Co., Phoenix, Arizona; John Jacobs Farms, Phoenix, Arizona; MBM Farms Co., Phoenix, Arizona; L. T. Malone Co., Phoenix, Arizona; Miller-Jones Co., Phoenix, Arizona; Joseph Palmisano Co., Phoenix, Arizona; O. R. Recker Co., Phoenix, Arizona; Richman-Justman-Frankenthal Co., Phoenix, Arizona; Salinas Valley Vegetable Exchange, Phoenix, Arizona; Floyd N. Smith Co., Phoenix, Arizona; Smith Vegetable Co., Phoenix, Arizona; Stanley & McDaniels,² Phoenix, Arizona; W. L. Thompson Co., Phoenix, Arizona; Burrell Collins, Phoenix, Arizona; and Valley Produce Distributors, Phoenix, Arizona, herein collectively called the Companies, the National Labor Relations Board consolidated the cases by an order dated February 8, 1945, and provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Phoenix, Arizona, on February 15, 1945. The Companies, with the exception of Stanley & McDaniels,³ 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. During the course of the hearing, the Union moved that it be certified on the record as the collective bargaining representative of the employees of each of the Companies in the units which it proposes as appropriate. Also during the course of the hearing, the Companies moved for a dismissal of the petitions herein, contending, in substance, that (1) the employees involved herein are agricultural employees within the meaning of the National Labor Relations Act, and (2) there is no evidence that the Union represents "all of the employees of any of the employers represented in this proceeding with respect to the handling of any commodity other than lettuce." The Trial Examiner referred both motions to the Board for ruling. The motions are hereby denied.⁴ 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

The Companies are engaged in the packing of lettuce, carrots, broccoli, chicory, and other vegetables, as well as melons, in the Salt River Valley area of Arizona, and, during the various packing seasons, em-

² The name of this Company has been corrected in accordance with an amendment made at the hearing.

³ The record indicates that this Company was duly served with Notice of Hearing

⁴ With respect to (1), *supra*, we have previously held that packing employees such as those involved in the instant consolidated proceeding are not agricultural laborers as defined in Section 2 (3) of the Act. See, e. g., *Matter of Allen and Sandilands Packing Company, et al*, 59 N L R B 724, and cases cited therein. See also, *Idaho Potato Growers v. N. L R B*, 144 F (2d) 295 (C C A 9), cert den 323 U S 769

ploy persons for the purpose of handling, sorting, and packing. Between December 1, 1944, and January 20, 1945, each of the Companies shipped vegetables ranging in amounts from 25 to 205 cars. More than 85 percent of all shipments made by each Company was consigned to points outside the State of Arizona.

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

II. THE ORGANIZATION INVOLVED

Fresh Fruit and Vegetable Workers Union, Local 78, Food, Tobacco and Agriculture and Allied Workers Union of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Companies.

III. THE QUESTIONS CONCERNING REPRESENTATION

Each of the Companies refuses to recognize the Union as the collective bargaining representative of certain of its employees in the absence of certification by the Board.

The Union adduced testimony concerning the extent of its membership among the persons who work in the vegetable and fruit packing industry in the Salt River Valley area in which each of the Companies conducts packing operations. This testimony indicates that the Union represents a substantial number of those persons who are or who will be employed by the Companies.⁵

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 DETERMINATION OF REPRESENTATIVES

(a) *Contentions of the parties*

By virtue of separate collective bargaining agreements the Union is currently recognized by each of the Companies, except MBM Farms Co., as the representative of its lettuce packing employees. In these proceedings, the Union seeks to represent in 27 separate units all vegetable packing employees of MBM Farms Co., including watch-

⁵ The Companies, as hereinbefore noted, contend that the petitions should be dismissed because the Union made no showing that it represented "all of the employees" of any of the Companies involved herein other than those engaged in the handling of lettuce. The Board ordinarily requires that a labor organization petitioning for a determination of representatives present specific evidence of substantial, not entire, designation among the employees whom it seeks to represent, thus indicating that it is likely to be selected by such employees as their representative. The requirement of such preliminary evidence is solely for the benefit of the Board in carrying out the purposes of the Act, and the absence of such specific evidence does not constitute grounds for objection on the part of the employer to an election held among the employees. See *Matter of Allen and Sandilands Packing Company, et al., supra*.

men, and all vegetable packing employees of each of the remaining Companies, including watchmen, but excluding lettuce packing employees. In addition, the Union would exclude from each unit sought office and supervisory employees. MBM Farms Co. takes no position with respect to the unit of its employees which is sought by the Union. Each of the remaining Companies represented at the hearing⁶ objects to the proposed unit of its employees only insofar as the inclusion of watchmen is concerned.

(b) *The appropriate units of employees of each Company, except MBM Farms Co.*

The record indicates that watchmen are not engaged in packing operations, and that their duties are confined to safeguarding the packing shed in which each is employed. Inasmuch as they are not packing employees, we shall exclude them.

In view of the foregoing, we find that all vegetable packing employees of each of the Companies, except MBM Farms Co., excluding those engaged in packing lettuce, watchmen, 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 26 separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁷

(c) *The determination of representatives of employees of all the Companies, except MBM Farms Co.*

As hereinbefore indicated, each of the Companies is engaged in the packing of lettuce and other vegetables at various seasons of the year. The fall lettuce season in the Salt River Valley area commences, for some of the Companies, in November, and for others, in December, and lasts until January. The cauliflower, cabbage, and fall carrot seasons appear occasionally to overlap the lettuce season, but usually start shortly after the lettuce season's conclusion, and run for several weeks. The spring lettuce season commences in March and lasts approximately a month and a half. The spring carrot season starts toward the latter part of the spring lettuce season and lasts through May and perhaps part of June. Also toward the latter part of the spring lettuce season, the chicory season commences, and, through June, July,

⁶ As hereinbefore noted, Stanley & McDaniels did not appear by counsel at the hearing. Its position, therefore, is not indicated in the record.

⁷ Our finding in this respect is without prejudice to the entertainment of motions by the Union, if successful in any of the elections hereinafter directed among employees of each of the Companies except MBM Farms Co., to bargain collectively for the employees in the units herein found to be appropriate together with those employees of the Companies whom it presently represents.

and August, some of the Companies are engaged in packing melons of various types. Thus, it appears that there is frequent overlapping of the various packing seasons in the Salt River Valley area, and, in these instances, the record indicates that the Companies run more than one commodity through their packing sheds.

However, the lettuce packing employees are by far the most numerous of all packing workers.⁸ The ordinary lettuce worker spends March and April in the Salt River Valley area during the spring lettuce season, moving thereafter to the Salinas, California, area, until November when he returns to the Salt River Valley for the fall lettuce season. Upon completion of this season, he travels to the Imperial Valley area of California for February and March, and returns to the Salt River Valley for the spring lettuce season. The record indicates that only a relatively minor proportion of the lettuce packing workers in the Salt River Valley area stays on for the mixed vegetable "deals," and that the remainder of the packing workers employed for these "deals" is recruited from among local residents.

The Union contends that elections should be conducted between March 25 and April 10, 1945, on the ground that, during this period, the packing sheds will be at peak employment. The Companies oppose the holding of elections during this period, contending that such elections would occur during the spring lettuce packing season, and, therefore, would not be indicative of the desires of employees other than lettuce workers. We find merit in the Companies' contention. Accordingly, since the mixed vegetable season appears to occur between the end of March and the beginning of June, we shall direct that the questions concerning representation which have arisen be resolved by 26 separate elections by secret ballot to be held between May 1, 1945, and June 20, 1945, among the employees in the appropriate units set forth in Section IV (b), *supra*, who are employed within an appropriate unit on the day such unit is voted, subject to the limitations and additions set forth in the Direction.⁹

(d) *The appropriate unit of employees of MBM Farms Co.; the determination of representatives*

As hereinbefore noted, the Union seeks to represent all packing employees of this Company, excluding office and supervisory employees. In effect, the Union desires to represent two groups of

⁸ The record indicates that during the lettuce packing seasons there are between 2,200 and 2,500 employees engaged in packing operations in the Salt River Valley area, whereas during the mixed vegetable packing seasons there are between 400 and 600 employees, and, during the melon packing season, there are from 1,200 to 1,500 workers.

⁹ Employees who are engaged both in packing lettuce and mixed vegetables shall be eligible to participate in these elections.

workers, the lettuce packers and the other vegetable packing employees, which may form separate units, or, with propriety, constitute a single unit. We shall, therefore, make no final determination at this time with respect to the appropriate unit or units, but shall reserve such determination pending the outcome of elections hereinafter directed. We shall direct that the question concerning representation of employees of MBM Farms Co. be resolved by separate elections by secret ballot to be held among the employees in each of the voting groups set forth below:¹⁰

(1) All lettuce packing employees, excluding watchmen, 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; and

(2) All vegetable packing employees, excluding those engaged in packing lettuce, watchmen, office employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect change in the status of employees, or effectively recommend such action.

Upon the results of these elections will depend, in part, our determination of the appropriate unit or units of MBM Farm Co.'s employees. However, since, as previously indicated, the employees in each group work for the most part at different seasons in the year, we shall direct that the election among the employees in group (1) be held within 30 days from the date of the Direction of Elections herein, among those employees in the group who were employed during the pay-roll period immediately preceding the date of the Direction herein, subject to the limitations and additions set forth therein; and we shall further direct that the election among the employees in group (2) be held between May 1, 1945, and June 20, 1945, among the employees in this group who are employed on the day this group is voted, subject to the limitations and additions set forth in the Direction.¹¹

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 purpose of collective bargaining with Areana-Norton Co.,

¹⁰ In conformance with our prior determination with respect to watchmen, we shall exclude such employees.

¹¹ Employees who are engaged both in packing lettuce and mixed vegetables shall be eligible to participate in the election conducted among the employees in group (2).

Phoenix, Arizona; Arizona Vegetable Distributors, Phoenix, Arizona; Bodine Produce Co., Phoenix, Arizona; Comer Produce Co., Phoenix, Arizona; H. D. Conner, Phoenix, Arizona; E. E. Davis Co., Phoenix, Arizona; Eaton Fruit Company, Phoenix, Arizona; Frank Fernandez, Phoenix, Arizona; S. A. Gerrard Co., Phoenix, Arizona; W. M. Heyman, Phoenix, Arizona; Fred G. Hilvert Co., Phoenix, Arizona; Holmes Farms, Phoenix, Arizona; Isabell Hartner Co., Phoenix, Arizona; John Jacobs Farms, Phoenix, Arizona; MBM Farms Co., Phoenix, Arizona; L. T. Malone Co., Phoenix, Arizona; Miller-Johns Co., Phoenix, Arizona; Joseph Palmisano Co., Phoenix, Arizona; O. R. Becker Co., Phoenix, Arizona; Richman-Justman-Frankenthal Co., Phoenix, Arizona; Salinas Valley Vegetable Exchange, Phoenix, Arizona; Floyd N. Smith Co., Phoenix, Arizona; Smith Vegetable Co., Phoenix, Arizona; Stanley & McDaniels, Phoenix, Arizona; W. L. Thompson Co., Phoenix, Arizona; Burrell Collins, Phoenix, Arizona; and Valley Produce Distributors, Phoenix, Arizona; 27 separate elections by secret ballot shall be conducted as early as possible between May 1, 1945, and June 20, 1945, 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 all vegetable packing employees of the afore-mentioned Companies, excluding those engaged in packing lettuce, watchmen, office employees, 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, who are employed within an appropriate unit or voting group on the day such unit or voting group is voted, including employees who are not working because they are 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, to determine whether or not they desire to be represented by Fresh Fruit and Vegetable Workers Union, Local 78, FTA-CIO, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining; and

IT IS FURTHER DIRECTED that as part of the investigation to ascertain representatives for the purposes of collective bargaining with MBM Farms Co., Phoenix, Arizona, 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 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 all lettuce packing employees of the aforesaid Company, excluding watchmen, 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, who were employed by this Company 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 any 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 Fresh Fruit and Vegetable Workers Union, Local 78, FTA-CIO, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.