

In the Matter of WILLIAM H. ELLIOTT & SONS COMPANY, EMPLOYER
and TEXTILE WORKERS UNION OF AMERICA C. I. O., PETITIONER

Case No. 1-RC-215.—Decided August 18, 1948

Mr. Maurice F. Devine, of Manchester, N. H., for the Employer.
Mr. Julius Gracia, of Manchester, N. H., for the Petitioner.

DECISION

AND

ORDER

Upon a petition duly filed, hearing in this case was held at Dover, New Hampshire, on April 23, 1948, before Thomas H. Ramsey, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

THE BUSINESS OF THE EMPLOYER

William H. Elliott & Sons Company grows and sells roses at its premises in Madbury, New Hampshire. The Petitioner seeks a unit of the Employer's rose growers, packers, maintenance men, firemen, and tractor and truck drivers, excluding executives, office and clerical employees, professional employees, guards, and supervisors. The Employer contends that the employees sought to be represented are "agricultural laborers" within the meaning of Section 2 (3) of the Act, and therefore that the Board is without jurisdiction to entertain the petition herein.

The Employer purchases small rose plants from growers in California, which are then planted in cement containers located in greenhouses. The soil in which the rose plants are placed requires constant care; among other things, it must be highly fertile and maintained under rigid temperature conditions. The soil in the greenhouses is tested monthly, and the fertilization of the plants is based

on these tests. Various scientific preventive methods against insects and fungus diseases are utilized. The Employer also operates a farm, where soil is prepared for use in the greenhouses.

The various classifications of employees all perform tasks related to the growth and production of the roses. The rose growers work in the greenhouses, watering, cutting, spraying, tying, pinching, and doing other work necessary for the growth of the plants, up to the point of transporting the cut roses to the packing room. The packers grade the roses, eliminating weak, open flowers, and pack the flowers in wooden boxes. The maintenance men maintain the pipes and pumps used for insecticides and water, replace glass, and do various other jobs related to the upkeep of the plant. The firemen operate the heating plant, to maintain steam pressure at the proper level. The temperature men maintain the greenhouse temperature and take care of ventilation; they also patrol the premises at night. The tractor driver operates the tractor on the Employer's farm for plowing, harrowing, and preparing soil for the greenhouses. The truck driver hauls fuel to the plant, fertilizer to the different greenhouses, and cinders from the boiler room. The two drivers and the maintenance men also help in the preparation of the soil outside the greenhouse, and assist in the cultivation of hay on the farm.

In *Matter of The Park Floral Company*,¹ the Board held that employees performing similar duties for a like employer were not agricultural laborers within the meaning of Section 2 (3) of the Act. When the *Park Floral* case was decided in 1940, however, the definition of "agricultural laborers" set forth in the Fair Labor Standards Act of 1938 had not been incorporated by reference into the National Labor Relations Act.² That definition, under the rider to the Board's current appropriation act, is now controlling on the question of whether particular employees are "agricultural laborers" within the meaning of Section 2 (3) of the Act.

In the case of *Damutz v. William Pinchbeck, Inc.*, 158 F. (2d) 882, a fireman employed by the operator of a wholesale florist business brought suit for over-time compensation under the Fair Labor Standards Act. The Employer was engaged in the production of cut flowers, using plants purchased from others and grown by the employer in a manner similar to that involved in the present case. The employee was engaged in firing the boilers which supplied steam to heat the

¹ 19 N L R B. 403.

² This definition, insofar as applicable here, reads as follows:

"agriculture" includes farming in all its branches and among other things includes . . . the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . and any practices . . . performed by a farmer or on a farm including preparation for market, delivery to storage or to market or to carriers for transportation to market.

employer's greenhouses and to sterilize the soil in which the plants were grown. The United States Circuit Court of Appeals for the Second Circuit denied the relief sought, saying that "Such a production of cut flowers is clearly the production of a horticultural commodity . . ." and that, as the employee was engaged in the production of a horticultural commodity, he was an agricultural employee excluded from the coverage of the Fair Labor Standards Act.

On the basis of that case, and because most of the employees sought by the Petitioner appear clearly to be "agricultural laborers" within the purview of the definition set forth in Section 3 (f) of the Fair Labor Standards Act of 1938, we shall dismiss the petition herein.

ORDER

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.