

In the Matter of CAIN CANNING COMPANY, EMPLOYER and AMERICAN
FEDERATION OF LABOR, PETITIONER

Case No. 32-RC-56.—Decided January 18, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization named below claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's canning plant at Springdale, Arkansas, excluding all office and clerical employees and supervisors.

5. The Employer is engaged in canning vegetables and grape juice at Springdale, Arkansas. It operates its plant entirely on a seasonal basis. It has no permanent or year-round employees. The number

*Chairman Herzog and Members Houston and Gray.

81 N. L. R. B., No. 34.

of employees on its pay roll varies with the seasons. During the past seasonal year, its labor force varied from 60 to 100 workers¹ as follows:

<i>Seasons</i>	<i>Dates</i>	<i>Number on pay roll</i>
Spring Spinach Season	March 15–May 10	65 workers
Green Bean Season	June 10–July 4	60 workers
Tomato Season	August 15–October 15	100 workers
Grape Juice Season	August 20–September 5	10 additional workers
Fall Spinach Season	November 15–November 25	60 workers

Before the actual beginning of seasonal activity, the Employer notifies, directly by post card or by telephone, certain “key” employees, such as boiler room workers, of its opening date. These employees constitute 10 percent of its working force. The Employer recruits the majority of its workers, however, (a) by announcing in a newspaper that the plant will start operations on a certain date and (b) by blowing, for a period of 2 hours, a whistle of distinctive timbre and with a range of approximately 5 to 7 miles. Although the record discloses no definitive over-all percentages, local housewives comprise the greater part of the employer’s workers. These women work as their inclinations prompt and their home duties permit. Other workers are recruited from the “Government Employment Office” and from a “transient labor camp” at Springdale.

During the 5 working seasons in the past year, the Employer hired 591 different persons to maintain its varying force of 60 to 110 employees. It contends that this turn-over rebuts the presumption that it has any workers with employment interests sufficient to justify an election at the plant.

We find no merit in this contention. The Employer looks to the same reservoir of workers year after year to obtain the majority of its employees.² To deny an election would, in effect, deny representation and collective bargaining to these employees, simply because they are seasonal workers.

The Employer’s plant, now closed, will reopen in the spring spinach season, about March 15, 1949. We shall therefore direct that an election be held during the Employer’s 1949 spring spinach season on a day to be determined by the Regional Director, subject to the conditions which appear in our Direction of Election.

¹ The dates and the numbers of workers are approximate.

² *Matter of Couburne & Jewett, et al.*, 59 N. L. R. B. 176; *Matter of Alaska Salmon Industry Inc.*, 61 N. L. R. B. 1508; and *Matter of Azusa Citrus Association*, 65 N. L. R. B. 1136.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted during the Employer's 1949 spring spinach season, under the direction and supervision of the Regional Director for the Region in which this case was heard, on a day to be determined by the Regional Director, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph 4, above, who were employed during the pay-roll period immediately preceding the date of the issuance of Notice of Election by the Regional Director, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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 election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by the American Federation of Labor.