

In the Matter of WM. P. McDONALD CORPORATION, EMPLOYER and
CITRUS WORKERS UNION #24218, AFL, PETITIONER

Case No. 10-RC-495.—Decided May 9, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing¹ was held before LeRoy W. C. Mather, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. A motion to dismiss the petition, made by the Employer at the hearing, was referred to the Board. For reasons hereinafter stated, the motion is denied.

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-member panel [Members Houston, Reynolds, and Murdock].

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 Petitioner is a labor organization claiming to represent employees of the Employer.²

¹ The Employer contends that it was never notified by the Board as to whether or not the CIO Organizing Committee had refused or agreed to represent its employees. The CIO, though notified of this proceeding, did not appear at the hearing and has not evinced any desire to participate.

² The Employer also maintains that it does not appear from the petition what union is the Petitioner; that the American Federation of Labor is actually the petitioner and is an indispensable party to this proceeding; that the Petitioner does not represent a majority or a substantial number of its employees and that the Petitioner has made no showing of interest because the authorization cards designated the American Federation of Labor and not the Local; that the Petitioner was not in compliance with Section 9 (f), (g), and (h) of the amended Act at the time the petition was filed; and that the Petitioner is not a labor organization within the meaning of the Act. We find no merit in these contentions. The American Federation of Labor has made no effort to become a party to these proceedings other than through its affiliated local. While the Employer claims that the filing of the petition by "Citrus Workers Union #24218, AFL, led it to believe the local union and the AFL were joint petitioners, we do not believe that the absence of the words "affiliated with" in that signature prejudiced the Employer's rights. As such the alleged misrepresentation cannot serve as a basis for granting the motion to dismiss. See *Matter of Crawford Steel Foundry Company*, 58 N. L. R. B. 428. The Employer further charges that authorization cards used for the showing of interest of the Petitioner were made out to "Florida Council of Citrus Workers Unions, A. F. of L." and did not authorize the Petitioner to bargain for the signers and that, even were these cards valid, the employees who signed them are in all

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

4. The appropriate unit:

The Petitioner seeks a unit consisting of all employees at the Employer's Auburndale, Florida, plant, excluding office and clerical employees, truck drivers, agricultural workers, night watchmen and guards, professional employees, and supervisors as defined in the Act, as amended. The Employer contends that the proposed unit is inappropriate because it includes seasonal workers with permanent employees and because the unit contains temporary employees who do not have a sufficient interest in working conditions to be eligible to participate in collective bargaining activity. It further maintains that garage employees, timekeepers, inspectors, and checkers, cafeteria workers, first aid attendants and nurses, fruit buyers, construction workers, the fresh fruit scale operator, the stock clerk, brix testers, acid testers, vacuum pan operators, compressor room operators, firemen, the bacteriologist, laboratory employees, temporary, seasonal and agricultural employees should be excluded from the unit.

The Employer is engaged in growing, packing, and canning citrus fruits. Fruit is supplied to the plant from the Employer's own groves and from other growers within a radius of 40 miles of the plant. All grove employees of the Employer are excluded from the proposed unit under a stipulation of both parties. After being trucked into the plant, the fruit is either packed and shipped as fresh fruit or is proposed for marketing in other forms. Total plant employment varies from a high of over 700 employees at the peak of operations to a low of 30 workers who act as a maintenance force during the off season. The Employer's operations are seasonal in nature and the plant is in operation during the period between September and May with yearly variations. Individual departments of the plant are not necessarily in operation at the same time or at all times during the season, each being regulated by growing and marketing factors and other considerations.

probability no longer with the Employer due to the seasonal lay-off. The card authorizes the AFL and "all affiliated organizations" to bargain for the signer. We have previously held a designation of a parent organization to be a valid designation of an affiliate. See *Matter of Norfolk Southern Bus Corporation*, 76 N. L. R. B. 488. The currency of the authorizations as well as the compliance status of the Petitioner are matters of administrative determination not subject to collateral attack at the hearing. See *Matter of Procter & Gamble Manufacturing Company*, 78 N. L. R. B. 1043, *Matter of Mergenthaler Linotype Company*, 80 N. L. R. B. 132. Finally, we are satisfied, on the basis of the testimony in the record and the copy of Petitioner's constitution and bylaws introduced into evidence, that the Petitioner is a labor organization within the meaning of the Act.

³ The Employer contends that no demand for recognition has been made by the petitioning unit and that no demand for recognition of the petitioning union as bargaining agent for employees in an appropriate unit has ever been made. We do not agree and find to the contrary. See *Matter of Advance Pattern Company*, 80 N. L. R. B. 29.

There are four main departments at the plant, all housed in buildings within a fenced-in area and within a short distance from each other. These are the packinghouse, the sectionizing and peeling department, the juice and canning plant, and the concentrate plant. There is also a small maintenance warehouse and hauling department.

The Employer purchases between 40 and 50 percent of its fruit from other growers. This fruit, as well as that raised in the Employer's own groves, is trucked to the packinghouse where it is gassed, colored, waxed, and boxed for shipment, or further processed in the other departments. During the sorting of the fruit, the culls are separated and sent to the canning plant by conveyor belt. At the hearing, the Employer indicated that he considered the packinghouse employees to be agricultural employees and thus exempt under the terms of the Act. This contention was not pursued in his brief filed after the hearing. The Board now applies the definition of "agricultural laborer" found in the Fair Labor Standards Act of 1938 and has held that employees processing produce grown on the employer's *own* farm are exempt under the Act when "fruit is sold in its raw state and the only processing involved consists of boxing and crating in order to ship it to market."⁴ As we have noted, a substantial portion of the fruit handled by the packinghouse is purchased from other growers and, moreover, all fruit shipped is not merely boxed and crated but is chemically treated to enhance its market value. Further, the packinghouse operates as the plant source of the fruit used by the other departments and its entire operations seem to be an integrated part of the admittedly non-agricultural operations of the rest of the plant. It was indicated at the hearing that the packinghouse employees are deemed to be covered by the Fair Labor Standards Act, although the record is somewhat confused as to this point.⁵ We find, therefore, that the packinghouse employees are not agricultural employees within the exemption of the Act.

The Employer maintains that the unit is inappropriate because it includes seasonal and temporary employees with regular employees. In its brief, it lays particular stress on the temporary tenure of the personnel employed in the packinghouse and in the sectionizing and peeling department. The packinghouse employs approximately 120 employees when in full operation. All of these employees are on

⁴ See *Matter of Di Giorgio Fruit Corporation*, 80 N. L. R. B. 853. We distinguish the facts herein from those present in *N. L. R. B. v. John W. Campbell, Inc.*, 159 F. (2d) 184 (C. A. 5, 1947), and *Matter of Salinas Valley Vegetable Exchange*, 82 N. L. R. B. 96. In those cases packinghouse or packingshed workers were held to be agricultural laborers where they were engaged in simple packing operations only and which involved produce grown exclusively or almost entirely on the employer's own farm.

⁵ At one point in the record, the Employer stated that only the mechanic and the watchmen were covered under the Fair Labor Standards Act. The same witness later testified in response to a direct question as to the packinghouse employees' status under that Act, that "packinghouse employees are covered by the Wage and Hour Act."

hourly pay rates with the exception of the foremen and assistant foremen, who are salaried, and packers, who are paid on a piecework basis. The only skilled employee is a mechanic. Hiring is done on an informal word-of-mouth basis and by contacting the foremen. The packinghouse is in operation for a period of from 6 to 8 months but is subject to frequent lay-offs, and part days. All employees with the exception of 10 or 12 who are retained throughout the off season for maintenance purposes, are terminated during shutdowns and are hired as new employees when they return to work. Despite this fact, the superintendent in charge of the packinghouse testified that 90 percent of the personnel return from year to year.

The sectionizing and peeling department processes fruit for canning. Fruit is peeled and segmented through a series of mechanical and manual operations at the close of which it is placed in cans, closed, cooked, cooled, and packed in boxes. At peak operation, the department employs over 500 workers; the majority of whom are sectionizers and peelers. All of the department personnel is either unskilled or semiskilled labor performing essentially simple tasks. The sectionizers and peelers are on a piecework basis. The rest of the department, including graders, scalders, inspectors, checkers, syrup makers, machine operators, can cookers, and boxers is on an hourly rate. Hiring in this department, as in the case with the rest of the plant, is done chiefly by word-of-mouth and the Employer makes no effort to get in touch with former employees. This is supplemented by contracts with foreladies who have a personal following. Employees are terminated by the Employer for absence from work, during shut-downs, and at the end of the season. If rehired, they are classified as new employees.

The Employer contends that these departments consist largely of temporary and seasonal employees with little or no community of interest with other personnel and no expectation of reemployment. We do not agree and we find to the contrary. The alleged temporary nature of the packinghouse and the sectionizing and peeling department personnel is a factor which will be considered in the determination of eligibility for participation in the election hereinafter directed. We can perceive no appreciable difference in the working conditions and interests of these employees and those in the remainder of the plant. The Employer is engaged in a seasonal industry, and its employees are almost exclusively, as a result, seasonal and even migratory. However, contrary to the contention of the Employer, the seasonal nature of their employment does not *per se* operate to deny them the right to the processes of collective bargaining. Where no union has requested their inclusion, we have excluded seasonal employees from

bargaining units of permanent employees.⁶ We have also held that where, as here, the Petitioner has requested inclusion of seasonal employees with year-round workers and all the employees as one group have a sufficient community of interest, they may constitute an appropriate bargaining unit.⁷ The only appreciable difference in working conditions referred to herein is the difference between the pieceworkers and the hourly paid. We have previously held that differences in the mode of payment are not conclusive or controlling in unit determinations.⁸

The juice plant, with approximately 40 workers, and the concentrate plant, employing nearly 80, are the remaining production departments. These plants process fruit into juice and concentrate products. Both groups consist largely of unskilled labor, on an hourly pay rate, and subject to the same general working conditions and interests as the remainder of the plant personnel. They, also, are recruited at the beginning of the season by advertisements and word-of-mouth notification and are subject to the same termination procedures noted in the instance of the packinghouse and the sectionizing and peeling departments. A small maintenance, hauling, and warehouse department operates throughout the year. A substantial number of the 30 employees retained throughout the off season are selected from the seasonal production and maintenance personnel. We find that the production and maintenance employees of the Employer constitute a group with a community of interests sufficient to warrant establishment as a collective bargaining unit. The Employer, however, maintains that certain individuals and fringe groups should be excluded from such a unit.

Nurse and first aid attendants: A salaried graduate nurse is employed during the seasonal operations. She is assisted by first aid attendants who also keep records and prepare reports of injuries. In accordance with our usual custom, we shall exclude the nurse and the first aid attendants from the unit.⁹

Fresh fruit scale operator: The fresh fruit scale operator is held responsible for all fruit received in the canning operation. He weighs the fruit and records its origin and its eventual disposition in the plant. The operator is employed for each season on an hourly wage. The

⁶ See *Matter of St. Mary's Packing Co.*, 72 N. L. R. B. 596 and cases cited therein.

⁷ See *Matter of J. M. Smucker Company*, 75 N. L. R. B. 202 and cases cited therein; *Matter of Edgar F. Hurff Company*, 77 N. L. R. B. 762; cf. *Matter of Southern Fruit Distributors, Inc.*, 74 N. L. R. B. 72, where a sectionizing and peeling department was excluded from the unit on the finding that it was the only department where all employees were dismissed at the end of the season and there was a year-round continuity of employment in the rest of the plant.

⁸ See *Matter of General Motors Corp., Chevrolet Forge, Spring and Bumper Division*, 80 N. L. R. B. 145; *Matter of H. O. Canfield Company*, 76 N. L. R. B. 606.

⁹ See *Matter of Standard Oil Company (Indiana)*, 80 N. L. R. B. 1022; *Matter of Art Metal Construction Company*, 75 N. L. R. B. 80.

present scale operator, who has been employed in this position for several seasons, is the brother-in-law of the president of the Employer. In view of his close relationship to management, we shall exclude him from the unit.¹⁰

Construction workers: Although no employees are hired permanently for construction work, the Employer employs unskilled, hourly paid workers for incidental work as it arises. In view of the fact that the construction workers are casual employees whose work is not related to that of the production and maintenance personnel, we shall exclude them from the unit.¹¹

Cafeteria employees: The Employer maintains a cafeteria for the plant workers which is run by a manager and several employees. They perform the usual functions of that work classification and are on an hourly pay rate. Their employment is seasonal and they do not take part in production and maintenance work. The manager appears to have no authority to hire, discharge, or effectively recommend such action. Inasmuch as there is no showing that the working conditions and interests of the cafeteria employees differ substantially from those of the remainder of the unit hereinafter found appropriate, we shall include them in the unit.¹²

Bacteriologist and laboratory employees: The bacteriologist is a university graduate with a degree who performs tests and technical work. He is a salaried employee and works on a yearly basis. The laboratory also includes laboratory assistants who perform detail work for and under the direction of the bacteriologist. The assistants must be high school graduates, with some background in chemistry. They, also, are employed throughout the year and are on a salary pay basis. The bacteriologist is clearly a professional and technical employee. The laboratory assistants perform technical tasks under separate supervision and have little contact with the production and maintenance employees. We shall, therefore, exclude the bacteriologist and the laboratory assistants from the unit.¹³

Timekeepers: Personnel time records are maintained by three timekeepers who work in an office apart from the production rooms under the separate supervision of the personnel manager. They are hired for the duration of the season and terminated at its close. Prior pay-roll experience is usually required by the Employer of applicants for the position of timekeeper. While we have, on occasion included timekeepers who were employed as factory clericals, it is

¹⁰ See *Matter of Associated Electronic Enterprises, Inc.*, 80 N. L. R. B. 295.

¹¹ See *Matter of Clarkton Gramwood Products Company, Inc.*, 76 N. L. R. B. 1044; *Matter of Kansas City Power & Light Company*, 75 N. L. R. B. 609.

¹² See *Matter of Mississippi Products, Inc.*, 78 N. L. R. B. 873; *Matter of Western Electric Company, Incorporated*, 76 N. L. R. B. 400.

¹³ See *Matter of Cutter Laboratories*, 80 N. L. R. B. 213; *Matter of United States Gypsum Company*, 79 N. L. R. B. 869.

apparent that the duties and interests of these employees are separate and distinct from those of the production and maintenance employees. As a result, we shall exclude them from the unit.¹⁴

Fruit buyer: The fruit buyer is a salaried employee employed throughout the entire year to purchase quantities of citrus fruits for the Employer. The position requires native talent and a minimum of 5 years' experience and training. While he is not necessarily a professional employee, we are of the opinion that his interests are closely connected with those of management. Accordingly, we shall exclude the fruit buyer from the unit.¹⁵

Firemen: The firemen perform the usual functions of that classification. They watch the boilers, control the inflow of fuel and water, and see that proper steam pressure is maintained. There are two employees in this job; one on the day shift and one on at night. They do not interchange with the remainder of the plant personnel, are paid hourly rates, and are employed for the season only. There was no showing that the firemen have substantially different working conditions or interest from those of the remainder of the unit. We shall, therefore, follow our usual policy of including these employees in the unit.¹⁶

Brix testers and acid testers: The acid testers and brix testers perform essentially simple tests on fruit at stations inside the various departments. While a high school education is preferred and some knowledge of chemistry is helpful, the tests require only the exercise of judgment and a few days' experience. They work on seasonal basis and are paid by the hour. While the brix and acid testers do not interchange with the production and maintenance employees other than through contact at their stations, we believe the record shows their interests and working conditions to be identical. We will include the brix and acid testers in the unit.¹⁷

Stock clerk: The stock clerk works under the supervision of the personnel manager and receives all maintenance materials for the plant operation. He maintains a current stockroom inventory and records the disposition of materials. Familiarity with maintenance materials and 2 years' experience is required. The stock clerk is paid by the hour. While this employee is more experienced than the majority of the plant personnel and is under different supervision, we believe his interests are closely allied to those of the production and maintenance

¹⁴ *Matter of General Motors Corporation, Fisher Body Division-Van Nuys Plant*, 79 N. L. R. B. 341.

¹⁵ See *Matter of Vulcan Corporation*, 58 N. L. R. B. 733.

¹⁶ See *Matter of New York Steam Laundry, Inc., et al.*, 80 N. L. R. B. 1597; *Matter of McGraw-Curran Lumber Co., Inc.*, 79 N. L. R. B. 705.

¹⁷ See *Matter of Sompael Time Control, Inc.*, 80 N. L. R. B. 1250.

employees. In accord with our usual policy as to factory clerical workers, we shall include him in the unit.¹⁸

Vacuum pan operators and compressor room operators: The vacuum pan operators are highly skilled employees who were initially trained by the machine manufacturer. Three of these employees are assigned to the concentrate and frozen fruit operations of the plant. They are hired for each season and are on an hourly pay rate. They do not interchange with other personnel. The compressor room operators are also highly skilled and are required to have considerable experience and training in refrigeration, motors, compressors, and other mechanical equipment. The present operators were trained in the plant and were formerly maintenance employees. Their employment is seasonal and they are paid by the hour. Both the compressor room operators and the vacuum pan operators are engaged in the production process. In the absence of any cogent reason for their exclusion other than their superiority in skills, we find that the compressor room operators and the vacuum pan operators should be included in the unit.

Garage employees: The garage employees consist of two mechanics, one of whom is a foreman with authority to hire or discharge. We shall exclude the garage foreman from the unit in view of his supervisory authority. The mechanics maintain and repair the trucks and goats owned by the Employer and used for the harvesting and transport of fruit. Their employment is year-round and they do not interchange with other production and maintenance employees. No other labor organization desires to represent these employees. We shall include the garage mechanic in the unit.¹⁹

Inspectors and checkers: The *roving inspectors* are assigned to the sectionizing department and advise and assist the sectionizer in packing the fruit in the case as well as checking to see that the fruit is packed correctly. Their authority is limited to reporting continuing mistakes to the forelady. They are paid by the hour and their employment is seasonal. Only 2 to 3 months of experience is necessary for training as a roving inspector. *Piecework checkers* work in the packinghouse where they check the stamp on the packed box of fruit and keep records of individual production of the pieceworkers. They are also employed in the peeling room where they keep a tally of the amount of fruit processed by the peelers, and in the sectionizing plant where they check the number of cans filled by the sectionizers. The *case receiver* works in the warehouse and records the labels on cans of juice produced and placed in storage. The *basket inspector* works in the peeling room in conjunction with the piecework checker there and has the further duty of checking the quality of the fruit.

¹⁸ See *Matter of General Electric Company*, 80 N. L. R. B. 174.

¹⁹ See *Matter of Emd Co-Operative Creamery Association*, 79 N. L. R. B. 444.

The *packing inspector* works in the packinghouse and checks the individual packer's work to see that the goods are properly placed in the boxes. The pay basis, length of employment and experience required of the piecework checkers, case receivers, basket inspector, and packing inspector are similar to that noted for the roving inspectors. In no case can they hire or discharge nor was there any showing of authority effectively to recommend such action.

We have previously held that in the absence of such authority, the duty of reporting defective work is insufficient to constitute supervisory or managerial status.²⁰ We find that the roving inspectors, piecework checkers, case receivers, basket inspectors, and packing inspectors have interests, duties, and working conditions closely allied to those of the production and maintenance employees and we shall include them in the unit.²¹

We find that all production and maintenance employees of the Employer's plant at Auburndale, Florida, including cafeteria employees, firemen, brix testers, acid testers, the stock clerk, vacuum pan operators, compressor room operators, roving inspectors, piecework checkers, case receivers, basket inspectors, packing inspectors, garage employees and seasonal employees, but excluding the nurse, first aid attendants, the fresh fruit scale operator, truckdrivers,²² construction workers, the bacteriologist, laboratory assistants, timekeepers, the fruit buyer, office and clerical employees, agricultural employees, night watchmen and guards, professional employees, and all supervisors as defined in the amended Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The determination of representatives:

The Employer contends that a great number of its employees in the unit we have found appropriate, are not only seasonal but temporary employees. The high rate of absenteeism existing in the sectioning and peeling department and in the packinghouse is cited as showing that these employees do not have sufficient interest in their employment to participate in the election of collective bargaining representatives.

Further, the Employer maintains that these employees do not have a reasonable expectation of reemployment after termination at the end of the season's operations due to the migratory nature of the labor it employs and the Employer's policy of making no effort to contact

²⁰ See *Matter of Luminous Processes, Inc.*, 71 N. L. R. B. 405.

²¹ See *Matter of United States Gypsum Company*, 78 N. L. R. B. 849; *Matter of Clayton Mark Company*, 76 N. L. R. B. 230.

²² The truckdrivers are covered under a contract between the Employer and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL. Neither party desires their inclusion in the unit and in accordance with our usual custom we shall exclude them. See *Matter of Clayton Mark & Company*, *supra*, footnote 21.

and rehire previous employees. As we have noted, *supra*, this contention bears on the eligibility of the employees to vote in the election hereinafter ordered rather than on their inclusion in the unit found appropriate. Of necessity, these employees will be represented by the Petitioner if it wins the election we are directing.²³ We are of the opinion that their tenure of employment is sufficient to allow their participation in the election. Although the Employer keeps no records as to reemployment, the superintendent in charge of the packing-house testified that 90 percent of his employees returned from year to year. There was evidence that the high rate of absenteeism in the sectionizing and peeling department is partially the result of factors such as the limited work space.

The four main production departments at the Employer's plant do not begin or cease operation at the same time and are subject to seasonal variations. The peak of the season, according to the dates submitted by the Employer, appears to be in January, and, as we have noted, the plant employment reaches a low of 30 employees in April and May. Under these circumstances, an election held at this time would not be representative. We shall direct an election to be held at or about the peak of the next seasonal production period, on a date to be determined by the Regional Director, among the employees in the appropriate unit who are employed during the pay-roll period immediately preceding the date of the issuance of Notice of Election by the Regional Director.

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 on a date to be selected by the Regional Director in accordance with the instructions set forth in paragraph numbered 5, above, under the direction and supervision of the Regional Director for the Tenth Region, 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 numbered 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, and employees who did not work during such pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who thereafter quit or are discharged for cause and are not rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented for purposes of collective bargaining, by Citrus Workers Union #24218, AFL.

²³ See *Matter of Providence Public Market Company*, 79 N. L. R. B. 1482 and cases cited therein.