

In the Matter of ARENA-NORTON Co.; ARIZONA VEGETABLE DISTRIBUTORS; BURREL COLLINS; COMER PRODUCE Co.; EATON FRUIT Co. FRANK FERNANDEZ; S. A. GERRARD Co.; GOLDSBY-EVANS PRODUCE Co.\* WM. N. HEYMAN; FRED G. HILVERT Co.; HOLMES FARMS. ISABELL-HARTNER Co.; JOHNS & HAGIN; M. B. M. FARMS; L. T. MALONEY Co.; McELROY-BRICEY & GURREN; H. B. NICKELL,\* JOSEPH PALMISANO Co.; RICHMAN-JUSTMAN-FRANKENTHAL Co. SALINAS VALLEY VEGETABLE EXCHANGE; FLOYD N. SMITH Co., LEO C. SMITH Co.; STANLEY & McDANIELS, TOLBY BROTHERS; VALLEY PRODUCE DISTRIBUTORS; ZIETMAN PRODUCE Co. and FRESH FRUIT AND VEGETABLE WORKERS UNION, LOCAL 78, FTA-CIO

*Cases Nos. 21-R-2859 to 21-R-2884, inclusive.—Decided June 30, 1945*

*Messrs. Jennings, Salmon & Trask, by Mr. Riney B. Salmon, of Phoenix, Ariz., for the Companies.*

*Messrs. Gladstein, Grossman, Sawyer & Edises, by Mr. Robert E. Treuhart, of Oakland, Calif.; and Mr. Charles Law, of Phoenix, Ariz., for the Union.*

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

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon 21 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 Arena-Norton Co., Tolleson and Mesa, Arizona, Arizona Vegetable Distributors, Tolleson, Arizona; Burrel Collins, Phoenix, Arizona; Comer Produce Co., Tolleson and Mesa, Arizona; Eaton Fruit Co., Alhambra, Arizona; Frank Fernandez, Alhambra, Arizona; S. A. Gerrard

\* The names of these Companies have been corrected in accordance with evidence disclosed at the hearing

Co., Tolleson and Mesa, Arizona; Goldsby-Evans Produce Co., Tolleson, Arizona; Wm. N. Heyman, Alhambra, Arizona; Fred G. Hilvert Co., Campo and Tempe, Arizona; Holmes Farms, Tolleson, Arizona; Isabell-Hartner Co., Mobest, Arizona; M. B. M. Farms, Tolleson, Arizona; L. T. Maloney Co., Alhambra, Arizona; Joseph Palmisano Co., Tolleson, Arizona; Richman-Justman-Frankenthal Co., Tolleson, Arizona; Salmas Valley Vegetable Exchange, Tolleson, Arizona; Floyd N. Smith Co., Alhambra, Arizona; Stanley & McDaniels, Tolleson, Arizona; Tolby Brothers, Tolleson, Arizona; and Valley Produce Distributors, Tolleson and Tempe, Arizona, herein collectively called the Companies, the National Labor Relations Board consolidated the cases by an order dated May 24, 1945,<sup>1</sup> and provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. Said hearing was held at Phoenix, Arizona, on June 6, 1945. The Companies 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 Companies moved, on various occasions, for a dismissal of the petitions. The Trial Examiner referred the motions to dismiss to the Board for ruling. The motions are hereby denied.<sup>2</sup> The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup> All parties were afforded an opportunity to file briefs with the Board. On June 15, 1945, a "motion" was filed with the Board by the Companies urging, in effect, that the petitions be dismissed on the ground that the Board has no jurisdiction over the employees involved herein. This motion, in effect, a repetition of the previous motions to dismiss, is also denied.

Upon the entire record in the case, the Board makes the following

<sup>1</sup> In addition, petitions affecting employees of Johns & Hagin, Phoenix, Arizona (Case No. 21-R-2871); McElroy-Brickey & Gurren, Tolleson, Arizona (Case No. 21-R-2874); H. B. Nickell, Tolleson, Arizona (Case No. 21-R-2875); Leo C. Smith Co., Alhambra, Arizona (Case No. 21-R-2880); and Zietman Produce Co., Phoenix, Arizona (Case No. 21-R-2884), were filed by the Union, and these cases were covered by the order of consolidation. These cases are hereby severed from this consolidated proceeding and continued before the Board.

<sup>2</sup> In support of these motions, the Companies contended that (a) no employer-employee relationship existed either at the time of the filing of the petitions or at any subsequent time up to and including the date of the hearing; (b) the Union submitted no documentary evidence that it represented any of the Companies' melon packing employees, nor could it, since none had been employed either at the time of the filing of the petitions or at the date of the hearing, and (c) the employees whom the Union seeks to represent are agricultural workers, and, therefore, not subject to the Board's jurisdiction. We are of the opinion that these contentions are without merit. See *Matter of George G. Avocill, et al.*; 13 N L R B 411, *Matter of Alaska Salmon Industry, Inc.*, 61 N L R B 1508, *Matter of Arcana-Norton Company, et al.*, 60 N L R B 1166 and cases cited therein.

<sup>3</sup> The Companies specifically objected to the admission into evidence of the petitions affecting Arcana-Norton Co. and Burrell Collins on the ground that these Companies were not served with proper copies thereof. However, the Trial Examiner correctly overruled the objection, since all petitions contained virtually the same allegations, the other 19 Companies were served with correct copies, all Companies were represented by the same counsel, and the difference between the copies served upon these 2 Companies and the originals filed with the Board was relatively insignificant. It is clear that these 2 Companies were in no way prejudiced.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANIES

In a prior proceeding, the Board found that all the Companies, except for Tolby and Goldsby-Evans Produce Co., which were not parties thereto, are engaged in commerce within the meaning of the Act.<sup>4</sup>

Tolby Brothers expects to engage between 30 to 40 workers during its melon packing season, and to pack between 60 and 85 carloads of melons, "probably every car loaded [to be] shipped outside the State of Arizona."

Goldsby-Evans Produce Co. expects to employ approximately 40 workers and to "ship" between 200 and 300 carloads of melons, 90 percent of which "will be shipped out of the State of Arizona."

The record indicates that the melon packing season in the Salt River Valley area, in which the Companies are located, takes place between June 20 and August 20;<sup>5</sup> and that, during the 1944 melon season, shipments of melons from this area consisted of 4,008 carloads of cantalopes, 62 carloads of mixed melons, and 1,188 carloads of honeydews, approximately 90 percent of which was shipped outside the State of Arizona.

In view of the foregoing, 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 Food 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

On April 30, 1945, the Union requested recognition from each of the Companies involved herein as the representative of certain of its employees. On May 11, 1945, counsel for all Companies refused this request in their behalf.

No documentary evidence of substantial interest among the employees

<sup>4</sup> *Matter of Arcana-Norton Company, supra*. There, the Board found that these 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, employ persons for the purpose of handling, sorting, and packing," and that "more than 85 percent of all shipments [of mixed vegetables] made by each Company was consigned to points outside the State of Arizona."

The present record specifically indicated that (a) Salinas Valley Vegetable Exchange, one of the Companies involved in the prior proceeding, will employ approximately 50 workers, and anticipates packing about 75 carloads of melons, all of which will be shipped outside the State of Arizona; (b) Holmes Farms, also a party to the last proceeding, "will probably" employ about 15 workers, and expects to ship between 50 and 75 carloads of melons "nearly or all of which will be shipped" outside the State of Arizona; and (c) Fred G. Hulvert Co., which was also a party to the last proceeding, expects to employ 80 workers to pack approximately 76,000 cantalopes, and a like number to pack approximately 144,000 honeydews, all of which will be shipped outside the State of Arizona.

<sup>5</sup> The cantalope packing season ends approximately July 20, and the honeydew and mixed melon packing season terminates about August 20.

herein sought by the Union was introduced at the hearing. However, the requirement of such evidence is an administrative matter, resting solely in the Board's discretion. We are aware that, because of the nature of this particular industry, it would have been difficult to adduce such evidence at the customary time. We shall, however, as indicated in Section V, *infra*, require that such evidence be submitted prior to the holding of the elections hereinafter directed.

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

Substantially in accordance with the agreement of the parties, we find that all employees handling melons at each of the packing sheds of the Companies, excluding clerical employees, watchmen, employees on a monthly or yearly salary, officials, 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 units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

The melon packing employees sought by the Union are seasonal workers, the majority of whom are similarly engaged in other areas, but who customarily migrate to the Salt River Valley area when its melon packing season commences, and the remainder of whom are persons presently engaged in that area packing other commodities. As noted above, the melon packing season in the Salt River Valley area takes place between June 20 and August 20. Inasmuch as the season is of limited duration, it is virtually impossible, during its short span, for a labor organization to file petitions, submit documentary proof of representation at or before a hearing, have the petitions fully processed in sufficient time for the holding of representative elections, and, if certified, bargain collectively. Consequently, we entertained the petitions herein and conducted the hearing prior to the commencement of the melon packing season. Since, at that time, the Companies' melon packers were not employed, the evidence of interest among such future employees which was adduced was, at best, speculative. Yet, we deem it essential that documentary evidence of substantial representation be presented before we conduct elections, and, accordingly, we shall direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot to be held between June 20 and August 20, 1945, among the employees in the appropriate units set forth in Section IV, *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, *provided*, however, that, prior thereto, the Union presents to the Regional Director or his duly authorized agent, documentary proof of substantial representation among the employees in such unit.<sup>6</sup>

#### 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 Arená-Norton Co., Tolleson and Mesa, Arizona; Arizona Vegetable Distributors, Tolleson, Arizona, Burrell Collins, Phoenix, Arizona; Comer Produce Co., Tolleson and Mesa, Arizona, Eaton Fruit Co., Alhambra, Arizona; Frank Fernandez, Alhambra, Arizona; S. A. Gerrard Co., Tolleson and Mesa, Arizona, Goldsby-Evans Produce Co., Tolleson, Arizona, Wm N. Heyman, Alhambra, Arizona; Fred G. Hilvert Co., Campo and Tempe, Arizona, Holmes Farms, Tolleson, Arizona; Isabell-Hartner Co., Mobest, Arizona; M. B. M. Farms, Tolleson, Arizona; L. T. Maloney Co., Alhambra, Arizona, Joseph Palmisano Co., Tolleson, Arizona; Richman-Justman Frankenthal Co., Tolleson, Arizona; Salinas Valley Vegetable Exchange, Tolleson, Arizona, Floyd N. Smith Co., Alhambra, Arizona, Stanley & McDaniels, Tolleson, Arizona; Tolby Brothers, Tolleson, Arizona; and Valley Produce Distributors, Tolleson and Tempe, Arizona, separate elections by secret ballot shall be held as early as possible between June 20 and August 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 the employees in the units found appropriate in Section IV, above, who are employed within an appropriate unit on the day such unit 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, for the purposes of collective bargaining, *provided*, however, that, prior to such election, documentary proof of substantial representation among the employees in said unit is presented by the above organization to the Regional Director or his duly authorized agent.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Elections.

<sup>6</sup> At the hearing evidence was adduced indicating that several of the Companies might not be engaged in packing melons during the 1945 season. If, of course, any Company is not so engaged, no election affecting it will be held.