

In the Matter of LIBBY, McNEILL & LIBBY and CANNERY AND FOOD  
PROCESS WORKERS UNION, C. I. O.

*Case No. 19-R-1597.—Decided October 11, 1945*

*Messrs. Hugh L. Biggs and Kenneth C. Hardwicke*, both of Portland, Oreg., for the Company.

*Messrs. Harry George and Al Hartung*, both of Portland, Oreg., for the CIO.

*Messrs. Edwin D. Hicks and Al Verhaaf*, both of Portland, Oreg., for the AFL.

*Mr. Glenn L. Moller*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Cannery and Food Process Workers Union, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Libby, McNeill and Libby, Portland, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. The hearing was held at Portland, Oregon, on July 25, 26, 30, and 31, and August 1 and 2, 1945. The Company, the CIO, and Cannery Workers Union, Local 20707, AFL, herein called the AFL, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Trial Examiner referred to the Board ruling on a motion by counsel for the AFL to strike certain testimony. The motion is hereby denied. The AFL moved to dismiss the petition on the grounds that there is in existence a collective bargaining contract constituting a bar to this proceeding, and that there is a suit to construe this contract pending before a State court, thus depriving this Board of jurisdiction. The AFL also moved that this proceeding be held in abeyance pending disposition of proceeding before the State court. The motions are denied. The contract is not a bar for the reasons hereinafter set forth. An action on a contract in a State court cannot affect

the duty of this Board to investigate and determine bargaining representatives.<sup>1</sup> 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

Libby, McNeill & Libby is a Maine corporation with its principal office and plant in Chicago, Illinois. The Company operates plants in various States of the United States, including a food processing and canning plant in Portland, Oregon. Only the Company's Portland plant is involved in this proceeding.

The Company annually uses raw materials valued in excess of \$1,000,000, of which approximately 40 percent is shipped to the Portland plant from points outside the State of Oregon. The Company produces annually finished products valued in excess of \$1,000,000, of which approximately 90 percent is shipped from the Portland plant to points outside the State of Oregon.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Cannery and Food Process Workers Union, affiliated with the Congress of Industrial Organizations is a labor organization within the meaning of the Act.

Cannery Workers Union, Local 20707, presently functioning under the direction of an administrator appointed by the American Federation of Labor, is a labor organization within the meaning of the Act. We do not pass upon the question whether the present Local 20707 is the same entity as Local 20707, affiliated with the American Federation of Labor, the organization which has represented the Company's employees in the past.

#### III. THE QUESTION CONCERNING REPRESENTATION

In 1937 the American Federation of Labor organized a federal labor union, designating it as Cannery Workers Union, Local 20707. Thereafter, a council of similar federal unions was organized in the Oregon canning industry and Local 20707 became a member of that council. The Company entered into its first collective bargaining agreement with Local 20707 in 1937, and thereafter executed annual contracts with that union. In 1943, at the insistence of the local, the Oregon State Cannery Council and the American Federation of Labor

<sup>1</sup> *Matter of Land O'Lakes Dairy Company*, 48 N. L. R. B. 1028, and cases cited in footnote 2 therein.

were added as parties in the recognition clause of the new contract. When a new contract was negotiated in 1944, the Council and the American Federation of Labor were again named as parties to the contract. Early in 1945, however, after the requisite notice of desire to reopen had been given by the local, the negotiating officers of the local advised the Company that, in view of a possibility that the local would change its affiliation, they wished to omit from the contract any reference to the Oregon State Cannery Council or to the American Federation of Labor. When the parties met again to negotiate, the local proposed a new recognition clause which was finally agreed upon and incorporated into the contract, which was executed by the Company on May 25, 1945, the local having executed it several days before. This clause contains the following language:

This agreement, made and entered into \* \* \* between \* \* \* the Company, and Cannery Workers Union, Local No. 20707, located at Portland, Oregon, or their successor which the parties agree may be certified by the National Labor Relations Board during the life of this contract, hereinafter referred to as the Union.

Both the language of the contract and other evidence<sup>2</sup> satisfy us that the parties intended, when they negotiated the contract, that Local 20707 was not to remain the bargaining agent if a new representative was certified by the Board and we so find.<sup>3</sup> Such a contract is not a bar to a present determination of representatives.<sup>4</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

<sup>2</sup> Thus, on June 25, 1945, the Company wrote to the group which is now affiliated with the CIO, that the Company had recognized Local 20707 "for the life of the contract or until a successor should be certified by the National Labor Relations Board. We are recognizing Local 20707 since we are without advice that any successor union has been certified."

<sup>3</sup> In view of our construction of the contract, we find it unnecessary to decide whether, as the CIO contends and the AFL denies, the CIO group, rather than the group now acting through an administrator under the name Local 20707, is the same as, or the legal successor to, the labor organization which negotiated the contract. This would involve judgment as to the effect of sundry events, including an order from the American Federation of Labor to affiliate with the Teamsters Union and votes by the local to refuse to comply with this order and to seek other affiliations.

<sup>4</sup> *Matter of Farr Alpaca Company, Inc.*, 9 N L R B 1208, *Matter of The Steel Storage Pile Company*, 27 N L R B 210, *Matter of Willlys Overland Motors, Inc.*, 35 N L R B 549

<sup>5</sup> The Field Examiner reported that the CIO submitted a certified list of designation cards which bore 227 apparently genuine original signatures of persons listed on the Company's pay roll of June 21, 1945, which contained the names of 301 employees in the appropriate units.

Local 20707 submitted evidence of a membership of 267, of which 135 appeared on the aforesaid pay roll. The names of 130 of the persons listed on the pay roll and on the records of Local 20707 also appeared on the CIO list.

## IV. THE APPROPRIATE UNIT

In substantial conformity with the stipulation of the parties, we find that all employees of the Company at its Portland plant, excluding all clerical employees, the chief clerk, general superintendent, general foreman, second general foreman, department foremen, head foreladies, and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

## V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

## DIRECTION OF ELECTION

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 Libby, McNeill & Libby, Portland, Oregon, 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 Nineteenth 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 unit found appropriate in Section IV, above, who were employed during the payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll 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 those employees who have since quit or been discharged for cause and who have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Cannery and Food Process Workers Union, C. I. O., or by Cannery Workers Union, Local 20707, AFL, for the purposes of collective bargaining, or by neither.