

In the Matter of NORTHWEST PACKING Co. and CANNERY AND FOOD PROCESS WORKERS UNION, C. I. O.

In the Matter of NORTHWEST PACKING Co. and CANNERY WORKERS UNION, LOCAL 20707, A. F. L. and CANNERY AND FOOD PROCESS WORKERS UNION, PORTLAND AREA

Cases Nos. 19-R-1598 and 19-RE-24, respectively.—Decided October 11, 1945

Mr. Hy. Samuels, of Portland, Oreg., for the Company.

Mr. Harry George, of Portland, Oreg., for the CIO.

Messrs. Edwin D. Hicks and Al Verhaaf, both of Portland, Oreg., for Local 20707.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petitions duly filed by Cannery and Food Process Workers Union, C. I. O., herein called the CIO, and by Northwest Packing Co., herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of employees of the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. The hearing was held at Portland, Oregon, on July 27, 1944. The Company, the CIO, and Cannery Workers Union, Local 20707, A. F. of L., herein called Local 20707, 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. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Northwest Packing Co., an Oregon corporation with its office and plant located in Portland, Oregon, is engaged in the processing and canning of fruits and vegetables.

During the year 1944 the Company handled at its Portland plant products valued at approximately \$250,000, more than 90 percent of which was received from local sources. During the same period the Company produced finished products valued at approximately \$500,000, of which approximately 90 percent was shipped from the Company's 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, and we so find.

II. THE ORGANIZATIONS INVOLVED

Cannery and Food Process Workers Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Cannery Workers Union, Local 20707, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to either Union as the exclusive bargaining representative of its employees unless it is certified by the Board in an appropriate unit.

In October or November 1941, following a consent election in which only Local 20707 was involved, the Company recognized Local 20707 as the exclusive bargaining representative of its employees and shortly thereafter entered into a collective bargaining agreement with that union. Annual contracts were executed by the parties thereafter, the last contract having been executed in 1944, covering the period April 1, 1944 to March 1, 1945. This contract, which contains a 60-day automatic renewal clause, was reopened by Local 20707 in a letter to the Company dated December 28, 1944, stating that the union wished "to reopen the agreement for adjustment of wages, hours and working conditions." Negotiations were commenced in January 1945 and ended in disagreement on all issues under discussion, with the sole exception of vacations. The disputed issues were then referred to Conciliation Service and then to the Regional War Labor Board.

These issues included requests for a general wage increase, overtime pay, night differentials, check-off and a most-favored-employee clause. The Regional War Labor Board issued its Directive Order on June 21, 1945.

Meanwhile, however, on June 8, 1945, the officers of Local 20707 notified the Company that the local had voted to change its affiliation to the Seafarers' International Union, AFL, and claimed to represent a majority of the Company's employees.¹ On June 12, 1945, the Company filed its petition, alleging that two labor organizations were claiming to represent its employees. On June 28, 1945, the CIO filed its petition for certification.² The Company has refused to execute the contract finally ordered by the War Labor Board because of the unresolved question concerning representation.

Local 20707 contends that the contract was not terminated by its letter, but that it was merely reopened to negotiate amendments; that the 1944-45 contract will therefore remain in effect for another year unless amended. The contract provides, however, that it may be terminated by either party at any time during negotiations.³ Clearly, therefore, the parties, at the time of the CIO claim, were operating under a contract terminable at will. Such a contract is not a bar to a determination of representatives.⁴

Local 20707 also seeks to rely upon the *Allis-Chalmers* doctrine.⁵ As we have frequently pointed out, the principle enunciated in that decision is limited to situations where a newly certified or recognized union has been denied a fair opportunity to demonstrate its ability to obtain for its adherents the benefits of collective bargaining because of delays occasioned by its resort to the orderly processes of other governmental agencies.⁶ In the instant proceeding Local 20707 has been the statutory representative since 1941 and enjoyed a continuous contractual relationship with the Company until March 1, 1945. We find that the proceedings before the War Labor Board do not bar a present determination of representatives.

¹ On June 12, 1945, the Seafarers filed a petition for certification with the Board, but on July 5, 1945, withdrew its petition.

² The Company's petition, in describing the interested parties, names "L. D. McLain, Cannery and Food Process Workers Union, Portland Area." The CIO petition is signed by L. D. McLain. Although the record is not explicit, it is evident that the group of employees on whose behalf the Seafarers' petition had been filed is the same group which now constitutes the CIO adherents.

³ In the event that such notice [to terminate or reopen] is given prior to March 1st as hereinabove provided, and negotiations are begun, the terms of the agreement as of the date of such notice shall remain in full force and effect during and until the conclusions of such negotiations or until either party gives notice to the other of the termination and cancellation of said negotiations and agreement."

⁴ *Matter of Fischer Lumber Co.*, 62 N. L. R. B. 543.

⁵ See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

⁶ *Matter of Foster-Grant Co., Inc.*, 54 N. L. R. B. 802; *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268.

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.⁷

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

IV. THE APPROPRIATE UNIT

We find in substantial accordance with the agreement of the parties, that all employees at the Company's Portland plant, excluding the field man, office clerical employees, the superintendent, general foreman, warehouseman, head mechanic, receiving foreman, head forelady, foreladies,⁸ 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

The CIO alleges that the intervening AFL federal local no longer exists and is hence not entitled to a place on the ballot.⁹ The record shows, however, that an organization, calling itself Local 20707 and administered by a representative of the AFL, still has dues paying members and officers, and claims the right to administer the collective bargaining agreement. We shall accord that organization a place on the ballot.

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,

⁷ The Field Examiner reported that the CIO submitted 24 authorization cards, dated between June 26 and July 11, 1945, and that there are between 4 and 75 employees in the alleged appropriate unit, depending upon the amount of food being processed.

Local 20707 relies upon its past contractual relationship with the Company to establish its interest.

⁸ Although the Company and Local 20707 have considered the foreladies to be within the unit, the record shows that the foreladies have plenary authority to discharge and discipline employees in the absence of the head forelady.

⁹ The CIO contends that because the AFL has instructed the local to affiliate with the Teamsters Union these instructions automatically make the Union a local of the Teamsters, thereby destroying the federal. In addition, the CIO claims that the AFL local ceased to exist when a majority voted to affiliate with the CIO.

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 Northwest Packing Co., 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 pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll 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 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, A. F. L., for the purposes of collective bargaining, or by neither.