

IN THE MATTER OF NORTHERN PACKING CORPORATION *and* FISH CANNERY  
WORKERS' UNION OF THE PACIFIC, SAN FRANCISCO BAY AREA,  
A. F. OF L.

*Case No. 20-R-1453.—Decided October 24, 1945*

*Mr. C. Richard Lange and George J. Christo, of San Francisco, Calif., for the Company.*

*Mr. Charles J. Janigian, of San Francisco, Calif., and Mr. George Issel, of Richmond, Calif., for the A. F. of L.*

*Gladstein, Grossman, Sawyer & Edises, by Doris B. Marasse, of San Francisco, Calif., for the C. I. O.*

*Mr. John E. Lawyer, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Fish Cannery Workers' Union of the Pacific, San Francisco Bay Area, A. F. of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Northern Packing Corporation, San Francisco, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert E. Tillman, Trial Examiner. Said hearing was held at San Francisco, California, on August 28, 1945. At the commencement of the hearing, the Trial Examiner granted a motion of Food, Tobacco, Agricultural and Allied Workers Union of America, Local No. 7, herein called the C. I. O., to intervene. The Company, the A. F. of L., and the C. I. O. appeared at and participated in the hearing, and 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 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

Northern Packing Corporation, a California corporation, is engaged in the business of processing and packing sardines at its only plant in San Francisco, California. During the 1944-1945 season, the Company sold products, consisting of canned fish, fish meal, and fish oil, having a value of \$551,440.20. Approximately 55 percent of the canned fish was delivered to the armed forces, and virtually all of the remaining canned fish was shipped to points outside the State of California. Approximately 23 percent of the fish meal and 35.2 percent of the fish oil was likewise shipped to points outside the State.

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

#### II. THE ORGANIZATIONS INVOLVED

Fish Cannery Workers' Union of the Pacific, San Francisco Bay Area, affiliated with the American Federation of Labor, and Food, Tobacco, Agricultural and Allied Workers Union of America, Local No. 7, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

For approximately 7 years the Company and a predecessor of the C. I. O., have been parties to collective bargaining agreements.<sup>1</sup> The last contract, and the one in dispute, became effective August 1, 1943. It provides in part as follows:

Section 18. *Renewal.* This agreement shall be effective immediately upon its execution, and shall remain in effect for each succeeding year thereafter, unless either party shall give written notice to the other party of its intention to alter or modify any of the terms or provisions the party intends to make the subject of alteration or modification, said notice to be given sixty (60) days prior to August 1, 1943, [sic] or August 1st of any succeeding year thereafter. Then only those terms or provisions shall

<sup>1</sup> In December 1938, an affiliate of United Cannery, Agricultural, Packing and Allied Workers of America, C. I. O., was selected as the collective bargaining representative of the Company's production and maintenance employees in a consent election (Case No. 20-R-312). In December 1944, the United changed its name to Food, Tobacco, Agricultural and Allied Workers of America, C. I. O. We have taken notice of this change of name in prior cases before the Board. See *Matter of Allen and Sandilands Packing Company, et al.*, 60 N. L. R. B. 1007.

be subject for negotiations, and the remainder shall remain in full force and effect. Nothing contained herein shall prevent either party from giving notice, at the time it give [sic] notice herein provided for, of its intention to add new provisions to the agreement. . . .

On August 5, 1944, the C. I. O.'s predecessor and the Company executed a memorandum agreement which recited that the 1943 contract was to be continued for another year since neither party had given notice of a desire to change it.<sup>2</sup>

On February 2, 1945, the A. F. of L. filed a petition with the Board for investigation and certification as the representative of the Company's employees, and on April 22, 1945, withdrew the petition upon the advice of the Regional Director.<sup>3</sup> In May 1945, the A. F. of L. orally renewed its claim and requested the Company to bargain.<sup>4</sup> On May 25, 1945, more than 60 days prior to the anniversary date of the contract, the C. I. O. sent a letter to the Company in which it requested negotiations to start for the modification of 9 or 10 clauses of the contract, and the addition of several others, all of a substantial character. The Company refused to recognize or negotiate with either union until it had been certified by the Board.

The C. I. O. apparently contends that its contract is a bar to the present proceeding. We find no merit in this contention. Not only did the A. F. of L. give oral timely notice of its claim to representation in May 1945,<sup>5</sup> but the May 25, 1945, request of the C. I. O. to reopen the contract for consideration of various substantial changes was also seasonable, thereby forestalling the automatic renewal of the contract.<sup>6</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. of L. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>7</sup>

<sup>2</sup> In view of the memorandum agreement, and based on the entire record, we construe Section 18 of the 1944 agreement as meaning that if timely notice of intention to alter or modify is given by either contracting party this forestalls the automatic renewal of the contract and all provisions not subject to change are to continue in effect until an agreement is reached concerning the matters to be altered, at which time a new contract is to be consummated by the parties, accordingly, once the notice contemplated by Section 18 is given, the contract cannot constitute a bar.

<sup>3</sup> Case No. 21-R-1304.

<sup>4</sup> By a letter dated May 31, 1945, the A. F. of L. again advised the Company that it represented a majority of the production and maintenance employees and requested the Company to negotiate an agreement. The Company's representative who received the letter could not remember the exact date of receipt. However, the envelope containing the letter bore post office stamps of June 2 and 4, 1945.

<sup>5</sup> See *Matter of Scintilla Magneto Division, Bendix Aviation Corporation*, 61 N. L. R. B. 520; *Matter of National Fireworks, Inc.*, 61 N. L. R. B. 1597.

<sup>6</sup> See *Matter of Red Jacket Manufacturing Company*, 62 N. L. R. B. 740; *Matter of Goetz Ice Co.*, 61 N. L. R. B. 761.

<sup>7</sup> The Board agent reported that the A. F. of L. submitted 91 authorization cards, 89 of which were dated in July and August 1945. The C. I. O. relies upon the 1943 contract for its interest in the proceeding. There are approximately 130 employees in the appropriate unit.

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.

#### IV. THE APPROPRIATE UNIT

We find, in accordance with the agreement of the parties, that all production and maintenance employees of the Company, excluding office and clerical employees, the superintendent, assistant superintendent, foremen, and all 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.<sup>8</sup>

#### V. THE DETERMINATION OF REPRESENTATIVES

The operations of the Company are seasonal. The 1945-1946 season commenced August 1, 1945, and will end February 15, 1946. With the exception of a small maintenance and repair crew retained the entire year, the Company's employees work only on the days there are sardines to be canned or processed. It also appears that the number and identity of the Company's employees may vary materially from pay roll to pay roll.

The A. F. of L. urges that all employees within the appropriate unit who, prior to the date of this Decision and Direction of Election, have worked a total of 6 or more days during the 1945-1946 season, be permitted to vote. The C. I. O. agrees, but requests that the working period be fixed at 10 days. The Company takes no position except to urge that whatever period is selected should be such as will allow a fair and substantial number of its employees to participate in the election.

We are of the opinion that the shorter working period will allow a more representative number of employees to participate in the election. Accordingly, we shall direct that the question concerning representation which has arisen be resolved by means of a secret ballot among the employees<sup>9</sup> in the appropriate unit who, prior to the date

<sup>8</sup> Included among the production and maintenance employees is one machinist whom the International Association of Machinists has bargained for in the past pursuant to an agreement with the Company which has now expired. Although served with notice of the hearing, the Machinists did not appear, and has not indicated that it has any interest in the proceeding.

<sup>9</sup> The parties agree, and we conclude, that "Servicemen," who are occasionally employed by the Company, should not be eligible to vote. However, employees of the Company who are in the armed forces of the United States and who worked the requisite number of days during the 1945-1946 season prior to their entry into the service, or who were employed on a permanent basis as part of the maintenance and repair crew retained by the Company during the entire year but did not work the requisite number of days during the 1945-1946 season because of their entry into the service, shall be eligible to participate in the election if they appear in person at the polls.

of this Decision and Direction of Election, have worked a total of 6 or more days during the 1945-1946 season, subject to the limitations and additions set forth in the Direction.<sup>10</sup>

### 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 Northern Packing Corporation, San Francisco, California, 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 Twentieth 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, prior to the date of this Decision and Direction of Election, have worked a total of 6 or more days in the 1945-1946 season, including employees who did not work 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 any who have 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 Fish Cannery Workers' Union of the Pacific, San Francisco Bay Area, A. F. of L., or by Food, Tobacco, Agricultural and Allied Workers Union of America, Local No. 7, C. I. O., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

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<sup>10</sup> The C. I. O. contended inferentially that a fair election could not be held at the present time because of alleged unfair labor practices in which the Company engaged. The Regional Director refused to issue a complaint premised upon charges embracing these alleged unfair labor practices, and, on appeal, his refusal was sustained by the Board. Accordingly, we find no reason to postpone the election.