

IN THE MATTER OF CALIFORNIA PACKING CORPORATION *and* LOCAL 760A,
FRUIT AND VEGETABLE PACKERS AND WAREHOUSEMEN'S UNION, AFFILI-
ATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.

Case No. 19-R-1558.—Decided April 3, 1946

Hampson, Koerner, Young & Swett, by *Mr. R. R. Morris*, of Port-
land, Oreg., and *Mr. A. W. Eames, Jr.*, of Portland, Oreg., for the
Company.

Mrs. Ethel P. Way, of Yakima, Wash., and *Mr. Charles C. Hughes*,
of Seattle, Wash., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 760A, Fruit and Vegetable Packers and Warehousemen's Union, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of California Packing Corporation, Yakima, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. The hearing was held at Yakima, Washington, on July 6, 1945. The Company and the Union 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. At the hearing the Company moved to dismiss the petition. The Trial Examiner referred this motion to the Board. For reasons stated hereinafter, the motion is hereby denied. 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:

66 N. L. R. B., No. 180.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

California Packing Corporation, a New York corporation, is engaged in the business of processing and canning fruits, vegetables, and other products. It operates numerous plants throughout the United States, including the plant at Yakima, Washington, which is the subject of this proceeding. The Yakima plant is devoted exclusively to the canning of fruit, substantially all of which is obtained from growers within the State of Washington. In connection with its canning operations, the Yakima plant also uses annually sugar, salt, cans, cartons, labels and glass jars, of a value in excess of \$100,000, of which approximately 25 percent is shipped to the plant from sources outside the State of Washington. The same plant annually produces finished products valued at more than \$500,000, of which at least 70 percent is shipped out of the State.

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

II. THE ORGANIZATION INVOLVED

Local 760A, Fruit and Vegetable Packers and Warehousemen's Union, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which is, in turn, affiliated with the American Federation of Labor, is a labor organization admitting supervisory employees of the Company into membership.¹

III. THE QUESTION CONCERNING REPRESENTATION

The Company has declined to recognize the Union as the collective bargaining representative of any of its supervisory employees.

The Company asserts that the foremen involved in this proceeding are not employees within the meaning of the Act and that consequently the Board lacks jurisdiction of the subject matter of this proceeding. The arguments advanced by the Company to support this position have been considered in a number of previous cases.

¹ The Company contends that the Union is not a labor organization within the meaning of the Act apparently because it is an auxiliary of a rank and file union. There is no merit in this argument. Section 2 (5) of the Act states: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, rates of pay, hours of employment, or conditions of work." The Union is clearly a "labor organization" within this definition. See *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannonin Coal Division*, 66 N. L. R. B. 386.

The Board has found,² as have the courts,³ that the definitions of "employer" and "employee" contained in the Act are not mutually exclusive; that a foreman, for example, is an "employer" when he acts in the interest of his employer, but is an "employee" when he acts in his own interest, as when he seeks to better the terms and conditions of his employment. Inasmuch as the present proceeding covers the "employee" aspect of their dual relationship, we find that the supervisors involved in this proceeding are employees within the meaning of Section 2 (3) of the Act.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the alleged appropriate unit.⁴

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

The Union seeks a unit of general foremen, department foremen, and assistant foremen, at the Company's Yakima plant, excluding superintendents and assistant superintendents.⁵ The Company has not specifically objected to the composition of the proposed unit; it appears to rest its case entirely on the proposition that no unit of its foremen would be appropriate. In support of this proposition, the Company attempts to distinguish this case from the *Packard* case⁶ on the grounds that it is not engaged in mass production, that its foremen are not industrial "traffic cops" as were the foremen in the *Packard* case, and that the Union is not an independent labor organization.

² See *Matter of Soss Manufacturing Company, et al*, 56 N. L. R. B. 348; *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4 and 64 N. L. R. B. 1212; *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294; *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298, *Matter of Simmons Company*, 65 N. L. R. B. 984; *Matter of The Midland Steel Products Company*, 65 N. L. R. B. 997; *Matter of Jones & Laughlin Steel Corporation*, 66 N. L. R. B. 386

³ See *N. L. R. B. v. Armour and Co*, 154 F. (2d) 570 (C. C. A. 10); *Jones & Laughlin Steel Corporation v. N. L. R. B.*, 146 F. (2d) 833 (C. C. A. 5); *N. L. R. B. v. Skinner & Kennedy Stationery Company*, 113 F. (2d) 667 (C. C. A. 8).

⁴ The Field Examiner reported that the Union had submitted 10 application cards and that there were 16 employees in the alleged appropriate unit.

⁵ In its petition, the Union also sought to include "bosses" who were specifically excluded from the production and maintenance unit previously found appropriate by the Board (*Matter of California Packing Company*, 59 N. L. R. B. 941) However, subsequent to that decision and the hearing in this case, the Company and the union representing the production and maintenance employees jointly requested that the certification in the cited case be amended to include the bosses in the production and maintenance unit on the ground that the bosses had been deprived of their supervisory authority. In accordance with this request, the Board on July 27, 1945, amended its previous certification to include the bosses in the production and maintenance unit. Hence the bosses are no longer an issue in this case.

⁶ *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4.

In two cases issued after the *Packard* decision, a majority of the Board considered in detail these three arguments made by the Company. In the first of these cases, *Matter of L. A. Young Spring & Wire Corporation*,⁷ the majority held that foremen are employees within the meaning of the Act; that as "employees" they are entitled to be placed in some bargaining unit under Section 9 (b); that the kind of industry in which the foremen are employed, whether mass production or non-production, is immaterial; and that the nature of the duties and responsibilities of foremen is relevant only insofar as it may bear upon the question of proper grouping for collective bargaining purposes. In the second case, *Matter of Jones & Laughlin Steel Corporation*,⁸ the majority of the Board held that it had no power under the Act to limit the choice by foremen of a collective bargaining representative to an independent, unaffiliated foremen's labor organization, because the Act guarantees to all employees, including foremen the right to bargain collectively "through representatives of their own choosing," not of our choosing. Accordingly, the majority refused to dismiss a petition for a supervisor's unit filed by an affiliate of the labor organization which represented the same company's rank and file employees. By the same reasoning, the Board cannot refuse to entertain a petition filed by a supervisory auxiliary of the local union which represents the Company's non-supervisory employees, the situation in the present case.⁹

We find that all general foremen, department foremen, and assistant foremen at the Company's Yakima plant, excluding superintendents and assistant superintendents, 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 employees in the appropriate unit who were employed during the pay-roll 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 Re-

⁷ 65 N. L. R. B. 298.

⁸ 66 N. L. R. B. 386.

⁹ Like the supervisors in the *Jones & Laughlin* case, the foremen involved in this proceeding are not, although the Company attempted to prove otherwise, policy making officials.

lations 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 California Packing Corporation, Yakima, Washington, 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 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 or not they desire to be represented by Local 760A, Fruit and Vegetable Packers and Warehousemen's Union, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

I am constrained to disagree with the result in this case for the reasons set forth in my dissent in the *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, as well as additional reasons set forth in my dissenting opinion in *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386.