

In the Matter of OLIVE PRODUCTS COMPANY and FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, C. I. O.

In the Matter of WYANDOTTE OLIVE GROWERS ASSOCIATION, LTD. and FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, C. I. O.

Cases Nos. 20-R-1589 and 20-R-1590, respectively.—Decided April 26, 1946

Mr. S. J. Tupper, of Oroville, Calif., for the Company.

Gladstein, Anderson, Resner, Sawyer, and Edises, by *Mr. Bertram Edises*, of Oakland, Calif., for the C. I. O.

Tobriner and Lazarus, by *Mr. Mathew O. Tobriner*, of San Francisco, Calif., for the A. F. L.

Mr. Arnold Ordman, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

Upon separate petitions duly filed by Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., herein called the C. I. O., alleging that questions affecting commerce had arisen concerning the representation of employees of Olive Products Company, Oroville, California, herein called the Company, and of Wyandotte Olive Growers Association, Ltd., Oroville, California, herein called the Association,¹ the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Merle E. Vincent, Jr., Trial Examiner. The hearing was held at San Francisco, California, on February 15 and 19, 1946. The Company, the C. I. O., and the California State Council of Cannery Unions, AFL, herein called the A. F. L., appeared and participated.² 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 ruling made at the hearing are free from prejudicial

¹ Wyandotte Olive Growers Association, Ltd., appears to be the correct name of the Association.

² Wyandotte Olive Grove Association was duly served with notice of hearing, but did not appear. Cannery, Dried Fruit and Nut Workers Union of Oroville Area, herein called the Oroville Area Union, was duly served with notice of hearing, but did not appear. Cannery, Dried Fruit and Nut Workers Union, Local 21634, AFL, herein called Local 21634, appears through the California State Council of Cannery Unions, with which it is affiliated.

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 AND THE ASSOCIATION

Olive Products Company is a California corporation, engaged in the processing and packing of ripe olives, olive oil, and other olive products at its plant in Oroville, California. It purchases its olives locally. During the past year, its finished products amounted in value to approximately \$400,000, of which about 50 percent was shipped to points outside the State of California.

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

Wyandotte Olive Growers Association, Ltd., is a cooperative non-stock, non-profit corporation of California, engaged in the processing and canning of ripe olives at its plant in Oroville, California. It obtains its olives from its members. During the past few years, its finished products averaged from \$50,000 to \$250,000, in value, all of which was delivered to the Navy during the war. Prior thereto, approximately 75 percent of its finished products was shipped to points outside the State of California.³

We find that the Association is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Food, Tobacco, Agricultural and Allied Workers Union of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company and the Association.

California State Council of Cannery Unions, and Cannery, Dried Fruit and Nut Workers Union, Local 21634, a constituent union of the Council, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company and the Association.⁴

III. THE QUESTIONS CONCERNING REPRESENTATION

Neither the Company nor the Association will recognize the C. I. O. as the collective bargaining representative of certain of their respective employees in the absence of certifications by the Board.

³These findings are premised upon a letter dated November 10, 1945, written by the Association to the National Labor Relations Board, and admitted into evidence without objection.

⁴Local 21634, a "Federal Union," in addition to its affiliation with the Council, also became affiliated in October 1945, with the Teamsters Union

The history of bargaining as revealed in the record with respect to both the Company and the Association is substantially identical. Each entered into a contract with Local 21634, dated June 1, 1943, to continue in operation for 1 year and renewable thereafter from year to year in the absence of notice to modify given by any contract party at least thirty (30) days prior to any anniversary date. Each was informed about May 24, 1945, that Local 21634 no longer represented a majority of its employees and that the Oroville Area Union did have such majority status. Thereupon, the Company and the Association each signed a Memorandum of Agreement with the Oroville Area Union dated May 24, 1945, providing for recognition of that organization, but otherwise stating merely that the terms of the 1943 contract were to be applicable. There is no substantial evidence that the Oroville Area Union ever functioned after the execution of the agreements of May 24, 1945, and a question is also raised as to the continuing existence of Local 21634, as such.

The A. F. L. contends that the 1943 contracts with Local 21634 were renewed and are a bar to these proceedings. Even assuming that these agreements were automatically renewed with Local 21634 in 1945, they do not constitute a bar to a present determination of representatives inasmuch as their 1946 anniversary dates are less than 2 months distant.⁵

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the units hereinafter found appropriate.⁶

We find that questions affecting commerce have arisen concerning the representation of employees of the Company and of the Association within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

A. *The Company's employees*

The parties are apparently agreed that the appropriate bargaining unit should embrace all production and maintenance employees of the Company including seasonal and year-round employees, but excluding

⁵ See *Matter of Clark Bros. Co., Inc.*, 66 N. L. R. B. 849; *Matter of Flintkote Company*, 55 N. L. R. B. 1442.

⁶ The Field Examiner made the following report on investigation of interest:

(1) As to the Company (Case No. 20-R-1589).

The C. I. O. submitted 36 application cards, all bearing the names of employees listed on the Company's pay roll for the period ending December 21, 1945. The A. F. L. submitted 27 authorization cards bearing the names of 26 employees listed on the same pay roll. There are approximately 68 employees in the appropriate unit.

(2) As to the Association (Case No. 20-R-1590).

The C. I. O. submitted 30 application cards bearing the names of 25 employees listed on the Company's pay roll for the period ending January 26, 1945. The A. F. L. submitted 42 authorization cards bearing the names of 33 employees listed on the same pay roll. There are approximately 82 employees in the appropriate unit.

office, clerical, and supervisory personnel. The C. I. O. and the A. F. L. also agree to include the watchman, who had been excluded from the unit defined in the 1943 contract between the Company and Local 21634, and the Company does not object to his inclusion.

It appears from the record that the watchman is neither deputized nor uniformed. He is a former production worker, who, because of his health, was made a watchman. In addition to his duties as watchman, he also performs janitorial functions. We shall include him in the unit hereinafter found appropriate as a maintenance employee.

Accordingly, we find that all production and maintenance employees of the Company, including seasonal and year-round employees,⁷ but excluding office and clerical employees, 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 a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

B. *The Associations' employees*

In accordance with the unopposed request of the C. I. O. and the A. F. L., and based upon the entire record, we find that all production and maintenance employees of the Association, including seasonal and year-round employees, but excluding office and clerical employees, 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 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 are of the opinion that the questions concerning representation which have arisen can best be resolved by separate elections by secret ballot among the employees in the units found appropriate in Section IV, above.

As has been indicated, the Company and the Association are engaged in the processing and packing of olives and olive products. This is a seasonal operation beginning about the first of November and ending in February or March. During the remainder of the year the plants are closed or operated only by a small maintenance crew. The pay

⁷ Included also are certain year-round employees, designated as head men and fore-ladies, who, during the busy part of the processing season, exercise supervisory authority, but, during the bulk of the year, function as ordinary non-supervisory workers. The parties agree, and we find, that they are to be included in the unit while in a nonsupervisory capacity, and excluded only while occupying a supervisory status. See *Matter of Sterling Sugars, Inc.*, 65 N. L. R. B. 1118.

roll varies from as few as 8 employees during the off-season to as many as 100 to 200 during the height of the processing season in December and January. Aside from a few year-round employees, the bulk of the employees are transients who may or may not be recruited from the surrounding area, and who may or may not return from year to year. Consequently, there is no feasible method of ascertaining the identity of such employees until they are actually employed and appear on the pay rolls of the Company and the Association. The parties are in apparent agreement that, if elections are held, they should be conducted during the processing season.

In the light of the foregoing facts, we conclude that the elections should be held during the next processing season, preferably at its peak in December or January. Under all the circumstances of this case, however, we shall not now select a pay-roll period determining eligibility to vote which is to fall within a season not commencing until as late as December 1946, nor shall we now direct elections for a designated time so far in the future.

Therefore, the determination of an eligibility period and the issuance of a Direction of Elections to ascertain representatives for the purposes of collective bargaining with Olive Products Company, and with Wyandotte Olive Growers Association, Ltd., both of Oroville, California, will be withheld until such time in the coming processing season as the Regional Director for the Twentieth Region shall advise us that elections may be held among the employees in the units found appropriate in Section IV, above.