

In the Matter of **BERCUT-RICHARDS PACKING COMPANY, et al. and CANNERY AND FOOD PROCESS WORKERS COUNCIL OF THE PACIFIC COAST AND ITS AFFILIATED UNIONS: FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, C. I. O.**

*Case No 20-R-1414, et al.*

## SECOND SUPPLEMENTAL DECISION

*June 13, 1946*

On February 16, 1946, the Board issued a Supplemental Decision and Order setting aside the prior elections held herein. On March 28, 1946, the Board issued an order reopening the record and directing a further hearing for the purpose of adducing additional evidence with respect to (1) the time when further elections should be held; (2) eligibility provisions for voting in such further elections; and (3) the form of the ballot in such further elections. Pursuant to the order reopening the record, the Board provided for an appropriate hearing upon due notice before Charles W. Schneider, Trial Examiner. The hearing was held on April 29, 1946, at San Francisco, California. The C. P. & G., certain of the independent companies, the C. I. O., and the A. F. L. appeared and participated.<sup>1</sup> At the hearing certain additional issues concerning the appropriate units and voting groups were also raised. All parties were afforded full opportunity 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 motion of the C. P. & G. to postpone the present proceedings is denied for reasons hereinafter stated. All parties were afforded an opportunity to file briefs with the Board.

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

### SUPPLEMENTAL FINDINGS OF FACT

#### I. As to the appropriate units and voting groups

##### a. The composition of the units and groups in general

The Board, in its prior Decision and Direction of Election, made no finding with respect to the inclusion or exclusion of non-deputized watch-

<sup>1</sup> The Independent Council, herein called the Independent, although notified in advance of the hearing, did not appear at the reopened hearing or request to be allowed to participate in any subsequent elections.

men, cafeteria employees, and floorladies, concerning whom there was no specific evidence in the record as to their respective duties and responsibilities. At the reopened hearing, the parties agreed that non-deputized watchmen and cafeteria employees should be included in the unit. Under the circumstances, we shall include non-deputized watchmen and cafeteria employees. With respect to floorladies, however, the Unions disagreed as to their inclusion, the C. I. O. contending that some of the floorladies should be excluded as supervisory employees. The record discloses that floorladies are generally without supervisory authority and have been included under the provisions of the master contract between C. P. & G. members and the A. F. L. Under the circumstances, we shall include floorladies as a group, subject to the right to challenge the ballots of individual floorladies upon the ground that they are supervisory employees.

b. The scope of the C. P. & G. unit

The parties at the reopened hearing suggested that the C. P. & G. unit be further clarified specifically to state the plants intended to be covered by the unit heretofore found appropriate in the Board's Decision and Direction of Elections. Although such Decision and Direction did not refer to specific plants of C. P. & G. members within the scope of the C. P. & G. unit, it was our intention to include therein the employees of all plants of C. P. & G. members then engaged in the canning of fruits and vegetables and covered by the provisions of the recent master agreement between members of the C. P. & G. and the A. F. L. Accordingly, in view of a possible ambiguity in our previous finding with respect to the C. P. & G. unit, we shall clarify such unit by a supplemental finding at the present time. We find, therefore, that all production and maintenance employees in the plants of member companies of the C. P. & G. as set forth in Appendix A,<sup>2</sup> attached hereto, including non-deputized watchmen, cafeteria employees, and floorladies, 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.

c. Effect of additions to and withdrawals from the C. P. & G.

With reference to the inclusion within the C. P. & G. unit of employees in plants of certain companies whose relations to the C. P. & G. have changed or who have put into operation additional plants since the date

<sup>2</sup> The list of plants to be found in Appendix A does not include the plants of certain companies hereinafter considered whose relation to the CP&G has changed or which have been put into operation since the date of the previous Decision and Direction.

of our previous Decision and Direction, it appears that the *Lincoln Packing Company* has withdrawn from the C. P. & G. and has elected to pursue an independent course of action with regard to its labor relations. Under the circumstances, we find that the employees of *Lincoln Packing Company* constitute a separate appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>3</sup>

With respect to the employees of *Allen R. Parrish Company* and *California Frozen Foods, Inc.*, which companies recently have become members of the C. P. & G. and desire that their employees be included within the C. P. & G. unit, it appears that such employees, together with the employees at the new plant of the *H. J. Heinz Company*, recently opened at Tracy, California, have never been included under the master agreement covering the C. P. & G. unit. The record indicates that, as a normal practice, plants of C. P. & G. members have been included under the A. F. L. contract only upon a showing that a majority of the employees in individual plants have selected the A. F. L. as their bargaining representative. Under the circumstances, we are of the opinion that, before making a final determination as to the inclusion of these employees within the C. P. & G. unit, such employees should be afforded an opportunity to express their desires with respect to representation for the purposes of collective bargaining, either as members of the C. P. & G. unit or as members of independent units, as reflected in separate elections.<sup>4</sup> Upon the results of these elections will depend, in part, our determination with respect to the type of unit through which the employees hereinabove mentioned may exercise their right to bargain collectively. If a majority of the employees in any of the three voting groups composed of employees of the respective companies select the same bargaining representative as that selected by the employees within the C. P. & G. unit, the employees of that company or the particular plant involved in such election, will have thereby indicated their desire to become a part of the existing C. P. & G. unit and may be bargained for as part of such unit; otherwise, they will be considered as having elected to remain separate groups for the purposes of collective bargaining.

II. As to the time when further elections should be held and the determination of eligibility

The parties are agreed that further elections in these proceedings should be held at or near the peak employment of this year's canning

<sup>3</sup> See *Matter of Rubin E. Rappeport, et al.*, 62 N. L. R. B. 1188, and Supplemental Decision, Certification, Direction, and Order issued August 3, 1945.

<sup>4</sup> See *Matter of Demuth Glass Works, Inc.*, 53 N. L. R. B. 451, and Supplemental Decision issued February 12, 1944.

season. The Unions, however, are in disagreement as to the need for a qualifying period of employment and also as to how soon the elections should be conducted after the date of the eligibility pay roll.

The C. I. O. originally requested at the reopened hearing that no qualifying period of employment be required. However, it later suggested, by way of compromise with the A. F. L., that the elections be held within 10 days after the week selected as determining eligibility to vote. On the other hand, the A. F. L. adheres to its request for retention of the 25-day eligibility provision set forth in the Board's earlier Decision and Direction of Election. In support of its request, the A. F. L. urges that, as a means of determining eligibility under the claimed 25-day eligibility provision, the elections be conducted 4 weeks after the selected eligibility period.

Although in our original Decision and Direction of Elections, we adopted the agreement of the parties with respect to the use of a 25-day eligibility period and further indicated in our Supplemental Decision and Order the desirability of a master eligibility list for employees in the C. P. & G. unit, the evidence at the reopened hearing convinces the Board that a 25-day eligibility period which of necessity, would have to be established by a master eligibility list, cannot, as a practical matter, be employed in the conduct of the elections in view of the difficulties arising from employment instability in a multi-seasonal industry.<sup>5</sup>

In the light of these considerations, it is our opinion that the most representative elections may be obtained by providing that employees who actually work in any unit or voting group as defined in this and our earlier decision during the pay-roll period to be selected as representative of employment during the peak period of the canning season and who are employed in that unit or voting group on the date of the election, shall be entitled to participate therein.<sup>6</sup> We shall confine the group of eligible employees exclusively to those employees who meet both requirements. We intend elimination of employees who performed no work during the pay-roll period of eligibility because of illness or because they

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<sup>5</sup> The record discloses that the preparation in advance of the elections of a satisfactory master eligibility list showing 25 days prior employment within the CP&G unit, cannot be accomplished without prohibitive expense and extreme difficulty, mainly by reason of the unavailability of social security data required for the purpose of checking the identity of employees within the CP&G unit.

<sup>6</sup> By virtue of the requirement of employment both during the eligibility period and on the date of the elections, and the lapse of time which normally occurs between the eligibility pay-roll period and the actual elections, only those employees who have been employed within the CP&G unit a sufficient length of time to acquire a recognized interest in the election will be entitled to participate therein, substantially in accord with the eligibility contention of the A. F. L. and the compromise suggestion offered in this regard by the C. I. O.

had been temporarily laid off,<sup>7</sup> and also of employees who, although they worked during the period of eligibility, lost their employee status through resignation or lawful discharge prior to the election. Conversely, we propose to permit voting of employees who subsequent to working during the eligibility pay-roll period are temporarily laid off and who, for that reason or because of temporary illness or excused absence, are not in actual work status on the day of the election. Employees otherwise eligible to vote in the C. P. & G. unit who, on the date of the election, are employed in that unit elsewhere than at the plant at which they were employed during the period of eligibility, shall vote at the plant where currently employed. The ballots of such employees will be segregated and the fact of their employment in the C. P. & G. unit during the period of eligibility will be determined subsequent to the elections.

### III. The form of the ballot

The C. I. O. desires to appear on the ballot as F. T. A.-C. I. O. The A. F. L. requests that it appear on the ballot as California State Council of Cannery Union, A. F. of L. The several requests of the C. I. O. and the A. F. L. with respect to their own designation on the ballot are hereby granted. The request of the C. I. O. that the A. F. L. be required to amend its designation on the ballot is hereby denied.

There remains the further question as to whether the name of the Independent or its constituent locals should appear on any of the ballots, and also whether in the election at the plant of Ensher, Alexander & Barsom, Inc., herein called the Ensher plant, the C. I. O. should be permitted a place on the ballot. So far as the Independent is concerned, the evidence indicates that the Independent is either defunct or no longer interested in the present proceedings. Inasmuch as it did not appear at the reopened hearing or request that it be allowed to participate in the elections, we shall omit its name from the ballot in all further elections.

With respect to the request of the C. I. O. that its name be included on the ballot at the Ensher plant, the Board in its earlier Decision and Direction of Election denied the C. I. O. a place on the ballot at the Ensher plant upon the ground that it had made an inadequate showing of interest among the employees therein. As the basis of its request, the C. I. O. now relies on the fact that the local of the Independent which made a substantial showing both prior to and at the recent election at the Ensher plant, has become an affiliate of the C. I. O. The request of the C. I. O. is opposed in the present instance by the A. F. L. The

<sup>7</sup> Although this specific elimination will disenfranchise a few employees who, under our normal practice, would be entitled to vote in the elections, we are of the opinion as previously stated, that the difficulties presented in conducting elections among seasonal employees in a multi-seasonal industry are such that it would be administratively impossible to extend eligibility beyond the point indicated above and still maintain the safeguards which we have always considered essential to the conduct of truly representative elections.

C. I. O. has produced no additional cards in its own name aside from seven cards which were submitted after the close of the hearing which preceded the Board's original Decision and Direction of Elections. Under the circumstances, we shall not at this time include the name of the C. I. O. upon the ballot at the Ensher pant. We shall, however, permit the name of the C. I. O. to appear on the ballot providing the C. I. O. submits adequate and timely evidence of its interest to the Regional Director.

IV. The time for directing the elections and the selection of the eligibility pay-roll period

We shall direct that elections be conducted among plants of the C. P. & G. unit during a representative week at the peak of the canning season. Similarly, we shall conduct elections among the employees of the independent companies during their respective seasons of peak operations either at the same time or following the elections of the C. P. & G. unit. However, we shall not at this time select a pay-roll period determining eligibility to vote in any of the elections to be hereinafter directed or a period in which the actual elections shall be held in view of the difficulty of ascertaining when the peak period of employment in canning operations may be expected to occur during the present season. Accordingly, the determination of the eligibility date and the issuance of a Direction of Election with respect to the C. P. & G. unit, the several voting groups and the separate units of the independent companies, will be withheld until such time as the Regional Director for the Twentieth Region shall advise us that the arrival of a representative period in the peak season of employment makes appropriate the holding of the elections among the employees in the various appropriate units and voting groups hereinabove referred to.<sup>8</sup>

APPENDIX A

<i>Name</i>	<i>Location of Plant</i>
F. M. Ball Co., Inc. ....	Oakland
Barron-Gray Packing Company .....	San Jose
Bercut-Richards Packing Company .....	Sacramento
California Conserving Company .....	Ryde
(Mountain View Supply Co., Subsidiary) . . . . .	Hayward
	Mountain View
(Pacific Packing Co., Subsidiary) .....	Oakdale

<sup>8</sup> Counsel for the Companies indicated at the reopened hearing the Companies' willingness to cooperate with the Board in the furnishing of such pay rolls during the peak season of operations as may be required in the determination of a representative period for purposes of eligibility.

<i>Name</i>	<i>Location of Plant</i>
California Packing Corporation . . . . .	#3 San Jose #8 San Leandro #11 Sacramento #12 Sacramento #14 Yuba City #24 Oakland #25 Kinsburg #35 Emeryville #37 Oakland #39 San Jose #10 Stockton
Chevy Chase Company . . . . .	San Jose
Drew Canning Company . . . . .	Campbell
Escalon Packers, Inc. . . . .	Escalon
Filice & Perrelli Canning Co. . . . .	Richmond Gilroy
Foster & Wood Canning Company . . . . .	Lodi
Gerber Products Company . . . . .	Oakland
Harter Packing Company . . . . .	Yuba City
H. J. Heinz Company . . . . .	Berkeley
Hickmott Canning Company . . . . .	Antioch
G. W. Hume Company . . . . .	Turlock
Hunt Foods, Inc. . . . .	Hayward
Libby, McNeill & Libby. . . . .	Gridley Nimbus Sacramento Selma Sunnyvale
Manteca Canning Company . . . . .	Manteca
Mission Valley Canning Company . . . . .	San Jose
Mor-Pak Preserving Corporation . . . . .	Stockton
National Packing Company . . . . .	Isleton
Oakland Canning Company . . . . .	Oakland
Pratt-Low Preserving Company . . . . .	Santa Clara Ryde
Richmond-Chase Company . . . . .	Stockton San Jose <sup>1</sup>
Riverbank Canning Company . . . . .	Riverbank
Santa Clara Packing Company . . . . .	San Jose

<sup>1</sup> Includes warehouse in Mountain View

<i>Name</i>	<i>Location of Plant</i>
Santa Cruz Fruit Packing Co. ....	Oakland Oroville
Schukl & Company, Inc. ....	Sunnyvale Niles
The Shaw Family, Inc. ....	San Jose
Stockton Food Products, Inc. ....	Stockton
Sutter Packing Company ....	Palo Alto
Thornton Canning Company ....	Thornton
Tri-Valley Packing Association ....	Modesto San Jose
Turlock Cooperative Growers ....	Turlock
U. S. Products Corporation, Ltd. ....	San Jose
Western California Cannery ....	Antioch
Frank M. Wilson Company, Inc. ....	Stockton