

In the Matter of HUNT FOODS, INC. and CANNERY WAREHOUSEMEN,
FOOD PROCESSORS, DRIVERS & HELPERS, LOCAL 670, AFL

Case No. 19-R-1747.—Decided June 20, 1946

Rhoten & Rhoten, by *Mr. George A. Rhoten*, of Salem, Oreg., for the Company.

Mr. E. S. Benjamin, of Salem, Oreg., and *Mr. Walter H. Briem*, of Portland, Oreg., for the Union.

Mrs. Margaret H. Patterson, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Cannery Warehousemen, Food Processors, Drivers & Helpers, Local 670, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Hunt Foods, Inc., Salem, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Erwin A. Peterson, Trial Examiner. The hearing was held at Salem, Oregon, on April 25, 1946. The Company and the Union appeared and participated. All parties were afforded 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

Hunt Foods, Inc., is a California corporation having its principal offices in Los Angeles, California. It owns and operates plants in the
68 N. L. R. B., No. 108.

States of Oregon, Washington, and California. The plant at Salem, Oregon, is engaged in processing fruits and vegetables. Raw materials and supplies in excess of \$500,000 are purchased annually for this plant, approximately 15 percent of which originates outside the State of Oregon. The annual value of the plant's finished product is in excess of \$500,000, of which approximately 95 percent is shipped out of the State of Oregon.

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

Cannery Warehousemen, Food Processors, Drivers & Helpers, Local 670, is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an 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

The Union seeks a unit of all production, maintenance, and warehouse employees at the Company's Salem, Oregon plant, excluding seasonal workers engaged solely for the duration of the processing season, 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. The Company contends that the unit should include seasonal production and maintenance workers but should exclude year-round production and maintenance employees who act in a supervisory capacity during the Company's peak processing season.

Seasonal Workers

The Company is engaged in processing fruits and vegetables during a season which normally extends from the end of May to the middle of November. The number of seasonal workers varies with the particular fruit or vegetable being processed. The Company normally employs

about 350 persons during the berry and cherry seasons, and from 350 to 700 employees during the beet, pear, peach, and prune season. The majority of the seasonal workers are women and high school students. The average turn-over in the seasonal workers is approximately 30 percent annually. There is some labor turn-over during the processing season itself.

In addition to seasonal workers, the Company employs a regular force of men in specified job classifications who work the year round. This force of year-round employees numbers about 33 persons. During the peak processing season these employees may be engaged in the same processing work done by the seasonal workers. The Company maintains a vacation plan for its year-round salaried employees, of whom there are 10. A group insurance plan is maintained by the Company and is open to all employees, whether year-round or seasonal.

From the foregoing facts it appears that the seasonal workers do not have the substantial continuing interest in their jobs which year-round employees possess. It further appears that the Union has confined its organizational activities to the year-round employees and does not presently seek to represent the seasonal workers. We shall accordingly exclude seasonal workers engaged solely for the duration of the processing season.¹

Part-Time Supervisory Employees

The Company employs approximately 17 year-round employees who are assigned to supervisory positions during the peak processing season lasting from 5 to 6 months. The record reveals that the supervisory nature of their duties is far from casual. These employees oversee the work of a considerable number of subordinates, having the authority to hire and discharge employees under their supervision. These employees, when acting as supervisors, receive a higher rate of pay than the non-supervisory employees. During the balance of the year they work as non-supervisory maintenance men, their wages and hours then being identical with year-round maintenance employees. The Company contends that because of the supervisory nature of their duties during the processing season these employees should be excluded from a production and maintenance unit. It is our opinion, however, that to the extent that these employees are engaged as non-supervisory maintenance workers, subject to the same wage rates and working conditions as the non-supervisory year-round employees, they are properly a part of a production and maintenance unit of year-round employees. We shall include them in the unit hereinafter found appropriate during such period as they are

¹ *Matter of California Packing Company*, 59 N. L. R. B. 941, *Matter of Libby, McNeill and Libby*, 59 N. L. R. B. 864; *Matter of Reid, Murdoch & Co.*, 56 N. L. R. B. 284, *Matter of Stokely Foods Company, Inc.*, 66 N. L. R. B. 749

engaged in non-supervisory maintenance work.² They are deemed to be excluded from the unit only when acting in the capacity of supervisors. The question of the eligibility of these part-time supervisors to vote in the election will be considered in Section V, *infra*.³

Four of the Company's year-round employees are classified as supervisors and act in such capacity throughout the entire year. There appears to be no real dispute regarding their exclusion and we shall exclude such year-round supervisors from the unit.

We find that all production, maintenance, and warehouse employees at the Company's Salem, Oregon, plant, excluding seasonal workers solely engaged for the duration of the processing season, office and clerical employees, and all supervisory employees⁴ 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 shall direct that the question concerning representations 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.

As indicated in Section IV, above, some of the year-round employees divide their time between supervisory and non-supervisory duties. While all of such employees may be represented by the Union in respect to that part of their employment which is not supervisory, only those employees who spend 50 percent or more of their time in such non-supervisory employment have a sufficiently substantial interest in the terms and conditions of employment in the production and maintenance unit and in the outcome of the election in that unit to entitle them to vote in the election hereinafter directed.⁵ Accordingly, year-round production

² *Matter of Sterling Sugars, Inc*, 65 N L R B 1118 A somewhat similar arrangement was adopted by this Board in situations where employees divided their time between agricultural and non-agricultural pursuits. In such cases the Board held that these employees should be deemed excluded from the unit when engaged in agricultural work, but included where engaged in non-agricultural employment. See *Matter of Pepeekeo Sugar Company*, 59 N L R B 1532; *Matter of Maui Pineapple Company*, 60 N L R B 401, *Matter of H J Heinz Company*, 49 N. L. R. B 573.

³ See *Matter of Wadhams' Division of Socony-Vacuum Oil Company*, 54 N L R B 1164

⁴ Those year-round employees who exercise supervisory authority during the processing season only and who, during the balance of the year, work as non-supervisory maintenance men, are deemed excluded from the unit only when acting in the capacity of supervisors.

⁵ This Board has not heretofore dealt with the question of the eligibility of part-time supervisors to vote in an election involving non-supervisory employees. Our decision concerning their eligibility is based on analogy with the cases involving part-time agricultural workers who act in that capacity during only half of the year and were held eligible to vote in an election. See *Matter of Pepeekeo Sugar Company*, *supra*, and *Matter of Maui Pineapple Company*, *supra*.

and maintenance employees in the Company's employ at the time of the election who have worked in the plant more than 50 percent of their time in a non-supervisory capacity (1) during the 12 months preceding the date of this Direction, or (2) during the period of their employment if less than 12 months, are eligible to vote in the election.

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 Hunt Foods, Inc., Salem, 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 or not they desire to be represented by Cannery Warehousemen, Food Processors, Drivers & Helpers, Local 670, AFL, for the purposes of collective bargaining.