

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 OF AMERICA, CIO

Case No. 20-R-1414, et al

THIRD SUPPLEMENTAL DECISION
AND
SECOND DIRECTION OF ELECTIONS

August 16, 1946

On June 13, 1946; the National Labor Relations Board issued a Second Supplemental Decision¹ in these proceedings. In its Second Supplemental Decision the Board stated that it would direct new elections upon being advised by the Regional Director that the advent of a representative period in the peak season of employment made it appropriate to hold such elections. Upon advice from the Regional Director that such representative period has been reached and that new elections may now be held, we herein direct that elections be held among the employees in the CP & G unit and in the independent company units and groups hereinafter listed in the Direction, who were employed during the pay-roll period of the week ending August 17, 1946, subject to the limitations and additions set forth in the Direction. We shall also at this time consider and dispose of certain matters which have arisen since the issuance of the Second Supplemental Decision and which affect the conduct of elections.

1. The question of withdrawals from the CP & G unit

On June 24 and July 16, 1946, respectively, the Board issued orders to show cause, among other matters, why the employees of Bercut Richards Packing Company and Chevy Chase Company, heretofore members of CP & G, should not be considered as the employees of independent Companies for purposes of the elections. In the case of Chevy Chase Company, the order to show cause was issued following the recommendation of the Regional Director that the Board find a separate appropriate unit for the employees of this Company.² So far as Bercut Richards Packing Company is concerned, the order to

¹ 68 N L R B 605.

² The Regional Director stated as reason for his recommendation that there had been a transfer in the ownership of the Chevy Chase Company to a Company not a member of CP & G.

70 N L R B, No. 9.

show cause resulted from the filing of a motion by the Company that its employees be considered as a separate unit by reason of the Company's withdrawal from membership in the CP & G.

In answer to the orders to show cause, the AFL, the CIO, and the CP & G indicated that they are opposed to permitting further withdrawals from the CP & G unit at this time, setting forth various factual considerations supporting their position. However, in the case of the Chevy Chase Company, since it appears that the order to show cause was not issued pursuant to a request by that Company, and since from the answers to the order to show cause it appears without contradiction that the Chevy Chase Company is still a member of CP & G, we find that its employees are properly included within the CP & G unit. On the other hand, the motion of Bercut Richards Packing Company, although received prior to the issuance of the present direction, was not received in time to permit, prior to the elections directed herein, the conduct of a hearing with respect to the factual issues raised by the several answers to the order to show cause. Accordingly, the motion of Bercut Richards Packing Company is denied without prejudice. No further applications for withdrawal from the CP & G unit will be entertained.

2. The question of additions to the CP & G unit

The Regional Director has advised that a change has occurred in the relation of certain plants to the CP & G. These plants are the Stockton plant of United States Quick Frozen Foods, Inc., and the Modesto frozen food plant of Stokely Foods, Inc., both of which have recently joined the CP & G and are covered by the master contract in force among CP & G members. Inasmuch as we have hitherto directed self-determinative elections for the employees of recent CP & G members upon facts substantially identical to those already stated,³ we shall afford a similar opportunity to the employees in these two plants to express their desires with respect to being represented for the purposes of collective bargaining as members of the CP & G unit or as members of independent units, through separate elections. 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 the majority of the employees in either of the two voting groups select the same bargaining representatives as that selected by the employees within the CP & G unit, the employees of that group will

³ See Second Supplemental Decision aforesaid with respect to the employees of Allen R. Parrish Company, California Frozen Foods, Inc., and Tracy, California, plant of H. J. Heinz Company.

thereby be deemed to have indicated their desire to become a part of the existing CP & 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.

3. Changes in name among plants in the CP & G unit

In connection with the order to show cause issued on July 16, 1946, the Board, upon recommendation of the Regional Director, also directed that the parties show cause why a finding should not be made reflecting recent changes in the names of certain plants within the CP & G unit. No cause to the contrary having been shown, the Board hereby finds that the plants formerly operated by California Conserving Company and Drew Canning Company, respectively, should be designated in the elections for the CP & G unit as plants of Hunt Foods, Inc., and that the plants formerly operated by Santa Cruz Fruit Packing Company should be designated in the elections for the CP & G unit as plants of Stokely Foods, Inc.

4. The form of the Ensher ballot

The CIO has requested that its name be included on the ballot in the election at the plant of Ensher Alexander & Barsoom, Inc. In our Second Supplemental Decision herein, we declined to allow the name of the CIO to appear on the ballot, because of its failure to submit an adequate showing of membership among the company's employees. We said, however, that we would permit the name of the CIO to appear on the ballot, provided the CIO thereafter submitted competent evidence of a substantial interest to the Regional Director. We have since been advised by the Regional Director that the CIO has made a showing of membership among the Company's employees sufficient to warrant its participation in the election to be held at the plant in question. We shall, therefore, accord the CIO a place on the Ensher ballot.

5. Necessity of waivers with respect to pending charges of unfair labor practices

We now turn to the question of the propriety of directing elections at this time, in view of the fact that there are pending charges filed by the CIO alleging the commission of unfair labor practices on the part of certain of the Companies involved herein. The Board customarily will not proceed to an election without first requiring a charging petitioner to agree that it will not urge the subject matter of its pending unfair labor practice charges as grounds for objecting

to the conduct of the election in the event that it loses.⁴ In the present instance, the Board requested that the CIO file the usual waivers with respect to its pending charges of unfair labor practices. Although the CIO has failed to file such waivers, it has given no indication that it does not desire that elections be conducted at this time. Inasmuch as the elections cannot be truly representative, because of the character of the industry involved, unless conducted during the present season of peak operations, and in view of the fact that the pending charges cannot be determined in time to hold the elections during the present season, we are disposed under all the circumstances of this case, including the importance of conducting an election in this industry during 1946, to direct elections without first requiring the filing of waivers by the CIO. We shall not, however, permit the subject matter of the pending unfair labor practice charges to constitute a valid basis for setting aside the elections, if that result should ever be sought.⁵

6. *The CIO motion that the AFL be excluded from the ballot*

After the hearing which preceded our Second Supplemental Decision, the CIO filed a motion requesting that the AFL be excluded from the ballot because certain of the companies involved herein were engaging in unfair labor practices, designed to promote the interests of the AFL with respect to the forthcoming elections. Both the AFL and the CP & G opposed the motion. It has become unnecessary, however, to rule on the motion, as the CIO has now asked to withdraw it.

SECOND DIRECTION OF ELECTIONS

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 California Processors and Growers, Inc., Oakland, California, as representative of its member companies, and with the independent companies in the units and voting groups listed herein, separate elections shall be conducted

⁴ See *Matter of The May Department Stores Company, d/b/a Famous-Barr Company*, 61 N. L. R. B. 258.

⁵ After the hearing which preceded our Second Supplemental Decision, the AFL filed a motion to dismiss the unfair labor practice charges prior to the conduct of the elections. In view of the above provision that the unfair labor practice charges are not to be utilized as the basis of objections to the conduct of the election, the motion of the AFL is hereby denied.

during the week ending August 31, 1946, 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 CP & G unit listed in Appendix A and the independent company units and voting groups listed in "Appendix B," as clarified herein and in the Second Supplemental Decision hereinabove mentioned, who were employed and actually worked during the pay-roll period of the week ending August 17, 1946, including employees who, subsequent to working during the eligibility period, are not in actual work status on the date of the election because temporarily laid off or because of illness or other excused absence, but excluding employees who performed no work during the pay-roll period of eligibility because of illness or because they had been temporarily laid off, and excluding employees who since the pay-roll eligibility period have quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine whether they desire to be represented by California State Council of Cannery Unions, AFL, or by FTA-CIA, for the purposes of collective bargaining, or by neither.

APPENDIX A

<i>Name</i>	<i>Location of Plant</i>
F. M. Ball & Co., Inc. #1 and 2-----	Oakland
Barron-Gray Packing Company #1-----	San Jose
Bercut-Richards Packing Company-----	Sacramento
California Packing Corporation-----	#3 San Jose
	#8 San Leandro
	#10 Stockton
	#11 Sacramento
	#12 Sacramento
	#14 Yuba City
	#24 Oakland
	#25 Kingsburg
	#35 Emeryville
	#37 Oakland
	#39 San Jose
Chevy Chase Company-----	#1 San Jose
Escalon Packers, Inc.-----	Escalon
Filice & Perrelli Canning Company-----	Richmond
	Gilroy
Foster & Wood Canning Company-----	Lodi
Gerber Products Company-----	Oakland
Harter Packing Company-----	Yuba City

<i>Name</i>	<i>Location of Plant</i>
H. J. Heinz Company-----	Berkeley
	Isleton
Hickmott Canning Company-----	Antioch
G. W. Hume Company-----	Turlock
Hunt Foods, Inc.-----	#1 Hayward
	#3 Hayward
(Mountain View Supply Co.)-----	#4 Mountain View
(California Conserving Co.)-----	#6 Walnut Grove
(Drew Canning Co.)-----	#16 Campbell
(Pacific Packing Co.)-----	Oakdale
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-----	#1 Santa Clara
	#2 Walnut Grove
Richmond-Chase Company-----	#7 Stockton ⁶
	#4 San Jose
Riverbank Canning Company-----	Riverbank
Santa Clara Packing Company-----	San Jose
Schukl & Company, Inc.-----	Sunnyvale
	Niles
The Shaw Family, Inc.-----	San Jose
Stockton Food Products, Inc.-----	#1 Stockton
Stokely Foods, Inc.—	
(Santa Cruz Packing Co.)-----	Oakland
(Santa Cruz Packing Co. #6)-----	Oroville
Sutter Packing Company-----	Palo Alto
Thornton Canning Company-----	Thornton
Tri-Valley Packing Association-----	#1 Modesto
	#2 San Jose
Turlock Cooperative Growers-----	#1 Modesto
United States Products Corp., Ltd.-----	San Jose
Western California Cannery, Inc.-----	Antioch
Frank M. Wilson Company, Inc.-----	Stockton

⁶ Includes warehouse in Mountain View.

APPENDIX B

INDEPENDENT COMPANY UNITS

<i>Name</i>	<i>Location of Plant</i>
Aron Canning Company-----	Stockton
Basic Vegetable Products Company-----	Vacaville
Booth Company, Inc.-----	Centerville
Califruit Canning Company-----	Manteca
California Pet Foods Company-----	Sacramento
Ensher, Alexander & Barsoom, Inc.-----	#3 Isleton
Flotill Products, Inc.-----	Stockton
Frank Raiter Canning Company-----	Salinas
Fruitvale Canning Company-----	Oakland
Lincoln Packing Company-----	Lincoln
Pacific Grape Products Company-----	Modesto
Sacramento Frosted Foods Company-----	Sacramento
Sardik Food Products Corporation-----	Riverbank
Scientific Nutrition Company d/b/a Capolino Packing Corporation-----	Atwater
Stanislaus Canning Company-----	Modesto

VOTING GROUPS.

Allen R. Parrish Company-----	Stockton
California Frozen Foods, Inc.-----	Modesto
H. J. Heinz Company-----	Tracy
U. S. Quick Frozen Foods, Inc.-----	Stockton
Stokely Foods, Inc. (frozen food plant)-----	Modesto

[See, *infra*, 70 N. L. R. B. 272, for Fourth Supplemental Decision and Amendment to Second Direction of Elections.]