

In the Matter of McKEON CANNING Co., INC., EMPLOYER *and* FRUIT AND PRODUCE DRIVERS, WAREHOUSEMEN AND EMPLOYEES UNION, LOCAL 630, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L., PETITIONER

Case No. 21-UA-48.—Decided June 22, 1948

DECISION ON APPEAL

AND

ORDER

On December 17, 1947, the Petitioner filed a petition with the Regional Director for the Twenty-first Region, seeking authority to enter into an agreement with the Employer concerning union security, as provided by Section 9 (e) (1) of the Act. On January 29, 1948, the Regional Director dismissed the petition, on the ground that the unit of employees for whom the Petitioner sought to act as representative was inappropriate. From this decision of the Regional Director, the Petitioner appealed to the Board, in accordance with Section 203.63 of the Board's Rules and Regulations—Series 5.

The Employer processes corn into hominy during the winter season, and cans tomatoes during the late summer and fall. It employs approximately 40 people on a year-round basis. This staff is increased tenfold to approximately 375 people during the tomato-canning period. That occurs in September, October, and November. At the time the present petition was filed, only the normal year-round working force of 40 people was employed. The Petitioner submitted evidence that 21 of these 40 employees supported the petition. It desires an election at this time to establish its right to enter into a union-security agreement which will bind, not only the year-round employees, but *also* the much larger number of seasonal employees who will be employed during the coming tomato-canning season, although the seasonal employees will not be able to vote in any election held now.

The Petitioner seeks an election in a unit of production and maintenance employees, a customary unit. Contrary to the Regional

77 N. L. R. B., No. 208.

1365

Director, we find that this unit is appropriate. Although the unit is appropriate and the Petitioner's present showing of interest in that unit is sufficient to justify the Board in entertaining the petition, we shall not direct an immediate election because of the following considerations:

An election at this time would permit the small group of employees now employed to bind the much larger group of employees who will work during the peak canning period. This would be inconsistent with the spirit and intent of the statutory provision for union-shop authorization elections, *viz*, that a majority of those to be bound by a union-security agreement should authorize its negotiation. However, there is no objection to holding an election when the number of employees becomes representative of the total number employed during the usual peak employment period. Accordingly, we shall overrule the Regional Director's dismissal of the Petitioner's petition and direct that an election be held at such future time as the Regional Director finds that a representative number of employees is employed.

ORDER

IT IS HEREBY ORDERED that the appeal of the Petitioner herein be, and it hereby is, granted, and that the Regional Director's dismissal of the petition be, and it hereby is, set aside; and

IT IS HEREBY FURTHER ORDERED that the case be, and it hereby is, referred to the Regional Director for the Twenty-first Region for further proceedings, including a union-shop authorization election to be conducted, if otherwise appropriate, whenever during the calendar year 1948 the Regional Director finds that a representative number of employees is employed by the Employer.