Accordingly, the Board will direct an election for the employees at that location.[29]

Upon the entire record the Board finds that all production and maintenance employees at the Employer's plant 5, excluding truck drivers, car lift operators, warehousemen, craters, stock clerks, timekeepers, production planners, material planners and schedulers, office and clerical employees, watchmen, guards, foremen, and all supervisors as defined in the amended Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.[30]

[Text of Direction of Election omitted from publication in this volume.]

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.

[29] See, for example, *C. I. Brink, Incorporated,* 57 NLRB 477, in which the Board held that where an employer converted in part, for defense purposes, from its standard business to a new product, employees engaged in the latter work could comprise a separate single-employer unit despite a history of multiemployer bargaining for the plant. See also *Demuth Glass Works, Inc.,* 53 NLRB 451. Moreover, the Board has consistently held that where a classification or craft group of employees exists only at one employer's plant, single-plant bargaining is appropriate as to those employees although the remainder of employer's personnel may be within a multiemployer bargaining group. See *Members of the California State Brewers Institute, Southern Division,* 90 NLRB 1747; *Pacific Coast Association of Pulp and Paper Manufacturers,* 94 NLRB 477.

[30] The parties agreed that timekeepers, production planners, material planners and schedulers should be excluded from the unit. As the record shows these employees do not share common working conditions and interests with the remainder of the plant force, the Board concurs in this agreement. The parties agreed, and we find, that the Employer's watchmen are guards within the meaning of the Act and should be excluded. The UAW–CIO wished to exclude, and the AFL Intervenors wished to include, foremen in the unit. As the record shows that all foremen at the plant have authority effectively to recommend with respect to hiring, suspension, layoff, recall, promotion, and discharge of employees under their supervision, we find that the foremen are supervisors as defined in the Act, and exclude them from the unit.

ALLIED MILLS, INC. *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, TRUCK DRIVERS & HELPERS UNION, LOCAL NO. 784, AFL, PETITIONER. *Case No. 17–RC–1073. September 24, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Eugene Hoffman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner and the Employer agree that a unit consisting of all truck drivers, helpers, warehousemen, and general plant employees, excluding office and clerical employees, professional employees, guards, and supervisors as defined in the Act, is appropriate for the purposes of collective bargaining. However, the Employer contends that all of its employees are not "employees" within the meaning of the Act, but are "agricultural laborers" over whom the Board may not assert jurisdiction.[1] In the alternative, the Employer contends that, if all of its employees are not agricultural laborers, all of its employees are subject to the provisions of the Act because of the continuous nature of its operations.

At its plant in Cozad, Nebraska, which is the only plant involved in this proceeding, the Employer is engaged in dehydrating green alfalfa, processing sun-cured alfalfa into alfalfa meal, and manufacturing animal feeds from alfalfa, corn, molasses, and other products. The Employer is not engaged in the planting or cultivation of alfalfa, but purchases green alfalfa standing in the fields and sun-cured alfalfa standing in stacks or windrows on farmers' fields. The Board has previously held that the agricultural exemption does not apply to employees who work in a separate commercial establishment on commodities which are not grown by their own employer where such work materially changes the agricultural product to enhance its value.[2] Accordingly, we reject the Employer's contention that all of its employees are "agricultural laborers" within the meaning of the Act.

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[1] As in previous years, a rider to the Board's current Appropriation Act (Public Law 134, 82d Cong, 1st Sess., August 31, 1951) requires the Board to define agriculture as defined in Section 3 (f) of the Fair Labor Standards Act for the purpose of determining who are "agricultural laborers" within the meaning of Section 2 (3) of the National Labor Relations Act

[2] *Franklin Country Sugar Company*, 92 NLRB 1341; *Imperial Garden Growers*, 91 NLRB 1034; *Roberts Fig Company*, 88 NLRB 1150; *Di Giorgio Fruit Corporation*, 80 NLRB 853.

There remains for consideration the status of employees classified as "cuttermen" and "loadermen."[3] Cuttermen operate the machines which mow the green alfalfa standing in fields "leased" by the Employer.[4] The machines also chop up the alfalfa and blow it into trucks for transportation to the Employer's plant, where it is put through a dehydrating process. The Employer also purchases sun-cured alfalfa as it stands in stacks or windrows on the farmers' fields. Loadermen operate tractors equipped with special forks which gather such sun-cured alfalfa and place it on the Employer's trucks.

Section 3 (f) of the Fair Labor Standards Act, to which we are required to refer to the definition of agriculture,[5] defines agriculture as follows:

> (f) "Agriculture" includes farming in all its branches and among other things includes the . . . harvesting of any agricultural or horticultural commodities . . . and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

It is apparent that both cuttermen and loadermen are engaged in the farming operation of harvesting alfalfa on a farm.[6] The record in this case does not substantiate the Employer's alternative contention that its operations are so continuous and integrated as to make the work of cuttermen and loadermen an incident of the Employer's commercial activities rather than an incident of farming operations. Accordingly, cuttermen and loadermen fall within the classification of agricultural laborers and must, therefore, be excluded from the unit herein found appropriate. However, as described more fully below, it appears that at various times cuttermen and loadermen are assigned to work at the Employer's plant. They are included in the unit and may be represented by the Petitioner if successful in the election hereinafter directed, for time spent in such nonagricultural work.[7]

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[3] As stated above, the Employer contends that, if all of its employees are not agricultural laborers, all of its employees are subject to the provisions of the Act. However, the Board's jurisdiction must be determined in accordance with the provisions of the Act and not by the positions taken by the parties Cf. *Pacific Metals Company, Ltd*, 91 NLRB 696.

[4] Although the agreements made with the farmers who cultivate the alfalfa are described as leases, it appears that the Employer does not perform any operations on such "leased" land other than the moving and cutting described above.

[5] See footnote 1, *supra*.

[6] See Wage Hour Div, Interpretative Bulletin No 14, August 21, 1939, pars 5 (a) and 11 The Board has excluded as agricultural laborers employees engaged in operations similar to those performed by loadermen See *L T Malone*, 94 NLRB 1016 (operators of mechanical loaders, field bugs, and silver kings)

[7] *L T Malone, supra; Roberts Fig Company, supra*

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining: All truck drivers, helpers, warehousemen, and general plant employees at the Employer's Cozad, Nebraska, plant, excluding all cuttermen and loadermen, office and clerical employees, professional employees, guards, and supervisors as defined in the Act.

5. Cuttermen are employed approximately 6 months of a year in harvesting alfalfa, as described above. Generally, they are assigned to work in the Employer's plant during those months in which no harvesting can be done. The record does not disclose the exact division of their time between agricultural and nonagricultural work. On the other hand, loadermen are engaged on a year-round basis in loading operations and they are assigned to work in the Employer's plant on an intermittent basis, depending upon the state of the weather. Thus, because loadermen spend less than 50 percent of their time in nonagricultural work, it is clear that they are not eligible to vote in the election. However, it appears that some cuttermen may have such a substantial interest in the election as to be the basis for permitting them to vote therein. In accordance with usual Board policy, only those cuttermen who were assigned to work in the Employer's plant during at least half of the number of weeks in which they worked in 1950 shall be eligible to vote.[8]

[Text of Direction of Election omitted from publication in this volume.]

[8] *WCAU, Inc.*, 93 NLRB 1003; *Libby McNeill & Libby*, 90 NLRB 279; *Delaware Broadcasting Company*, 82 NLRB 727.

LIBERTY CORK CO., INC.[1] *and* UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 4–RC–1159. September 24, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Harold X. Summers, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

Upon the entire record in this case, the Board finds:

[1] The petition and other formal papers were amended at the hearing to show the correct name of the Employer.