

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Brotherhood of Paper Makers, AFL, and International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication in this volume.]

EASTERN SUGAR ASSOCIATES (A TRUST) D/B/A CENTRAL JUNCOS and UNION AMALGAMADA DE TRABAJADORES INDUSTRIALES DE JUNCOS (ILA-AFL), PETITIONER. Case No. 24-RC-291. July 18, 1952

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Philip Licari, 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 Houston 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.¹

2. The labor organizations involved claim to represent employees of the Employer.²

3. No 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, for the following reasons:

The Petitioner seeks to represent a unit of all production, maintenance, and repair employees at the Employer's tractor and mechanics shop.³ The Employer contends that the petition should be dismissed

¹ *Eastern Sugar Associates*, 80 NLRB 73.

² The Union de Trabajadores Industriales de Central Juncos (Ind.) was permitted to intervene on the basis of a contract interest. The Sindicato de Trabajadores de la Industria Azucarera de P. R. (CGT-CIO), also possessing a contract interest, although duly notified of the hearing did not appear.

³ The Employer has only one such shop servicing its several sugar plantations.

on the grounds that (1) the employees sought to be represented by the Petitioner are agricultural laborers within the meaning of section 3 (f) of the Fair Labor Standards Act and Section 2 (3) of the National Labor Relations Act; (2) the unit requested by the Petitioner is inappropriate because the employees sought to be represented are a part of a larger unit of agricultural employees; and (3) that there is a long history of collective bargaining covering the employees involved herein in an Employer-wide group of agricultural employees. The Intervenor takes no position as to the issues raised by the Employer, and stated at the hearing that it had no interest in these employees and would not participate in any election should the Board direct one in this proceeding.

The Employer owns and operates several farms and leases others, on which it plants, grows, and harvests sugar cane. This activity of the Employer is known as its agricultural division. It also owns and operates several sugar mills where it processes its own sugar cane and that of independent farmers into raw and refined sugar. In connection with its sugar mills, it owns a railroad with extensions terminating in railroad siding located as closely as practicable to its several farms. It also owns docks. This part of the Employer's business is known as its operating division.⁴ These two divisions are completely separated, and each of them is under the general direction and supervision of a vice president, and has a separate supervisory hierarchy. This proceeding is concerned only with the employees who repair and maintain the Employer's farm machinery and equipment.

The tractor and mechanic shop is part of the agricultural division. The employees in this shop include types of machinists usually found in a modern machine shop, such as engine specialists, motor and pump specialists, welders, tool makers, and a variety of other mechanics. They repair and maintain tractors, derricks, winches, and other agricultural tools and implements. They also repair trucks and build and repair carts for hauling sugar cane from the fields to the railroad sidings. They do not repair any machinery or equipment for the Employer's sugar mills, each of which has its own shop and mechanics for this purpose. There is very little interchange between the employees of the tractor shop and the employees of any of the shops at the Employer's sugar mills.

Under the current Board Appropriations Act, the definition of "agriculture" in section 3 (f) of the FLSA is made applicable to the exclusion of agricultural laborers appearing in Section 2 (3) of the NLRA. Section 3 (f) reads as follows:

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil . . .

⁴The Employer also has an office division, which takes care of the accounting for the other two divisions.

The production, cultivation, growing, and harvesting of any agriculture . . . 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 market or to carriers for transportation to market. [Emphasis added.]

Although the tractor shop employees in the performance of their duties do not work on a farm, it is nevertheless clear that they service, maintain, and repair machinery and equipment which the Employer uses only for its farming operations, that they are completely separated from any of the Employer's other operations and that they do not repair, service or maintain any of its other machinery and equipment. In these circumstances, and upon the entire record, we find that tractor and mechanic shop employees involved in this proceeding perform work and services for the Employer which are incidental to its farming operations. We further find that the duties of these employees fall within the definition of "agriculture" contained in section 3 (f) of the FLSA, and hence that they are agricultural laborers excluded from coverage by Section 2 (3) of the NLRA.⁵ We shall therefore dismiss the petition.

Order

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.

⁵ *Luce & Company, S. en C.*, 98 NLRB 1060, and authorities cited therein. See particularly the letter dated October 4, 1949, addressed to the Solicitor of the Board by the Assistant Solicitor of the United States Department of Labor (1949 W H 998). See also Interpretative Bulletin No. 14 issued by the Wage and Hour Division of the United States Department of Labor, paragraph 12. In *Imperial Garden Growers*, 91 NLRB 1034, the Board stated that it would follow the interpretations of the Department of Labor and its Wage and Hour Division as to Section 3 (f) of the FLSA.

In view of our findings, it is unnecessary to resolve the Employer's other contentions.

NEW CASTLE PRODUCTS, INCORPORATED *and* INTERNATIONAL UNION,
UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 35-RC-719.*
June 18, 1952

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act,¹ a hearing was held before Leonard S. Kimmel, hearing

¹ The Employer contends that Section 9 (c) of the Act and the Rules and Regulations based thereon which provide that the hearing officer who conducts the hearing shall not make any recommendations with respect thereto is violative of the fifth amendment to the Constitution. The Board has held that as an administrative agency created by Congress it cannot question the constitutionality of the Act which created it and that it will leave such questions to the courts for determination. Unless and until the courts have determined otherwise, the Board will assume that the Act is constitutional. *Samuel Bonat & Bro. Inc.*, 81 NLRB 1249; *Rite-Form Corset Company, Inc.*, 75 NLRB 174.