

of separate elections covering such units. We deny the request of the Intervenor, without deciding upon the appropriateness of the units for which the Intervenor contends, as the Intervenor, who in this respect has the status and obligations of a petitioner,⁵ has failed to make separate sufficient showings of interest to support the direction of elections claimed appropriate by the Intervenor.

We find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's Elizabeth City, North Carolina, plant, excluding the watchmen,⁶ office and plant clerical employees,⁷ and supervisors as defined in the Act.

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

⁵ *Boeing Airplane Company*, 86 NLRB 368; *Cadillac Motor Car Division*, 94 NLRB 217.

⁶ As the watchmen work at night and on weekends when the plant is closed, punch clocks, and have no duties other than patrolling the plant in protection of the Employer's property, we find them to be "guards" within the meaning of the Act. *Union Starch and Refining Co.*, 100 NLRB 567.

⁷ The Employer and the Petitioner stipulated that the appropriate unit should be the contract unit as defined in the bargaining agreement between them. The said agreement specifically excluded both office and plant clerical employees.

ALBERT ROSSI, D/B/A AL ROSSI PRODUCE COMPANY *and* UNITED FRESH FRUIT & VEGETABLE WORKERS, LOCAL INDUSTRIAL UNION No. 78, CIO, PETITIONER. *Case No. 20-RC-2091. March 17, 1953*

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 LaFayette D. Mathews, Jr., hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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 Styles and Peterson].

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 organizations involved claim to represent certain employees of the Employer.²

¹ At the hearing the petition and other formal papers were amended to show the correct name of the Employer.

² General Teamsters, Warehousemen & Helpers, Local 890, AFL, herein called the Teamsters, was permitted to intervene at the hearing.

3. The Employer urges dismissal of the petition on the ground that the employees concerned are agricultural laborers within the meaning of Section 2 (3) of the Act.

The Employer operates a ranch and a packing shed at Gonzales, California. Although all but 25 to 30 percent of the produce which moved through his packing shed last year was grown by the Employer, his packing operations are conducted as a separate commercial enterprise from his farming operations. The packing shed employees are separately supervised and carried on a separate payroll from the ranch employees. The shed employees receive overtime pay, while the ranch employees do not. The Employer makes contributions to the Unemployment Compensation Fund for shed employees, but not for the ranch employees. The Employer provides housing for most of the ranch employees, but he does not provide housing for any of the shed employees. For these reasons we find that the employees involved in this proceeding are not agricultural laborers, but are employees within the meaning of the National Labor Relations Act.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

4. We find, in agreement with the parties, that all packing shed employees at the Employer's packing shed at Gonzales, California, engaged in the handling and processing of vegetables, excluding office clerical employees, watchmen, guards, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The Employer has operated its packing shed since August of 1951. On an experimental basis it has packed spinach, celery, broccoli, and radishes. In the future the Employer will pack only carrots and tomatoes. At the time of the hearing, the Employer anticipated that the shed would be completely shut down about February 15, and that operations at the shed would not be resumed until July 1953. The Employer will begin packing carrots in July and tomatoes in August. He expects to have from 25 to 35 employees working in July, and from 55 to 60 in August, when the tomato packing operations begin.

³ *Imperial Garden Growers*, 91 NLRB 1034; *Holme & Seifert and Grower-Shipper Vegetable Association of Central California*, 102 NLRB 347.

⁴ The Employer moves to dismiss the petition upon the ground that the petition contains no allegation, as required by the Act, that the Employer declined to recognize the Petitioner as the representative of its employees. We find no merit in the Employer's contention. The filing of the petition is itself a sufficient demand to raise a question concerning representation. Moreover, by refusing to answer the hearing officer's inquiry at the hearing as to whether he was willing to recognize the Petitioner, the Employer in effect refused recognition. *The Great Atlantic & Pacific Tea Company*, 96 NLRB 660; *White Construction and Engineering Company, Inc.*, 94 NLRB 1419. Accordingly, the Employer's motion is hereby denied.

The Petitioner and the Teamsters contend that an immediate election should be directed because most of the Employer's shed employees are local residents. The Employer contends that any election which may be directed should be timed so as to coincide with the maximum employment in July or August.

Because the seasonal employment peak for the Employer's shed has passed, we shall not direct an election be held at this time. Following our customary practice in seasonal industries, we shall direct that an election be held at or about the time of the employment peak of the next packing season, on a date to be determined by the Regional Director, among the employees in the appropriate unit who are employed during the payroll period immediately preceding the date of issuance of the notice of election.⁵

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

⁵ *Truck Equipment Company of Atlanta*, 93 NLRB 825.

GENERAL ELECTRIC COMPANY (NILES GLASS WORKS, LAMP DIVISION)
and INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, CIO. *Case No. 8-RC-1533. March 17, 1953*

Second Supplemental Decision and Certification of Representatives

Pursuant to a Supplemental Decision, Order, and Direction of Elections,¹ issued on September 30, 1952, an election was conducted on October 14, 1952, under the direction and supervision of the Regional Director for the Eighth Region, among the employees in the unit found appropriate in Case No. 8-RC-1533. At the conclusion of the election, the parties were furnished with a tally of ballots which shows that of approximately 278 eligible voters, 102 valid ballots were cast for the Petitioner, 160 valid ballots were cast for the Intervenor, United Electrical Radio & Machine Workers of America (UE), and its Local No. 751, and 4 ballots were cast against participating labor organizations.

Thereafter, on October 19, 1952, the Petitioner filed timely objections to the conduct of the election and to conduct affecting the results of the election, alleging that on or about September 12, 1952, the Employer and Intervenor executed a contract which provided for wage increases and other benefits at a time when a matter involving a ques-

¹ *General Electric Company*, 100 NLRB 1318 (consolidated Cases Nos. 8-RC-1524, 8-RC-1533).