

organization is seeking their separate representation, we shall, contrary to the Petitioner's contention, include them in the unit.⁸

We find that all production and maintenance employees at the Employer's Charlotte, North Carolina, plant, including the shipping clerk, the knitted work collector, and cafeteria employees, but excluding office clerical employees, painters, nurses, truckdrivers, watchmen-firemen, fixers, the maintenance fixer-learner, foreman-fixers, the assistant foreman-fixer, the foreladies in the finishing and inspecting, mending, greige goods inspecting, and packing departments, the head dyer, the utility man, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

⁸ The Alliance Manufacturing Company, 101 NLRB 112.

PRODUCERS RICE MILL, INC., AND PRODUCERS DRYER, INC. *and* INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, CIO, Petitioner. Case No. 32-RC-637. July 13, 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 Seymour X. Alsher, 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 had delegated its powers in connection with this case to a three-member panel [Members Houston, Styles, and Peterson].

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

1. Both the Mill and the Dryer are farmer-owned coopera-

¹ The petition as filed covered only the employees of Producers Rice Mill, Inc., herein called the Mill. At the hearing the petition was amended to include Producers Dryer, Inc., herein called the Dryer, as an Employer, and the unit was amended to include the employees of the Dryer. Both Employers objected to the amendments on the grounds that: (1) The Dryer had received no formal notice of the petition or of the hearing; and (2) the Petitioner had not formally requested recognition before the hearing for the unit sought in the amended petition. Regarding the first contention, the Dryer was represented at the hearing, and participated fully. It presented testimony and was accorded an opportunity to be heard. As it did not claim surprise, and made no showing of prejudice, the objection is overruled. *Arena-North, Inc., et al.*, 93 NLRB 375; *Imperial Garden Growers*, 91 NLRB 1034. However, as noted hereafter, we shall not direct an election among the Dryer's employees. With regard to the second contention, it is sufficient that at the hearing the Petitioner's status as a bargaining agent for the unit sought was disputed. This objection is therefore overruled also. *Advance Pattern Company*, 80 NLRB 29.

tives. The Dryer dries green grain, mostly rice, on a fixed fee per bushel basis during a 6- to 8-week season beginning September 1, each year, and thereafter operates as a commercial construction company. The Mill mills and markets dried rice, its plant generally operating through most of the year. Title to the grain they handle passes to neither of the Employers, as they operate as agents of the farmers. The Mill's annual out-of-State sales exceed \$25,000 per year. The rice handled by the Dryer, which is shipped to the Mill, is valued at \$50,000 per year.

Although as found *infra*, the Mill and the Dryer do not constitute a single employer, we find that jurisdiction is properly asserted over these Employers, considered individually.²

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

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

4. The Petitioner and the Intervenor, International Association of Machinists, Local Lodge 674, AFL, seek a unit consisting of all production and maintenance employees of both Employers, at their Stuttgart, Arkansas, plants. As to scope, the Employers contend that only separate units of the employees of each Employer are appropriate. As to composition, the parties are in disagreement concerning the placement of seasonal employees and alleged supervisors of the Dryer. Neither Employer has any history of collective bargaining.

The Mill and the Dryer were incorporated in 1943 and 1946, respectively. Up to 1946, the farmers of Arkansas County mostly dried their rice in the field, and the Dryer was organized by a minority of the Mill's stockholders, over the opposition of the Mill's operating manager. It appears, however, that the Dryer is presently an important factor in attracting business to the Mill, and that over 65 percent of the rice processed by the Mill comes from the Dryer. From 50 to 90 percent of the Dryer's production goes to the Mill. At present, over 80 percent of the Dryer's stockholders constitute over 70 percent of the Mill's stockholders. The president and another member of the Mill's board of directors serve the Dryer in the same capacities, but the balance of the Mill's 7-man board and the Dryer's 5-man board, and their other officers, are different.

The Dryer is located between facilities of the Mill, on land purchased from the Mill, and does not have a separate watchman, although the Mill's watchman is not responsible for the Dryer's property. Since its second year of operation the Dryer has had its office in the Mill's office building, rent free. Its

²Stanislaus Implement and Hardware Co., 91 NLRB 618; Hollow Tree Lumber Co., 91 NLRB 635; Evan Hall Sugar Cooperative, Inc., 97 NLRB 1258.

³The Employers questioned whether the Petitioner made an adequate showing of interest. A showing of interest is an administrative matter not triable by the parties. We are administratively satisfied that the Petitioner's showing of interest is adequate Birmingham Casket Company, 92 NLRB 573.

conveyor belt moves dried rice directly into the Mill, and when there is a breakdown in the Mill's storage machinery the Dryer's employees help make repairs because the Dryer has unusually small storage space, and unless farmers pick their grain up promptly or the Mill's storage facilities are available, the Dryer must close down.

Other than to make emergency repairs in the Mill's storage machinery, the labor forces of the two Employers do not mingle and there is no employee interchange between them; none of the Dryer's present permanent employees was ever employed by the Mill. Each Employer has a separate office area, office staff, office machinery, telephone listing, books, records, and payroll. The Mill processes and markets rice only; the Dryer dries rice, oats, wheat, corn, and soy beans, and engages in commercial construction work after the drying season is over. Their boards of directors rarely meet together, and their labor relations are under the separate jurisdictions of their respective operating managers who separately supervise their employees and set labor conditions. There is no evidence that they have common conditions of employment.⁴

Under all the circumstances, and in the absence of a sufficient showing of common control of labor relations policies of these separate entities, the Employers do not constitute a single employer within the meaning of Section 2(2) of the Act.⁵ As neither Employer has had any history of collective bargaining, there is no basis for a multiemployer unit, and we shall therefore consider the appropriateness of separate bargaining units.

The Mill operates with a force of 40 to 45 employees from September 1 to November 30, each year, and 20 to 25 employees during substantially the balance of the year.⁶ There is no disagreement between the parties as to the composition of this unit, which appears to be composed of the substantially year-round employees, and no request has been made that the election in this unit be postponed. Accordingly, we find that a unit of the Mill's production and maintenance employees is appropriate and shall direct an immediate election therein.

As previously stated, the Dryer operates as a grain drier for 6 to 8 weeks a year, beginning about September 1, and thereafter it does construction work for other companies, including the Mill. It has a permanent labor force of 5 workers, and this force is increased to 30 or 35 during the drying season. These seasonal employees are unskilled and the Employer makes no effort to secure their return from year to year. The record does not establish the number that return for a second season; the only specific evidence is that only 2 or 3

⁴The only instance of mutual consultation by the Employers concerning labor relations policy occurred recently when their boards of directors met together to discuss the organizing drive that culminated in the instant case.

⁵Jefferson Co., Inc., 105 NLRB 202; The Fli-Back Company and the Sock-It Company, 85 NLRB 959; The Clark Thread Company, 79 NLRB 542.

⁶Although the Mill's labor force may occasionally be reduced in March or May, annually, it is continued if any construction or maintenance work remains.

out of 35 come back for more than 2 seasons. The Dryer's construction work is sometimes done by temporary employees hired for the job, and otherwise by a labor force supplied by an independent contractor. The seasonal drying employees⁷ of the Dryer could properly be included in a production and maintenance unit because they work alongside the regular workers and perform similar tasks, although they do not receive the same benefits as the permanent workers.⁸ However, we are of the opinion that their seasonal tenure of employment is not sufficiently regular or substantial to entitle them to participate in an election and, accordingly, we find them ineligible to vote.⁹

Of the Dryer's 5 permanent workers, only 1 is admittedly not a supervisor. The other 4, who the Employer contends are supervisors, have authority to hire and discharge when they have subordinates. They have such subordinates during the drying season and frequently when the Dryer has construction contracts. Between May 4 and October 15, 1952, they supervised construction and drying workers; thereafter, until the end of November 1952, they supervised maintenance workers. Since then there has been 1 minor construction job which, at the time of the hearing, required the supervisory services of 2 of the individuals in question. As it appears that they were supervisors for most of last year, none of the 4 disputed workers is eligible to vote.¹⁰

In view of the foregoing, only one of the Dryer's production and maintenance workers is eligible to vote. Therefore, we shall not direct an election in a unit of the Dryer's workers.¹¹

We find that all production and maintenance employees of Producers Rice Mill, Inc., at its Stuttgart, Arkansas, plant, excluding all office-clerical employees, guards, professional employees, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

⁷Both unions agreed to the exclusion of the seasonal construction employees.

⁸S. & L. Co. of Pipestone, 96 NLRB 1148; R. Appel, Inc., 95 NLRB 7.

⁹Ibid.

¹⁰Stokely-Van Camp, Inc., 102 NLRB 1259; Libby, McNeill & Libby, 90 NLRB 279.

¹¹Cf. Warren Paper Products Co., 93 NLRB 1187; J. C. Penney Company, 92 NLRB 1286.

WESTCHESTER DIVISION, PETROLEUM HEAT & POWER CO., INC.¹ and LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, Petitioner. Case No. 2-RC-5433. July 13, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed on December 16, 1952, under Section 9 (c) of the National Labor Relations Act, a hearing was

¹The Employer's name appears as amended at the hearing.

¹⁰⁶NLRB No. 20.