

In my recent dissenting opinion in the *Whyte* case,⁷ I pointed out that the mere existence of a clause like the instant one serves as a potent instrument of coercion to individual employees, who are, after all, the primary beneficiaries of the Act. And I further pointed out that this Board undercuts the important congressional policy against the closed shop, by recognizing as valid union-security provisions which do not conform to the statutory standard. The reasons, that compelled my dissent in the *Whyte* case also compel me now to say that the Board should not give its approval to the clause in this case by finding a contract bar to exist.

The issue here does not turn, as my colleagues imply, on whether there has been a showing of actual discrimination against employees. Indeed, the record affirmatively shows that when the contract was signed, none of the Employer's employees was a union member.⁸ Nor is the issue disposed of by saying, as my colleagues say, that we are not here concerned with a charge of unfair labor practices involving the protection of employee rights. As a practical matter, unfair labor practice charges are not likely to be filed unless an unlawful union-security clause is actually enforced by discharge or other penalty. Meanwhile, the restraint against employees embodied in this contract is allowed to continue. By the majority decision herein, unions and employers are encouraged to execute illegal union-security provisions, for they are assured that their unlawful action, though ground for a possible unfair labor practice case, will be otherwise overlooked and condoned. Neither the specific language of the statute nor the legal rights of the individual employee should be so lightly brushed aside.

MEMBER PETERSON took no part in the consideration of the above Decision and Order.

⁷ *Whyte Manufacturing Co.*, 109 NLRB 1125.

⁸ Cf. *Regal Shoe Company*, 106 NLRB 1078.

ANTLE CARROTS, INC. and UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL 78, CIO, PETITIONER. *Case No. 20-RC-2592. November 3, 1954*

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.

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

1. The Employer, a California corporation incorporated on August 13, 1953, is engaged in Watsonville, California, in crating and packaging carrots. The Employer leases a packingshed on a year-to-year basis. The packing operations are carried on from approximately May 22 to December 15. In the calendar year 1954 up to the date of the hearing, the Employer's shipments of packaged carrots to customers located outside the State of California have exceeded \$50,000. The Employer does not lease or own any land for the growing of crops, but contracts with the owner or lessors of the land which the Employer has determined to be suitable for the growing of carrots. Under these contracts, the farmer is guaranteed a minimum price per acre for the crop plus a percentage of any profits based upon the quality and yield of the crop. The Employer provides fumigant, fertilizer, advice on planting, cultivation and irrigation, and transportation of the carrots from the field to the shed—a distance varying from 2 to 40 miles. The Employer also contracts with private labor contractors to supply the labor for the harvesting of the carrots. The farmer provides the labor required in cultivation, planting, and irrigation. The Employer owns the harvesting equipment used by the private labor contractors. In some instances, the Employer supplies for the use of the farmers, certain planting equipment and the seed which is then charged against the guaranteed minimum in the contract.

The Employer hires and has complete control over employees engaged in transportation and in the packingshed. They receive overtime for work in excess of 8 hours in any 1 day and for working on certain specified days of the week. They are covered by unemployment compensation insurance and Federal old-age and survivor benefit insurance. The Employer has nothing to do with labor hired by the farmers in the planting and cultivation process. There is no interchange between the farm laborers and the Employer's packingshed and transportation employees.

The Employer contends that the approximately 80 packingshed employees are engaged in operations which are a necessary incident to the farming operations and hence are agricultural laborers within the meaning of the Act. We find no merit in this contention. Packingshed employees work exclusively in the packing operation and are carried on a separate payroll. Their duties include the various operations connected with dumping, culling, sorting, washing, reculling, grading, cooling, packing in plastic bags or crating, and tying or stitching.

The Employer is not a grower in its own right, but obtains the produce through contract. In the operation of its packingshed, the Employer is not engaged in activities merely incident to or in conjunction

with farming operations such as would constitute its employees agricultural laborers within the meaning of the Act, but is engaged in a separate commercial enterprise.¹ We find that the Employer is engaged in commerce within the meaning of the Act, and that its packingshed employees are "employees" engaged in a separate commercial enterprise and are not "agricultural laborers" 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 Employer would limit the production and maintenance unit sought by the Petitioner to employees handling carrots, the only commodity the Employer presently processes through the packingshed. The Petitioner opposes such a limitation. Although the Employer is presently equipped to handle only carrots, and does not anticipate handling any other commodity in the future, we find no valid reason for specifying a limitation to a particular commodity.

The parties disagree as to the unit placement of one maintenance man. The Employer would exclude and the Petitioner would include him in the unit. His duties are to repair the machinery in case of a breakdown—whether in the shed, on the road, or in the field. In performing his work, he uses welding equipment and mechanic's tools, all of which are portable; he uses a pickup truck to make repairs on the road or in the fields. In addition, he installs any new machinery in the packingshed. The record does not disclose what percentage of the maintenance man's working time is spent repairing farm machinery in the field.

The Board has held that field maintenance men, because they repair agricultural machines on farms, are engaged in work incidental to farming operations.² More recently, the Board considered whether individuals who divide their working time between agricultural and nonagricultural duties should be regarded as falling within the statutory exclusion of agricultural labor, and decided that they must be excluded from units of employees covered by the Act.³ Accordingly, we shall exclude the maintenance mechanic from the unit herein found appropriate.

We find that all production and maintenance employees of the Employer at its packingshed in Watsonville, California, excluding office

¹ See *Shoreland Freezers, Inc.*, 108 NLRB 723; *Giffen, Inc.*, 106 NLRB 764; *H. F. Byrd, Inc.*, 103 NLRB 1278; cf. *L. Bianchi & Son*, 107 NLRB 864; *K. Malofy & Son and Ray Hart*, 107 NLRB 943.

² See *Holtville Alfalfa Mills, Inc.*, 98 NLRB 1183, 1184.

³ See *Clinton Foods, Inc.*, 108 NLRB 85.

clerical employees, guards, and all supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

GENERAL ELECTRIC COMPANY (FITCHBURG WORKS) *and* LOCAL 86,
INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL, PETI-
TIONER. *Case No. 1-RC-3655. November 3, 1954*

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 Robert S. Fuchs, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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.¹

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 seeks to sever from the existing production and maintenance unit, a unit of powerhouse employees at the Employer's Fitchburg, Massachusetts, plant, including all licensed steam engineers² and firemen, and all powerplant maintenance men. The Intervenor asserts that the requested unit is not appropriate, contending that it is not a functionally separate and distinct unit, and that the production of the high-pressure boilers is integrated with the production processes. The Employer takes no position as to the appropriateness of the proposed unit.

The Employer is engaged in the manufacture of steam turbines and superchargers at its Fitchburg works. The main powerhouse, which is separately located on the plant premises, contains two B & W high-pressure steam boilers, related auxiliary equipment, and air compressors. In addition to the powerhouse, the Employer maintains a high-pressure boiler located in the center of building 2, where the turbines are manufactured. The boiler is segregated from the

¹ International Union of Electrical, Radio & Machine Workers, Local 286, CIO, herein called the Intervenor, was permitted to intervene on the basis of its current contract with the Employer.

² No employees are classified as steam engineers at this plant.