

factors" in the UE's failure to recapture its constituent local unions "was the expulsion which took place in 1949, the ensuing red-baiting that took place. . . ." He asserted that the CIO charge of Communist domination against the UE affected the vote by UE Local 456 because the charge "was the start of our trouble." Former President McLeish of UE District 4, present at both disaffiliation meetings, also testified that the charge of Communist domination in the 1949 CIO resolution affected the decision of UE locals within District 4 to transfer their affiliation to the IUE.

In these circumstances we are convinced, contrary to the Intervenor, that the disaffiliation action by the members of UE Local 456 was taken for reasons related to the 1949 expulsion of the UE by its then parent organization, the CIO, and creates such confusion that the existing contract no longer stabilizes industrial relations. We find, therefore, that a schism exists which warrants directing an immediate election. Accordingly, we find that the current contract does not bar this proceeding.⁵

We find that 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 parties agree, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All hourly paid employees of the Employer at its Jersey City works, 150 Pacific Avenue, Jersey City, New Jersey, including group leaders, but excluding all office, clerical, technical, and professional employees, timekeepers, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁵ *Globe Forge, Inc., supra*; *General Electric Apparatus & Service Shop*, 110 NLRB 1054, 1055; *International Harvester Company, East Molne Works*, 108 NLRB 600, 604; *A. C. Lawrence Leather Company, supra*

In view of this finding we do not pass upon the Petitioner's other arguments for finding the Intervenor's contract not a bar.

Adams Packing Association, Inc. and Cannery, Citrus Workers, Drivers, Warehousemen and Allied Employees of Local Union 444, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner.
Case No. 10-RC-3581. November 26, 1956

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 Allen Sinsheimer, 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 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.²
4. The appropriate unit:

The Petitioner seeks a unit of all production and maintenance employees at the Employer's Auburndale, Florida, establishment, including truckdrivers, warehousemen, sectionizing, feed mill, and molasses unit employees, peelers, packinghouse employees, garage and filling station employees, and concentrate employees, but excluding office clerical employees, chemists, managerial employees, agricultural employees, night watchmen, and all supervisors as defined in the Act. The Employer and the intervening unions are in agreement as to the basic composition of the unit. However, the parties are in disagreement over the unit placement of the truckdrivers. The Petitioner contends that only the "semi-trailer" or tractor drivers should be included in the unit. Local 24218 and the Brewery Workers urge that the "goat" drivers, if the Board finds they are employees under the Act, as well as the tractor drivers, should be included. The Employer argues that neither classification of truckdrivers should be included in

¹ Citrus Workers Local 24218, AFL-CIO, herein called Local 24218, intervened on the basis of a contract currently in effect with the Employer International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO, herein called Brewery Workers, intervened on the basis of an adequate showing of interest. After their intervention, these unions requested that their names appear jointly on the ballot in any election directed herein on the ground that Local 24218 has applied for a charter from the Brewery Workers and their affiliation with the Brewery Workers will be completed in the near future. The Petitioner acquiesced in this request. However, the Employer objected on the grounds that there was no showing that Local 24218 had executed and filed the financial statements with the Department of Labor as required under Section 9 of the Act, and that the Brewery Workers had "raided" Local 24218. As to the first ground of the Employer's objection, the Board has frequently held that the fact of compliance of a labor organization required to comply may not be litigated in Board cases, but has adopted the practice of permitting parties to such proceedings to cause to be instituted an administrative investigation of those compliance matters which the Board may properly decide in collateral proceedings. See *Desaulniers and Company*, 115 NLRB 1025. However, the Board is administratively satisfied that Local 24218 has at all times material to this proceeding been in compliance with the filing requirements of the Act. As to the second ground of the Employer's objection, the record is devoid of any evidence to support the Employer's contention that the Brewery Workers have "raided" Local 24218. Accordingly, the Employer's objection is overruled. We shall therefore place the names of these unions on the ballot jointly.

² The Employer moved to dismiss the petition on the ground that its contract with Local 24218 is a bar. On December 12, 1955, the Employer and Local 24218 executed an agreement which was to run until November 1, 1956, and thereafter for annual periods absent 60 days' notice of termination or modification. The instant petition was filed on August 3, 1956. As the petition was filed prior to the *Mull B* date of the contract, we find that the contract cannot bar this proceeding. The Employer's motion to dismiss is therefore denied.

the unit because they have, since a prior certification in 1947, been consistently excluded from the basic unit here sought.

The Employer is engaged in growing, processing, concentrating, and canning citrus fruits and juices at its establishment in Auburndale, Florida. At the peak of the season, which usually occurs in January, the Employer employs approximately 800 employees including 15 tractor-truck drivers and 14 to 18 goat drivers. The goat drivers spend all their working time in the citrus groves where they transport harvested citrus fruits on stripped-down trucks from the groves to the roadside. There, the tractor-truck drivers pick up the citrus fruits and transport them over the road to the Employer's plant. Except for 1 or 2 occasions during the year, tractor-truck drivers do not drive goat trucks. Moreover, they receive a higher rate of pay than the goat drivers.

In the absence of bargaining history, the Board would normally include the tractor-truck drivers in the overall production and maintenance unit.³ As these drivers have been excluded from the bargaining history over the years, however, they would not be included in the overall unit without being given an opportunity of voting separately on whether they desire to become part of that unit.⁴ The Petitioner and the intervening unions stated on the record their willingness to participate in a separate election among the tractor-truck drivers. However, we are administratively advised that the participating unions have made no showing of interest among these truckdrivers. As the Board requires a separate showing of interest in such cases,⁵ we shall not establish a separate voting group for the truckdrivers.

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's Auburndale, Florida, establishment, including warehousemen, sectionizing, feed mill, and molasses unit employees, peelers, packinghouse employees, garage and filling station employees, and concentrate employees, but excluding truckdrivers, office clerical employees, chemists, managerial employees, agricultural employees, night watchmen, and all supervisors as defined in the Act.

5. Because of the seasonal character of the Employer's operations, and the fact that the seasonal peak is reached during January, we shall direct that the election directed herein be held during the month of January 1957, on a date to be determined by the Regional Director.

[Text of Direction of Election omitted from publication.]

³ In view of our findings herein, we find it unnecessary to decide whether the goat drivers are employees within the meaning of the Act. Further, as in the case of the tractor-truck drivers, no showing has been made among the goat drivers.

⁴ See *Fort Worth Stockyards*, 109 NLRB 1452, 1454.

⁵ See *American Can Company*, 108 NLRB 1209, 1210, footnote 3.