

poses of collective bargaining. We shall therefore direct that an election be held among the employees in that department.

We find that the following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees in the Employer's ready-to-wear department at its retail store in Bedford, Ohio, excluding employees in the leased departments, guards, watchmen, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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**Minute Maid Corporation and Cannery, Citrus Workers, Drivers, Warehousemen and Allied Employees Local Union #444, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner. Case No. 12-RC-14 (formerly 10-RC-3596). January 16, 1957**

#### 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.<sup>1</sup> 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 contends that the Board has no jurisdiction over it and that, therefore, the instant petition should be dismissed. We find no merit in this contention.

The Employer is a Florida corporation with its principal office located at Orlando, Florida, and is engaged in the business of concentrating and processing citrus products. Its plant at Auburndale, Florida, is the only one involved in this proceeding. As the Em-

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<sup>1</sup> The Employer moves that the petition be dismissed on the ground that it is not supported by 30 percent of the employees in the unit as required by the Board's Rules and Regulations, and on the further ground that the Board's application of the 30 percent showing-of-interest rule to seasonal industries (to the effect that the showing may be limited to current employees, excluding peak season employees, at a time when peak season operations are not being carried on) is an arbitrary and capricious rule, contrary to the meaning and intent of the statute, and is not consistent with the Act or with the Administrative Procedure Act.

These motions are hereby denied. The Board has repeatedly held that the showing of interest is a matter for administrative determination and is not a subject which is litigable by the parties to a representation proceeding. Furthermore, we are satisfied that Petitioner's showing is adequate, even when measured against the number of employees employed during the Employer's peak season operations. Furthermore, we have frequently held in the past that a representation proceeding is not subject to the provisions of the Administrative Procedure Act. *F. C. Russell Company*, 116 NLRB 1015, and cases cited therein. Accordingly, we find no merit in these contentions.

The Employer has advanced various additional grounds for dismissing the petition. For reasons stated hereinafter in this Decision the motions to dismiss are hereby denied *in toto*.

ployer has shipped goods from its Auburndale plant to points outside the State valued in excess of \$500,000 during the year preceding the date of the hearing, we find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction in this case.<sup>2</sup>

2. The Employer refused to stipulate that any of the labor organizations involved herein are labor organizations within the meaning of Section 2 (5) of the Act. We take official notice of the fact that one of the intervening unions, the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO, herein called the Brewery Workers, exists for the purpose of dealing with employers concerning working conditions and is therefore a labor organization within the meaning of the Act. As pertains to the Petitioner and the other intervening union, Citrus Workers Federal Labor Union #24218, AFL-CIO, herein called the Federal Union,<sup>3</sup> uncontradicted testimony was received at the hearing to the effect that both these unions exist for the purpose of representing employees in dealing with employers with respect to matters relating to grievances, labor disputes, rates of pay, hours of employment, and other conditions of employment. We find, therefore, that the Petitioner and the Federal Union are both labor organizations within the meaning of the Act.

3. The Employer contends that its contract with the Federal Union is a bar to an election at this time. The Federal Union, the certified bargaining agent, entered into a contract with the Employer on December 23, 1955, to run until October 31, 1956, and from year to year thereafter, absent 60 days' written notice by either party of a desire to modify or terminate the contract. The petition in this case was filed on August 13, 1956, or approximately 2½ weeks prior to the *Mill B* date of the contract. Accordingly, as the present petition was timely filed in relation to the automatic renewal date of the then current contract between the Employer and the Federal Union, we find that the contract does not bar an election.<sup>4</sup>

Nor do we find merit in the Employer's contention that the petition should be dismissed on the ground that Petitioner claims to be a successor union to the Federal Union. Whether Petitioner is a successor or not is immaterial as the Employer refused to recognize the claim of the Petitioner or to bargain with it, thereby raising a question concerning representation.

The Employer also contends that the petition should be dismissed because (1) the Federal Union's affiliation with various other unions is illegal or otherwise defective, and (2) the petition violates the no-

<sup>2</sup> *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

<sup>3</sup> Federal Union and the Brewery Workers were permitted to intervene in this proceeding on the basis of card showings of interest.

<sup>4</sup> *P C Russell Company*, *supra*.

raiding provisions of the AFL-CIO constitution. As to (1), the status of the Federal Union, which is merely an intervenor herein, cannot, in any event, affect the validity of the petition. As to (2), the Board has heretofore held that the fact that a petition violates the no-raiding clause of the AFL-CIO constitution is no ground for the dismissal of a petition.<sup>5</sup>

Accordingly, 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 are in basic agreement as to the composition of the unit sought, as amended at the hearing. However, the Employer would exclude, while the Petitioner and the Intervenors would include, cafeteria employees and leadmen.

*Cafeteria employees:* The Employer operates a nonpublic cafeteria for the use of its employees, although truckdrivers of other employers who bring material to the plant and haul finished goods away from the plant may also use it. In addition to the working supervisor, who the parties agree should be excluded from the unit, there are 4 cafeteria employees during the busy season and 2 during the slack season. The cafeteria employees are hourly paid, receive the same benefits as other production and maintenance employees, were expressly included in the unit found appropriate in the prior proceeding, and have been included in the contract unit. In accordance with our usual custom of including such employees in plantwide units, particularly where, as here, their separate representation is not sought by any other labor organization, we shall include the cafeteria employees in the unit hereinafter found to be appropriate.<sup>6</sup>

*Leadmen:* In the Employer's juice extraction department, there is a foreman in charge of each shift who is directly responsible to the plant superintendent. Each shift foreman has two assistant or subforemen under him in charge of separate departments. They in turn, each have a leadman directly under them. In the warehouse operation, there is a warehouse foreman and two leadmen on each shift, one of whom works with cold storage and the other with dry storage. The record indicates that there may be other leadmen, but is not clear as to their placement or number. However, it is clear that all leadmen have the same degree of authority over their subordinates, and that all department leadmen work under shift foremen or subforemen. Leadmen direct the work of from 3 to 15 employees, depending upon the specific department and the time of the year. In

<sup>5</sup> *Adams Packing Association, Inc.*, 116 NLRB 1645; *F. C. Russell Company, supra*; *Minneapolis Star and Tribune Company*, 115 NLRB 1300, and cases cited therein.

<sup>6</sup> *Foley Manufacturing Company*, 115 NLRB 1205; *Eastman Kodak Company*, 115 NLRB 591; *Channel Master Corporation*, 114 NLRB 1486; *Ozburn-Abston and Co., Inc.*, 112 NLRB 936. Cf. *Geneva Forge, Inc.*, 114 NLRB 1295; *LeTourneau-Westinghouse Company*, 113 NLRB 684

contrast to the foremen and subforemen, leadmen are paid on an hourly basis, receive overtime pay, are carried on seniority lists, and are not covered by the retirement program for supervisors. In addition, although the Board's unit finding in a previous case involving the same employees<sup>7</sup> contains no reference to leadmen, they voted in the election directed therein and have been included in the unit bargained for under the certification resulting from that election.

The record shows that these leadmen work under department heads or foremen who are admittedly supervisors as defined in the Act, and act as conduits for relaying work directions to the rank-and-file employees. They do not have authority to hire, discharge, or discipline employees and, although they may make recommendations to their immediate superior as to transfers and discharges, any reports or recommendations made by the leadmen are subject to independent investigation by their supervisors. We find that these employees cannot effectively recommend changes in personnel status, and that the control exercised over other employees is more the type of direction which experienced employees customarily exercise over those who are less experienced and is of a routine nature not involving the use of independent judgment. We find, therefore, that the leadmen are not supervisory employees within the meaning of Section 2 (11) of the Act, and we shall include them in the unit.<sup>8</sup>

Accordingly, we find that the following employees of the Employer at its plant located in Auburndale, Florida, 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, including warehousemen, checkers, cafeteria employees, leadmen, and the peel oil operator, but excluding office and office clerical employees, printshop employees, truckdrivers, gauge employees, fruit scale men, all new construction and installation employees, agricultural employees, first-aid personnel, laboratory technicians, professional employees, night watchmen, guards, inspectors, subforemen and foremen, the cafeteria supervisor, and all supervisors as defined in the Act.

5. The Employer's operations are seasonal in nature, with peak employment occurring during the period from January to March. Because of this seasonal nature of the Employer's business, we shall

<sup>7</sup> In that case, the Federal Union petitioned for a unit of employees of the Employer's predecessor. *Wm. P. McDonald Corporation*, 83 NLRB 427. The Board there found appropriate a unit consisting of all production and maintenance employees, subject to certain exclusions. Thereafter, on January 19, 1950, the Federal Union was certified as exclusive bargaining representative for the above unit of employees.

<sup>8</sup> *The Gas Service Company*, 115 NLRB 944; *Sidney Blumenthal & Co., Inc.*, 113 NLRB 791; *Eagle Iron and Brass Company*, 110 NLRB 747; *Gerber Plastic Company*, 108 NLRB 403, and cases cited therein

direct that the election directed herein be held during the Employer's peak season, on a date to be determined by the Regional Director.<sup>9</sup>

[Text of Direction of Election <sup>10</sup> omitted from publication.]

<sup>9</sup> The Employer contends, *inter alia*, that the petition is premature because filed before the peak season. However, there is no requirement that petitions for seasonal employees be filed during the peak season. It suffices that, as here, the election is not held until the peak season.

<sup>10</sup> As a Federal labor union, the Federal Union is affiliated directly with the AFL-CIO in contrast to a union which is affiliated with an international union. However, the Federal Union and the Brewery Workers request that their names appear jointly on the ballot in any election directed herein on the ground that the Federal Union has applied for a charter from the Brewery Workers and that their affiliation with the Brewery Workers will be completed in the near future. The Petitioner acquiesced in this request. Accordingly, we shall place the names of these two unions on the ballot jointly in the election herein directed. See *Adams Packing Association, Inc., supra*.

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**Good-All Electric Mfg. Co. and International Brotherhood of Electrical Workers, Local 1525, AFL-CIO, Petitioner. Case No. 17-RC-2228. January 17, 1957**

**SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

Pursuant to a Decision and Direction of Election issued on June 5, 1956,<sup>1</sup> an election was conducted on July 18, 1956, under the direction and supervision of the Regional Director for the Seventeenth Region, among the employees in the unit heretofore found appropriate. At the close of the election a tally of ballots was furnished each of the parties in accordance with the Board's Rules and Regulations. The tally shows that 127 valid ballots were cast for the Petitioner, 382 valid ballots were cast against the Petitioner, 42 ballots were challenged, and 4 ballots were declared void.

On July 20, 1956, the Petitioner filed timely objections to conduct affecting the results of the election, and requested the right to withdraw its petition. On October 1, 1956, the Regional Director, after investigation, issued his report on the objections, recommending that the election be set aside, and that the Petitioner's request to withdraw its petition be approved. On October 18, 1956, the Employer filed exceptions to the Regional Director's report.

The Board has considered the objections, the Regional Director's report, the exceptions, and the entire record in the case, and finds merit in the Employer's exceptions.

In June 1955, the Employer announced to its employees that it had established a profit-sharing trust fund for them, and that it was making an initial payment to that fund based on the employees' earn-

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<sup>1</sup> Not reported in printed volumes of Board Decisions and Orders.