APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT poll or interrogate our employees concerning their union affiliations, sympathies, or activities in regard to International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL–CIO, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such acts may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to Jack Griffiths, Julia Capaldi, Beatrice Griffiths, and Nettie Heddleson immediate and full reinstatement to his or her former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and will make each of them whole for any loss of pay he may have suffered as a result of the discrimination against him.

WE WILL NOT discourage membership in International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL–CIO, or any other labor organization, by discriminating in any manner against our employees in regard to their hire or tenure of employment or any term or condition of their employment.

WE WILL NOT discriminate in regard to the hire or tenure of employment or any term or condition of employment, because of membership in, or activities on behalf of, any such labor organization.

All our employees are free to become or remain members of the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL–CIO, or any other labor organization.

OLD KING COLE, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Bordo Products Company *and* International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL–CIO, Petitioner. *Case No. 12–RC–12 (formerly 10–RC–3590). February 5, 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. 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 the business of processing citrus fruits. This case involved its operation at Winter Haven, Florida.

The Employer in this proceeding contests the Board's jurisdiction but refuses to disclose any information as to the nature and extent of its purchases and sales at this plant. The hearing officer placed in the record certain telegrams, dated in September 1956, from customers of the Employer to the Board's Regional Director, which show that the Employer at the present time ships in interstate commerce products of an annual value of at least $536,941.

In 1948, the Employer participated in a consent election involving this Winter Haven plant, pursuant to which a certification was issued covering the plant.[1] In 1949, in a proceeding involving its Mission, Texas, plant,[2] the Employer admitted it is engaged in commerce within the meaning of the Act and stipulated certain facts concerning its operations on the basis of which the Board asserted jurisdiction. We hereby take official notice of the record in that proceeding.[3] The stipulation therein shows that the Employer is an Illinois corporation with its home office in Chicago, Illinois, and plants in Mission, Texas, and Winter Haven, Florida. All the Employer's salesmen work out of the home office in Chicago and make sales to various customers over the entire United States. During the operating season, November 1947 to May 1948, the Employer purchased in Texas in excess of $100,000 worth of citrus fruit for processing at the Mission plant. During the same period it purchased from the American Can Company and Kieckhefer Container Company tin cans and corrugated pasteboard cartons valued at $675,000, which were shipped to Mission from Houston, Texas. It also purchased in excess of $50,000 worth of labels for use in its Mission plant, most of which were shipped to the plant from points outside the State of Texas. During the same period of time, the Employer's sales at the Mission, Texas, plant alone were in excess of $1,000,000, of which approximately 90 percent was shipped to points outside the State of Texas.

The Employer, although contesting jurisdiction herein, neither asserted nor offered any evidence to show that its operations have substantially changed since the earlier cases. There is nothing in the record of the 1949 proceeding or of this proceeding which would indicate that the Employer's operations for the year 1947–48 are not typical of its business. The Board is aware of no intervening circumstances which would raise the probability that the Employer's interstate business has declined. The presumption is that a state of affairs once shown to exist continues until the contrary is shown.[4] Our dis-

[1] Case No 10–RC–421 (not reported in printed volumes of Board Decisions and Orders).

[2] 83 NLRB 461

[3] See *Maxwell Brothers, Inc*, 111 NLRB 1118, *Aabel Corporation*, 111 NLRB 180, and *Avco Mfg Corp.*, 107 NLRB 295, where the Board took official notice of earlier proceedings involving the same employer to get commerce facts

[4] *N L R B.* v. *Whittier Mills Co*, 111 F. 2d 474 (C. A. 5); see also *N. L. R. B.* v. *Tex-O-Kan Flour Mills Co*, 122 F. 2d 433, 436 (C. A. 5), *N L R B* v. *J. G Boswell Co.*, 136 F. 2d 585 (C. A. 9).

senting colleague fails to cite any authority which holds that there is an exception to this general rule of law which precludes its application to facts as to business operations simply because such facts are utilized to determine jurisdiction. Indeed, we note that he participated in 2 of the 3 cases cited in footnote 3, *supra*, where the Board did take official notice of the commerce facts in a prior proceeding as a basis for asserting jurisdiction. Accordingly, in the absence of evidence to the contrary, which the Employer may still present if it desires to do so, should it promptly make a sufficient offer of proof, the Board concludes that the commerce data heretofore presented to the Board continues to be representative of the Employer's business.

The Board finds that the Employer is engaged in commerce within the meaning of the Act, and inasmuch as the Employer meets the Board's jurisdictional standards with respect to multistate operations,[5] it will effectuate the purposes of the Act to assert jurisdiction in this case.

2. The record shows that the Petitioner and the Intervenor, Cannery, Citrus Workers, Drivers, Warehousemen and Allied Employees Local 60, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO, exist for the purpose of bargaining collectively with employers concerning the wages, hours, and working conditions of employees. We find that both are labor organizations within the meaning of Section 2 (5) of the Act and claim to represent certain employees of the Employer.

Citrus Workers' Local Union 24215, AFL–CIO, party to a bargaining contract with the Employer, was duly notified but did not intervene in this proceeding.

3. The Employer moves to dismiss the petition on numerous grounds. For reasons indicated below, we deny the motion.

The Employer alleges first a contract bar to the petition. A contract was entered into between the Employer and the Citrus Workers' Local Union 24215, affiliated with the AFL, on December 15, 1955, which contained an expiration date of October 29, 1956, unless automatically renewed by failure of either party to give 60 days' notice prior to the expiration date. The petition herein was filed on August 8, 1956, prior to the operative date of the automatic renewal clause. We, therefore, find that it was timely filed. Accordingly, the contract is no bar.[6] In view of our finding that the petition was filed at a time appropriate with respect to the contract's term for a change of representation, the grounds urged by the Employer to support its dismissal motion relating to raiding, disaffiliation, or defunctness are not pertinent, and we shall not discuss them.

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[5] See *Jonesboro Grain Drying Cooperative*, 110 NLRB 481, *The Ransom and Randolph Company*, 110 NLRB 2204.

[6] See *International Harvester Company*, 113 NLRB 750

The Employer also contends that the Petitioner has not made a proper showing of interest in view of the seasonal nature of the business involved. The Employer urges that a showing of interest among employees on its payroll at the time the petition was filed is inadequate because of the greatly increased number of employees who will be working during the season. We find no merit in the contention. The showing of interest is an administrative matter not subject to collateral attack, and the Board has consistently found that a showing among current employees in a seasonal industry is adequate.[7]

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 a unit of all production and maintenance employees at the Employer's operation located at Winter Haven, Florida. The parties are generally in agreement as to the composition of the unit. There is some problem raised as to the unit placement of plant clerical employees and the supervisory status of car checkers.

Although the parties seem to have agreed that "clerical" employees should be excluded from the unit they are in specific disagreement concerning scalemen and possibly stock clerks. The 1948 certification following a consent election covered all employees including specifically stockroom clerks. The most recent bargaining contract recognized a unit of all employees, and although the recognition clause did not mention specifically plant clerical employees as a group or the individual classifications here in dispute, an addendum to the contract provides wage rates for scalemen and stockroom clerks.

Scalemen work in the scalehouse weighing fruit. A loaded truck is driven on the scales and the scalemen press a button which automatically records the weight on a scale ticket. Then, after the truck has been unloaded, the truck is driven on the scales empty and the weight is recorded in the same manner. The scalemen make a manual calculation of the differential, record all information relating to the type of fruit, the supplier of fruit, and other information. Stock clerks perform clerical duties in keeping track of materials. We find the scalemen and stock clerks are plant clerical employees. Inasmuch as the Board finds it desirable to include plant clericals with production and maintenance employees with whom they are closely associated,[8] and, the bargaining history appears to have covered such employees, we shall include all plant clericals, including scalemen and stock clerks, in the unit hereinafter found appropriate.

The car checkers work in the warehouse or at any point where there are shipping operations. Each checker has a crew of three or more

[7] See *Sebastopol Cooperative Cannery,* 111 NLRB 530, 532.

[8] See *Mrs. Tucker's Products,* 106 NLRB 533

employees, called car loaders. The checker receives a tally which indicates the amount and size of merchandise to be loaded into the car or truck and it is his responsibility to see that the merchandise is loaded correctly by the loaders, and he signs the tally when loading is completed. He has the authority to effectively recommend discharge. We find that the car checkers responsibly direct the loaders and are supervisors as defined in the Act. Accordingly, we shall exclude them from the unit.

We find the following 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 fruit processing plant at Winter Haven, Florida, including scalemen, stock clerks and all plant clericals, and truckdrivers and warehouse employees, but excluding all new construction, installation, and agricultural employees,[9] office clerical employees, cafeteria employees, laboratory and first aid personnel, technicians, professional employees, watchmen and guards, sectionizing supervisors, car checkers, and all other supervisors as defined in the Act.

5. The Employer's business is seasonal. The plant was closed on March 28, 1956, and remaining on the payroll as of August 8, 1956, were 107 employees. At the peak of the season there are approximately 1,200 employees. The season is influenced by the weather. The record shows that in 1955 the peak of employment was reached sometime after the first of December, and probably remained at the peak for a couple of months. The Employer moves to dismiss the petition on the basis that since employees had not been hired for the current season's operations at the time of the hearing, it is improper to provide for an election among employees not yet employed. We find no merit to the contention.[10]

We shall in accordance with our usual practice in seasonal industries direct that an election be held at or about the peak of the 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 the issuance of notice of election by the Regional Director.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS, dissenting:

I know of no case before this Board, or before the courts, where the facts upon which the forum's jurisdiction rests may be presumed.[11]

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[9] The parties agreed that "agricultural employees" is defined to mean those employees who work in the groves

[10] See *Sebastopol Cooperative Cannery, supra*

[11] 42 Am Jur. 440, Public Administrative Law § 109, 42 Am. Jur. 513, Public Administrative Law § 157; 20 Am Jur 172, Evidence § 167 Cf. 31 Am Jur 79, Judgments § 416; 31 Am Jur 81, Judgments § 419

Certainly any rule of law to the effect that facts once established are presumed to continue does not apply to the determination by a quasi-judicial tribunal of its right to adjudicate a given matter at a given time.[12]

The Board in its investigation of this case had the statutory right to subpena all pertinent evidence and failed to exercise this right. I see no justification, therefore, in presuming to be jurisdictional facts, materials that are not in this record but in the record of a case litigated 8 years ago. Accordingly, I would remand this case for appropriate further investigation in conformity with our usual practice.

[12] ". . such generalizations, useful enough, perhaps, in solving some problem of a particular case, are not rules of law to be applied to all cases, with or without reason" *Maggio* v. *Zeitz*, 333 U. S. 56, 65.

The cases cited by the majority in support of this rule (*supra*, footnote 3) are not applicable. In both the *Boswell* and *Tex-O-Kan Flour Mills* cases, the Board made specific findings of jurisdictional facts based upon what appears to be the most current figures available (26 NLRB 765, 768; 35 NLRB 968, 974 (C A. 5)). The court's affirmance of these findings in the *Tex-O-Kan* case stressed that the information was, in fact, the "last apparently for which the record had been made up" (122 F. 2d 433, 436), and significantly the *Boswell* findings were presumed by the court not to have changed "in the following month" (136 F. 2d 585, 589). The facts in the *Whittier Mills* case that were presumed by the court to have continued involved substantive matters having no bearing upon the Board's jurisdiction. 111 F 2d 474, 478 (C A 5)

There is, of course, an obvious distinction between the Board taking official notice of contemporaneous facts as it did in the two cases in which I participated (footnote 3, majority opinion) and presuming to be contemporaneous in 1957, as it does here, facts established in 1948

Arden Farms; Bordens Capital Dairy; Carnation Co.; Golden State Co. Ltd.; Challenge Cream & Butter Association; Crystal Cream and Butter Company; Inderkums Dairy; and Taylor's Dairy[1] *and* Office Employees International Union, Local No. 29, AFL-CIO, Petitioner

Golden State Co. Ltd. *and* Chauffeurs, Teamsters & Helpers, Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Petitioner

Arden Farms *and* Chauffeurs, Teamsters & Helpers, Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Petitioner. *Cases Nos. 20-RC-3155, 20-RC-3162, and 20-RC-3164. February 5, 1957*

DECISION, ORDER, AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before L. D. Mathews, Jr.,

[1] At the hearing, without objection, the petition in Case No. 20-RC-3155 was amended to substitute Crystal Cream and Butter Company for Home Milk and Ice Cream Co.