

## V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom, and take certain affirmative and remedial action designed to effectuate the policies of the Act.

It will be recommended that the Respondent offer Theodore Pavlue and Louis Hoxie immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any wage losses incurred as a result of the discrimination against them, in accordance with the Board's usual policies.

Upon the basis of the foregoing findings of fact, and the entire record in the case, I make the following:

## CONCLUSIONS OF LAW

1. International Chemical Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Theodore Pavlue and Louis Hoxie, thereby discouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

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**H. A. Rider & Sons, Petitioner and Local No. 912, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.** *Case No. 20-RM-212. March 1, 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 Shirley N. Bingham, 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 organization involved claims to represent certain employees of the Employer.

3. The Employer seeks a determination of representatives among the production and maintenance employees at its processing plant in Watsonville, California. The Union contends that no question concerning representation exists because of its alleged disclaimer.

For a period of 2 years, beginning in the summer of 1954, the Union has made a series of demands on the Employer to sign a contract recognizing the Union as the representative of the Employer's employees. On September 10, 1956, at about 10 a. m., two of the Union's representatives called on the Employer and presented it with a contract and

requested the Employer to sign it. When the Employer declined and suggested to the Union that they first get the employees to join the Union, the union representatives stated in effect that this required "too much work." The Employer then indicated that it would request an election. The union representative thereupon said that "One way is to put up a picket line and see how many of your men will cross it." The meeting ended with the union agent stating that if the Employer wanted to do it "the hard way" the Union would establish a picket line. At about 4 p. m. that same afternoon the Union sent a letter to the Employer, received by the latter the following morning, in which the Union stated in substance that it was contemplating the commencement of an organizational drive among the employees, and that it would not ask the Employer to sign a contract until a majority of its employees had indicated a desire to be affiliated with it. On the very morning the Employer received this letter, two union pickets appeared at the Employer's premises with a sign "TO THE EMPLOYEES OF H. A. RIDER AND SONS JOIN THE TEAMSTERS LOCAL 912." The Employer filed the instant petition on September 12, 1956. The picketing was still in progress at the time of the hearing in this proceeding.

Although the Union concedes that it demanded a contract on the morning of September 10, 1956, nonetheless it asserts that its letter of the same day constituted an unequivocal disclaimer, and that its picketing on the morning of September 11, 1956, was not inconsistent therewith. It contends therefore that no question concerning representation exists. We do not agree. It is clear from the record that for a period of more than 2 years the Union repeatedly made demands for recognition on the Employer, and that within less than 24 hours before the picket line in question appeared at the Employer's premises, it not only reiterated its demand for a contract but threatened to establish a picket line in order to force the Employer to grant it a contract. It is equally significant that the picket line was established precisely as threatened. Moreover, we note that on the very day that the Union wrote its letter which it asserts as a disclaimer, it told the Employer, in response to its suggestion that it organize the employees first before demanding recognition, that this was "too much work." From the record as a whole, and from these facts in particular, we are convinced that the picketing was inconsistent with an unequivocal disclaimer, and that the Union's manifest purpose was to induce the Employer to execute a contract although it had no representative status among the employees in question.<sup>1</sup>

We find, therefore, that a question affecting commerce exists concerning the representation of employees of the Employer within the

<sup>1</sup> See *Jerome E. Mundy Co., Inc.*, 116 NLRB 1487; *Casey-Metcalf Machinery Co., et al.*, 114 NLRB 1520.

meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Employer seeks an election among the production and maintenance employees at its processing plant located at Watsonville, California. It is engaged in the production of apply cider as its principal product. The record shows that the Employer employs between 15 and 18 employees at its processing plant, and that their duties consist of dumping apples in a wash machine, sorting and grading, pressing the fruit, and bottling by machine. Adjacent to, and about 7 miles from, this plant, the Employer also engages in farming operations. Approximately 5 percent of the apples used in the processing plant is grown by the Employer; the remaining 95 percent is obtained from other sources. Of the 15 to 18 employees in the Employer's employ, approximately 8 are laid off at the conclusion of the season. The others are retained, doing minor maintenance work at the plant, closing it down and preparing for the resumption of operations, and engaging in some work on the farm. The employees, about 10 in number, who divide their time between the processing plant and the farming operations, spend more than 70 percent of their time each year working at the processing plant.

From the foregoing facts it is clear that the processing plant is a nonagricultural operation, and that the employees thus employed constitute an appropriate unit for purposes of collective bargaining.<sup>2</sup> The only question for our determination concerns the employees who divide their time between the processing plant and the farm.

Although prior to the *Clinton Foods*<sup>3</sup> decision no problem would have arisen with respect to the employees in this case who divide their time between agricultural and nonagricultural employment as it is clear from the record herein that they spend approximately 70 percent of their time each year in nonagricultural work, the Board in *Clinton Foods* held that "employees who divide their time between agricultural and nonagricultural employment must, to the extent that they spend a substantial part of their time in an agricultural function, be deemed agricultural laborers within the meaning of the Act and are, therefore, to be excluded from the unit." Applying a conflict of interest rationale analogous to that used in the case of guards and supervisors, the Board overruled all prior decisions inconsistent with this holding and decided that even where employees spent, as they did in that case, only one-third of their time in agricultural employment, they would have to be excluded from the unit found appropriate.

We have reevaluated the holding in the *Clinton Foods* decision, and, on careful reconsideration and after a thorough review of the basic considerations, are convinced that the analogy predicated on a conflict of interest rationale is inapplicable to employees who divide their time

<sup>2</sup> *H F Byrd, Inc*, 103 NLRB 1278; *Imperial Garden Growers*, 91 NLRB 1034.

<sup>3</sup> *Clinton Foods, Inc*, 108 NLRB 85.

between agricultural and nonagricultural pursuits. Accordingly, we find that since the employees in this case spend upwards of 70 percent of their time during the year in nonagricultural employment, they are properly included in the unit found appropriate.<sup>4</sup>

Accordingly, we find that the following employees at the Employer's Watsonville, California, processing plant constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees, excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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<sup>4</sup>To the extent that *Clinton Foods, Inc., supra*, and subsequent cases are inconsistent with this decision, they are hereby overruled. We find it unnecessary to lay down a general rule in this case as to what proportion of time spent in nonagricultural work is necessary for inclusion in the unit

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**Westinghouse Electric Corporation and Local 68, International Union of Operating Engineers, AFL-CIO, Petitioner. Case No. 2-RC-8403. March 1, 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 Julian J. Hoffman, 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 named below claim to represent certain employees of the Employer.<sup>1</sup>
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.

The Intervenor moved to dismiss contending that its current contract with the Employer is a bar to the petition for the unit of powerhouse employees sought by the Petitioner. The Employer takes no position on this issue.

The Intervenor has been the bargaining representative of the Employer's production and maintenance employees including the employees sought herein for a number of years. The last contract, effective through October 14, 1956, and containing a provision for

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<sup>1</sup>Local 410, International Union of Electrical, Radio & Machine Workers, AFL-CIO, herein called Intervenor, was permitted to intervene on the basis of its contract with the Employer covering the employees herein involved