

**The Illinois Canning Company and Leon Pierce, Petitioner and Local 678, United Packinghouse Workers of America, AFL-CIO. Case No. 13-RD-393. December 10, 1959**

DECISION AND DIRECTION OF ELECTION

Upon a decertification petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Norbert C. Rayford, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, and Fanning].

Upon the entire record in this case,<sup>1</sup> 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.<sup>2</sup>

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The Employer is engaged in the seasonal business of canning and distributing fruit juices and vegetables. It operates two canning plants at Hoopeston, Illinois, and one at nearby Fowler, Illinois. The Employer operates a farm of approximately 900 acres, on which it grows sweet corn, tomatoes, and a small amount of wheat. The Employer also enters into contracts with independent farmers, under which the Employer is required to purchase the entire crop grown on approximately 7,700 acres. Practically all of the produce canned by the Employer is grown either on its farm or on the above-described contract acreage. The Employer furnishes the contract farmers with harvesting equipment. The Employer normally employs approximately 150 employees, but during the farming season it hires approximately 300 additional seasonal and migratory workers.

Petitioner seeks a decertification election in the unit previously certified by the Board.<sup>3</sup> It contends that Board policies require the direction of an election without any change in the certified unit, and without consideration of the unit issues raised by the Union. The Union alleges that the certified unit includes employees who, as agricultural laborers and/or supervisors, are expressly excluded from

<sup>1</sup> In accordance with the stipulation of the parties, the transcript of hearing and exhibits in Case No. 13-RD-387 have been incorporated into the record of the present proceeding.

<sup>2</sup> Petitioner, an employee of the Employer, contends that the Union is no longer the exclusive bargaining representative of the employees involved herein within the meaning of Section 9(a) of the Act.

<sup>3</sup> *The Illinois Canning Co.*, 120 NLRB 669.

the coverage of the Act. It is of course true that the Board directs decertification elections only in the recognized or certified unit represented by the bargaining representative of the employees involved.<sup>4</sup> However, since a victory in the election hereinafter directed would entitle the Union to a recertification as bargaining representative of the employees involved, and since the Board is without jurisdiction to include agricultural laborers or supervisors in such a unit, it is necessary to determine the status of the disputed employees. The exclusion of such individuals as may be required by the Act, does not constitute a change in the unit.

We find no merit in the Union's contention that John Baker, Aaron Polson, Ray Robinson, George Dean, Oakley Lawson, Albert MacIntyre, Hughie Polson, Orville Wagner, Ewell Wells, Oakley Williams, and Claytus Witty must be excluded from the unit as agricultural laborers within the meaning of the Act. Baker, Aaron Polson, and Robinson regularly work for approximately 8 months each year in the Employer's shipping department. Such work is clearly nonagricultural in character. The remaining eight employees all work regularly from November to March repairing and maintaining equipment which is furnished by the Employer to the contract farmers and which is used only on contract acreage from April to October. This repair and maintenance work is performed in the Employer's repair shops. As such work is done on equipment which is furnished by the Employer to other farmers for use in their farming operations, it cannot be said to be carried on as an incident to, or in conjunction with, the Employer's own farming operations. Accordingly, the agricultural exemption under the Fair Labor Standards Act<sup>5</sup> does not apply to these employees when engaged in such repair and maintenance work.<sup>6</sup> In view of the foregoing, we find that all 11 employees, whom the Union would exclude as agricultural employees, regularly perform work which is nonagricultural in character, and that accordingly, their inclusion in the unit is not prohibited by any statutory provision.<sup>7</sup> We shall therefore include them in the unit with respect to that portion of their work which is nonagricultural.<sup>8</sup>

The Union contends that Harold Cassidy, Otto Lightle, Hubert Morrison, Chester Vest, Edwin Lightle, Orville Wagner, and Claytus

<sup>4</sup> *Harry F. Shuey, et al., d/b/a Oakwood Tool and Engineering Company*, 122 NLRB 812.

<sup>5</sup> The Board's annual appropriation rider directs, in effect, that the Board is to be guided, in determining whether an employee is an agricultural laborer, by the definition set forth in the Fair Labor Standards Act.

<sup>6</sup> *N.L.R.B. v. Olaa Sugar Refining Company, Limited, et al.*, 242 F. 2d 714 (C.A. 9).

<sup>7</sup> *Ibid*; *H. A. Rider & Sons*, 117 NLRB 517.

<sup>8</sup> *Olaa Sugar Company, Limited*, 118 NLRB 1442. Board Member Rodgers believes that the principle set forth in *Clinton Foods, Inc.*, 108 NLRB 85, that individuals who spend a substantial part of their time in an agricultural function are agricultural laborers within the meaning of the Act, is sound. However, he deems himself bound by the Board decision in *Olaa Sugar Limited, supra*, and therefore agrees to the inclusion in the unit of the persons in question.

Witty are supervisors within the meaning of the Act. The Employer contends that Harold Galloway, whom the Board found to be a supervisor in the prior proceeding, is no longer a supervisor, and should be included in the unit.

Harold Cassidy is a cutter and maintenance mechanic, and is charged with instructing new women employees in the canning plant in the operation of corn cutting machines during the corn canning season. He also adjusts the cutter machines to meet changing specifications. Otto Lightle, Hubert Morrison, and Chester Vest are retort or pressure-cooker timers most of the time. Edwin Lightle is a husker mechanic during August, the corn canning season, and does only common labor the other 11 months. Harold Galloway no longer is a crew leader and now merely helps with the unloading and related activities. None of these employees has authority to hire or fire or discipline employees, or effectively to recommend such personnel action. Moreover such authority as they may possess with respect to the direction of other employees is of a routine nature which does not require the use of independent judgment and discretion contemplated by the phrase "responsibly to direct" as used in the Act.<sup>9</sup> Accordingly, we find that they are not supervisors within the meaning of the Act, and we shall include them in the unit.

Orville Wagner and Claytus Witty patrol the Company's farm in pickup trucks during the harvesting season. The trucks are equipped with two-way radios which are utilized by Wagner and Witty to report the progress of approximately 300 migratory employees to Assistant Farm and Field Manager Timmons or his assistant, Roy Sims, and to receive messages from those officials relating to future tasks of the migratory farmworkers. Wagner and Witty relay such messages to the migratory crew leaders. In these circumstances, we find that Wagner and Witty are not supervisors but serve merely as conduit for the orders of supervisory officials. We find, however, that the work performed by them in this connection is agricultural labor within the meaning of the Act, and that when performing such work they are not to be included in the unit. This finding does not preclude their participation in the election, as we have found above that other work performed by these two employees is nonagricultural in character.

In view of the foregoing, we find that the following employees at the Employer's two plants in Hoopston, Illinois, and at its plant in Fowler, Indiana, 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 John Baker, Aaron Polson, Ray Robinson, George Dean, Oakley Lawson, Albert MacIntyre, Hughie Polson, Ewell Wells, Oakley Williams, Orville

<sup>9</sup> See *The Accurate Threaded Products Company*, 123 NLRB 1938.

Wagner, Claytus Witty, Harold Cassidy, Otto Lightle, Hubert Morrison, Chester Vest, Edwin Lightle, and Harold Galloway, but excluding all seasonal employees, office and plant clerical employees, sales employees, over-the-road (long haul) truckdrivers, professional employees, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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**Sheraton-Jefferson Corporation<sup>1</sup> and Local 2, International Union of Operating Engineers, AFL-CIO, Petitioner.** *Case No. 14-RC-3547. December 10, 1959*

### 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 Walter A. Werner, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, and Fanning].

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

1. We find no merit in the Employer's contention that its hotel operations do not affect commerce within the meaning of the Act. The Employer, a Delaware corporation, is a wholly owned subsidiary of the Sheraton Corporation of America, and is engaged in the operation of a 746-room hotel in St. Louis, Missouri, which furnishes lodging, eating, and related services to its guests. The Employer derives additional income from the rental of office space to commercial and business enterprises, including Western Union, airlines, advertising agencies, and local shops of various kinds. The Employer employs approximately 500 employees. In 1958, the Employer received gross revenues in excess of \$500,000, made purchases from points outside the State amounting to over \$50,000, and spent about \$25,000 on out-of-State advertising. It does not appear that 75 percent of the guests remain at the hotel for periods of a month or more. In view of the foregoing, we find that the Employer's operations affect commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein. *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261, Member Jenkins concurring in part and dissenting in part, and Member Fanning concurring separately.

2. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup>The name of the Employer appears as corrected at the hearing.