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In the Matter of EDINBURG CITRUS ASSOCIATION *and* TEXAS FRUIT &  
VEGETABLE WORKERS UNION, LOCAL 35, UCAPAWA-CIO

*Case No. 16-R-858.—Decided April 12, 1944*

*Mr. S. R. Greer*, of McAllen, Tex., for the Company.

*Mr. Otis G. Nation*, of Mercedes, Tex., for the Union.

*Mr. Louis Cokin*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Texas Fruit & Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Edinburg Citrus Association, Edinburg, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Glenn L. Moller, Trial Examiner. Said hearing was held at Edinburg, Texas, on March 15, 1944. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Edinburg Citrus Association is a corporation under the Cooperative Marketing Act of the State of Texas. It is engaged at Edinburg, Texas, in the packing, selling, and distribution of citrus fruit. During 1943 the Company sold citrus fruit valued at about \$500,000, approximately 60 percent of which was consigned to Rio Grande Valley Citrus

Exchange in the State of Texas. The latter ships over 80 percent of the citrus fruit to points outside the State of Texas. During 1943 the Company used raw materials valued at about \$100,000, approximately 50 percent of which was shipped to it from points outside the State of Texas.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.<sup>1</sup>

## II. THE ORGANIZATION INVOLVED

Texas Fruit & Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>2</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

## IV. THE APPROPRIATE UNIT

The Union urges that all employees employed by the Company at its Edinburg, Texas, plant, excluding watchmen, clerical employees, field employees, foremen, and any other supervisory employees, constitute an appropriate unit. The Company contends that all employees should be in the unit.

The Company employs one person classified by it as a watchman. He is not armed, uniformed, or deputized. Under the circumstances, we shall include him in the unit.

The Company has three clerical employees classified as the manager's secretary, bookkeeper, and assistant bookkeeper, respectively. They spend their entire time performing clerical duties. Since no affirmative showing has been made nor any compelling arguments advanced as to why we should depart from our usual practice of excluding

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<sup>1</sup>The Company asserts in its brief that the Board is without jurisdiction because the employees of the Company fall within the definition of the term "agricultural laborer" in Section 2 (3) of the Act. We find no merit in this contention. See e. g. *North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9) cert. den 310 U. S. 632.

<sup>2</sup>The Field Examiner reported that the Union submitted 64 authorization and membership application cards. There are 125 employees in the appropriate unit.

clerical employees from a unit largely composed of production and maintenance employees, we shall exclude clerical employees from the unit.

The Company employs a manager, an assistant manager, and three foremen at its plant. The record indicates that they all have the authority to hire and discharge. We find that the manager, assistant manager, and the three foremen are supervisory employees, and, as such, we shall exclude them from the unit.

We find that all employees of the Company on its pay roll at its Edinburg, Texas, plant, including watchmen, but excluding field employees, clerical employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.<sup>3</sup>

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Edinburg Citrus Association, Edinburg, Texas, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were

<sup>3</sup> While no direct issue was made at the hearing as to the inclusion in the unit of non-citizen employees and their eligibility to participate in the election, it is evident from the record that such an issue may arise at the time of the election. The Act does not differentiate between citizens and non citizens. In order to effectively carry out the purposes of the Act, we conclude that no distinction should be drawn on such a basis. (Cf. *Matter of U. S. Bedding Co.*, 52 N. L. R. B. 382.) Non-citizenship of an employee shall not, consequently, constitute a disqualification for participation in the election.

employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Texas Fruit & Vegetable Workers Union, Local 35, UCAPAWA, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.