

In the Matter of NEWDAY SEEDS, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION 116, A. F. OF L.

Case No. 18-R-922

SUPPLEMENTAL DECISION

AND

ORDER

May 26, 1944

On April 7, 1944, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in this proceeding.¹ Pursuant to the Direction of Election, an election by secret ballot was conducted on April 24, 1944, under the direction and supervision of the Regional Director for the Eighteenth Region (Minneapolis, Minnesota). On April 24, 1944, the Regional Director issued and duly served on the parties a Tally of Ballots.

As to the balloting and its results, the Regional Director reported as follows:

Approximate number of eligible voters.....	10-19
Valid votes counted.....	10
Votes cast for International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 116, A. F. of L.....	5
Votes cast against participating union.....	5
Challenged ballots.....	7
Void ballots.....	0

On April 26, 1944, the Union filed Objections to conduct affecting the results of the election, contending that the Company had laid off employees to prevent them from voting. In view of the Objections and the fact that the challenged ballots were sufficient in number to affect the results of the election, the Regional Director investigated the issues raised by the Objections and challenges and on May 9, 1944, made and duly served upon the parties a Report on the Challenged Ballots and Objections.

He sustained three and overruled four of the seven challenges. Neither the Union nor the Company excepted to the Regional Director's rulings on the three challenges which he sustained and we shall

¹ 55 N L R. B. 1049.

56 N L R. B., No. 170.

therefore accept his rulings thereon. The Company, however, excepted to the Regional Director's ruling that four employees, Henry Gunderson, Adelbert McNamar, Elwood Benbo, and Michael Kopach, who were laid off between the date of the pay roll determining eligibility to vote and the date of the election, were "regular seasonal employees whose lay-off was of a temporary nature" and that they were therefore entitled to vote.

As we noted in our Decision and Direction of Election, employment at the Company's plant is of a highly seasonal nature, the number of employees fluctuating greatly between the winter months and May. The Regional Director reported that "Investigation reveals that the lay-offs in question were in line with this seasonal fluctuation." He thereby impliedly rejected the Union's contention that employees had been laid off to prevent them from voting. The Union filed no exceptions to the Regional Director's Report and we adopt his findings as to the cause of the lay-offs.

The Company excepted to the Regional Director's ruling that the four employees in question were regular seasonal employees whose lay-offs were of a temporary nature. It stated that it did not intend to rehire these employees "because of their advanced age and inability to perform the type of work for which they were employed." It contended, moreover, that its seasonal labor supply is largely recruited from transients who happen to be available and that the same men are seldom available for reemployment during the succeeding seasons. The latter contention is supported by the record which shows, in addition, that none of the four employees had ever been laid off by the Company and later rehired by it. Under the circumstances, we shall sustain the Company's challenge of the ballots of these four employees.

Since no collective bargaining representative has been selected by a majority of the employees of Newday Seeds, Inc., Fargo, North Dakota, in the unit heretofore found to be appropriate for collective bargaining, we shall dismiss the petition for investigation and certification of representatives filed herein.

ORDER

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, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3,

IT IS HEREBY ORDERED that the petition for investigation and certification of employees of Newday Seeds, Inc., Fargo, North Dakota, filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union 116, A. F. of L., be, and it hereby is, dismissed.