Tropicana Products, Inc. *and* Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 79, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. *Case No. 12–RC–382. November 18, 1958*

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 Martin Sacks, 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. After the hearing in this matter was concluded, counsel for the Employer filed with the Board at its Washington, D.C., offices, a motion to dismiss and to strike. In substance the motion seeks dismissal of the petition for the following reasons: The record fails to show that the Employer's operations satisfy the Board's jurisdictional standards or in any event that a valid election can be held at this time; the Petitioner has thereby failed to satisfy its burden of proof; the Board and the Petitioner refused to use the procedures set up by the Act, i.e., subpena powers to secure jurisdictional and other evidence; the Employer may with impunity stay away from a hearing when neither it nor any of its officers have been served with subpenas to appear, testify, or produce records.

We deny the motion to dismiss.[1] The hearing in this matter was set for October 16, 1958, the date on which it was held, only after telephone consultation between a Board field examiner and Theo Hamilton, counsel for the Employer, after the Employer had advised the Regional Office that Hamilton had been retained by it in this matter and that the Regional Office should direct further inquiries to Hamilton. The October 16 date was selected for the convenience of Hamilton, who in no way indicated that he deemed it unnecessary to appear, or that he or any other representative of the Employer would appear only under subpena. The Employer was duly served by registered mail with the notice of hearing and a copy of the petition, copies of which were sent by regular mail to counsel, Theo Hamilton. Despite the foregoing, neither the Employer nor Hamilton nor other representatives of the Employer appeared at the hearing. During the hearing, the hearing officer undertook to converse with Hamilton by telephone and recited the substance of Hamilton's remarks for the

[1] With respect to the Employer's motion to strike, the Board has not in any way relied upon the comments of the hearing officer or Petitioner's representative to which exception is taken. Accordingly, for that reason, we grant the motion to strike.

record.[2] According to the hearing officer, Hamilton stated that he knew of the hearing, that he represented the Employer, and that his client's absence from the hearing was evidence simply that it saw no necessity and did not desire to participate.

In the absence of the Employer, the hearing officer took evidence as to the nature of the Employer's operations from a representative of the Petitioner who was active in organizing the Employer's employees in the course of which activity he had appeared at the Employer's place of operations. This individual testified that, on the basis of his observations and contacts with the Employer's employees, he believed that the Employer employed approximately 75 truckdrivers who do long-distance or interstate driving. He observed on the Employer's premises tractor-trailer trucks identified as the property of "Tropicana Products, Inc.," on which appeared Interstate Commerce Commission numbers, and license plates of States other than Florida. He testified further that he observed the loading of these trucks with orange juice from the Employer's warehouse. The Petitioner introduced into the record eight logbooks prepared by eight different employees of the Employer. These logbooks contain Form BMC prescribed by the Interstate Commerce Commission, which must be filled out by drivers each day they are on a trip. When filled out these logbooks constitute a daily record of a truckdriver's activities, including the number of hours and miles driven, the number of hours on duty but not driving, the number of hours in sleeper berth, and the number of hours off duty. They contain as well the name of the driver's employer, the points of departure, trip designation, and the names of any cities or towns at which the driver made a stop during the day.

The eight logbooks reveal that employees of the Employer drove their trucks on numerous trips starting from Bradenton, Florida, for such destinations as Colorado Springs, Colorado; Carnegie, Pennsylvania; Mason, Michigan; Chicago, Illinois; Sandusky, Ohio; Evansville, Indiana; Sioux Falls, South Dakota; and Marion, Ohio. They reveal that, on those trips, stops were made in States other than those already mentioned, including Nebraska, Iowa, Kansas, Wisconsin, Indiana, Tennessee, Mississippi, Alabama, West Virginia, Maryland, North Carolina, and South Carolina.

The foregoing evidence conclusively demonstrates that the Employer is extensively engaged in the shipment of goods in interstate commerce. The record does not reveal, however, the precise value of the Employer's interstate shipments, and thus does not show that the Employer's operations satisfy the Board's jurisdictional stand-

[2] In the motion to dismiss and to strike, Counsel Hamilton does not take exception to the accuracy of the hearing officer's recitation into the record.

ards. These standards were adopted by the Board, *inter alia*, as an administrative aid to facilitate its jurisdictional determinations in order that it might reduce the amount of time and energy expended in the investigation of jurisdictional questions, so that it might concentrate its energies on substantive issues in the many important cases coming before it and thus increase its case-handling capacity. The adoption of such standards in no way precludes the Board from exercising its statutory authority, in any properly filed case, where legal jurisdiction alone is proven, if the Board is satisfied that such action will best effectuate the policies of the Act.[3]

The Board has determined that it best effectuates the policies of the Act, and promotes the prompt handling of cases, to assert jurisdiction in any case in which an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards.

This determination is based upon the following considerations: Section 11 of the Act affords the Board the right of access at all reasonable times to any evidence of any person being investigated or proceeded against, by the Board when exercising the powers vested in it by Sections 9 and 10 of the Act. Section 11 also specifically vests the Board with subpena powers to enforce this right when it deems necessary. Thus, the Act plainly contemplates that a party cooperate with the Government in providing evidence, especially that which by its nature is peculiarly in its possession, such as commerce facts held by an employer. The Board's overriding function is to carry out the policies of the Act in order to minimize industrial strife which interferes with the normal flow of commerce. In many situations, notably representation proceedings under Section 9, time is of the essence if Board processes are to be effective. The invocation of the subpena procedures in such cases to compel the production of evidence in the possession of a party resistant to supplying it voluntarily, as in the instant case, customarily involves considerable delay in the processing of the cases on their merits, which materially reduces the usefulness of a petitioner's resort to the Board's processes in its attempt to arrive at a peaceful settlement of its labor dispute with an employer. Indeed, in many cases invocation of the Board's subpena powers may well be self-defeating.[4] To avoid such consequences the Board has

[3] See *N.L.R.B.* v. *W. B. Jones Lumber Company, Inc.*, 245 F. 2d 388 (C.A. 9).

[4] In the present case, for example, resort to the use of subpenas to compel the production of the Employer's records would in all probability have resulted in such a delay as to preclude the holding of an election during the current season, thus putting off the election to a time a year or more away.

adopted the policy announced herein, the application of which may be avoided by the simple expedient of an employer's production, upon request, of material and relevant evidence as to the effect of its operations on commerce, or by appearance at a hearing conducted before an agent of the Board, prepared to cooperate in the production of such material and relevant evidence.

Applying this policy to the instant case, the Board has decided to assert jurisdiction over the Employer. The record evidence clearly establishes, and we find, that the Employer's operations substantially affect commerce within the meaning of the Act and are therefore within the Board's statutory jurisdiction. Further, the Employer plainly has refused to cooperate in the production of evidence concerning the effect of its operations on commerce, indicating that it would not supply information necessary to establish that its operations satisfy the Board's jurisdictional standards except under subpena, and has declined to appear at the hearing, though properly served with notice of the same.

2. The record demonstrates that the Petitioner is a labor organization within the meaning of the Act and that it claims to represent certain employees of the Employer.

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.

4. The Petitioner seeks to represent a unit of all long-distance or interstate truckdrivers and helpers, excluding any other drivers and warehouse employees. The Board has customarily found such a unit to be appropriate. The Employer's motion to dismiss rests in part on the ground that there has been no showing that the employees involved are other than casual or temporary employees, or that a valid election can be held at this time.[5] Aside from the fact that the Employer offered no proof to substantiate its claim, and indeed passed up the opportunity to bring forth evidence in support thereof, the record indicates that the Employer's operations are seasonal in nature and that the employees are seasonal rather than casual or temporary. Accordingly, we find that the following employees employed at the Employer's Bradenton, Florida, plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All long-distance or interstate truckdrivers and helpers, excluding goat drivers, pickup and delivery drivers, warehouse employees, mechanics, office clerical employees, watchmen, and supervisors as defined in the Act.

5. The record shows that the Employer conducts a seasonal operation, that the peak of the season will be reached during the last 2

[5] We deny the motion to dismiss insofar as it is predicated on this ground.

weeks of November and the first 2 weeks of December, and that there is likely to be a sharp decline in the size of the operations after January 1. In these circumstances, we hereby direct the Regional Director to hold the election hereinafter directed, at or near the peak of the season, occurring first after the issuance of this Decision and Direction of Election.

[Text of Direction of Election omitted from publication.]

Talladega Foundry & Machine Company *and* Local 421, International Molders & Foundry Workers Union of North America, AFL-CIO. *Case No. 10-CA-2746. November 19, 1958*

DECISION AND ORDER

On November 12, 1957, Trial Examiner Thomas S. Wilson issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case and hereby adopts the Trial Examiner's findings and recommendations insofar as they are consistent with our decision herein.[1]

The Trial Examiner recommends that all dischargees[2] should be offered reinstatement and back pay, and that reinstatement be granted, upon request, to the strikers.[3] The Respondent excepts, contending that all dischargees and strikers are disqualified from reinstatement by reason of strike-connected misconduct. We find, contrary to the Trial Examiner, that the evidence concerning strike misconduct by five of the six dischargees and by strikers Wright and Gilliland was

[1] The Respondent excepts to the Trial Examiner's conduct of the proceedings and urges that the proceedings be set aside under the doctrine of *Indianapolis Glove Company*, 88 NLRB 986, to avoid the appearance of a partisan tribunal. Although, as discussed below, we disagree with the Trial Examiner's conclusion that the conduct of the dischargees and certain strikers did not disqualify any of them from reinstatement, we have concluded that the Trial Examiner's conduct of the proceedings does not warrant setting them aside.

[2] James Sanders, Aughey (Bud) Mitchell, James Mellon, Dell Dyson, Grover Spurling, and James L. Watkins.

[3] The strikers named by the Trial Examiner were: Gentry Mellon, William Waites, Joseph Marler, John Watts, Leroy Wright, Charles Woods, Jesse Gilliland, Grady Mitchell, Edward Johnson, J. L. Wilson, Phillip Jones, James Keith, J. H. Wilson, Sam Gooden, Thornton Phillips, and Ollie Thornton.