

In general, the Board seeks to include in the unit employees who share common interests, similarity of skills and working conditions, etc. In seasonal industries, including those related to agriculture, the Board has established units taking into account the special attributes of those industries. In such industries, the factors most important to determining the inclusion of employees in the unit are (1) the expectancy of reemployment in the future and (2) the extent to which the interests of the seasonal employees are similar to nonseasonal in the unit.

Thus, where the employer draws from the same labor force each season,¹¹ or where former employees are given preference in rehiring or recall,¹² the Board, as a general rule, finds that the community of interest with the permanent employees is sufficient to warrant inclusion of the seasonal employees in the unit.

In order to determine questions relating to likelihood of return of employees from season to season, the Board routinely takes evidence on this subject in these cases. For example, in *California Vegetable Concentrates Inc.*, 137 NLRB 1779 (processing of vegetables), the Company operated on a year-round basis with a permanent complement of between 240 and 290 employees. Also, seasonal employees were regularly employed each year from August to November, with peak employment of about 600 seasonals usually occurring in October. The employer did not maintain a recall list of seasonals but it did give hiring preference to former seasonal employees who were known to be reliable workers; between 20 and 50 seasonals became permanent employees each year. Of 270 seasonals on the September 1961 payroll, over 50 percent had worked during the 1960 season. The Board included the seasonal employees in the unit in accordance with its usual practice in this industry.

The inter-relation or inter-action of the working conditions and pay of seasonal and nonseasonal employees makes it obvious that for the bargaining to be effective for either, the bargaining unit should, if possible, include both.

Showing of interest

Before the Board will conduct an election in a year round or nonseasonal industry with relative regularity of employment, it is the Board's normal policy to require the petitioning union to make a "30% showing of interest"—i.e., to produce evidence (usually in the form of signed authorization or membership cards) to show that at least 30% of the employees in the unit wish to be represented by the union for purposes of collective bargaining. The purpose of this rule is to avoid spending the taxpayers' money on running an election unless there is a reasonable ground to believe that a substantial number of employees are interested.¹³ However, where an employer files a petition for an election following a claim of majority representation by a union, no showing of interest is required.

The Board does not apply this same rule in seasonal-industry cases. In such cases it is the Board's long-established policy to require a showing only among those employed in the unit at the time the petition is filed. This policy recognizes the practical, special problems incident to the conduct of elections in seasonal industries, where the Board seeks to have the election conducted at the peak of the season in order to allow a maximum number of employees in the unit to vote. Accordingly, if a cannery began its operations in May with 100 employees, built up to a peak of 500 employees in September, and the union filed its petition in May, the Board would require a 30% showing among the 100 employees employed at the time the petition was filed. This would allow time for a hearing to be held, in the event the parties did not consent to an election, and an election to be directed among the 500 employees working during the peak of the season in September.

Another type of question is reflected by the Board's decision involving an apple cannery in California. *Sebastopol Co-operative Cannery*, 111 NLRB 530. "The employer contends, however, that (1) the seasonal nature of its operation and the high rate of labor turnover in its plant make it improper to conduct an election among next season's employees; and (2) that for the same reason, the petitioner's present showing of interest is inadequate to warrant a direction of election among next season employees. We find these contentions without merit.

¹¹ *Kelly Bros. Nurseries, Inc.*, 140 NLRB 82 (growing and sale of nursery stock); *Carol Management Corp.*, 133 NLRB 1126 (ownership and management of residential properties-gardeners).

¹² *Aspen Skiing Corp.*, 143 NLRB 707 (operation of skiing facilities); *Brown Cigar Co.*, 124 NLRB 1435 (cigar wholesaler-summer employees); *Knouse Food Co-operative*, 131 NLRB 804 (processing of fruits).

¹³ *O. D. Jennings*, 68 NLRB 516.