

It is clear, as to the employer's first contention, if the Board were to adopt the employer's reasoning the Board would be precluded from conducting an election in any seasonal industry where, as is often the case, there is high turnover of labor from one season to another. *Franklin County Sugar Company*, 97 NLRB 936. As to its second contention, it is well established that, in seasonal industries, it is the Board's policy to require a showing only among those employed in the unit at the time the petition is filed. *Nephi Processing Plant, Inc.*, 107 NLRB 647; *J. J. Crossetti Co.*, 98 NLRB 268."

Eligibility to vote

The general rule governing eligibility to vote in seasonal industries is to vote those employees employed during the payroll period immediately preceding the date of issuance of the notice of election and who are employed on the date of the election. This includes those who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off.

The application of this practice to agricultural workers would have to be carefully examined to be sure that it does not disenfranchise significant numbers of employees. For example, the peak of the season for the harvesting of the crop of a large grower may occur in the last half of August. The eligible payroll period may be set for the third week in August with the election to be held on August 30. Accordingly, to be eligible to vote under present policy a worker's name must appear on that payroll. Thus, if a migratory worker during the designated payroll period was not employed by this grower because he was engaged in the same area in winding up the harvesting of another crop or was migrating from another area he would not be eligible to vote even though he began work during the next payroll period and was employed on election day and remained at work several days to finish the crop. It would appear that if there were a number of true migratory workers in this category that the Board would have to accommodate its eligibility policies to such circumstances. On the other hand the Board would want to know whether or not this eligibility rule would give a vote to those who may not have a common interest in the work. Therefore, the status of part-time and casual employees as distinguished from seasonal workers in agriculture will also have to be studied.

Where there is no significant difference between the work of seasonal and nonseasonal workers and they have other interests in common, both groups may be joined into a single bargaining unit.¹⁴ Foreign Nationals recruited under inter-government agreements for temporary agricultural work are not eligible to vote.¹⁵ However, this is no longer significant.

Timing of Election

Consistent with the Board's policy of enfranchising a maximum number of employees, the present rule in seasonal industries is to conduct the election at the peak of the season.¹⁶ The date of election is selected by the Regional Director in consultation with the parties and usually with their agreement.¹⁷ Timing the election at the harvest peak is also based on the assumption that the seasonal employees are genuinely interested in the conditions of their employment even though any benefit derived from collective bargaining may not be realized until the following season, and on a recognition that a proportion of the workers will not return to the cannery or shed the next season. A study of each crop in order to determine the point of highest employment will have to be made. Likewise, consideration must be given to the effect of the varying season and work force for different crops of the same employer.

Where, of course, there is virtually year round employment or where the diversification of crops reduces the fluctuations in employment the timing of elections is not significant.

Conduct of elections

The actual, physical conduct of secret-ballot elections among agricultural employees would present no insuperable problems. The Board has conducted more than 200,000 elections among more than 25,000,000 voters since 1935. Board agents have taken the voting booth and ballot box to employees in units ranging from two to many thousands, and have conducted elections ranging in length from

¹⁴ *Libby, McNeill and Libby, et al.*, 90 NLRB 279.

¹⁵ *Stokely-Van Camp, et al.*, 107 NLRB 1137.

¹⁶ *Arena Norton, Inc.*, 93 NLRB 375.

¹⁷ *Wade and Paston*, 90 NLRB 1227.