Agricultural Workers Under National Labor Relations Laws
EDITORIAL NOTE

This Bulletin covers a question of considerable legislative, administrative, and judicial interest. Because of the use of an appropriation rider for defining agricultural employees, the question is destined for further consideration by the Congress. The analysis by Dr. Fred Witney presented here includes a historical survey of the question and an analysis of how it relates to the Labor Management Relations Act, 1947.

Because the question is a technical one and still rests on administrative and judicial decisions, references to the major sources are included. Readers interested in analyzing the technical aspects of this question will find the references comprehensive. For those with a more general interest, Dr. Witney’s discussion provides a stimulating review. — PHILLIPS BRADLEY

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AGRICULTURAL WORKERS UNDER NATIONAL LABOR RELATIONS LAWS

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In June, 1935, when passage of the National Labor Relations Act was being debated, some members of Congress contended that agricultural laborers, as well as industrial employees should receive legal protection of their right to organize and bargain collectively. When the Act was finally passed, however, these workers were excluded from the coverage of the law. Under its provisions, an “employee” for purposes of the Act, did not include “any individual employed as an agricultural laborer.” The Labor-Management Relations Act, 1947 (Taft-Hartley Law), which supplants the National Labor Relations Act, also excludes these workers from its terms.

Congress apparently believed that the organization of farm workers was not of national concern. Since the number of these workers is comparatively small, labor disputes resulting from organization efforts of farm employees would not materially burden interstate commerce, according to this viewpoint. One representative in Congress who reflected this position said:

The agricultural worker is not a problem in some of the states. In some of the states they [farmers] have practically no employees in the generally accepted sense of the term. In some states of the Union, especially in the Middle West, the farmers seldom employ more than one or two employees, and then for only seasonal employment.

A Circuit Court of Appeals attempting to determine why agricultural laborers were excluded from the National Labor Relations Act also recognized this point. The Court declared, “There never would be a great number suffering under the difficulty of negotiating with the actual employer and there would be no need for collective bargaining and conditions leading to strikes would not obtain.” On the other hand, this Court held that it was not the intent of Congress to include within the agricultural classification workers employed in commercial enterprises which pack, can, or otherwise process farm products.
WHO ARE AGRICULTURAL LABORERS?

When Congress excluded agricultural employees from the National Labor Relations Act in 1935 and the Labor Management Relations Act in 1947 it failed to define the meaning of the term, "agricultural employee." This is not the case in the Social Security Act or in the Fair Labor Standards Act (Wage-Hour Law) which also exclude agricultural employees from their coverage. Congress established legislative standards indicating the scope of the agricultural classification for purposes of these acts.

Thus Section 209 of the Social Security Act contains a detailed definition of agricultural labor. Some of the main points of the definition follow:

The term "agricultural labor" includes all service performed
(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.
(2) .......
(3) .......
(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity. ....

The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing.

Section 3(f) of the Fair Labor Standards Act defines agriculture as follows:

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . the raising of livestock, bees, fur-bearing animals or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

Congress did not define "agricultural employee" in the National Labor Relations Act and the Labor Management Relations Act.
The task of interpreting the nature and extent of the agricultural exclusion is left to the National Labor Relations Board and the courts. The power of the N.L.R.B. to construe the meaning of agricultural employment was not restricted until July, 1946, approximately 11 years after the passage of the National Labor Relations Act. At that time Congress passed legislation which made the definition of agricultural workers as contained in the Fair Labor Standards Act applicable to the National Labor Relations Act.*

The main purpose of this bulletin is to examine the meaning and scope of the agricultural exemption for purposes of the Labor Management Relations Act. What employees are embraced within the exclusion? Are employees of a farm cooperative agricultural workers? May workers who aid in the production of agricultural and horticultural products in a greenhouse expect protection from the N.L.R.B.? What tests does the N.L.R.B. employ to determine whether a particular worker performs agricultural duties?

The N.L.R.B. in its 12 years of operations has established many precedents in attempting to define the agricultural exemption. A careful examination of these precedents seems worth while since rulings handed down by the N.L.R.B. under the National Labor Relations Act apply to the Labor Management Relations Act as long as they do not conflict with the new labor law.* Attention must also be directed to court decisions and to efforts of Congress to define the meaning of agricultural employment.

It is important to examine carefully the agricultural exclusion under the Labor Management Relations Act because: (1) workers performing agricultural duties may not be included in a bargaining unit certified as appropriate for purposes of collective bargaining; (2) employers have no legal obligation to bargain collectively with labor unions composed of agricultural laborers; (3) a farm worker may be discharged for union activities, and his reinstatement will not be ordered by the N.L.R.B. (4) labor organizations composed of farm workers are not affected by the restrictions which the new law placed on labor organizations.

*Policies established by the N.L.R.B. under the National Labor Relations Act remain in force unless they are inconsistent with the Labor Management Relations Act. It has already been indicated that both laws treat agricultural laborers in essentially the same fashion.
CONGRESS DEFINES AGRICULTURAL EMPLOYMENT

Some members of Congress have from time to time sponsored legislation designed to clarify the meaning of the term "agricultural employment" under the National Labor Relations Act. In 1939 one proposal was introduced to define the phrase to include workers who pack and can as well as those who produce farm commodities. Under this proposal, workers in commercial packing and canning establishments could expect no legal protection of their right to self-organize and bargain collectively. An attempt to exclude agricultural-product processing workers from the National Labor Relations Act was made by the House of Representatives on February 7, 1946 when it passed its version of the so-called Case Bill. Congress gave further attention to the definition of agricultural workers when the Labor Management Relations Act was being considered. Again the House attempted to deny workers of packing houses, canneries, and similar food processing establishments legal protection of their right to organize. These efforts failed, however, and canning and packing house workers remain subject to the jurisdiction of the N.L.R.B.

Limitation on N.L.R.B. Appropriation

In 1946 employees of packing houses and farm-product processing enterprises were also threatened with the loss of legal protection of their right to organize and bargain collectively. At that time, the House of Representatives defined agricultural labor for purposes of the National Labor Relations Act in the same manner as the term is defined in the Social Security Act.

Under the Social Security Act definition, agricultural labor includes services performed (1) by an employee in connection with the processing of articles from materials which were produced on a farm, also (2) the packing . . . of these articles. When this definition was being debated in Congress, the N.L.R.B. quickly pointed out that it "would affect packing-shed and processing employees." On the other hand, the term agricultural employment contained in the Social Security Act does not apply to workers employed in commercial canning plants.
The House took action by passing a rider to the N.L.R.B. Appropriation Act, 1947. The rider prohibited the Board from spending any of its funds in cases involving workers who are defined as agricultural employees in the Social Security Act. The appropriation for the N.L.R.B. was contained in a bill appropriating funds for several other federal agencies and the House expected the Senate to agree to the N.L.R.B. rider in order not to delay the allocation of funds for the other agencies.

**Position of the Senate**

The Senate, however, refused to approve the House-sponsored rider. Some members of the Senate pointed out that it would deprive “many hundreds of thousands of packing-shed workers” of legal protection of their right to collective bargaining. Since workers engaged in packing citrus fruit, lettuce, or other agricultural products could not use procedures of the National Labor Relations Act, they might turn to the strike when their right to bargain collectively was denied, it was argued in the Senate.

Senator Morse, of Oregon, who had been a public member of the National War Labor Board, was particularly concerned with possible effects of the rider. He pointed out that the National War Labor Board had been forbidden to use its funds to settle disputes involving “agricultural laborers” as that term is defined in the Social Security Act. As a result of the limitation (known as the Lea rider to the 1946 Appropriation Act of the War Labor Board) Mr. Morse declared:

A great many strikes occurred among the employees [of packing establishments] which never would have occurred had the National War Labor Board been free to use its funds to send members of its staff into the disputes which arose, to the end of settling them under the peaceful procedures of the War Labor Board. Being denied the peaceful procedures of the War Labor Board for use in the settlement of their disputes, the workers had no other course but to strike.

Mr. Robert La Follette, then Senator from Wisconsin, also was fearful that the House-sponsored rider might result in serious organizing strikes. He said:

When I was chairman of the so-called Civil Liberties Committee we conducted investigations in California concerning [organizing] strikes in some of the packing sheds. The record will show that they were among the
most bitter and violent cases of that character on which the committee held hearings. I believe that, from the standpoint of production of important foodstuffs and their packing and distribution, if this Senate takes this action [approval of the House-sponsored rider] it will be moving in the direction of returning to the chaotic and bitter controversies which took place before the employees had the protection of the National Labor Relations Act.

The Senate defeated a motion to approve the House-sponsored rider and the matter was referred to a Senate-House conference committee on July 12, 1946. This committee was unable to reach an agreement during the following week and the Senate was again approached on the matter. Once more the Senate refused to agree to the Social Security Act definition, and the dispute was again referred to the conference committee.

Fair Labor Standards Act Definition Applied

On July 20, 1946, the conference committee finally worked out a compromise which was acceptable to both houses of Congress. Instead of accepting the Social Security Act definition of agricultural labor, Congress passed legislation which made the definition in the Fair Labor Standards Act applicable to the National Labor Relations Act. Specifically, Congress provided that no funds appropriated to the N.L.R.B. could be used "to organize, or assist in organizing agricultural laborers, or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers, as referred to in Section 2 (3) of the Act of July 5, 1935 (49 Stat. 450) (National Labor Relations Act), and as defined in Section 3 (f) of the Act of June 25, 1938 (52 Stat. 1060) (Fair Labor Standards Act)." Thus, the appropriation rider device was used to implement this action. A similar restriction is contained in the N.L.R.B. Appropriation Act for the fiscal year 1948 (July 1, 1947-June 30, 1948).

As long as the appropriation rider method is used to make the Fair Labor Standards Act definition applicable to the Labor Management Relations Act, the rider must be re-enacted year after year. This would not be necessary if the substantive provisions of the Act were amended to include this definition.

Before the Senate agreed to the Fair Labor Standards Act definition, the possible effect of limiting the use of the N.L.R.B.
funds was examined. Senator McCarren of Nevada, and chairman of the Senate members of the congressional conference committee, pointed out that the Fair Labor Standards Act definition did not cover employees of packing houses or processing establishments. Mr. McCarren said that “this provision confines itself to operations that are actually on the farm.” Perhaps this interpretation was based on the fact that, under the Fair Labor Standards Act definition, only those practices incidental to farming which are performed by a farmer or on a farm (italics supplied) may be considered agricultural in character. Employees who perform operations in commercial packing houses located off the farm therefore appear to retain their rights to organize and bargain collectively under the protection of the N.L.R.B. However, in the case of the N.L.R.B. v. John W. Campbell Inc., the Fifth U.S. Circuit Court of Appeals held that employees of a tomato packing house fall within the agricultural exclusion even though the facility was removed from the farm and located in town.

The attitude of the National Labor Relations Board probably influenced the Senate to agree to the Fair Labor Standards Act definition. The Board was consulted before the Senate approved the measure. The Board said that though the definition “might require few minor changes in . . . present procedure and definition . . . they would be very minor.” In addition, the Board felt it “could get along under it very well.” In contrast the Board pointed out that the definition of agricultural employment contained in the Social Security Act would affect sizable groups of employees if it were adopted.

Congress also recognized that the jurisdiction of the N.L.R.B. would not be greatly reduced by the Fair Labor Standards Act definition, and only a relatively small number of workers would lose benefits afforded by the National Labor Relations Act. This view was expressed by Senator Ball of Minnesota who was a member of the conference committee which considered the choice of definitions:

Instead of using the definition of “agricultural laborer” contained in the Social Security Act, a very broad one, covering a great many processing employees, packing shed workers, and so forth, this change substitutes the definition “agriculture” contained in the Fair Labor Standards Act which is a much narrower definition.
Significance of the Rider

The amendment to the N.L.R.B. Appropriation Act codifies a definition of agricultural laborers which must receive consideration whenever the N.L.R.B. decides whether a particular employee is engaged in agriculture. Presumably the Board will be influenced, if not bound, in these decisions by construction placed on the definition by the Administrator of the Fair Labor Standards Act. It appears that any court decision dealing with the meaning of the Fair Labor Standards Act definition for purposes of that act would be equally binding on the N.L.R.B. in determining the scope of the definition for cases arising under the Labor Management Act.

A situation has already occurred in which a court's decision conflicts with an interpretation of the N.L.R.B. In 1940 the Board ruled that employees who fire the boilers of a commercial greenhouse were not engaged in agriculture. Accordingly these workers were afforded the full benefits of the National Labor Relations Act. In contrast a federal district court on July 12, 1946, held that firemen employed in a commercial greenhouse perform agricultural duties and are therefore exempt from the coverage of the Fair Labor Standards Act. On the basis of this court decision it would seem that these employees may no longer expect legal protection of their right to bargain collectively.

On the other hand, the rider will be of little importance where no conflict of interpretation exists between the N.L.R.B., the Administrator of the Fair Labor Standards Act, and the courts. Actually these three units have been in agreement on many occasions on the scope of the agricultural classification. For example, even before the rider was attached to the N.L.R.B. Appropriation Act, employees performing duties on farm nurseries were denied legal protection of their right to collective bargaining. These workers likewise have been excluded from the coverage of the Fair Labor Standards Act.

A similarity of these decisions arises from interpretations of agricultural employment handed down by the N.L.R.B. before enactment of the rider and the nature of the definition of agricultural laborer contained in the Fair Labor Standards Act. Thus this definition states in part:
Agriculture includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodities ... the raising of livestock, bees, fur-bearing animals or poultry. . . .

Decisions of the N.L.R.B. reflect this view of agriculture. The Board has stated several times that "the term 'agricultural laborer,' as commonly understood, refers to a person employed on a farm in the cultivation of the soil, including the harvesting of the crops and the rearing and management of livestock."

The Fair Labor Standards Act definition further provides that agricultural duties include those tasks performed "by a farmer or on a farm as an incident (italics supplied) to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market." In similar fashion the N.L.R.B. recognized, even before the limitation was placed on the use of its funds, that "the agricultural character of the work does not necessarily terminate with the severance of the crop from the tree or ground." Instead the Board has held that workers engaged in processing, packing, packaging, transporting or marketing a farm crop, when done on a farm as "an incident to ordinary farming operations" (italics supplied), fall within the agricultural classification. Thus on one occasion the Board found that employees of a sugar plantation who load sugar on trucks into railway cars for transportation to a sugar mill are agricultural workers. Further effects of the rider to the N.L.R.B. Appropriation Act will be indicated in the subsequent investigation of the meaning and scope of the agricultural labor exemption contained in the Labor Management Relations Act.*

AGRICULTURAL-COMMERCIAL ENTERPRISES

Economic development has resulted in the formation of some enterprises which are both agricultural and commercial in character.

* Because the rider specifies that the definition of agricultural labor of Section 3 (f) of the Fair Labor Standards Act is to apply to the Labor Management Relations Act, Section 13 (a) (10) is probably not applicable. Section 13 (a) (10) exempts from the coverage of the Fair Labor Standards Act "any individual employed within the area of production (as defined by the Administrator), engaged in handling, packaging, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products." Individuals "employed in agriculture" are separately exempted by Section 13 (a) (6).
These establishments, though producing farm products, use a great deal of modern machinery, employ a comparatively large number of workers, and ordinarily add great value to farm products which they process. In addition they are operated as large scale business organizations, using many of the methods of production commonly identified with the modern mass-production industrial factory. For example, sugar plantations, particularly those located in Hawaii and Puerto Rico, are highly mechanized and are organized as large-scale business establishments. Chick raising, commonly regarded as a farming pursuit, has been greatly affected by the introduction of the commercial incubator. The modern hatchery resembles in many ways the industrial factory. Modern technology has also provided the basis for the greenhouse in which agriculture and horticulture products are produced under artificial conditions.

The question thus arises: Are all these employees engaged in agricultural pursuits and hence deprived of legal protection of their bargaining rights? In dealing with this problem, the N.L.R.B. has given much weight to the character of the work performed. On one occasion the Board declared that the exclusion of employees from its jurisdiction depends on "the essential character of the work performed. . . ." In other words, employees who perform duties which are incidental to the farming operations of these agricultural-commercial establishments are denied legal protection of their right to self-organization and collective bargaining. But employees whose tasks are related to the commercial activities of these enterprises have the protection and responsibilities of the Labor Management Relations Act.

Sugar Plantations

In January, 1945, a case arose which involved practically the entire sugar industry of Hawaii. It was pointed out that the modern Hawaiian sugar plantation is a corporation owning thousands of acres, employing hundreds of persons, with sales and purchases amounting to more than one million dollars per year. Located on the plantations are railroads used to transport the sugar cane from the fields to the mills, irrigation systems, repair shops, and the sugar mills. The modern Hawaiian sugar plantation has been described
AGRICULTURAL WORKERS

as a "complex, highly mechanized, carefully organized . . . large scale business enterprise."

In deciding the case, the National Labor Relations Board held that those engaged in the planting, cultivating, and harvesting of the sugar cane are agricultural employees and hence excluded from the coverage of the National Relations Act. On the other hand, employees who operate the railroads, work in the sugar processing mills, and who repair machinery of the plantation were found to be subject to the jurisdiction of the N.L.R.B. Employees of irrigation companies owned by sugar plantations are likewise protected in their organizational activities. The fact that these workers handle the water which is used on the plantations does not place them within the agricultural employment category.

Board action established certain principles in these cases. Workers who perform agricultural duties on large farms or plantations, using modern large-scale methods of production, are excluded from the scope of the Labor Management Relations Act in the same manner as are workers who execute similar tasks on small farms. Size of the enterprise alone does not determine whether or not a given worker will be treated as an agricultural employee. In addition, all workers on a plantation or on a farm will not on the basis of this consideration alone be denied legal protection of their right to self-organization and collective bargaining. Instead the N.L.R.B. will give consideration to the character of the work. The test is whether the employee is engaged in activities which are commercial or agricultural in nature. Finally, the fact that a single employer may own a plantation as well as mills, repair shops or transportation facilities located on the enterprise does not necessarily make milling, repairing, or transporting activities agricultural in character.

Application of the Fair Labor Standards Act to employees of sugar plantations has also been established. A Circuit Court of Appeals held that employees who work in sugar processing mills, operate plantation railroads, and who repair and maintain transportation and mill facilities are not employed in agriculture. Only those workers who plant, cultivate, or harvest sugar cane were considered within the agricultural category and hence excluded from coverage of the Fair Labor Standards Act. As in the case which
involved the National Labor Relations Act, the same management owned and controlled the plantation, the mill, the repair shops, and the transportation facilities. The court refused to give much weight to this feature in reaching its decision. It stated:

The mere fact that in this case the owners of the farm are also owners of the mills and the transportation facilities does not make transportation an incident to farming. The issue, therefore, is not whether the same owners manage and control the mill, the farms, and the transportation system, but rather whether transportation is incident to milling, an operation specifically within the purview of the [Fair Labor Standards] Act.  

In the light of this court decision, the rider to the N.L.R.B. Appropriation Act is of little importance in cases involving sugar plantations. Workers who perform commercial duties on a plantation will continue to receive protection from the N.L.R.B.

**Nurseries**

Employees of nurseries which are engaged in the production, sale, and distribution of fruit trees, berries, and vegetables are exempt from provisions of the Labor Management Relations Act. Even though it was conceded that the conduct of the modern nursery includes both commercial and agricultural operations, the Board has held that the employees of these enterprises are engaged in agricultural employment. In the case of a large Missouri nursery, the N.L.R.B. remarked, that the employees of the enterprise perform duties “customarily regarded as agriculture.”

Specifically, employees of the Missouri nursery unload and store young fruit trees in the company’s packing houses, cut scions from the trees growing in the nursery, graft the scions on to the seedlings in the company’s grafting rooms, and pack and ship the seedlings. In the packing season the workers fill and check customers’ orders and label, bundle, pack and ship the orders.

The N.L.R.B. granted that grafting and other work closely related to the propagation of fruit trees is “performed on a large scale and in a scientific manner.” In the judgment of the Board, however, duties performed in operating nurseries are “familiar agricultural pursuits.” As a result workers of nurseries may not expect legal protection of their right to collective bargaining.
Employees of nurseries have also been excluded from coverage of the Fair Labor Standards Act. For the purposes of this Act, the term "employed in agriculture" includes employees of nurseries engaged in:

1. sowing seeds and otherwise propagating fruit, nuts, vegetables, and ornamental plants or trees, shrubs, vines and flowers.
2. planting, cultivating, watering, spraying, fertilizing, pruning of nursery products.
3. handling, wrapping and packaging of products grown by a nursery.

Since the N.L.R.B. has already denied employees of nurseries legal protection of their bargaining rights, the rider to the N.L.R.B. Appropriation Act and this interpretation of the Fair Labor Standards definition of agricultural employment will cause no change in the policy of the Board.

**Hatchery Employees**

The use of the modern incubator has greatly affected the method of chick production. Many farmers now sell eggs to the modern hatchery instead of hatching the eggs on their own farms. In 1941 a hatchery in Missouri purchased from farmers eggs valued at about $169,497. During the same year, the company sold baby chicks worth approximately $419,410. Approximately 4,500,000 chicks were incubated in the hatchery during that year.

Employees who worked in the hatchery performed duties which included unloading eggs from trucks owned and operated by the company; placing the eggs in trays and inserting the trays into incubators; taking the hatched chicks out of the incubator; grading the chicks and boxing and loading them into trucks for transportation to market. In determining whether these employees fell within the agricultural classification, the N.L.R.B. was persuaded by the fact that their operations "are similar to the operations performed by the farmer." Accordingly the Board ruled that hatchery employees do not fall within the limits of its jurisdiction.

The Board recognized that the commercial hatchery in the case was large, used large-scale production methods, had scientific and specialized operations, and a large total value of the product. These features of the enterprise did not, however, sway the Board to grant
legal protection to the hatchery employees. This case again illustrated the principle that all workers engaged in the production of farm commodities produced under large scale methods are not, on the basis of this consideration alone, protected in their organizational activities. If their duties are deemed agricultural in character, they are excluded from the terms of the Labor Management Relations Act.

Hatchery workers have also been denied the benefits of the Fair Labor Standards Act. Since the administrator of that act held that operations performed in a commercial hatchery are agricultural in character, employees engaging in duties within these establishments have been designated as agricultural employees. This ruling was upheld by the Circuit Court of Appeals at Kansas City. For this reason the rider to the N.L.R.B. Appropriation Act is of little importance in cases involving hatcheries. The N.L.R.B. and the administrator of the Fair Labor Standards Act have reached similar conclusions on the agricultural status of hatchery workers.

Greenhouse Employees

The growing of agricultural and horticultural products in greenhouses raises the problem: Are employees performing duties in greenhouses within the agricultural classification? Planting, cultivating, and harvesting operations appear as vital to the greenhouse method of producing agricultural and horticultural stock as they are to the raising of products on a farm where natural conditions prevail. The N.L.R.B. has consistently held that employees engaged in planting, cultivating, and harvesting operations are agricultural workers and are therefore excluded from the scope of its jurisdiction. Does the growing of farm products in greenhouses alter the agricultural status of the employees performing these duties?

Different conclusions were reached by the N.L.R.B. and the administrator of the Fair Labor Standards Act on this problem. In 1940, the Board held that greenhouse employees were not agricultural workers and were therefore entitled to full protection of the National Labor Relations Act. This decision was apparently influenced by the artificial nature of greenhouse production. On this score the N.L.R.B. stated that the duties of greenhouse em-
ployees are not performed on a farm, nor are their services incident to farming operations. Instead their work, according to the Board, was industrial in character, for “planting, care, and growing of plants and flowers have been removed from the farm and from the natural conditions which there obtain, and are carried on under artificial conditions and in a specialized process.”

In another case in 1941 the Board held that employees performing operations in greenhouses where mushrooms are produced are entitled to the protection of the National Labor Relations Act. Again the Board noted the artificial conditions which prevail in greenhouse operations. It declared that mushroom growing under artificial conditions does not depend upon “climate, temperature, rainfall, or other conditions which affect the growing of crops under ordinary circumstances.” Hence, employees performing duties in connection with the raising of mushrooms in greenhouses perform tasks which are not agricultural but industrial in character.

A different position has been taken by the administrator of the Fair Labor Standards Act. In August, 1939, the administrator ruled that employees engaged in the production of mushrooms, flowers, or seeds under greenhouse conditions are excluded from the provisions of the Fair Labor Standards Act. As noted before, a federal district court implemented this ruling in 1946. The court dealt with application of the Fair Labor Standards Act to employees who fired boilers in a greenhouse producing cut flowers. It was recognized by the Court that greenhouse production which is carried on “under glass with steam heat is of course far removed from our normal conception of the growth of products by a farmer on an ordinary farm.” Nevertheless, the court held that firemen of greenhouses are “agricultural laborers” within the meaning of the Fair Labor Standards Act since, in its opinion, the language defining agricultural employment in the Act “is broad enough to cover this type of production.”

Although only greenhouse firemen were involved in this district court case, it may be expected that the administrator’s ruling which excludes all greenhouse employees from the purview of the Fair Labor Standards Act would be sustained by the courts. In fact, in the case described above, the court held that “we are bound to give weight to the interpretation of the administrator.” It appears then
that greenhouse employees may not expect further protection from the N.L.R.B. in their organizational activities. The Board, now bound by the Fair Labor Standards Act definition of agricultural employment, must apparently decline jurisdiction of additional cases involving greenhouse employees.

**Dairy Ranch Bottlers**

Some employers who own large dairy ranches possess the facilities for bottling the milk produced on the ranch. For example, one corporation located in Hawaii owns a dairy ranch of about 2,000 acres. Located on the ranch are corrals, warehouses, and the main dairy plant. The cows are milked and the milk bottled in the same building. Employees who perform the bottling operations run the bottle washers, filling machine, and capping machine. In addition, they place the milk in cold storage, wash pipe lines and bottling machines, and check outgoing and returned unsold milk.

In determining the status of the employees engaged in the bottling process under the National Labor Relations Act, the N.L.R.B. held that the bottling operations are related to the commercial activities of the ranch rather than to its agricultural pursuits. The bottlers were therefore afforded legal protection of their bargaining rights. The Board recognized that the bottlers handled a product produced on the ranch, but ruled that this fact alone did not place the employees beyond its jurisdiction. Instead the Board restated the principle that the character of the work performed by an employee is a controlling consideration in determining his agricultural status. Thus if he executes commercial duties, a worker is covered by the Labor Management Relations Act even though he may be engaged in handling products grown on a farm, plantation, or ranch.

It appears that bottlers are also covered by the Fair Labor Standards Act. In 1939 the administrator of that Act held that employees engaged in “the bottling of milk, the capping of bottles, and the transportation of milk” are not exempt from the coverage of the Fair Labor Standards Act. Only when these activities are so closely associated to the pasteurization of milk, that “they cannot be segregated therefrom” are bottling workers apparently exempt from the protection of the Fair Labor Standards Act.
AGRICULTURAL WORKERS

seems, therefore, that these workers are still entitled to legal protection of their collective bargaining rights, in spite of the fact that the Fair Labor Standards Act definition of agricultural employment now applies to the Labor-Management Relations Act.

PACKING, CANNING, AND SHIPPING OF FARM PRODUCTS

Even before Congress enacted the rider to the N.L.R.B. Appropriation Act, the N.L.R.B. held that farming did not stop with the mere harvesting of a crop. Practices which are incidental to growing or harvesting farm products were considered agricultural, and the employees performing these operations have been denied the use of remedies of the Board.

Thus a group of employees engaged in the sorting and grading of olives were regarded as agricultural employees.53 Their company grew and marketed raw olives. The firm owned approximately 480 acres of orchard land in California, producing 1,160,230 pounds of olives in one year. The workers used a sorting belt and an automatic grader. Specifically, they culled olives which were bruised, rotten, misshapen, or otherwise not marketable. In addition, they removed stems from the olives. After the grading and sorting operations were completed, the workers who performed these duties then loaded the barrels of graded olives onto trucks. In deciding that these graders and sorters are agricultural workers, the N.L.R.B. held that their operations are incidental to the growing of the olives and not related to the commercial activities of the company.

On the other hand, employees of commercial packing, processing, or canning enterprises are not excluded from the jurisdiction of the Board. In fact, it was this policy of the N.L.R.B. which stimulated Congress to attempt to deny these workers legal protection of their right to collective bargaining.

Packing and Shipping Operations

In a series of cases involving a group of lettuce packing and distributing companies in California and Arizona, the N.L.R.B. held that lettuce packing workers employed by these establishments are not agricultural workers.54 The fact that their duties are not per-
formed on a farm, but in lettuce packing sheds located in towns, next to railway sidings, and close to ice sheds located in towns, next to railway sidings, and close to ice sheds. The board weighed heavily the consideration that several of the packing companies grew only a portion of the lettuce which they packed and shipped, and bought additional quantities of lettuce from other growers.

Employees of companies which purchase, pack, and distribute onions are likewise subject to provisions of the Labor Management Relations Act. In a case involving these workers it was shown that their employers bought from growers quantities of onions which were prepared for shipment by onion packing companies. Unlike the olive graders, the employees of these onion packing establishments were not employed by the farmers who grew the product, but by companies which bought the commodity from farmers. The Board also noted that the work of the employees was not performed on a farm.

A similar set of circumstances were present in a proceeding involving oyster packers. A Maryland oyster distributing company purchased quantities of oysters from fishermen who brought the product to the packing plant of the company. Employees of the packing company first stored the oysters in bins, and later “shucked,” washed, and packed them into containers. The Board pointed out that these employees' duties are performed in the packing plant and their services are devoted exclusively to the handling of oysters being prepared for shipment to the market. The Board ruled that these packing house workers perform duties which are commercial rather than agricultural. Employees who pack and ship carrots, broccoli, chicory, and other vegetables, as well as melons, are likewise entitled to legal protection of their collective bargaining rights.

Commercial packing house workers are also covered by the Fair Labor Standards Act. The administrator of that law declared that the agricultural exemption of the law “does not extend to employees of packing house owners who pack produce of other growers as well as their own. Unless packing is done on the farm on which the commodities packed are raised, an independent contractor engaged in packing would not appear to be entitled to benefit of agricultural exemption.” Adoption of the Fair Labor Standards Act
definition of agricultural employment for purposes of the Labor Management Relations Act does not therefore exclude packing house workers from the protection and responsibilities of existing federal labor relations law.

Court Cases on Packing and Processing

In the cases reviewed above most firms bought from growers all, or a part, of the farm produce which they packed and distributed. A question thus arises about the status of workers in an establishment which itself grows all of the farm products which it packs and ships. In March, 1946, the National Labor Relations Board, in the Campbell case, dealt with this problem. The proceeding involved a Florida firm which grows tomatoes and operated a packing plant in which are processed only the tomatoes grown on its own farm. Evidence in the case showed that the packing plant was not on the farm, but in a town, and that large-scale production methods were used in the packing.

These facts prompted the Board to hold that employees in the packing house were not agricultural workers, even though the same management owns the farm and the packing house. According to the N.L.R.B., the fact that the same employer operated both packing house and tomato farm "is relevant but not controlling" in determining the agricultural status of the packing house workers. Of greater importance was the fact that the packing house operations were "removed from farm to town, and performed under factory conditions."

In January, 1947, the Circuit Court of Appeals in New Orleans overruled this decision of the N.L.R.B. holding that the employees of the packing house were agricultural laborers and thus removed from the protection of the National Labor Relations Act. The court declared that packing and preparing agricultural products for market is a necessary step in any agricultural operation. A packing plant does not become commercial or industrial in character merely because the enterprise is large and is organized along factory lines. The fact that the plant was located in a town was apparently given little weight by the court at New Orleans. The Circuit Court stressed the point that the packing plant employees packed only those tomatoes grown on the farm of the Florida firm. It would
seem that the United States Supreme Court must eventually decide whether employees such as those in the *Campbell* case fall within the agricultural classification.

On two other occasions the Supreme Court declined to review cases dealing with the agricultural status of workers who pack and process farm products. One of these cases affected workers preparing the Idaho potato crop for market. The other concerned the meat packing industry. In the *Idaho Potato Growers* case,\(^6\) the facts indicated that produce men purchase and handle under contract a large part of the Idaho potato crop. After the potatoes are dug, they are taken to a place for sorting, washing, grading, and packing. At times this readying for shipment is done in "cellars" on the farm, and sometimes in the warehouses of the produce men. Employees who perform these duties work as crews and are employed, not by farmers in whose cellars they work, but by the produce men. Moreover, the crews work under supervisors designated by the dealers.

It was held by a Circuit Court of Appeals that the work done by these workers is commercial and not agricultural. Much weight was given to the fact that the employees were hired by the dealers and worked under the supervision of foremen selected by the produce men. Another major consideration was the fact that the readying process may be performed either on the farm or in warehouses located off the farm. It was held that workers performing the tasks in farm cellars are entitled to protection of the N.L.R.B. in the same manner as those working in dealers’ warehouses. It was also noted that the work was not incidental to the planting, cultivating, or harvesting of the potato crop, but to its commercial marketing.

Somewhat similar facts were present in a lemon picking case.\(^7\) A California firm gained complete control of lemon crops through contracts made with individual growers even before the lemons were picked from the trees. When the lemons were ready to be picked, the company sent crews of pickers to the growers’ orchards. The employees in the particular case were hired, paid and supervised by the company and not by the farmers in whose fields they worked. A labor organization which sought to bargain for the lemon pickers argued that the employees were not agricultural workers because
their duties were more closely allied with commercial marketing than with the growing and cultivation of the lemon crop.

The Board, however, held that the lemon pickers were agricultural workers and exempt from its jurisdiction. The Board was persuaded by the fact that the essential character of the pickers' work is agricultural. In contrast with employees readying potatoes for market, the tasks of the lemon pickers can be performed *only* on the farm and not in warehouses off the farm.

The proceeding which dealt with the meat packing industry was the *Tovrea* case. A Circuit Court of Appeals held that employees of a meat slaughtering and packing enterprise who fed and conditioned cattle before the slaughter or sale of the animals are not agricultural workers. The company in the case owned feed lots adjacent to the packing house. Cattle were held in their pens for 30 days to 6 months. They were then slaughtered or sold. The employees hauled and distributed feed by wagon or tractor to the cattle, cleaned out the feed and water troughs, gathered up manure, stacked hay, and repaired fences. It was recognized that the tasks performed by these workers are essentially agricultural in nature, but the employees were not regarded as farm laborers because their work, according to the view of the court, was incidental to the commercial activities of the company in its packing plant.

Approximately five years later the N.L.R.B. held in the *Swift* case, that another group of employees who fed and conditioned cattle owned by a meat slaughtering and packing establishment fell within the agricultural classification. The facts in the *Swift* case, in contrast with the *Tovrea* matter, indicated that the feed lot of the company was geographically separated from the slaughtering facilities, that the feed lot was operated as an independent project, and that a separate pay roll was maintained for the feed lot workers. These feed lot workers were not, in the opinion of the Board, performing duties incidental to the commercial and industrial activities of the company. They were therefore ruled to be agricultural workers. It would thus appear that cattle feed lot workers employed by a meat packing corporation are exempt from the Labor Management Relations Act unless they perform their duties in pens located immediately adjacent to the slaughtering facilities.
Canning Operations

As noted, attempts have been made in Congress to exclude can- nery workers from the jurisdiction of the N.L.R.B. These efforts failed, however, and workers employed in commercial canning establishments are fully covered by existing federal labor relations legislation. Where a farmer cans commodities which he himself grows, however, employees engaged in such canning operations perform work incidental to farming, according to the Administrator of the Fair Labor Standards Act. Thus these workers are not subject to the protection and limitations of the Labor Management Relations Act because the N.L.R.B. is now presumably bound by interpretations handed down by the administrator.

Employers have not contended that all cannery workers fell within the agricultural employment classification. Apparently employers, trade unions, and the N.L.R.B. have all recognized the industrial character of commercial canning. However, the Board has decided many cases which involved workers engaged in the canning of farm products. These proceedings frequently deal with the appropriateness of bargaining units containing cannery employees. For example, on one occasion a union representing employees of an Illinois vegetable canning company desired a unit of all production and maintenance workers. The company offered little objection to this proposal, and the unit was found appropriate.

The N.L.R.B. also dealt with the appropriateness of bargain ing units of workers employed in salmon canneries located in Alaska and along the Pacific northwest.* In one of these cases, workers of salmon canning companies were regarded as employees of the establishment even though their duties were seasonal in character. The employees of a company which engaged in the reduction, canning, processing, handling, loading and storage of fish, fish oil, and fish meal were likewise deemed to compose a unit appropriate for collective bargaining. On still other occasions the N.L.R.B. took jurisdiction of cases involving companies which can fruit, baby foods, olives, and pickles.

* The Fair Labor Standards Act Section 13 (a) (5), specifically exempts persons engaged in the canning of fish. However, this exemption will not affect the status of these workers under the Labor-Management Relations Act, for they are not excluded on the basis of agricultural employment. Instead Congress excluded them from the provisions of the Fair Labor Standards Act as a class.
PART-TIME AGRICULTURAL EMPLOYEES

Frequently workers divide their working time between agricultural and non-agricultural duties. For example, a railway section gang employed on a large Hawaiian sugar plantation is reported to spend about two-thirds of its time repairing and maintaining railway lines and the other one-third in harvesting tasks. A special question is thus raised about the status under the Labor-Management Relations Act of employees who perform part-time agricultural duties. Are these workers excluded completely from coverage of the act? Or are they covered when engaged in non-agricultural pursuits, and excluded when engaged in agricultural occupations?

The N.L.R.B. has ruled that these workers are to be classed as non-agricultural workers, and hence covered employees, while they are employed in commercial or industrial duties, but agricultural, and hence uncovered employees, while they are engaged in agricultural pursuits. The Board said in February, 1947, that “with respect to N.L.R.B. practice . . . persons who divide their time between agricultural and non-agricultural pursuits are 'employees' while performing non-agricultural functions, and during such periods, are entitled to the benefits of the National Labor Relations Act.”

Employees who spend about 50 per cent of their time slaughtering meat for the other workers of a plantation and the other half of their time in agricultural pursuits may be represented by a union certified by the Board only during the time which the workers devote to butchering. In 1944 the Board held that employees of a seed processing and distributing company are entitled to legal protection of their right to collective bargaining during the eight months or more of each year in which they perform seed processing operations. On the other hand these workers were denied the benefits of the National Labor Relations Act while they were doing agricultural work on farms owned by the seed processing company. A labor union certified to bargain for such employees may be authorized to represent them only on matters affecting their interests as plant workers, and not on issues affecting their status as agricultural employees.

The policy established by the Administrator of the Fair Labor Standards Act differs somewhat on this point. A person to be exempt in any one work-week from the provisions of the Fair
Labor Standards Act must spend all of his working time in farm pursuits. An individual receives full protection under this law even though he devotes only a slight portion of his working time to non-agricultural duties. The N.L.R.B. appears to have adopted a narrower viewpoint and will afford protection to a part-time agricultural worker, only during the time in which he engaged in commercial or industrial activities. Moreover, to vote in bargaining elections these employees must spend at least fifty per cent of their working time in non-agricultural pursuits. The N.L.R.B. reaffirmed its position on the status of the part-time agricultural worker after the definition of agricultural employment in the Fair Labor Relations Act was made applicable under the National Labor Relations Act. Apparently the Board feels that there is no need to alter this particular policy even though it must now interpret agricultural employment in the same manner as the term is construed for purposes of the Fair Labor Standards Act.

**AGRICULTURAL COOPERATIVES**

A variety of tasks are performed in packing and processing plants owned and operated by cooperative organizations. This raises the question: To what extent are workers in these establishments subject to the provisions of the Labor Management Relations Act?

Spokesmen of some farmers' cooperatives have argued that their employees are agricultural workers even though the employees work in plants operated and owned by cooperatives and not on farms. This contention was advanced in the *North Whittier Heights Association* case, the leading court case dealing with the status of employees of cooperatives under the National Labor Relations Act. It was argued that if a single farmer were personally to hire and direct those doing his own packing and sorting, the work would be agricultural and his employees would be excluded from the jurisdiction of the N.L.R.B. The argument concluded by saying that the agricultural character of the work is not altered merely because the farmer, a member of a cooperative, turns over his product to a cooperatively owned plant for processing, packing, and marketing.
Position of the Courts

The United States Circuit Court of Appeals at San Francisco rejected this view. It held that employees of agricultural cooperatives were non-agricultural workers and were subject to the provisions of the National Labor Relations Act. This decision was later sustained by the Supreme Court of the United States. The Circuit Court ruled that the operations in processing and packing plants owned cooperatively are industrial and not agricultural. On this point the Court stated that "when the product of the soil leaves the farmer and enters a factory for processing and marketing it has entered the status of 'industry'." Since employees of these establishments perform non-agricultural duties, the remedies afforded by the N.L.R.B. are available to them.

The Circuit Court, furthermore, was convinced that the nature of the work and the status of the employees is altered by removing the packing and processing operations from the farm to the cooperatively owned plant. The Court pointed out that "the factual change in the manner of accomplishing the same work is exactly what does change the status of those doing it." Finally it may be pointed out that the N.L.R.B. will assume jurisdiction over the employees of an agricultural cooperative even though the organization processes and packs only the commodities grown by its farmer-members.

Types of Cooperatives Subject to N.L.R.B.

The North Whittier case dealt with the processing and packing of citrus fruits, but the N.L.R.B. has also held that other types of agricultural cooperatives are subject to its jurisdiction. The employees of a Vermont dairy, cooperatively owned by 750 member-farmers, were held to be non-agricultural workers subject to the National Labor Relations Act.

Work performed by employees of dairies is regarded by the Board as commercial. "When the milk leaves the farm and reaches the (dairy) for processing and marketing, it becomes engulfed in the first step of industrial activity, and is then in the practical control of a large selling organization," the Board stated.
In 1939 the N.L.R.B. held that employees shelling walnuts in California plants owned by a cooperative growers' association are not agricultural laborers.\(^7\) At the shelling plants employees feed walnuts into large shell-cracking machines; separate kernels as to size and color; clean, pack, and ship the kernels to the association's warehouses and to customers. Again controlling importance was attached to the industrial character of the work. The Board declared that the operations "like those of workers in industrial mass production plants are highly specialized. Each employee has one task to perform which contributes but one step in the total operation of processing the nut."\(^8\) It was also pointed out that the cooperative is not engaged in farming, but in the marketing of walnuts, and that the duties of the employees are incidental to the commercial enterprise of marketing. Employees of poultry cooperatives are likewise regarded as not engaged in agriculture, and hence are subject to the jurisdiction of the Board.\(^9\)

**Effect of Rider to N.L.R.B. Appropriation Act**

In February, 1947, the N.L.R.B. in the *San Fernando Heights Lemon Association* case refused to hold that workers in agricultural cooperatives are exempt from its jurisdiction because of the limitation attached to its appropriation act.\(^90\) (As noted, this limitation prohibits the Board from using its funds in proceedings involving agricultural laborers as the term is defined in the Fair Labor Standards Act.) The employees in the case worked in the packing houses of a California lemon packing association.

To support its position the N.L.R.B. pointed out that employees of packing houses operated by cooperative organizations are not regarded as agricultural workers under terms of the Fair Labor Standards Act. In March, 1939, the administrator of that act stated that such workers do not fall within the agricultural employment classification:

Employees of a farmers' cooperative . . . are employed not by the individual farmers who compose its membership or who are its stockholders, but by the cooperative association itself. Cooperative associations, whether in the corporate form or not, are distinct, separate entities from the farmers who compose them. The work performed by a farmers' cooperative association is not work performed by the farmer but for farmers.\(^91\)
This ruling by the administrator was the basis for the N.L.R.B. decision that workers in the *San Fernando* case are not agricultural workers since "the cooperative association is not a 'farmer' nor are its packing facilities located on a farm." In the light of this interpretation of the Fair Labor Standards Act, it may be expected that workers employed in packing and processing facilities owned and operated by cooperative organizations will continue to receive the benefits and assume the responsibilities of covered employees under the Labor Management Relations Act, 1947.

**CONCLUSIONS**

Agricultural workers, previously excluded from the scope of the National Labor Relations Act, are not covered by the terms of the Labor Management Relations Act, 1947. Labor organizations composed of these employees are not, therefore, affected by the protective or restrictive features of the new labor law.

Congress excluded farm laborers from the terms of the two labor relations acts, but it made no effort until July, 1946, to spell out the nature and scope of the term "agricultural labor." For approximately 11 years the National Labor Relations Board and the courts construed the meaning of agricultural employment.

To determine whether a given employee falls within the agricultural exemption, the Board and the courts have given much weight to the character of work performed by the worker. If the duties of an employee are deemed agricultural in nature, he has been excluded from the coverage of the National Labor Relations Act, and presumably will be excluded from coverage under the Labor Management Relations Act, 1947.

The benefits and responsibilities of the new act apply to workers who engage in non-agricultural tasks whether or not the workers are employed on a farm, plantation, or ranch. In addition, a worker who carries out industrial or commercial tasks does not fall within the agricultural employment class merely because he handles commodities produced on a farm, ranch, or plantation. For example, employees of commercial packing houses fall within the jurisdiction of the N.L.R.B. while workers performing duties in commercial hatcheries are excluded. In the judgment of the Board and the
courts employees of hatcheries perform agricultural duties while workers in commercial packing houses carry out commercial and industrial tasks.

In July, 1946, Congress restricted the Board's power to define the meaning of "agricultural employment" by making the Fair Labor Standards Act definition of the term applicable to the National Labor Relations Act. Congress took similar action in 1947, and the definition of agricultural employment contained in the Fair Labor Standards Act still controls the meaning of the term under the Labor-Management Relations Act. Only a comparatively small number of employees previously subject to the jurisdiction of the N.L.R.B. appear to have been removed from its authority because the Fair Labor Standards Act definition was adopted.

**Footnotes**

3. Labor-Management Relations Act, 1947 (Taft-Hartley) Public Law 101, 80th Congress, 1st Session, Title 1, Section 2 (3). A slight change in the nature of the exclusion is embodied in the Labor-Management Relations Act. Whereas the Wagner Act stated that an "employee" for purposes of that law did not include "any individual employed as an agricultural laborer," the Taft-Hartley law provides that the term "employee" for purposes of this statute does not embrace "any individual employed in agriculture." At this time the change in the wording is not expected to alter significantly the interpretations of the N.L.R.B. or the courts concerning the nature of agricultural employment.
7. 52 Stat. 1060.
13. Ibid., p. 8741.
15. Ibid., p. 8740.
16. Ibid., p. 8738.
17. Ibid., p. 8736.
22. Ibid., p. 9514.
24. John B. Damuzt v. William Pinchbeck, United States District Court, District of Connecticut No. 1610, July 12, 1946 (66 F. Supp. 667). This decision of the district court was upheld by the Circuit Court of Appeals at New York.
31. In the Matter of Stark Brothers Nurseries, supra, p. 1251.
32. In the Matter of the Pepeecko Sugar Company, supra.
36. In the Matter of Stark Brothers Nurseries, supra.
37. Ibid., p. 1249.
38. See footnote 26, supra.
40. In the Matter of Lindstrom Hatchery and Poultry Farm, 49 N.L.R.B. 776 (1943).
41. Ibid., p. 784.
44. In the Matter of Park Floral Company, supra.
45. Ibid., p. 414.
47. Ibid., p. 918.
49. See footnote 24, supra.
52. Ibid., p. 258.
60. Ibid., p. 886.
61. See footnote 20, supra.
   Certiorari denied 323 U.S. 769 (1944).
64. N.L.R.B. v. Tovrea Packing Company, 111 F. (2d) 626 (C.C.A. 9; 1940).
   Certiorari denied 311 U.S. 668 (1940).
74. In the Matter of Pepeeko Sugar Company, supra.
76. In the Matter of Pepeeko Sugar Company, supra, p. 1540.
80. See footnote 75, supra.
81. 310 U.S. 632 (1940).
83. Ibid., p. 80.
86. Ibid., p. 537.
88. Ibid., p. 500.
90. In the Matter of San Fernando Heights Lemon Association, supra.