

**In the Matter of CUDAHY PACKING COMPANY OF ALABAMA and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 513**

*Case No. 10-R-956.—Decided September 24, 1943*

*Mr. J. T. Bigger, of Birmingham, Ala., for the Company.*

*Mr. Louis B. Daniels, of Louisville, Ky., for the Amalgamated.*

*Mr. G. R. Hathaway, of Atlanta, Ga., for the P. W. O. C.*

*Mr. William R. Cameron, of counsel to the Board.*

**DECISION  
AND  
DIRECTION OF ELECTION**

**STATEMENT OF THE CASE**

Upon petition duly filed by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 513, herein called the Amalgamated, alleging that a question affecting commerce had arisen concerning the representation of employees of Cudahy Packing Company of Alabama, Birmingham, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry Whittaker, Trial Examiner. Said hearing was held at Birmingham, Alabama, on September 2, 1943. The Company, the Amalgamated, and Packinghouse Workers Organizing Committee, Local 136, herein called the P. W. O. C., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE COMPANY**

Cudahy Packing Company of Alabama, an Alabama corporation, maintains its principal office and place of business in the city of Chicago, Illinois, and has four branch houses in the State of Alabama.

We are here solely concerned with its branch house located at Birmingham, Alabama, where it is engaged in the wholesaling of products of the Cudahy Packing Company, and of processing certain smoked meats, sausage and hams. During the period of 34 weeks ending June 26, 1943, the Company purchased, both locally and from the Cudahy Packing Company, raw materials amounting to more than \$1,000,000, of which approximately 87½ percent was shipped to the plant at Birmingham from points outside the State of Alabama. During the same period, the Company sold finished products amounting in value to more than \$2,000,000, none of which was shipped to points outside the State of Alabama.

## II. THE ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, Local 513, is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Packinghouse Workers Organizing Committee, Local 136 is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Amalgamated, by letter of July 28, 1943, notified the Company that it claimed to represent a majority of the Company's employees, and requested a collective bargaining conference. The Company did not reply to this letter, but stated at the hearing that it would not recognize the Amalgamated unless certified by the Board as the bargaining representative.

On October 27, 1941, the Company and the P. W. O. C. entered into a contract in writing effective, by its terms, until October 26, 1942. This contract, though it did not so specifically provide, was regarded by the parties as renewable automatically in the absence of 30 days' notice in writing. The P. W. O. C. on September 18, 1942, gave such notice, and thereafter the P. W. O. C. and the Company entered into negotiations concerning the terms of a new contract. In view of the similarity of the demands made upon the Company by the P. W. O. C. to those involved in a dispute then pending before the National War Labor Board, to which the Cudahy Packing Company, a corporation organizationally interrelated with the Cudahy Packing Company of Alabama, and the others of the "big four" of meat packers were parties, and the delay that might be caused by the desire of the Company and the P. W. O. C. to await a decision in that case, it was verbally agreed to extend the terms of the previous agreement until a new written contract should be executed. Although the Directive

Order of the National War Labor Board was issued on February 8, 1943, and further negotiations were conducted subsequently thereto, as of the date of the hearing no new written contract had been entered into between the Company and the P. W. O. C. The P. W. O. C. contends that its contract of October 27, 1941, as extended by verbal agreement with the Company, constitutes a bar to a determination of representatives at this time. However, since the written contract had by its terms terminated, and the P. W. O. C. and the Company were still in the process of negotiating the terms of a new agreement at the time the Amalgamated presented its claim of representation, we find that the contract is not a bar to a present determination of representatives.

A statement of the Field Examiner introduced in evidence at the hearing, indicates that the Amalgamated represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>1</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

Substantially in accordance with the agreement and stipulation of the Amalgamated and the P. W. O. C.,<sup>2</sup> we find that all employees of the Company at its Birmingham, Alabama, plant, excluding clerks, office employees, salesmen, watchmen, employees on the temporary pay roll who have been employed less than 4 weeks,<sup>3</sup> superintendents, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

---

<sup>1</sup> The Field Examiner reported that the Amalgamated had submitted 34 membership applications, dated in July 1943, of which 25 appeared to bear the genuine original signatures of persons whose names are on the Company's pay roll of July 24, 1943, containing the names of 68 persons in the unit claimed to be appropriate.

The P. W. O. C. relies on its contract above mentioned as sufficiently establishing its interest in this proceeding.

<sup>2</sup> The Company, at the hearing, took no position with respect to the unit. The unit herein found to be appropriate is, however, substantially the same as that covered by the contract between the P. W. O. C. and the Company.

<sup>3</sup> The record discloses that the Company maintains a separate pay roll, known as the temporary pay roll, on which the names of new employees are placed. Some of those so employed are hired for only a few days to do certain kinds of work for which the Company often needs extra employees. Others, whom the Company intends to employ permanently, are kept on the temporary pay roll during a probationary period of 90 days, after which they are placed on the permanent pay roll. No distinction is made, on the temporary pay-roll list, between these two types of employees. The record indicates, and the parties agree, however, that in the case of all employees who have been employed 4 weeks or more, it is probable that they are employed with the intention of being placed on the permanent pay roll at the completion of the 90-day period of probation, and hence have a substantial interest in the selection of a collective bargaining representative.

## V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

## DIRECTION OF ELECTION

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, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Cudahy Packing Company of Alabama, Birmingham, Alabama, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Tenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, to determine whether they desire to be represented by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 513, affiliated with the American Federation of Labor, or by Packinghouse Workers Organizing Committee, Local 136, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

**CHAIRMAN MILLIS** took no part in the consideration of the above Decision and Direction of Election.