

In the Matter of IOWA PACKING COMPANY *and* INDEPENDENT UNION
OF PACKINGHOUSE WORKERS

Case No. 18-R-729.—Decided November 6, 1943

Messrs. John P. Staley and J. L. Fike, of Chicago, Ill., and Mr. H. A. Scudder, of Des Moines, Iowa, for the Company.

Messrs. Robert D. Jackson, Don Mahon and John Faaborg, of Des Moines, Iowa, for the Independent.

Messrs. E. R. Fitzpatrick and Thomas B. Haddon of Des Moines, Iowa, and Mr. Ted Covey, of Chicago, Ill., for the CIO.

Miss Olive N. Barton, of counsel to the Board.

DECISION'

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Independent Union of Packinghouse Workers, Local 56, affiliated with International Brotherhood of Swift Employees, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Iowa Packing Company, Des Moines, Iowa, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frances X. Helgesen, Trial Examiner. Said hearing was held at Des Moines, Iowa, on September 17, 1943. The Company, the Independent, and United Packinghouse Workers of America, Local 89, CIO, herein called the CIO, 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

Iowa Packing Company, an Iowa corporation, is wholly owned by Swift and Company, an Illinois corporation. It is engaged at Des
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Moines, Iowa, in the general business of purchasing, slaughtering and processing hogs, cattle, calves, sheep, and lambs. The only plant involved here is the Company's Des Moines plant. The volume of business at the Des Moines plant during the fiscal year of 1942 exceeded \$25,000,000. Approximately 83 percent of the total sales of products processed at this plant went to points outside the State of Iowa.

The Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Independent Union of Packinghouse Workers, Local No. 56, affiliated with International Brotherhood of Swift Employees, and United Packinghouse Workers of America, Local 89, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties agreed that during the month of April or May 1943, the Independent orally requested the Company to recognize it as the exclusive bargaining representative of the employees in the Snack Shop and cafeteria department. The Company refused, pending certification by the Board.

On March 19, 1943, the CIO was certified by the Board as the exclusive bargaining representative for the employees in the production and maintenance unit. Cafeteria and Snack employees were not included in that unit. Thereafter the CIO made an unsuccessful demand for the right to represent cafeteria workers. In the new contract being negotiated at the time of the present hearing such workers are not mentioned. The CIO contends that they belong in the broad maintenance and production unit.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the Independent represents a substantial number of employees within the unit hereinafter found appropriate.¹

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.

¹The Regional Director reported that the Independent submitted 12 authorization cards, all dated in April or May 1943. Eight of the 12, bearing apparently genuine original signatures, correspond with names on the Company's pay roll of August 12, 1943, which pay roll contains the names of 19 persons in the alleged appropriate unit. The Trial Examiner reported that the Independent had presented to him at the hearing an authorization petition naming it as bargaining agent which was signed by 11 employees, 6 of whom had not been previously reported. All 6 are apparently genuine original signatures and all correspond with names on the Company's pay roll of September 11, 1943, which pay roll contains 19 names in the alleged appropriate unit. The Trial Examiner further reported that the CIO submitted 2 authorization cards, bearing apparently genuine original signatures, both of which correspond with names on the Company's pay roll of August 12, 1943. One card is dated in June and 1 in August 1943.

IV. THE APPROPRIATE UNIT

The Independent wishes the unit to consist of all employees of the restaurant and the Snack Shop, including the head cook, the dining room gang leader, and the part-time employees in both the restaurant and the Snack Shop. The CIO contends first that restaurant and Snack Shop employees do not constitute an appropriate bargaining unit but should be included in the already established maintenance and production unit; and, second, that any unit established by the Board should include all employees in the restaurant, excluding salaried employees. The Company maintains that if the Board should decide that restaurant employees constitute a proper bargaining unit separate from the production and maintenance unit already established, the unit should include all employees in the restaurant except supervisory and clerical employees and part-time employees who regularly work in other departments.

There are 16 full-time, hourly paid employees in the restaurant. Both unions, denying that they are gang leaders, wish to include the head cook, Richard Bailey, whom the Company calls a gang leader, and Margaret Loeffler, who is known as the dining room gang leader, in the unit. The Company takes no position as to the inclusion or exclusion of these persons. While the record indicates that these 2 employees have no supervisory authority, the Company anticipates reorganizing its cafeteria supervisory staff. The head cook and the dining room gang leader will therefore be included or excluded, depending on whether they fit the definition of supervisory employees set forth below. Some question arose as to the disposition of the following employees.

Three girls from the lamb trim-out department assist in the cafeteria for an hour a day, one girl from the accounting department acts as cashier at noon daily, and Patricia Anderson, who does not work in any other department of the plant, comes in every day and works from 4:15 to 8 p. m. We find that the employees who regularly work in other departments of the plant and assist in the cafeteria for short periods should be excluded. However, Patricia Anderson will be included in the unit, since she is not assigned to another department and works a substantial number of hours each day.

Vivian Albers, who is paid on a salary basis, manages the Snack Shop, which is a typical office cigar stand kept open only certain hours. It is located in a room adjacent to the cafeteria. She makes all locally placed purchases, but those that are not locally placed are made through the purchasing department. She keeps a set of books for the Snack Shop and another set for the restaurant, and acts as timekeeper for the restaurant. About 30 percent of her time, when the Snack Shop is closed, she acts as a stenographer in the superintendent's office.

A salaried clerk, Doris Hunt, from another plant department, helps her for about an hour each Monday selling cafeteria coupon books. Since the Snack Shop is not a part of the cafeteria, and since all cafeteria employees are hourly paid, while these two employees are on a salary basis, and since the work done by Miss Albers for the cafeteria is of a clerical nature, we shall exclude both Snack Shop employees from the unit.

Inasmuch as the duties and interests of the cafeteria or restaurant employees are not similar to those of the production and maintenance employees, and cafeteria workers are not included in the standards and bonus system established for nearly all of the production and maintenance employees, we find that a unit limited to cafeteria employees is appropriate.²

We find, accordingly, that all employees of the cafeteria at the Des Moines plant of the Company, excluding clerical employees, part-time workers from other plant departments and any 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.

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 Iowa Packing Company, Des Moines, Iowa, 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 Eighteenth Region, acting in this matter

² See *Matter of Swift & Company*, 27 N. L. R. B. 903, 906; *Matter of Wilson & Co., Inc.*, 52 N. L. R. B. 888.

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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Independent Union of Packinghouse Workers, Local No. 56, or by United Packinghouse Workers of America, Local 89, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.