

In the Matter of SWIFT & COMPANY, AN ILLINOIS CORPORATION, LICENSED TO TRANSACT BUSINESS IN THE STATE OF NEW YORK AS SWIFT & COMPANY, INC. (UNITED DRESSED BEEF DIVISION) and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 816, AFL

*Case No. 2-R-4183.—Decided November 6, 1943*

*Mr. John P. Staley, of Chicago, Ill., for the Company.*

*Mr. Samuel J. Cohen, of New York City, for the Union.*

*Miss Muriel J. Levor, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon amended petition duly filed by International Brotherhood of Teamsters; Local 816, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Swift & Company, an Illinois corporation, licensed to transact business in the State of New York as Swift & Company, Inc. (United Dressed Beef Division), New York City, herein called the Company,<sup>1</sup> the National Labor Relations Board provided for an appropriate hearing upon due notice before John J. Cuneo, Trial Examiner. Said hearing was held at New York City, on October 15, 1943. The Company and the Union appeared,<sup>2</sup> participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Swift & Company, an Illinois corporation with its principal office and place of business at Chicago, is licensed to do business in the State

<sup>1</sup> A motion was made and granted at the hearing to amend the petition and other formal documents to set forth the name of the Company, as above.

<sup>2</sup> Officers of Employees Council Union also appeared at the hearing. However, after evidence of that organization's dissolution was adduced, they withdrew their claim of interest in this proceeding.

of New York as Swift & Company, Inc. (United Dressed Beef Division). Swift & Company maintains and operates packing plants, warehouses, and branch houses throughout the various States of the United States. The Company operates a branch office and plant in New York City, with which we are concerned in this proceeding; where it is engaged in the slaughtering of cattle, sheep, and lamb, which it processes and prepares for sale and distribution as meat, meat products, and byproducts. During the year ending about September 10, 1942, the Company purchased livestock, its principal raw material, for use in the New York City plant to a value in excess of \$1,000,000, of which approximately 90 percent was shipped from points outside the State of New York. During the same period, the Company produced and processed finished products valued at more than \$1,000,000, at its New York City plant, of which approximately 33 percent was shipped to points outside the State of New York.

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

## II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Local 816, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On August 16, 1943, the Union asserted a claim to represent a majority of the Company's motor vehicle drivers and requested recognition as their collective bargaining agent. The Company refused to accord such recognition unless and until the Union was certified by the Board, on the ground that Employees Council Union was the certified bargaining representative of its drivers.

A statement of the Regional Director introduced in evidence at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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

The Union claims as appropriate for collective bargaining purposes a unit composed of the Company's chauffeurs, truck pullers, plant

<sup>3</sup> The Regional Director reported that the Union submitted 49 designations, of which 42, bearing apparently genuine original signatures, correspond with names on the Company's pay roll of August 21, 1943, which contains 56 names.

drivers, and fat collectors, excluding supervisory employees, with which position the Company is in accord. The sole controversy arises from the Union's contention, which the Company opposes, that 5 specified employees<sup>4</sup> of the Company heretofore employed within the afore-mentioned categories, and now working at other duties, be included in the unit, since there is a possibility that they will be re-employed at their former activities.

The 5 contested employees had been employed by the Company at work which it is conceded is within the proposed unit until they were laid off because of a diminution in the Company's trucking activities. They were severed from the garage pay roll and were given the opportunity to take other positions with the Company. When these men asked for information the Company told them they would be given a preference should increased business require the Company to take on additional drivers. The Company takes the position that these men are not "temporarily laid off" within the meaning of Board decisions, since they are at present regularly employed at other occupations and merely retain seniority rights with respect to their previous employment.

Four of these employees are presently employed as beef loader, veal loader, janitor, and as timekeeper, respectively, and the Union concedes that they would not be eligible to its membership were it not for their past employment, the contingency referred to above, and their occasional employment as emergency drivers. The record discloses that Cirrincione, laid off October 4, 1942, has been given work as a part-time chauffeur for 3 days since that date; Guadagno, laid off February 8, 1943, 5 days; Clark, laid off May 9, 1943; 3 days; and Scalone has not worked as a chauffeur since his lay-off. Upon these facts and since it appears that there is no definite prospect of reemployment at occupations within the proposed unit, we find that the 4 employees in question should be excluded.<sup>5</sup>

The other contested employee, Lyons, is now engaged in driving a small tractor, called a "shop mule," upon the Company premises. The Union contends that Lyons should be included for the reasons it gives with respect to the other disputed employees and on the further ground that he is the driver of a motor-propelled vehicle. The tractor is used to pull a trailer loaded with hides from the beef and calf hide cellars to the Company's loading pier. Although Lyons is carried on the garage pay roll and punches the garage time clock, he works under the supervision of the general foreman of the hide department. His basic wage rate and his overtime are calculated according to the terms of the contract covering the production and maintenance employees, from which

<sup>4</sup> Cirrincione, Guadagno, Clark, Scalone, Lyons

<sup>5</sup> See *Matter of Utica and Mohawk Cotton Mills*, 51 N. L. R. B. 257, 261.

the employees requested herein are excluded as truck drivers. Furthermore, Lyons' predecessor as tractor driver was held eligible to vote at an election to determine the representative of the production and maintenance employees, and was not held eligible to vote in a consent election for the chauffeurs' unit.<sup>6</sup> The position of tractor driver in the Company's organization is a production job. Accordingly, we shall exclude Lyons from the unit.

We find that all chauffeurs, truck pullers, plant drivers, and fat collectors employed at the Company's New York City plant, but excluding Cirrincione, Guadagno, Clark, Scalone, and Lyons, and any supervisory employees having the right 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 means of 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 Swift & Company, an Illinois corporation, licensed to transact business in the State of New York as Swift & Company, Inc. (United Dressed Beef Division), New York City, 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 Second 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

<sup>6</sup>This election, held September 1942, was followed by the designation of Employees Council Union as the bargaining representative of the chauffeur unit. However, such designation did not result in an agreement with the Company.

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 and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by International Brotherhood of Teamsters, Local 816, affiliated with the American Federation of Labor, for the purposes of collective bargaining.