

In the Matter of ARMOUR & COMPANY and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 47, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR.

*Case No. 16-R-734.—Decided November 9, 1943*

*Mr. Carlisle Cravens and Mr. F. T. Denny, of Fort Worth, Tex., for the Company.*

*Mr. W. F. Derden, of Fort Worth, Tex., for the Union.*

*Mr. Joseph W. Kulkis, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 47, affiliated with the American Federation of Labor, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Armour & Company, Fort Worth, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before H. Carnie Russell, Trial Examiner. Said hearing was held at Fort Worth, Texas, on October 11, 1943. The Company and the Union 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

Armour & Company is a Maine corporation engaged in the operation of a packing plant at Fort Worth, Texas. During the calendar 6-month period of 1943, the Company received at its Fort Worth

plant approximately 48,592 tons of raw materials and supplies of which tonnage approximately 19 percent originated in States other than Texas. During the same period the Company made shipments approximating 69,316 tons of meats and other animal products of which tonnage 48.7 percent was shipped to points outside the State of Texas. Only the Company's plant at Fort Worth, Texas, is involved in this proceeding. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 47, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about August 31, 1943, the Union requested the Company to recognize it as the exclusive bargaining representative of its employees within an alleged appropriate unit. The Company refuses to accord the Union such recognition unless and until the Union is certified by the Board.

A statement of the Trial Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees within 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

The Union seeks a unit composed of all truck drivers of the Company's Fort Worth plant engaged in the Company's Country Trucking Division, exclusive of supervisors and clerical employees.<sup>2</sup> The Company takes no position with respect thereto.

The truck drivers are regularly engaged in country trucking operations which carry them to other States and may keep them from their home station for a period of several days; and are governed by certain provisions of the Interstate Commerce Commission.

<sup>1</sup> The statement of the Trial Examiner shows that the Union submitted 23 membership cards, 19 of which bear the apparently genuine signatures of persons whose names appear on the October 10, 1943, pay roll of the Company, which contains the names of 32 persons within the alleged appropriate unit.

<sup>2</sup> In addition to truck drivers, the Company employs in its Country Trucking Division, checkers, storers, washers, icers, assemblers, and dock men.

There is no distance limitation to their routes and they are paid on the basis of mileage consumed in the performance of their duties. Although they receive their instructions from Assistant Manager Henry, they are the only group of employees in the division directly responsible to Traffic Manager McConnell. We are of the opinion that the truck drivers comprise an appropriate unit.<sup>3</sup>

*Wholesale Truck Drivers:* The Union seeks to exclude these employees from the unit. While these employees are retained in the capacity of drivers by the Company's Country Trucking Division, the record reveals that they are distinguishable from the country trucking drivers mentioned above, in that their operations are limited to city delivery or inter-city operations between Fort Worth and Dallas, Texas, and accordingly are not governed by any provision of Interstate Commerce Commission. In addition, they are further distinguishable by the fact that they are paid on an hourly basis, and are under the separate supervision of F. E. Deen, Manager of the Wholesale Market Delivery. Under these circumstances, we do not believe that they should be in a unit together with drivers engaged in country trucking operations, and accordingly, we shall exclude them.

*Chauffeurs:* The Union also seeks to exclude these employees from the unit. The record shows that some employees classified by the Company as chauffeurs spend the majority of their time as storers, washers, and icers, and are considered merely as extra drivers and are not regularly used as such. They are paid on an hourly basis. In view of the fact that they are not regularly employed as drivers, and that their method of payment differs from that of the country trucking drivers, we shall exclude them.

We find that all truck drivers engaged in the Country Trucking Division of the Company's Fort Worth, Texas, plant, excluding wholesale truck drivers, extra chauffeurs, clerical employees, and all 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>3</sup> *Matter of Cudahy Packing Company*, 4 N. L. R. B. 39; *Matter of Armour & Company*, 7 N. L. R. B. 710; *Matter of Inland Steel Company*, 9 N. L. R. B. 783. *Matter of Century Biscuit Company*, 9 N. L. R. B. 1257; *Matter of Armour & Company*, 10 N. L. R. B. 912; *Matter of Seymour Packing Company*, 12 N. L. R. B. 1098; *Matter of Moulton Ladder Manufacturing Company*, 27 N. L. R. B. 40; *Matter of Fairmont Creamery Company*, 42 N. L. R. B. 1041; *Matter of United States Cartridge Company*, 45 N. L. R. B. 1043; *Matter of The Sherwin-Williams Defense Corporation*, 46 N. L. R. B., 325; *Matter of Douglas Aircraft Company, Inc.*, 51 N. L. R. B. 140.

## 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 Armour & Company, Fort Worth, Texas, 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 Sixteenth 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 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, Chauffeurs, Warehousemen and Helpers of America, Local 47, affiliated with the American Federation of Labor, for the purposes of collective bargaining.