

In the Matter of LOUIS HELLER AND BEN MELNICK, A PARTNERSHIP DOING
BUSINESS AS H & M PACKING COMPANY and UNITED PACKINGHOUSE
WORKERS OF AMERICA

Case No. 17-R-728.—Decided December 21, 1943

*Messrs. Louis E. Gelt and Irving Zveitel, both of Denver, Colo., for
the Company.*

Mr. Floyd Brouillard, of Denver, Colo., for the C. I. O.

Mr. Floyd L. Case, of Denver, Colo., for the A. F. L.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a second amended petition duly filed by Packinghouse Workers Organizing Committee,¹ herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Louis Heller and Ben Melnick, a partnership doing business as H & M Packing Company, Denver, Colorado, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Denver, Colorado, on November 16, 1943. The Company, the C. I. O., and Amalgamated Meat Cutters and Butcher Workmen of North America, Packing House Workers Union, Local No. 641, affiliated with the American Federation of Labor, herein called the A. F. L., appeared,² 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

¹ The evidence presented at the hearing indicated that the organization known as Packing House Workers Organizing Committee changed its name to "United Packinghouse Workers of America," on October 15, 1943. All papers in this proceeding are hereby amended so as to reflect the proper name of the petitioning labor organization.

² International Union of Operating Engineers, Local Union No. 1, herein called the Engineers, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Produce Drivers, Helpers and Warehousemen Local 542, herein called the Teamsters, although duly served with notice, made no formal appearance at the hearing.

Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

Louis Heller and Ben Melnick, a partnership doing business as H & M Packing Company, is engaged in the purchase, slaughter, and processing of livestock, and the sale and distribution of said products. The principal office and packing house of the partnership is located at Denver, Colorado; said partnership is duly licensed and qualified under both State and Federal statutory requirements. In the course and conduct of its business the Company purchased, for the 6 months' period commencing January 1, 1943, and ending June 30, 1943, livestock valued at approximately \$1,900,000, of which about 25 percent was shipped to the Company from points outside the State of Colorado. During the same period the sales of the Company's finished products were valued in excess of \$2,000,000, of which approximately 30 percent was sold, transported, and distributed to points outside the State of Colorado. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Packinghouse Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Amalgamated Meat Cutters and Butcher Workmen of North America, Packing House Workers Union, Local No. 641, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 1, 1942, the Company and the A. F. L. executed an agreement covering the Company's production employees which, by its terms, remained in effect until August 31, 1943. On or about August 28, 1943, the C. I. O. requested recognition of the Company as the bargaining representative of certain of its employees; the Company refused the request, stating that it was operating under a contract with the A. F. L. covering the employees whom the C. I. O. desired to represent, and therefore it would require determination

of the question concerning representation by the Board. The A. F. L. contends that the afore-mentioned contract constitutes a bar to the instant proceeding; it further contends that the limitation on the expenditure of the Board's funds in the Appropriations Act³ precludes the Board from proceeding in this case. However, we are of the opinion that the request of the C. I. O. was timely made,⁴ and that, for reasons stated in the recent *U. S. Bedding Company* case,⁵ the second contention of the A. F. L. is without merit. Accordingly, we find that the contract of September 1, 1942, between the Company and the A. F. L. does not constitute a bar to the instant proceeding.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁶

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 Company has been operating under closed-shop agreements with three separate labor organizations covering units comprised of employees engaged as production workers, truck drivers, and operating engineers, respectively.⁷ The only employees involved in the instant proceeding are the production workers presently represented by the A. F. L.⁸

Both the C. I. O. and A. F. L. are agreed that all production workers of the Company, excluding supervisors above the grade of working foremen, office workers, truck drivers, and operating engineers, constitute an appropriate unit. A dispute exists, however, with respect to working foremen; the A. F. L. would include them within the unit, whereas the C. I. O. would exclude them.

The record indicates that the Company employs 3 working foremen who supervise groups of employees ranging in numbers from 3 to 15

³ N. L. R. B. Appropriations Act, 1944, Title IV, Act of July 12, 1943, P. L. 135, 78th Congress, 1st Sess.

⁴ *Matter of Laclede Steel Company*, 49 N. L. R. B. 161.

⁵ 52 N. L. R. B. 382

⁶ The Field Examiner reported that the C. I. O. submitted 15 authorization cards containing apparently genuine original signatures; that 14 of these designations contained names appearing upon the Company's pay roll of September 20, 1943. The record indicates that there are between 15 and 25 employees in the unit sought by the C. I. O.

The A. F. L. relies upon its contract with the Company dated September 1, 1942, for the establishment of its interest.

⁷ The truck drivers and operating engineers are currently represented by the Teamsters, and the Engineers, respectively.

⁸ The C. I. O. in its petition, had originally sought a unit comprised of all production and maintenance workers of the Company. At the hearing, however, it was disclosed that all maintenance work was performed by operating engineers who, as stated before, were included within a unit represented by the Engineers. The C. I. O. thereupon withdrew its contention that maintenance workers be included within the unit which it sought.

persons. These employees have authority to hire and discharge, and to effectively recommend such action. Accordingly, we shall exclude these employees from the unit since they fall within our customary definition of supervisory employees.

We find that all production employees of the Company, but excluding office workers, truck drivers, operating engineers, working foremen, and all other supervisory employees with authority to hire, promote, discipline, discharge, 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 find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The A. F. L. desires that eligibility to vote be determined as of the last pay-roll period for the month of August, the pay-roll period immediately preceding the expiration date of its contract. In the absence of any persuasive reason for departing therefrom, we shall adhere to our customary practice, and shall direct that the employees of the Company eligible to vote in the election shall be those 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Louis Heller and Ben Melnick, a partnership doing business as H & M Packing Company, Denver, Colorado, 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 Seventeenth 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 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 United Packinghouse Workers of America, affiliated with the Congress of Industrial Organizations, or by Amalgamated Meat Cutters and Butcher Workmen of North America, Packing House Workers Union, Local No. 641, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.