

In the Matter of KOHRS PACKING COMPANY *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION No. 371, A. F. OF L.

Case No. 18-R-870.—Decided January 17, 1944

Messrs. J. H. Gehrman and *Al Dreller*, of Davenport, Iowa, for the Company.

Messrs. Elvin E. Hughes and *Cleo Enfield*, of Rock Island, Ill., for the Union.

Mrs. Augusta Spaulding, 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 & Helpers of America, Local Union No. 371, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Kohrs Packing Company, Davenport, Iowa, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Davenport, Iowa, on November 30, 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

Kohrs Packing Company is engaged in the slaughter and processing of hogs at Davenport, Iowa. The Company annually purchases for

use at its plant hogs and processing materials valued in excess of \$100,000. Over 98 percent of the hogs are purchased in Iowa. The Company annually expends approximately \$15,000 in miscellaneous supplies, of which approximately 50 percent is shipped to its plant from points outside Iowa. The Company annually sells products valued at approximately \$3,000,000, of which approximately 70 percent is shipped from the plant to points outside Iowa.

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 & Helpers of America, Local Union No. 371, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The representative of the Union on four different occasions attempted to communicate by telephone with the Company's manager concerning bargaining rights for teamsters employed at the plant. Although he left a telephone number for the return of his call, the Company did not communicate with him. He then consulted an attorney who had represented the Company in other labor matters. This attorney advised the Union's representative that he did not represent the Company for the purposes of dealing with the Union. The Union then filed the petition in this proceeding. The Company desires that the Board formally decide the question of the bargaining unit for its employees before the Company extends recognition to the Union as their bargaining representative.

A statement prepared by the Trial Examiner and read into the record at the hearing indicates that the Union represents a substantial number of employees in the unit herein found appropriate for bargaining.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.

IV. THE APPROPRIATE UNIT

The Union contends that all regular truck drivers, excluding occasional and part-time truck drivers and the truck foreman, constitute

¹ The Union submitted to the Trial Examiner six authorization cards, dated in July and August 1943, all of which bore the apparently genuine signatures of employees on the Company's pay roll for November 8, 1943.

There are approximately 12 employees in the appropriate bargaining unit.

an appropriate bargaining unit. The Company takes no position with respect to the unit.

The Company employs at its Davenport plant approximately 250 employees, of whom approximately 160 are classed as production and maintenance employees. The Company recognizes Amalgamated Meat Cutters and Butcher Workmen of North America, a labor organization affiliated with the American Federation of Labor, as the sole bargaining representative of these employees. The bargaining unit for these employees, by agreement between the parties, expressly excludes executives, general superintendents, assistant superintendents, foremen, assistant foremen, employees on the general office pay roll, salesmen, truck drivers, garage employees, watchmen, and temporary employees. The Company regularly employs approximately 12 truck drivers, who are among the employees expressly excluded from the unit for production and maintenance employees and whom the Union now desires to represent. Among them are 4 local truck drivers for delivery service in the tri-city area, 5 or 6 highway or over-the-road drivers for long distance service, and 1 driver who calls for the Company's mail and small supply orders and delivers rush orders of meat. All these employees are hourly paid and spend all their working time as truck drivers for the Company.

Upon occasion, as its needs require and for varying lengths of time, the Company uses the services of production and maintenance employees on a part-time basis for additional driving service. The Union contends that it has no jurisdiction to represent employees who spend less than 51 percent of their working day as drivers. For this reason, it would exclude all occasional and part-time driving employees from the bargaining unit for truck drivers. The record does not disclose in any detail what percentage of time such production and maintenance employees of the Company generally spend in driving or what their regular duties otherwise involve. However, as production and maintenance employees not expressly excluded from the bargaining unit noted above, they would form a part of the production and maintenance group for which another labor organization is bargaining representative. The record does not disclose whether persons hired by the Company for occasional or part-time driving have other employment. Under these circumstances, we shall exclude from the bargaining unit occasional drivers and part-time drivers who regularly spend less than 51 percent of their working day as truck drivers for the Company.

The Company lists one employee as a driver-salesman. This employee spends approximately 50 percent of his time as a driver and approximately 50 percent of his time as a salesman. Prior to the war, he was a full-time salesman on a salary basis. When

tire and gasoline restrictions made it impossible for him to devote his full time to selling, the Company provided that he should fill in his working time as a truck driver. As a salesman, this employee was a salaried employee. Although regular truck drivers of the Company are paid on an hourly basis, no change has been made in his compensation. The Union would exclude the driver-salesman from the bargaining unit for truck drivers. Since the working conditions for the driver-salesman are clearly distinct from those of regular full-time, hourly paid truck drivers of the Company, we shall exclude the driver-salesman from the bargaining unit herein found appropriate.

The Company lists as an employee on its pay roll an individual who presently spends approximately 80 percent of his time peddling the Company's products, and approximately 20 percent of his time as truck driver for the Company. This employee was formerly a full-time driver on the Company's pay roll. He was granted leave of absence from full-time work by the Company in order that he could take over the route of a peddler who was drafted into military service. The record does not disclose in any detail his relations with the Company as peddler. For approximately 20 percent of his working day this employee works under conditions identical with those of other company drivers. The Union would exclude him from the bargaining unit. Since this employee presently spends less than 51 percent of his working day as a regular driver for the Company, we shall exclude him as a part-time driver from the appropriate unit.²

Truck drivers are supervised by a foreman who has no authority to discharge or hire employees under him. He makes recommendations regarding their hire, promotion, or discharge to the superintendent, and his recommendations are accorded weight. The Union would exclude him from the bargaining unit. We shall exclude from the bargaining unit for truck drivers the truck foreman and all other supervisory employees within our usual definition of the term.

We find that all regular truck drivers of the Company, excluding occasional drivers, part-time drivers who regularly spend less than 51 percent of their working day as drivers for the Company, the driver-salesman, the truck foreman, 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.

² A garage mechanic repairs the Company's trucks. Garage employees were expressly excluded from the bargaining unit for production and maintenance employees. The garage mechanic, in connection with his work, drives and parks the Company's trucks. He does not, however, function as a truck driver for the Company's delivery service.

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question which has arisen concerning the representation of the Company's employees can best be resolved by an election by secret ballot. The Union requests that it be described on the ballot as Truck Drivers Local 371, affiliated with the American Federation of Labor. We shall grant the request.

Those eligible to vote in the election shall be all employees of the Company in the unit found appropriate in Section IV, above, 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 Kohrs Packing Company, Davenport, 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 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 or not they desire to be represented by Truck Drivers Local 371, affiliated with the American Federation of Labor, for the purposes of collective bargaining.