

In the Matter of KANSAS CITY ICE COMPANY AND CITY ICE COMPANY OF
KANSAS CITY and UNITED PACKINGHOUSE WORKERS OF AMERICA,
AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 17-R-760.—Decided January 26, 1944

Messrs. Patterson, Chastain & Smith, by Mr. A. Z. Patterson, of Kansas City, Mo., for the Companies.

Mr. John J. Manning, of Kansas City, Mo., for the Teamsters.

Mr. Cecil F. Liles, of Kansas City, Mo., for the Operating Engineers.

Messrs. Ralph Baker, Leslie O'Rear, and Irwin L. De Shetler, of Kansas City, Mo., for the Packinghouse Workers.

Miss S. Catherine Wilson, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by the United Packinghouse Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Packinghouse Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Kansas City Ice Company and City Ice Company of Kansas City, Kansas City, Missouri, and Kansas City, Kansas, herein called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer L. Hunt, Trial Examiner. Said hearing was held at Kansas City, Missouri, on December 9 and 10, 1943. The Companies, the Packinghouse Workers, the Ice & Coal Drivers and Handlers, Soda Drivers and Cold Storage Employees, Local Union #953, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the A. F. L., herein called the Teamsters, and the International Union of Operating Engineers, Local No. 6, affiliated with the A. F. L., herein called the Operating Engineers, appeared and participated. At the hearing the Teamsters and the Operating Engineers filed motions to intervene, which motions were granted by the Trial Examiner. All parties were afforded full opportunity to be heard, to

examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Operating Engineers and the Teamsters moved to dismiss the petition, and the Trial Examiner referred their motions to the Board. For reasons set forth hereinafter, the motions are hereby denied. The Trial 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

Kansas City Ice Company, a Delaware corporation, is engaged in the sale and distribution of ice in Kansas City, Missouri, and Kansas City, Kansas. All of the ice which it distributes is purchased from City Ice Company and United States Cold Storage Company of Kansas City, Missouri, and a majority of its delivery trucks are leased from City Ice Company. The annual sales of the Kansas City Ice Company for the year ending November 30, 1943, exceeded \$100,000. During this period it furnished ice to several interstate railroad carriers in the amount of more than 20,000 tons and having a value in excess of \$70,000.

City Ice Company of Kansas City, a Delaware corporation, is engaged in the manufacture and sale of ice, operating plants in Missouri and Kansas. On special occasions such as a plant breakdown, ice manufactured in one State is transported into the other. The entire production of City Ice Company is sold at its plants and docks, the annual sales exceeding \$100,000. During the year ending November 30, 1943, it produced 5,000 tons of ice sold by Kansas City Ice Company to railroad carriers. All of the common stock of City Ice Company is held by the Atlantic Company, Atlanta, Georgia. City Ice Company in turn holds the controlling stock interest in Kansas City Ice Company. The vice president of City Ice Company is the president of Kansas City Ice Company; and the same individual is secretary of both corporations. The Companies have a common main office, and employees are interchanged between their respective operations.

We find that the Companies are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

Ice and Coal Drivers and Handlers, Soda Drivers and Cold Storage Employees, Local Union #953, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and International Union of Operating Engineers, Local No. 6, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Companies.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that a question had arisen concerning the representation of employees of the Companies, in that the Packinghouse Workers requested and the Companies refused to grant recognition because of the existence of bargaining contracts with the Teamsters and the Operating Engineers.

These contracts, urged by the Teamsters and the Operating Engineers as bars to a present determination of representation and as grounds for dismissal of the petition, cover employees in the respective units alleged to be appropriate by the contracting unions. They were executed on June 1, 1941, for a 2-year period and provided for an automatic renewal thereof for an additional 2 years unless either party should give written notice of termination at least 30 days prior to the expiration of the first term. The petition in this proceeding was filed prior to the date notice of termination was required, and accordingly we find that the contracts constitute no bar to a present determination of representation.

A statement of the Trial Examiner introduced in evidence indicates that the Packinghouse Workers represents a substantial number of employees in the unit alleged by it to be appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Companies expressed no preference as to the appropriate unit or units. The Packinghouse Workers requests a unit of all employees of the Companies at their ice plants, docks, and platforms in Kansas City, Missouri, Kansas City, Kansas, and Leeds, Missouri, but excluding all office employees and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in

¹ The Trial Examiner reported that the Packinghouse Workers submitted 66 membership application cards all of which bore apparently genuine original signatures; that the names of 52 persons appearing on the cards were listed on the Companies' pay rolls of November 1, 1943, which contained the names of 132 employees in the alleged appropriate unit. The Operating Engineers and the Teamsters rely upon their contracts as evidence of their claims of representation.

the status of employees, or effectively recommend such action.² The Operating Engineers proposes a separate unit composed of engineers and maintenance men, but excluding the chief engineer³ and William W. Mesnard. This unit would embrace the employees covered by its contract with City Ice Company and Western Ice Service Company.⁴ The Teamsters seeks a unit composed of all of the employees of the Companies, with exception of the engineers and maintenance men now represented by the Operating Engineers, excluding office and supervisory employees, which unit is covered by its present contracts with the Companies. The units thus sought by the Operating Engineers and Teamsters, together comprise the unit sought by the Packinghouse Workers.

The Companies operate their business as an integrated enterprise, thus indicating the appropriateness of an industrial unit. On the other hand, their present bargaining relations indicate the practicability of separate representation for the engineers. Under these circumstances, we are of the opinion that the engineers could function as a separate bargaining unit or be combined with the other employees in a single unit. We shall therefore direct that separate elections be held among employees of the companies in the following groups, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction: (1) engineers and maintenance men, excluding the chief engineer and William W. Mesnard;⁵ and (2) the remaining employees, excluding salesmen, janitors, and office and clerical employees.⁶ Upon the results of these elections will depend in part our determination of the appropriate unit or units.

² The Packinghouse Workers would exclude retail route ice salesmen known as "peddlers." Since these persons are not employees of the Companies, but merely purchase ice from them and resell it as independent contractors, they will, for that reason, be excluded from participation in the elections hereinafter directed.

³ The chief engineer is classified as "superintendent."

⁴ All the property of the Western Ice Service Company is now being operated by City Ice Company, and all of its former employees are now employed by City Ice Company.

⁵ It appears that William W. Mesnard is primarily engaged in duties other than engineering or maintenance and, consequently, should not be included in a unit such as the Operating Engineers seeks to represent.

⁶ More specifically, the parties stipulated, and we find, that the following employees should be excluded from the above voting group as falling within the general classifications of office, clerical, and supervisory employees: clerks, treasurer-auditor, bookkeeper, president, secretary, sales manager, general cashier, foremen, superintendent garage, telephone operator, vice president, general cashier-assistant secretary, field auditor, typist, general manager-treasurer, timekeeper.

DIRECTION OF ELECTIONS

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 Kansas City Ice Company and City Ice Company of Kansas City, Kansas City, Missouri, and Kansas City, Kansas, elections 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 following groups, 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 elections, 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:

(1) All engineers and maintenance men of the Companies, excluding the chief engineer and William W. Mesnard, to determine whether they desire to be represented by International Union of Operating Engineers, Local No. 6, affiliated with the American Federation of Labor, or by United Packinghouse Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither;

(2) All remaining employees of the Companies, excluding salesmen, janitors, and office and clerical employees, to determine whether they desire to be represented by United Packinghouse Workers of America, affiliated with the Congress of Industrial Organizations, or by Ice and Coal Drivers and Handlers, Soda Drivers and Cold Storage Employees, Local Union #953, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.