

In the Matter of ARMOUR AND COMPANY *and* PACKINGHOUSE WORKERS
ORGANIZING COMMITTEE, AFFILIATED WITH THE CONGRESS OF INDUS-
TRIAL ORGANIZATIONS

Case No. 17-R-714.—Decided February 17, 1944

Mr. Paul E. Blanchard, of Chicago, Ill., for the Company.
Messrs. Ralph M. Baker and *Irvin L. DeShelter*, of Kansas City,
Mo., for the Union.
Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Packinghouse Workers Organizing Committee, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Armour and Company, Kansas City, Kansas, 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 Kansas City, Missouri, on September 29, 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 and Company, an Illinois corporation with its principal office and place of business in Chicago, Illinois, is engaged in the slaughtering, processing, and packing of livestock products. Since

June 1917, it has been qualified to do business in the State of Kansas, and maintains a plant at Kansas City, Kansas, which is engaged in the slaughtering, processing, and packing of livestock products. We are concerned herein with the operations of the Kansas City plant. All of the livestock slaughtered in the Kansas City plant is purchased in stockyards located in Kansas City, Missouri. The total production of products of livestock slaughtered at the Kansas City plant during the year 1942 was in excess of 500,000,000 pounds, having a total value in excess of \$45,000,000, of which more than 75 percent was distributed to points outside the State of Kansas. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

On or about August 18, 1943, the Union notified the Company that it represented a majority of the office employees at the Kansas City plant. The Company questioned the Union's claim to majority status and replied that it was unwilling to bargain with the Union with regard to these employees.

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

At its Kansas City plant the Company employs, in addition to production and maintenance workers, among others, plant clerks. The plant clerks perform no manual or production labor but do the same type of work usually done by office workers. The plant clerks are engaged in collecting, checking, and tabulating data with respect to production yields, costs, and other similar matters. Adjacent to the plant, where the Company is engaged in the slaughtering, processing, and packing of livestock, it maintains an office building where office

¹ The Field Examiner reported that the Union submitted 65 authorization cards, all bearing apparently genuine original signatures. The Field Examiner was unable to check the authorization cards against the Company's pay roll because the Company refused to submit its pay roll prior to the hearing before the Trial Examiner.

and other clerical employees on its pay roll work. The Union now has a contract with the Company covering all production and maintenance employees in the Kansas City plant, but excluding clerical workers and other classes of employees not involved in this proceeding. The Union also has been certified by the Board, following an election, as the exclusive representative of the plant clerks;² and, in a subsequent complaint proceeding, the Board has directed the Company to bargain with the Union as such representative.³ In the instant proceeding, the Union seeks to represent, separate and apart from the production and maintenance workers, "all office employees, general office and superintendent's office, exclusive of supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action."⁴ Within such unit the Union seeks to include the Company's plant clerks.

The Company contends that the plant clerks should not be included within a unit consisting of the office building employees and that, even if the plant clerks are excluded from such unit, the remaining employees do not constitute an appropriate unit since (a) its office employees should not be represented by the same labor organization which presently represents the Company's production and maintenance employees, and (b) the duties of its office workers place them in a confidential position with regard to management.

As indicated above, the plant clerks work in a separate building, and, with few exceptions, do not come in contact with the office workers employed in the Company's office building. While the plant clerks are under the general supervision of the chief of the office force, the immediate supervisors of the plant clerks are the foremen of the plant departments in which they work. As stated above, the Board has previously determined that the plant clerks constitute a separate appropriate unit. Accordingly, we shall, as requested by the Company, exclude the plant clerks from the broader unit of office employees.

The Company's office workers employed in its office building consist of the following departmental classifications: office manager; cashier; auditor of disbursement; accounting, comptometer; storage accounting; test; sales journalization; shipments control; reclamation and bookkeeping; point rationing; order, bill, and shipment; transportation; paymaster's; timekeeping; social security; salary and social security; mail and stationery; telegraph; telephone and telegraph; tubes and messengers; credit; general manager; superintendent; industrial engineering; purchasing; carcass sales; small stock sales; beef cut

² *Matter of Armour and Company*, 49 N. L. R. B. 688; Certification of Representatives issued June 24, 1943.

³ *Matter of Armour and Company*, 54 N. L. R. B. 1005.

⁴ As indicated, the office employees consist of two groups, those in the superintendent's office and those in the general office.

sales; produce; provision; animal byproducts; sausage sales, margarine sales; and plant sales.⁵

The record discloses that the bulk of these employees work as stenographers, typists, file clerks, comptometer operators, bookkeepers, messengers, and at other jobs of a clerical nature. They are engaged in the type of work indicated by their job titles. In the course of their duties many of them, particularly stenographers, file clerks, comptometer operators, bookkeepers, timekeepers, and those in the paymaster's office have access to confidential information such as profits, losses, production yields and costs, bank accounts, stock inventories, and customer lists.⁶ The Company urges that this places them in the position of managerial or confidential employees. However, these employees do not participate in the determination of company policy or the handling of labor disputes. The record does not disclose that the information accessible to these employees deals with questions of labor policy or other matters which we have heretofore determined to be of a confidential nature. We find that the information to which these employees have access, although some of it may be of a secret business nature, is not of such character as to warrant denying them the rights guaranteed in the Act. Since they mainly assemble, compute, and transcribe company production and other statistical records, their work is not dissimilar to that performed by office personnel in any large industrial plant.⁷ On the other hand, their duties are different from those of production and maintenance employees, and we shall not make the office workers a part of the production and maintenance unit. Accordingly, we find that the office building employees constitute a separate appropriate unit.⁸

⁵ At the hearing the Company introduced in evidence a list of office employees (General Office and Superintendent's Office), as of September 29, 1943, containing the names of 222 persons, including managerial, supervisory, and confidential employees. In addition, the Company introduced a list of so-called temporary employees, as of the same date, containing the names of 18 ordinary office employees.

⁶ Switchboard, teletype and other telegraph operators have access to communications, including those relating to labor relations matters, passing over the Company's wires, but such employees have instructions not to listen in on conversations to which the general manager's office is a party. Opportunities of this character do not render otherwise ordinary employees ineligible for inclusion in an appropriate bargaining unit.

⁷ See, for example, *Matter of Bohn Aluminum & Brass Corporation*, 47 N. L. R. B. 1229; *Matter of Boston Edison Company*, 51 N. L. R. B. 118; *Matter of Republic Steel Corporation*, 51 N. L. R. B. 1228.

⁸ The Union agreed to exclude from the appropriate unit, as managerial employees, the Company's general manager, office manager, and superintendent, together with their respective stenographers or other confidential assistants. These executives deal with matters relating to labor relations and determine labor relations policy, and their assistants have access to such confidential information which warrants their exclusion from the unit. Accordingly, we shall exclude from the unit persons occupying the positions of such executives and of such assistants. In addition, in accordance with our usual policy, we shall exclude from the unit as managerial or supervisory employees, all assistant superintendents, department heads, including those department heads temporarily having no subordinates in their charge, and assistant department heads. The Company desires to exclude from the unit 10 employees, whose recommendations as to promotions and demo-

The possibility that the same labor organization which presently represents the production and maintenance employees may also represent the office employees is not enough, in our opinion, to preclude these employees from the right to bargain collectively in an appropriate unit through whatever bargaining agent they may desire to represent them. We see no necessity for any conflict between self-organization for the purposes of collective bargaining and the faithful performance of duty. In any event the remedy for inefficiency or willful disregard or neglect of duty on the part of these employees lies implicitly in the power of the Company to discipline or discharge them. We see no reason, therefore, why the same labor organization may not, if chosen by these employees, represent both them and the production and maintenance employees or any other employees.

The employees in the Company's industrial engineering department require separate treatment. They are charged with the control of production, hours, and standards from the standpoint of efficiency in operations. The work of the department consists of three general divisions: time-study, checking, and computation.⁹ A time-study man is given a job description describing a job in terms of production objectives. The time-study man breaks down the job description into its component elements, namely, the steps in the production process; he times by the use of a stop watch a series of production operations, and determines a normal time allowance for completion of each element in the job description. This establishes a job standard. The checker, armed with the job standard, observes production operations to see that the operations are performed in accordance with the specifications in the job standard, collects data as to actual production based both on his own observation and from reports assembled by foremen or plant clerks, analyzes the data, and fills out blank forms furnished for the purpose. The forms containing the production figures are given to comptometer operators who compute group or departmental efficiency. Cost clerks in the industrial engineering department compute labor costs of production departments for the Company's accounting office.

In the normal course of his job, the checker issues no instructions to any individual employee or group of employees, and, except in in-

tions and other similar matters, according to the testimony of the Company's general office manager, are given weight by reason of their long experience with the Company. Their observations are made to department heads who make a complete investigation of such matters brought to their attention. The 10 employees do the same kind of work as their fellow employees and have no supervisory authority over the latter group. We shall include them in the appropriate unit.

⁹The checking and computation employees were involved in *Matter of Armour and Company*, 54 N. L. R. B. 1005, and the nature and duties of the employees in the Company's industrial engineering department were considered by the Board in that proceeding. The findings in this section relating thereto are largely taken from the record and the Board's findings in that case.

stances where only a single employee is engaged in a given job classification, the checker makes no reports reflecting the efficiency of any individual employee. On "day work," where no job standard has been established, the checkers consult with the foreman as to the amount of time to be allowed for the performance of such work. Sometimes a checker times an operation with a watch to recheck the job standard for accuracy. Such time-study operations as are performed by checkers are incidental to their primary duties as checkers. Should the checkers note a variation in performance of an operation from the job description, he normally would report the matter to the production foreman. In this, and in cases where a department shows a low record for performance, the checker has authority to make suggestions to the foremen for improving efficiency, but the foreman may accept or reject, as he sees fit, the checker's suggestions. A checker has no authority to hire or discharge or to make recommendations affecting change in job status of any employee, except that such change may result from an analysis of production data compiled by the checker. The Company's three time-study men, however, make recommendations as to and participate in the determination of piece rates for production workers. We shall exclude the time-study employees as managerial employees from the appropriate unit. The checkers, comptometer operators, and cost clerks in the industrial engineering department are clerical workers and not managerial employees within the meaning of the Act. We shall include the Company's employees in the industrial engineering department, except time-study employees, in the appropriate unit.¹⁰

The Company also contends that the industrial engineering department employees have access to confidential information such as job descriptions and job standards. While these matters are business secrets, each production employee has knowledge of the job description and job standard pertaining to his job, and the Company has made such information available to the Union as the representative of production employees in connection with labor disputes involving such employees. Checkers, comptometer operators, and cost clerks also have access to rates of pay of production workers, costs, and other similar matters. The information relates only to production employees, persons in a separate unit, and such information is not confidential information relating to labor relations in the sense that employees having access to it should be denied protection of the Act.

Accordingly we find that all office workers of the Company employed in its Kansas City, Kansas, general office and superintendent's office, exclusive of plant clerks, time-study employees, the general manager,

¹⁰ See *Matter of Westinghouse Electric & Manufacturing Company*, 45 N. L. R. B. 826; *Matter of Oliver Farm Equipment*, 53 N. L. R. B. 1078. Cf. *Matter of Gar Wood Industries*, 41 N. L. R. B. 1156.

the office manager, the superintendent, confidential secretaries of the general manager, office manager, and superintendent, and exclusive of assistant superintendents, all department heads, assistant department heads, 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.

V. THE DETERMINATION OF REPRESENTATIVES

At the time of the hearing the Company employed approximately 222 employees, including managerial, supervisory, and confidential employees, in its office building. In addition, the Company had approximately 18 ordinary office employees which it characterizes as temporary. Included among this group are employees expected soon to depart for service in the armed forces, employees hired for a short period to fill vacancies of persons sick or on vacation, and probationary employees. Company experience indicates that about 50 percent of its probationary employees eventually become permanent employees. In accordance with our usual practice, probationary employees and employees who are in, or who are about to enter the armed forces are eligible to vote; persons hired as temporary replacements for employees on vacation or ill, have an insufficient interest in their jobs, and are, consequently, not eligible to vote.

We shall direct that the question concerning representation which has arisen be resolved by 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Armour and Company, Kansas City, Kansas, 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 em-

ployees 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 Packinghouse Workers Organizing Committee, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.