

In the Matter of JOHN MORRELL & Co. and UNITED PACKINGHOUSE
WORKERS OF AMERICA, C. I. O., LOCAL UNION No. 1

Case No. 18-R-879.—Decided February 24, 1944

Mr. Edward J. Grier, of Ottumwa, Iowa, for the Company.
Mr. Lester B. Bishop, of Ottumwa, Iowa, for the Union.
Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Packinghouse Workers, C. I. O., Local Union No. 1, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of John Morrell & Co., Ottumwa, Iowa, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Ottumwa, Iowa, on December 14, 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 the opportunity of filing 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

John Morrell & Co., is a Maine corporation with its principal office and place of business at Ottumwa, Iowa. At the Ottumwa plant, which is the only one involved in this proceeding, the Company is engaged in the business of meat packing, including the slaughter of

¹ Incorrectly described in the petition and other formal papers as John Morrell and Company, and corrected by stipulation at the hearing.

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cattle, hogs, and sheep, and the processing, manufacture and canning of various beef, pork, and mutton products and byproducts. During the fiscal year ending November 11, 1943, the Company purchased for use at its Ottumwa plant, raw materials exceeding \$40,000,000 in value, of which approximately 5 percent was obtained from points outside the State of Iowa. During the same period, the finished products of the Company amounted to more than \$80,000,000 in value, of which approximately 95 percent was shipped from the Ottumwa plant to points outside the State of Iowa. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Packinghouse Workers, Local Union No. 1, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 7, 1943, the Union informed the Company by letter that it represented all employees in the meat stock office and requested recognition as exclusive representative for the purposes of collective bargaining. On October 6, 1943, the Union notified the Company by letter that it represented a majority of its chief clerks and requested recognition as exclusive bargaining representative for these employees. On September 9, 1943, and October 12, 1943, respectively, the Company replied to the several letters of the Union, stating that it would not recognize the Union as bargaining agent for the classifications of employees referred to, unless and until the question of representation had been determined by the Board.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit of chief clerks,² hereinafter found appropriate, and also among the meat stock office employees.³

We find that questions concerning representation have 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.

² The term "chief clerks" does not denote the nature of the duties performed by this classification of employees.

³ The Regional Director reported that the Union had submitted 12 membership cards dated in October and November 1943. Of these, 8 bore the apparently genuine original signatures of persons whose names are on the Company's pay roll of November 20, 1943, containing 24 names within the appropriate unit of chief clerks. The remaining 4 cards bore the apparently genuine original signatures of persons whose names are on the Company's pay roll of November 20, 1943, containing 4 names within the group of meat stock office employees.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Union's position as modified at the hearing, is that the meat stock office employees and the chief clerks should be joined to the production and maintenance unit now represented by the Union,⁴ or in the alternative that the meat stock office clerks and the chief clerks should be set apart as a single or separate bargaining units. The Company maintains that the meat stock office employees and the chief clerks cannot constitute an appropriate unit or units, either separately or as part of the production and maintenance group. The position of the Company is that (1) neither the chief clerks nor the meat stock office employees or both of these classifications should be included in the present production and maintenance unit, inasmuch as these are clerical classifications; (2) these two classifications do not constitute a separate appropriate unit, since their duties are not similar; and (3) the chief clerks should not be represented by a labor organization, since this classification includes confidential and supervisory employees. In addition thereto, the parties are in disagreement as to the inclusion in or exclusion of certain individual employees from such unit as may be found appropriate in the present proceeding.

With respect to the meat stock office employees, the record reveals that these employees have the duty of keeping a perpetual inventory of stocks of meat on hand in the various departments of the plant. While at the present time they work in a separate office which is located on a "bridge" between two production buildings, they were, prior to September 1941, located in the production departments where they apparently performed the usual work of factory clerks.⁵ Like production and maintenance employees, meat stock office employees are paid on an hourly basis,⁶ are carried on the plant pay roll, and have no supervisory authority.

The Company, however, contends that, notwithstanding a similarity in status and working conditions between meat stock office employees and the production and maintenance group, meat stock office employees have been consistently recognized as clerical employees and have not been included with the production and maintenance employees throughout the period covered by collective bargaining between the Company and the Union. On the other hand, while it ap-

⁴ The Union was certified by the Board as representative of a general production and maintenance unit on December 6, 1937 (4 N. L. R. B. 436), and has since had continuous contractual relations with the Company up to and including the present time. The present record presents no question of representation in the production and maintenance group.

⁵ The transfer of the meat stock office employees from the production departments to the meat stock office resulted from a decision of the Company to centralize this work in one location.

⁶ Meat stock office employees punch the same time clock as that used by the production and maintenance employees in the adjoining dry salt department.

pears that meat stock office employees were not expressly included in the series of collective bargaining agreements between the Company and the Union covering production and maintenance employees, neither were they expressly excluded therefrom, although other types of clerical employees were specifically excluded.⁷ Moreover, the fact that the unit as found appropriate in the Board's prior decision omits any reference to meat stock office employees, and generally excludes all clerical help from the production and maintenance unit, does not preclude a finding that meat stock office employees may properly be joined to the production and maintenance unit.⁸ The Board has frequently included factory clerks in a production and maintenance unit,⁹ and no sufficient reason here appears why meat stock office employees who perform substantially the same work as factory clerks may not be so joined. We shall, however, permit the preference of the meat stock office employees themselves to determine whether or not they shall be added to the existing unit of production and maintenance employees, and to that end shall order an election. If at such election these employees select the Union, they will have thereby indicated their desire to be included in a unit with the production and maintenance employees, and the Union may accordingly bargain for them as a part of such unit.¹⁰

The further question as to whether the chief clerks herein concerned may also be permitted to join the production and maintenance group, presents considerations of a somewhat different nature. Such difference is revealed by the fact that while the chief clerks in question are in a sense factory clerks through their location in or adjacent to the foremen's offices in the various production departments,¹¹ they do, nevertheless, have duties and responsibilities substantially different from those of ordinary factory clerical employees. The record reveals

⁷ The unit as recognized by the last collective bargaining agreement between the Company and the Union is described in the following terms: "all production, maintenance and stockyard employees as have been certified by the National Labor Relations Board or recognized by the Company, but not including the General Superintendent, Plant Superintendent, Divisional Superintendents, Foremen, Assistant Foremen, Production Engineering Departments, and all others in a supervisory capacity who do not work in this gang; Foremen, Chief Clerk, Timekeeper, Retail Market employees, and all other General Office employees."

⁸ In the previous decision the question of including or excluding meat stock office clerks from the production and maintenance unit was not raised or considered by the Board in its finding of the appropriate unit. Under such circumstances, the Board's prior determination of an appropriate unit does not preclude it from considering the status of the clerks herein concerned upon the evidence presented in the instant proceeding. See *Matter of Bethlehem Steel Company*, 39 N. L. R. B. 1230; *Matter of Aluminum Co. of America*, 42 N. L. R. B. 772

⁹ See *Matter of Armour & Company*, 15 N. L. R. B. 2681; *Matter of Sheffield Steel Corp. of Texas*, 43 N. L. R. B. 956; *Matter of New York Butcher Dressed Meat Company, Division of Armour and Company of Delaware*, 45 N. L. R. B. 816.

¹⁰ See *Matter of Fairchild Engine and Airplane Corporation*, 53 N. L. R. B. 395.

¹¹ The chief clerks, while presently located in the production departments, are in separate sections of the production areas, and in some instances are separated by glass enclosures from the production employees.

that chief clerks as a group, while normally without supervisory capacity¹² and with no part in or confidential knowledge concerning the labor relations of the Company, generally keep the time of the production employees in their departments and also maintain absentee records and seniority lists used by the foremen for lay-off purposes. Furthermore, chief clerks, as distinguished from the meat stock office employees, do no manual labor¹³ and are paid largely upon a weekly rather than upon the hourly basis common to both production and meat stock office employees. In addition thereto, it appears that chief clerks have been expressly excluded from the production and maintenance unit under the contracts of collective bargaining negotiated between the Company and the Union. Under the circumstances, we are of the opinion and find that while the chief clerks herein concerned are not, as a group, confidential employees within our customary definition, and hence may not be deprived of the privilege of collective bargaining,¹⁴ they have, nevertheless, insufficient interests in common with the production employees and the meat stock office employees to warrant including them in the production and maintenance unit for the purposes of collective bargaining. Accordingly, we shall grant them an opportunity to bargain collectively in a unit separate and apart from both the production and the meat stock office employees.

There remains for consideration the question of including or excluding certain individual chief clerks from the unit of chief clerks herein-after found appropriate for the purposes of collective bargaining.

Hoyt Bishop is chief clerk in the Load and Ship Department where he has under his supervision between 30 and 40 employees. While there is no evidence that Bishop has any authority with respect to the hire and discharge of such employees, he may, nevertheless, recommend their suspension. In addition thereto, it appears that although he does some clerical work, he spends at least half of his time acting as substitute foreman during the absence of the regular foreman for the department. Under the circumstances, we find that Bishop is a supervisory employee within our usual definition of the term.¹⁵ Accordingly, we shall exclude him from the unit of chief clerks herein-after found appropriate for the purposes of collective bargaining.

Oba Day, the chief clerk in the Lard Refining Department, has charge of shipping and loading lard. While his duties include the keeping of stock records, he is apparently the regular supervisor for four employees who work under him and to whom he gives orders.

¹² Although chief clerks substitute for the foremen in their absence, the evidence does not disclose the frequency of such absences among the foremen as a group.

¹³ By comparison with the chief clerks, meat stock office clerks do some manual labor whenever it is necessary to move stock in connection with their inventory work.

¹⁴ See *Matter of Chrysler Corporation*, 36 N. L. R. B. 157 at 162; *Matter of General Motors Corporation*, 52 N. L. R. B. 649.

¹⁵ See *Matter of Bisbee Linsced Company*, 34 N. L. R. B. 272.

Moreover, although without the authority with respect to the hire and discharge of employees, Day may recommend the suspension of employees. In view of his substantial supervisory powers and duties, we find that Day is a supervisory employee. He will, accordingly, be excluded from the unit.

Audrey Lushbaugh is the chief clerk in the Ham Boning Department. While he performs some clerical duties, he has the responsibility of supervising between 15 and 30 employees and his duties in this respect are similar to those of an assistant foreman,¹⁶ in acknowledgement of which capacity he wears a type of coat symbolic of this grade of supervision. In addition thereto, it appears that in the event of an increase in operations, Lushbaugh will spend the greater part of his time in supervisory activities. In view of the foregoing evidence, we find that Lushbaugh is a supervisory employee, by reason whereof we shall exclude him from the unit.

Earl King, the chief clerk in the Kill and Cut Department, spends the greater part of his time placing men on various jobs in this department. In the performance of his duties, he exercises some discretion in the selection of employees to be placed in available positions. In addition, he is present and takes notes during discussions between management and the Union. In view of his discretionary powers in the placement of employees and his secretarial duties in connection with labor negotiations, we find that King has substantial supervisory powers and also bears a confidential relationship to management with respect to labor relations.¹⁷ We shall, accordingly, exclude him from the unit of chief clerks hereinafter found appropriate for the purposes of collective bargaining.

Charles Jones, the chief clerk in the meat stock office,¹⁸ receives from other meat stock office clerks reports which he thereafter forwards to the general office. He likewise goes each day to the general office to report to the sales manager the amount of pickle stock on hand. While it does not appear that he actually supervises any of the meat stock office employees at the present time, his position is such that he would substitute for the meat stock office foreman in the latter's absence. We are of the opinion and find that Jones has interests and functions which are more closely allied with those of management than are the interests and functions of the group of chief clerks herein involved.

¹⁶ The category of assistant foremen was expressly excluded from the production and maintenance unit as defined in the last of the series of collective bargaining agreements between the Company and the Union.

¹⁷ See *Matter of General Motors Corporation, Chevrolet Motor Division*, 53 N. L. R. B. 1096.

¹⁸ The Union contends that while Jones is listed as a chief clerk, he does not in fact occupy this position. There is, however, no evidence to support the Union's contention in this respect. On the contrary, it appears that Jones is distinguishable from the other clerks in the meat stock office in that he is the only clerk therein who is not paid upon an hourly basis.

He will, accordingly, be excluded from the appropriate unit relating thereto.

We find that all chief clerks employed by the Company at its Ottumwa, Iowa, plant, excluding all supervisory employees¹⁹ 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.

We shall direct that separate elections by secret ballot be held among (1) the employees in the chief clerks unit hereinbefore found appropriate, and (2) the meat stock office employees, excluding the meat stock office foreman, the chief clerk in the meat stock office, 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, 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.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board of 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 John Morrell & Co., Ottumwa, Iowa, separate 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 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, (1) among the employees in the chief clerks unit found appropriate in Section IV, above, and (2) among the meat stock office employees, excluding the meat stock office foreman, the chief clerk, in the meat stock office, 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, who were employed during the pay-roll period immediately preceding the date of this Direction, including any employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off,

¹⁹ Hoyt Bishop, Oba Day, Audrey Lushbaugh, Earl King, and Charles Jones are to be deemed excluded as supervisory employees.

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 United Packinghouse Workers of America, Local Union No. 1, C. I. O., for the purposes of collective bargaining.