

In the Matter of ARMOUR & COMPANY and UNITED PACKINGHOUSE
WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUS-
TRIAL ORGANIZATIONS

Case No. 17-R-819.—Decided March 31, 1944

Messrs. George H. Damsel, C. M. Steward and J. W. Neighbor, of South St. Joseph, Mo., for the Company.

Mr. Ralph M. Baker, of Kansas City, Mo., and Mr. Fred Ingersoll, of St. Joseph, Mo., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Packinghouse Workers of America, 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 & Company, South St. Joseph, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Margaret L. Fassig, Trial Examiner. Said hearing was held at St. Joseph, Missouri, on February 29, 1944. The Company and the Union appeared and participated. All parties 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 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

The Company is engaged in the business of packing and selling meat throughout the United States. We are here concerned only

55 N. L. R. B., No. 174.

with its South St. Joseph plant, at which the Company is engaged in slaughtering, processing, manufacturing meat and meat products and byproducts, and operating a wholesale meat market. During the 12 months ending October 30, 1943, sales at the South St. Joseph plant exceeded 244,000,000 pounds valued at about \$48,775,000, of which 96 percent was shipped to destinations outside the State of Missouri. The sales of its meat market during that period exceeded \$2,316,000 in value, of which 22 percent was shipped outside the State.¹

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to, and bargain with the Union as the exclusive bargaining representative of certain of the Company's employees.

Statements of Board agents indicate that the Union represents a substantial number of employees in the units hereinafter found appropriate.²

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 DETERMINATION OF REPRESENTATIVES

The Union contends that all stockyard employees and all wholesale market employees of the Company at South St. Joseph, excluding all supervisory employees, should be included in the production and maintenance unit in which the Union is the recognized exclusive collective bargaining representative. The Company asserts that the stockyard employees could properly form a part of the production and maintenance unit, but that the wholesale market employees could not.

In a prior proceeding we found that a production and maintenance unit is appropriate at this plant.³ Subsequently we included other

¹ See *Matter of Armour and Company*, 40 N. L. R. B. 1333

² The Field Examiner reported that the Union submitted 17 membership application cards all of which bore apparently genuine original signatures. The Trial Examiner reported that 6 of the Union's cards bear names of stockyard employees, of whom the Company employs 13, and 7 of the Union's cards bear the names of wholesale market employees, of whom the Company employs 10

³ *Matter of Armour & Company*, 9 N. L. R. B. 1239, 10 N. L. R. B. 474

groups within that unit.⁴ The Company and the Union are parties to a collective contract covering production and maintenance employees.

The stockyard employees are under the jurisdiction of the Company's superintendent of plant operations, while the wholesale market employees are not. The wholesale market is located in the Company's main plant. However it is operated as a separate unit. There is slight interchange of employees between the plant and the market operations. The wholesale market employees are carried on the office pay roll, and include salesmen and clerical employees. The work of the wholesale market employees and of the plant production and maintenance employees appears to be dissimilar. In other plants of the Company livestock or stockyard employees appear to be included in production and maintenance units, while wholesale market employees are not included.

We are of the opinion that the stockyard employees, excluding all supervisory employees within our usual definition may properly constitute a part of the production and maintenance unit if the employees so desire. Under the circumstances here present, we are of a contrary opinion as to the wholesale market employees.⁵ However, we are of the opinion that the wholesale warehouse employees may properly constitute a separate appropriate unit.

We find that all wholesale warehouse employees, 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

There is no question concerning representation among the employees in the original production and maintenance unit. We shall direct an election among the stockyard employees, excluding all supervisory employees, and if they select the Union in that election, they will thereby have indicated their desire to be included in a unit with the general production and maintenance group and will be part of such unit. We shall also direct a separate election among the wholesale market employees.

A dispute arises as to the eligibility of one Jake E. Leichti, a scaler. Leichti substitutes for a foreman during the latter's absences, and while acting in that capacity has the power to effectively recommend changes in the status of ordinary employees. We have heretofore excluded scalers from the production and maintenance unit at this

⁴ *Matter of Armour & Company*, 40 N. L. R. B. 1333

⁵ Cf. *Matter of Wilson & Co.*, 52 N. L. R. B. 877

plant.⁶ We conclude that Leichti is without the unit, and is therefore ineligible to participate in the election.

The questions concerning representation which have arisen shall be resolved by elections by secret ballot among the stockyards employees and among the wholesale warehouse employees who were employed during the pay-roll periods 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 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, South St. Joseph, Missouri, 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 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 those employees of the Company in its stockyard and in its wholesale warehouse, respectively, defined in Section IV, above, who were employed during the pay-roll periods immediately preceding the date of this Direction, including employees who did not work during said pay-roll periods 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, to determine whether or not they desire to be represented by United Packinghouse Workers of America, Local No. 58, CIO,⁷ for the purposes of collective bargaining.

⁶ *Matter of Armour & Company*, 9 N. L. R. B. 1239, 10 N. L. R. B. 474.

⁷ The Union asked to be thus designated on the ballot. The request is granted.