In the Matter of ARMOUR AND COMPANY *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL 49–A, C. I. O.

Case No. 2–C–5338.—Decided April 10, 1944

Mr. Cyril W. O'Gorman, for the Board.

Mr. Peter F. Curran, of New York City, and *Mr. Paul E. Blanchard*, of Chicago, Ill., for the respondent.

Mr. William Whitsett, of counsel to the Board.

DECISION
AND
ORDER

STATEMENT OF THE CASE

Upon a charge duly filed on November 12, 1943, by United Packinghouse Workers of America, Local 49–A, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York City) issued its complaint, dated December 14, 1943, against Armour and Company,[1] herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by Notice of Hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent on or about October 28, 1943, and thereafter, refused to bargain collectively with the Union as the exclusive representative of the respondent's employees within an appropriate unit although the Union represented the majority of the employees in said unit, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondent did not file an answer.

[1] The complaint, which designated the respondent as Armour and Company of Delaware, was amended at the hearing, upon agreement of the parties, to designate the respondent as Armour and Company. The respondent conceded that it had duly received Notice of Hearing and that it was the proper party respondent in these proceedings, as successor of Armour and Company of Delaware

Pursuant to notice, a hearing was held on December 27, 1943, at Jersey City, New Jersey, before David Karasick, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.[2] At the close of the hearing counsel for the Board moved to conform the complaint to the proof with respect to formal matters. The motion was granted without objection. The Trial Examiner reserved ruling on the respondent's motion to dismiss the complaint and thereafter denied the motion in his Intermediate Report. During the course of the hearing, rulings were made by the Trial Examiner on various other motions and on objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On January 5, 1944, the Trial Examiner filed his Intermediate Report, copies of which were duly served upon the parties, in which he found that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (5), and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist therefrom, and take certain affirmative action to effectuate the policies of the Act.

On January 20, 1944, the respondent filed exceptions to the Intermediate Report and a supporting brief. Oral argument, in which the respondent and the Union participated, was had before the Board at Washington, D. C., on March 14, 1944.

The Board has considered the exceptions and brief submitted by the respondent, and, insofar as the exceptions are inconsistent with the findings of fact, conclusions of law, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

Armour and Company,[3] an Illinois corporation, with its principal office and place of business at Chicago, Illinois, operates a slaughtering plant and a processing plant in Jersey City, New Jersey, both of which are involved in this proceeding. During the 12-month period ending December 27, 1943, the respondent received at both plants ap-

[2] The respondent's exception to the Trial Examiner's rejection of its offer of proof as to the duties of watchmen is discussed in Section III, *infra*.

[3] Armour and Company of Delaware, a corporation of the State of Delaware, was merged with Armour and Company, an Illinois corporation, on or about September 24, 1943

proximately 66,000,000 pounds of live animals, products, and operating supplies, approximately 75 percent of which was shipped from points outside the State of New Jersey. During the same period of time, the respondent shipped from said plant approximately 60,000,000 pounds of finished products, the greater percentage of which was shipped to points outside the State of New Jersey. The respondent admits that it is engaged in commerce within the meaning of the Act.[4]

II. THE ORGANIZATION INVOLVED

United Packinghouse Workers of America, Local 49–A, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

The refusal to bargain

1. The appropriate unit and representation by the Union of a majority therein

On August 31, 1943, the Board issued its Decision and Direction of Election, in which it found, among other things, that all watchmen employed at the respondent's Jersey City plants, 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 constitute a unit appropriate for the purposes of collective bargaining.[5] On September 24, 1943, an election was held pursuant to said Direction of Election. On September 25, 1943, the Regional Director issued and served upon the respondent and the Union an Election Report with respect to the balloting. No objections to the said Election Report or to the conduct of the ballot were filed by either the respondent or the Union. On October 8, 1943, the Board certified the Union as the exclusive representative for the purposes of collective bargaining of the employees in the unit heretofore mentioned.

In the present proceedings the respondent offered to adduce evidence to show that its watchmen were supervisory employees who fell within the exclusion set forth in the afore-mentioned unit. It proposed to show the initiative, personal judgment, and discretionary powers exercised by watchmen by the following facts: (1) watchmen were required to challenge all visitors and employees entering the plant; (2) they were required to examine all packages carried by visitors and employees, and had full responsibility for determining

[4] The findings made in this section are based upon a stipulation entered into between the Board and the respondent during the course of the hearing.

[5] *Matter of Armour and Company of Delaware*, 52 N. L. R. B., No. 45.

whether the packages might be carried into the plant; (3) in the case of unidentified employees, it was within the watchmen's discretion to admit them or call the office; (4) they had absolute authority to grant or refuse admittance to the plant; (5) they were responsible for employees punching the timeclock; (6) they patrolled the plant to see that regulations were enforced, and were empowered to eject employees or visitors who violated regulations; (7) without consulting anyone, they were empowered to make arrests. The respondent proposed to show further that watchmen were selected from among the older, experienced employees who were capable of exercising personal judgment. The respondent also offered evidence to rebut testimony given at the representation hearing, which tended to show that production workers were eligible for pension benefits given to watchmen.[6]

The respondent excepted to the Trial Examiner's rejection of its foregoing offer of proof.[7] It contends that the testimony was offered to attack the jurisdiction of the Board, and that jurisdiction may be attacked at any time This position of the respondent is based upon the premise that supervisors are not employees within the meaning of the Act. Assuming, without deciding, the correctness of the respondent's premise, we would not alter our finding regarding the watchmen in question even if the respondent were able to prove all the facts which it specified in its detailed offer of proof, for such facts do not prove that the employees in question are supervisors. There is no showing that the watchmen have a voice in determining, shaping, or executing the labor policies of the respondent; that they are clothed with supervisory authority over other employees; or that they are concerned with the manner in which any employee performs his duties or conducts himself, except in the sphere of plant protection. While the duty to protect the property of the respondent necessarily entails the power to apprehend or expel employees, this power is of a monitory character. The proffered testimony thus does not show that watchmen are supervisors in the sense in which the designation is traditionally used in industry; it merely emphasizes their monitorial status. Employees exercising such powers are not supervisors such as we normally exclude from bargaining units, as we have frequently

[6] In the representation proceeding the respondent, in support of its contention that watchmen were supervisors, adduced testimony to show that watchmen participated in its pension fund, which was restricted to supervisors and executives. To refute this testimony, the Union then introduced evidence to the effect that several ordinary production employees had participated in the pension fund. The purpose of the offer of proof in the instant proceeding was to show that once a supervisor participated in this fund, he was not allowed to withdraw, and that the production employees, whom the Union referred to, were former supervisors who had been demoted.

[7] The Trial Examiner's ruling was based upon the fact that the proffered testimony was admittedly available at the time of the representation hearing, that the respondent conceded that it had an adequate opportunity to present it at that time, and that the respondent further admitted that there was no change in circumstances with respect to any matter concerning the appropriate unit or the Union's representation of a majority therein.

held in the analogous situations of plant guards and plant protection employees.[8] Since the proffered testimony was therefore immaterial, the Trial Examiner's refusal to receive it was not prejudicial to the respondent.

Like the Trial Examiner, we find, in accordance with our previous determination in the representation proceeding, that all watchmen employed at the respondent's Jersey City plants, 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, constitute, and at all times material herein, constituted a unit appropriate for the purposes of collective bargaining. Like the Trial Examiner, we further find that, on and at all times after October 8, 1943, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on October 8, 1943, and at all times thereafter has been and is now, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The refusal to bargain

On October 22, 1943, the Union requested the respondent to bargain collectively with it as the exclusive representative of the employees in the unit. In a letter directed to the Union, dated October 28, 1943, the respondent stated that it contested the appropriateness of the unit found by the Board in the representation proceeding; that it wished to obtain judicial review with respect to that question; and that it therefore refused to meet or negotiate with the Union.

Like the Trial Examiner, we find that the respondent on October 28, 1943, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent, set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substan-

[8] *Matter of Bethlehem Steel Co.*, 50 N. L. R B. 172, *Matter of Aluminum Company of America*, 50 N. L R B. 233; and 50 N L. R. B. 963; *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

tial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in and is engaging in unfair labor practices, we will order it to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act. We have found that the respondent has refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit. We shall, therefore, order that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. United Packinghouse Workers of America, Local 49–A, C. I. O., is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All watchmen employed by the respondent at its Jersey City, New Jersey, plants, 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, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. United Packinghouse Workers of America, Local 49–A, C. I. O., was on October 8, 1943, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on October 28, 1943, and at all times thereafter, to bargain collectively with United Packinghouse Workers of America, Local 49–A, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Armour and Company, Jersey City, New Jersey, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Packinghouse Workers of America, Local 49–A, C. I. O., as the exclusive representative of all its employees engaged as watchmen at its Jersey City, New Jersey, plants, 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;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Packinghouse Workers of America, Local 49–A, C. I. O., as the exclusive representative of all its employees engaged as watchmen at its Jersey City, New Jersey, plants 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, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places at its Jersey City, New Jersey, plants, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.