

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

Case No. 2-R-4409.—Decided April 29, 1944

Mr. John P. Staley, of Chicago, Ill., for the Company.

Mr. Ray Hobbs, of Chicago, Ill., for the Union.

Mrs. Platonía P. Kaldes, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Packinghouse Workers of America, Local 49-A, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Swift and Company, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John J. Cuneo, Trial Examiner. Said hearing was held at Jersey City, on February 16, 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. During the course of the hearing, the Company moved to dismiss the petition on the ground that the alleged unit was inappropriate. The Trial Examiner referred the Motion to the Board. For the reasons hereinafter set forth, the motion is 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

Swift and Company, an Illinois corporation with its principal place of business at Chicago, Illinois, maintains a branch office and plant at Jersey City, New Jersey, with which we are concerned in this

proceedings. At the Jersey City plant, the Company is engaged in processing and preparing hogs for sale and distribution as pork and pork products. During the past year, for its Jersey City plant the Company purchased hogs valued in excess of \$1,000,000, of which about 90 percent was shipped to it from points outside the State of New Jersey. During the same period the Company produced and processed at its Jersey City plant pork and pork products valued in excess of \$1,000,000, of which approximately 75 percent was shipped by it to points outside the State of New Jersey.

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, Local 49-A, 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 the Union as the exclusive bargaining representative of employees in the alleged appropriate unit until the Union has been certified by the Board.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.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

As a result of consent election proceedings affecting the Jersey City plant employees, a coaffiliate of the Union has been recognized by the Company as the bargaining representative of the production and maintenance employees² and the Union has been recognized as the bargaining representative of a unit of watchmen, box pullers, and a matron. In the instant proceeding the Union seeks to represent a residual group of employees consisting of the plant clerks, time and employment office employees, standards department employees

¹ The Regional Director reported that the Union submitted 13 application cards, all of which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll of December 1, 1943, which contained the names of 30 employees in the unit requested by the Union; and that the cards were dated as follows: 1 was dated in March 1943, 1 in April 1943, 4 in August 1943, and 7 in November 1943.

² By agreement between the parties, a storeroom employee classified as a laborer and a receiving office employee have also been included in this unit.

(including checkers and time-study employees), storeroom employees, commissary employees, and the fire marshal, but excluding supervisory employees. The Company contends that the unit requested by the Union is inappropriate on the grounds that it is heterogeneous; that the majority of the employees the Union seeks to represent either exercise managerial or supervisory functions, or have access to confidential management records, and that, in any event, the employees sought to be represented by the Union should not be represented by the same labor organization that represents the production and maintenance employees.³

With respect to the work of the categories of employees the Union seeks to represent herein, the record discloses the following facts:

Plant clerks.—The Company employs approximately 16 plant clerks. Four are permanently assigned to 1 production department and work under the immediate supervision of a chief clerk.⁴ The remaining 12 are permanently assigned to approximately 12 different production departments and work under the immediate supervision of the foremen of the respective departments. They keep departmental records of manufacturing costs, supplies received, shipments made of finished products, and inventories of raw materials and finished products. In some instances they also keep records of production employees' time. They are salaried employees⁵ who work approximately the same number of hours as other employees in the plant. In the absence of departmental foremen during vacation and other short periods, the plant clerks take over those of the foremen's duties having to do with the maintenance of adequate supplies in the department which are necessary to the efficient operation of production work. Although the Company argues that plant clerks exercise managerial functions and have access to records available only to supervisory employees, the evidence establishes that their work is primarily clerical,⁶ and that the records to which they have access do not deal with the Company's labor relations. There is, therefore, no reason to deny them the rights guaranteed in the Act.⁷

Time and employment office employees.—The Company employs two employees in the time and employment office. They work under

³ In the event the Union is certified by the Board as the bargaining representative of the employees in the unit requested, the Union intends that such employees be included in Local 221, the coaffiliate which now represents the production and maintenance employees.

⁴ The parties agree that the chief clerk is a supervisory employee.

⁵ Newly assigned plant clerks serve a probationary period during which they are paid on an hourly basis. Once they are permanently assigned, they are paid on a salary basis.

⁶ In one or two admittedly extraordinary cases and because of circumstances not normally present, two plant clerks who had had prior experience as production workers were specifically requested to supervise production workers while the departmental foremen were absent for a short period of time. We do not regard this fact of sufficient importance to warrant a finding that plant clerks are supervisory employees within the meaning of our customary definition.

⁷ See *Matter of Armour and Company*, 49 N. L. R. B. 688, 690.

the direct supervision of a supervisory employee alternately designated as the head timekeeper and the employment manager. They keep the time and service records of production employees, compute the amount of their earnings after deducting miscellaneous items therefrom, and assist applicants for employment in filling out application forms. In connection with applications for employment, they check the references given by the applicants and submit the information to the employment manager. In the absence of the latter, either of these employees may interview an applicant and may also hire him. We agree with the Company's contention that time and employment office employees are, to a large extent, identified with management.

Standards Department employees.—The Company employs three time-study employees and eight checkers, all of whom work under the supervision of the head of the Standards Department.

Time-study employees conduct time and motion studies of all operations performed in the plant and establish standards of work accordingly, expressed in amounts of production per hour. They are assigned to desks located in the office of the plant superintendent. Approximately 50 percent of their time is spent in the plant-making time studies from actual observation of the production workers. The other 50 percent of their time is spent in the office preparing, *inter alia*, reports of their observations and written evaluations of the standards of production. In order to perform their work properly, these employees must have specialized technical training and a college education or its equivalent. They are referred to as industrial engineers. Although like clerical employees, they are paid on a salary basis, they receive higher rates of pay. Accordingly, we are of the opinion that the work of time-study employees is more professional and technical than clerical and that their interests, background, and qualifications differ greatly from those of plant clericals.

Checkers record production figures for the use of time-study employees, observe the production operations and check the amount of production work performed by applying the standards set by the time-study employees. The figures accumulated by checkers either from their observation of production work or from production records are used to compute the amount of bonus or incentive pay to which a production worker is entitled if he completes a job assigned to him in less time than the standard time applicable to that job. No technical training is required for the performance of a checker's duties, although a high school education or its equivalent is essential. Checkers are salaried employees receiving approximately 20 percent less in wages than the time-study men. While they have little actual contact with time-study employees, their hours and working conditions are similar.

The Company contends that checkers exercise judgment or discretion in observing and checking production operations, that the amount of bonus pay to which production workers are entitled depends on the checkers' reports of their production performance, and that these facts indicate that checkers are closely allied to management. The evidence indicates that the duties of checkers do not involve the exercise of managerial discretion to a degree which would identify them with management,⁸ and that the reports they make regarding the work performance of production employees are based upon information gathered by the application of standards established by time-study men. We are of the opinion that the work of checkers is more in the nature of routine clerical work, does not require the professional and technical ability and skill that the work of time-study employees requires, and that the interests and problems of checkers are akin to those of plant clericals.

Storeroom employees.—The Company employs three employees in this group, one of whom is classified as the head storekeeper, one as a clerk, and one as a laborer. The Union does not seek to represent the laborer as he is included in another bargaining unit. The head storekeeper directs the work of the other two employees and has authority effectively to recommend hiring or firing or a change in the status of these two employees. Accordingly, he falls within our customary definition of a supervisor.

The storeroom clerk, a female employee, keeps records of maintenance equipment and inventories, makes up pay-roll deductions for supplies purchased by employees and operates a typewriter. Her hours and working conditions are similar to that of other plant clericals. She is paid on a salary basis. These facts establish that her work is primarily clerical. We see no merit to respondent's contention that her routine handling of pay-roll deductions for employees who purchase supplies from the storeroom allies her with management.

Commissary employees.—The Company employs two employees in this department. They sell the Company's products to other employees. In performing this function, they fill orders, weigh out the products they sell, wrap packages, make charges, bill various items, and collect payment therefor. The parties agree that the work of the commissary employees is mainly clerical. The Company, however, contends that these employees do not belong in the same unit with other plant clericals solely because they work under the supervision of the sales manager while the other plant clericals work under the supervision of the plant superintendent. The record establishes, however, that these employees are carried on the plant pay roll, rather than on

⁸ *Matter of Armour and Company*, 54 N. L. R. B. 1005.

the sales department pay roll and that their hours, working conditions, and rates of pay are similar to those of other plant clericals.

Fire Marshal.—This employee is under the supervision of the head of the watch service (plant protection). He is located in an office of his own wherein fire equipment is also stored. His duties consist of inspecting and maintaining fire equipment throughout the plant, checking any hazardous fire conditions that may exist and directing the correction of the same, directing and controlling the handling of fire equipment in case of emergency, and supervising the work of four janitors and porters whose duties are to keep the stairways, yards, and floors clean. He may effectively recommend the hiring, discharging or disciplining of the janitors and porters, and thus falls within our customary definition of a supervisory employee.

From the above facts it appears clear that the working conditions, interests, and problems of plant clerks, standards department checkers, storeroom employees and commissary employees, are all closely allied. They form a residuary group of employees carried on the plant pay roll whose duties are primarily clerical. Therefore, we find that the Company's contention that they constitute a heterogeneous group is not supported by the weight of the evidence. Nor do we consider the possibility that the same labor organization which represents the production and maintenance employees may also represent these employees to be a sound basis for depriving them of their right to bargain collectively in an appropriate unit through whatever bargaining agent they choose.⁹

We agree with the Company's contention that the time-study employees have interests, background and qualifications dissimilar to those of the group of employees whose duties are fundamentally clerical and that the head storekeeper and the fire marshal are supervisory employees. Accordingly, we shall exclude these employees from the unit hereinafter found appropriate. We also agree that time and employment office employees occupy a relationship to management sufficient to warrant their exclusion from the unit.

We find that all plant clerks, standards department checkers, storeroom clerk and commissary employees of the Company's Jersey City plant, exclusive of time and employment office employees, time-study employees, storeroom laborer, head storekeeper, chief clerk, fire marshal 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.

⁹ *Matter of Armour and Company*, 49 N. L. R. B. 688, 691.

V. THE DETERMINATION OF REPRESENTATIVES

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 Swift and Company, Jersey City, New Jersey, 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 Second 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 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 United Packinghouse Workers of America, C. I. O.,¹⁰ for the purposes of collective bargaining.

¹⁰ The Union has requested that it appear on the ballot as United Packinghouse Workers of America, C. I. O. We hereby grant this request, but should the Union win the election we shall certify it as its name appears in the caption of this proceeding.