

In the Matter of PFAELZER BROTHERS, A CO-PARTNERSHIP COMPOSED OF ELLARD, MONROE, AND LEONARD PFAELZER and AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, A. F. L.

Case No. 13-R-2301.—Decided June 16, 1944

Poppenhusen, Johnston, Thompson & Raymond, by Mr. Abraham Greenspahn, of Chicago, Ill., for the Company.

Messrs. Ben Dorsey and Joseph S. Sullivan, of Chicago, Ill., for the A. F. L.

Mr. Joseph Kinch, of Chicago, Ill., for the C. I. O.

Mr. Joseph Lepie, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Amalgamated Meat Cutters & Butcher Workmen of North America, A. F. L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Pfaelzer Brothers, Chicago, Illinois, a co-partnership composed of Ellard, Monroe, and Leonard Pfaelzer, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Russell Packard, Trial Examiner. Said hearing was held at Chicago, Illinois, on May 5, 1944. At the commencement of the hearing the Trial Examiner granted a motion to intervene made by United Packinghouse Workers of America, C. I. O., herein called the C. I. O. The Company, the A. F. L., and the C. I. O. 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

Ellard, Monroe, and Leonard Pfaelzer, co-partners, doing business as Pfaelzer Brothers, are engaged in Chicago, Illinois, in the wholesale meat, poultry, and provision business. During the year 1943, the Company purchased raw materials and supplies in excess of \$100,000 in value, of which 20 percent was shipped to the Company from points outside the State of Illinois. During the same period, the Company's sales exceeded \$100,000 in value, of which 90 percent was shipped to points outside the State of Illinois.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters & Butcher Workmen of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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

It was stipulated that in the early part of 1944 the A. F. L. requested recognition from the Company as the exclusive bargaining representative of certain of its employees and the Company refused to accord such recognition until the A. F. of L. was certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. of L. 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

The A. F. L., the C. I. O., and the Company agree that all production and maintenance employees, including janitors, but excluding non-working foremen with the right to hire and discharge, office and

¹ The Field Examiner reported that the A. F. L. submitted 29 authorization cards; and that the names of 29 persons appearing on the cards were listed on the Company's pay roll of March 31, 1944, which contained the names of 84 employees in the appropriate unit.

The C. I. O. submitted 29 cards. The names of 25 persons appearing on the cards were listed on the aforesaid pay roll.

clerical employees, outside salesmen, and truck drivers, constitute an appropriate unit. The parties are in disagreement, however, with respect to the following classifications of employees:

Part-time employees: The A. F. L. asks that the part-time employees be included in the unit; the Company urges their exclusion, and the C. I. O. would include only those part-time employees working 32 hours a week. All such employees average from 15 to 17 hours work a week, although some have worked as much as 29 hours during the course of a week. Both unions admit such employees to membership and there are 21 employees in this category, representing approximately one-fourth of the Company's total personnel. While it is true that their term of employment may be limited to the duration of the present war, this does not warrant their exclusion, despite the Company's contrary assertion.² We are also of the opinion that neither the fact that certain of these employees are employed full-time elsewhere, nor the fact that others attend school, militates against their inclusion.³ A substantial number of the present part-time workers have been in the Company's employ since September 1943, thus indicating that the relationship between the Company and all such employees is more or less of a permanent nature. Part-time employees are assigned to regular permanent work throughout the factory and receive the usual rates for such jobs. It appears that these workers have a substantial interest in the conditions of employment existing among the mass of the Company's employees and we shall include them in the unit.

Working foremen: The A. F. L. and the Company request that these employees be included in the unit, while the C. I. O. would exclude them. The working foremen are in charge of the various departments in the plant and they supervise the work of the employees under them. Until recently half of their time was spent in supervisory duties, but because of the current scarcity of labor they now spend only 10 to 20 percent of their work day in supervisory functions and they do manual work the remainder of the time. They are paid a weekly salary, whereas the employees under them are paid on an hourly basis. Although the right to hire and discharge is centralized in the personnel manager, the working foremen have the power effectively to recommend changes in the status of employees. We find that the working foremen, with the exception of the two in the grocery and provision departments,⁴ are supervisory employees and we shall therefore exclude them from the unit.

We find that all production and maintenance employees, including janitors, regular part-time employees, and the two working foremen

² *Matter of Emerson Radio & Phonograph Co.*, 53 N. L. R. B. 1359.

³ *Matter of Automatic Instrument Co.*, 54 N. L. R. B. 472; *Matter of Max Kaplan and Jacob Kaplan*, 46 N. L. R. B. 1057.

⁴ Of the six working foremen, the two in the grocery and provision departments have had no employees under their supervision for a year and will not have as long as there is a labor shortage

in the grocery and provision departments, but excluding office and clerical employees, outside salesmen, truck drivers, the remaining working foremen, 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, 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

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 Pfaelzer Brothers, Chicago, Illinois, a co-partnership composed of Ellard, Monroe, and Leonard Pfaelzer, 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 Thirteenth 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 the 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 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 they desire to be represented by Amalgamated Meat Cutters & Butcher Workmen of North America, affiliated with the American Federation of Labor, or by United Packinghouse Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.