

In the Matter of SWIFT & COMPANY and UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL 28—C, C. I. O.

Case No. 13-R-2411.—Decided June 28, 1944

Mr. E. L. Crain, of Chicago, Ill., for the Company.
Mr. Joseph Kinch, of Chicago, Ill., for the United.
Mr. Bruce Dawson, of Chicago, Ill., for the Association.
Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Packinghouse Workers of America, Local 29—C, C. I. O., herein called the United, alleging that a question affecting commerce had arisen concerning the representation of employees of Swift & Company, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert T. Drake, Trial Examiner. Said hearing was held at Chicago, Illinois, on May 22, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of Employees Protective Association, herein called the Association, to intervene. The Company, the United, and the Association appeared, participated, and 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 Association moved to dismiss the petition. The Trial Examiner reserved ruling thereon. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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 & Company is an Illinois corporation, operating plants in several States. We are here concerned with its plant at Union Stock
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Yards, Chicago, Illinois. During 1943 the Company purchased live stock valued in excess of \$1,000,000, approximately 75 percent of which was shipped to it from points outside the State of Illinois. During the same period the Company sold products valued in excess of \$1,000,000, approximately 75 percent of which 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

United Packinghouse Workers of America, Local 28-C, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Employees Protective Association is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the United as exclusive collective bargaining representative of the armed guards at the Union Stock Yards plant.

The Association contends that it has been bargaining with the Company on behalf of the employees involved herein for 15 years and that the petition should be dismissed for that reason. There has never been any written agreements between the Company and the Association. We find the position of the Association to be untenable.¹

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the United and the Association each represents a substantial number of employees in the unit hereinafter found to be 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 United and the Association contend that all armed guards at the Union Stock Yards plant of the Company, excluding clerks, the night gang leader, and sergeants, constitute an appropriate unit. The Company contends that the duties of its armed guards are such that they come into conflict with the interests of the production and mainte-

¹ See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

² The Field Examiner reported that the United and the Association submitted 17 authorization cards and a petition bearing 38 names, respectively, of persons on the April 1944 pay roll of the Company. There are approximately 54 employees in the appropriate unit.

nance employees. The Company argues that, since the United already represents the production and maintenance employees,³ it is improper to permit the armed guards to be represented by the same labor organization, albeit in separate bargaining units. The Company further contends that the armed guards are part of management and are not employees within the meaning of the Act because they are sworn auxiliary military police.

The armed guards are charged with the duties of preserving law and order, protecting the Company's property against sabotage, identifying all persons on the Company's premises, and assisting the fire department. Despite the peculiar relationship which plant-protection employees bear to management they are not to be denied any of the rights or privileges granted under Section 7 of the Act,⁴ since we have often held, as we do now, that plant-protection officers exercise monitorial and not supervisory functions. The record in the instant case offers ample evidence that the guards have no disciplinary authority over the production and maintenance employees, so that while disciplinary measures may result from a report made by a guard, such action is the conduct of the supervisor of the employees involved and not the conduct of the guard.⁵

It cannot seriously be contended at this time that guards who are sworn into temporary membership as auxiliary military police lose thereby any of the benefits of the Act.⁶

We turn now to the consideration of the contention that it is improper to permit plant-protection employees to be represented by the same labor organization as production and maintenance employees. It should be first noted that the petitioner herein is a separate local of the United than that which represents the production and maintenance employees. This argument deals with a possible conflict of interest which may arise when plant-protection employees join a labor organization. Self-organization for collective bargaining is not incompatible with efficient and faithful discharge of duty.⁷ It should be further noted that the petition in the instant proceeding does not raise the problem of merging the armed guards with the unit of production and maintenance employees.

We find that all armed guards at the Union Stock Yards plant of the Company, excluding clerks, the night gang leader, sergeants, and any other supervisory employees with authority to hire, promote,

³ Local 28 of the United presently represents the production and maintenance employees at the Union Stock Yards plant. Local 28-C and Local 28 are under the same district director and high union officials.

⁴ See *Matter of Chrysler Corporation, Highland Park plant*, 44 N. L. R. B. 881.

⁵ See *Matter of Federal Motor Truck Company*, 50 N. L. R. B. 9.

⁶ *Matter of Consolidated Steel Corporation, Ltd.*, 51 N. L. R. B. 333, and cases cited therein.

⁷ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

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 means of 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 & Company, Chicago, Illinois, 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 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 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 they desire to be represented by United Packinghouse Workers of America, Local 28-C, affiliated with the Congress of Industrial Organizations, or by Employees Protective Association, for the purposes of collective bargaining, or by neither.