

In the Matter of THE CORN STATES SERUM COMPANY and UNITED
PACKINGHOUSE WORKERS OF AMERICA, CIO

Case No. 17-R-868.—Decided July 14, 1944

Mr. G. N. Tunison, of Omaha, Nebr., for the Company.

Mr. Russell Bull, of South Omaha, Nebr., for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a second amended petition duly filed by United Packinghouse Workers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Corn States Serum Company, Omaha, Nebraska, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer L. Hunt, Trial Examiner. Said hearing was held at Omaha, Nebraska, on June 9, 1944. The Company and the Union appeared, participated, and 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. At the close of the hearing, the Company requested permission to argue orally before the Board. This request is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Corn States Serum Company, a Nebraska corporation with its principal place of business located at Omaha, Nebraska, is engaged in the manufacture and sale of virus serums. It operates one plant in Ralston, Nebraska, and another in Omaha, Nebraska. We are con-

cerned in this proceeding with both Nebraska plants.¹ During the fiscal year of 1943, the Company purchased raw materials valued in excess of \$1,500,000, of which approximately 80 percent was obtained from outside the State of Nebraska. During the same period, the sales of the Company exceeded \$2,500,000 in value, a substantial percentage of which represented shipments to points outside the State of Nebraska.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

On or about April 21, 1944, the Union requested recognition from the Company as the collective bargaining representative of certain of its employees. The Company refused, in effect, to accord such recognition to the Union.

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit 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 Union seeks a unit comprised of all production and maintenance employees of the Company's Nebraska plants, excluding clerical and supervisory employees.³ The Company agrees, in the main, with the foregoing unit, but contends that clerical employees should be included. It further contends that certain employees, whom the Union would exclude as supervisors, are not, in fact, supervisory employees.

It has been our usual practice to exclude clerical employees from a

¹ The Company also has central offices located in Omaha. The employees therein are not concerned in this proceeding.

² The Field Examiner reported that the Union submitted 36 designations of which 35 bore apparently genuine and original signatures, and contained the names of persons appearing upon the Company's pay roll of March 25, 1944. He further reported that there are approximately 88 employees in the unit sought in the petition.

³ The Union does not seek to represent employees engaged at the central offices of the Company, and the parties stipulated that Wayne L. Taylor, Sarah E. Long, Leona Vondra, and Juanita Melendy, employees engaged in these offices, should be excluded from the unit.

production and maintenance unit in the absence of compelling circumstances to the contrary. Sufficient evidence was not adduced in this proceeding to warrant a departure from our customary procedure. Accordingly, we shall exclude all clerical employees.⁴

The parties disagree with respect to the status of Roy E. Jensen, LeRoy Wilson, Otto C. Sieg, Herbert W. Telle, John G. Hill, E. Rickard, S. C. Vondra, Lee Rubin, and Clarence E. Hayes; the Union contends that these employees are supervisory, whereas the Company contends that they are not. The record discloses that these persons are older and more experienced employees who act as conduits for the transmission of orders and as leadmen in certain operations. None of these employees has authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. Accordingly, we find that they are not supervisory employees within the meaning of our customary definition, and we shall include them within the unit.

We find that all production and maintenance employees of the Company engaged at its Omaha and Ralston, Nebraska, plants, excluding clerical employees 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.

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 The Corn States Serum Company, Omaha, Nebraska, an election by secret ballot shall

⁴ The record discloses that J. Howard Bruce and Otto Pitha are clerical employees. These persons, or others now performing their duties are excluded from the unit. The record further discloses that a third employee, Stella Rudol, who was employed at first as a clerical employee, is now engaged in production work. We shall include her within the unit as a production employee.

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 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, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.