

In the Matter of SWIFT AND COMPANY and UNITED PACKINGHOUSE
WORKERS OF AMERICA, LOCAL 167, AFFILIATED WITH THE C. I. O.

Case No. 18-R-1041.—Decided August 14, 1944

Mr. William J. Scott, for the Board.

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

Mr. Douglas Hall, of Minneapolis, Minn., for the C. I. O.

Mr. Harold LeVander, of South St. Paul, Minn., for the Independent.

Mr. William R. Cameron, 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 167, affiliated with the C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Swift and Company, South St. Paul, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Minneapolis, Minnesota, on July 10, 1944. The Company, the C. I. O., and Packinghouse Industrial Union No. 11, herein called the Independent, 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 Independent moved to dismiss the petition of the C. I. O. on the ground that the C. I. O. had failed to show that it represents a majority of employees in the appropriate unit and that the present contract of the Independent with the Company constitutes a bar to an election. For reasons hereinafter appearing, this 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:

57 N. L. R. B., No 203.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Swift and Company is an Illinois corporation having many plants and branches throughout the United States. The only plant involved in this proceeding is located at South St. Paul, Minnesota, where the Company is engaged in the purchase and slaughter of cattle, sheep, and hogs, the processing of meat and cheese, and the handling of butter and eggs. For its fiscal year ending October 30, 1943, the Company purchased raw materials amounting in value to more than \$50,000,000, of which approximately 15 percent was purchased outside the State of Minnesota. For the same period, the Company's total sales from its South St. Paul plant amounted in value to more than \$52,000,000, of which approximately 85 percent represents products shipped outside the State of Minnesota.

The Company concedes 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 167, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Packinghouse Industrial Union No. 11, is a labor organization affiliated with the International Brotherhood of Swift Employees, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 2, 1944, the C. I. O., in writing, requested the Company to recognize it as the exclusive bargaining representative of the Company's employees. On June 10, 1944, the Company replied, refusing to recognize the C. I. O. on the ground that the Independent had been certified by this Board as such representative.

On May 1, 1943, as the result of an election conducted pursuant to a Decision and Direction of Election by this Board on January 16, 1943,¹ the Independent was certified as collective bargaining representative of the employees in substantially the same unit as that herein sought to be represented by the C. I. O. The Independent, through its parent organization, the International Brotherhood of Swift Employees, thereafter entered into a contract with the Company, which provided that it should become effective as of August 20, 1942, and

¹ 46 N L R B 1171. The Independent was first certified by the Board as collective bargaining representative of the Company's employees on December 12, 1941. See 37 N L R B 558

should remain in effect until August 11, 1943, and from year to year thereafter, subject to reopening by either party on written notice mailed at least 30 days prior to August 11 of any year. The Independent contends that this contract is presently in effect and constitutes a bar to an election. However, since the C. I. O.'s representation claim was presented to the Company prior to the effective date of the contract's automatic renewal provision, we find that the contract does not constitute a bar to a present determination of representatives.

A statement of the Field Examiner, introduced in evidence at the hearing, indicates that the C. I. O. 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 parties are generally agreed that the appropriate unit should comprise all production and maintenance employees of the Company at its South St. Paul plant, excluding the superintendent, assistant superintendent, division superintendents, general foremen, foremen, assistant foremen, plant-protection employees (policemen, watchmen, and firemen), standards department employees, time office employees, salaried plant clerks, chemists, all general office employees, bricklayers, plant administrative employees, office cafeteria employees, steady-time scalers, and branch house truck drivers. The C. I. O., however, would exclude the gang leaders, plant truck drivers, and hourly paid plant clerks, who have heretofore been included within the unit represented by the Independent and would include box pullers, who have heretofore been excluded. The Independent and the Company desire to include the gang leaders, plant truck drivers, and hourly paid plant clerks, and to exclude the box pullers, in accordance with the unit formerly agreed to by the parties and established by the Board in its previous Decision.³

Gang leaders. The record discloses that the lowest grade of the Company's supervisors is that of foremen and assistant foremen. Under them is an employee classification known as gang leaders, who act as leaders or pace setters of the various gangs of workmen. They

² The Field Examiner reported that the C. I. O. submitted 1,859 application-for-membership cards, of which 1,262 were dated from April through June 1943, 216 from July through September 1943, 145 from October through December 1943, 108 from January through March 1944, and 126 from April through June 1944. A spot check of the cards submitted disclosed that approximately 1,100 employees, whose names appear on these designations, are also listed on the Company's pay-roll list of June 16, 1944, containing 3,272 employees in the appropriate unit.

³ See citation in footnote 1.

spend all their time in production work and are hourly paid, receiving, in most cases, less than 5 cents an hour more than the other production employees with whom they work. They do not possess authority to hire, discharge, or make recommendations in regard to hiring or discharging, they do not recommend discipline, nor are they responsible for the quality or amount of the work of the other employees in the gangs. Inasmuch as the gang leaders were not excluded from the unit previously found appropriate by the Board, and the present record clearly reveals that they are not supervisory employees within our customary definition, we shall include them in the unit.

Plant truck drivers. The Company employs 11 plant truck drivers who deliver the Company's products to various points in Minnesota, Wisconsin, and North Dakota. They constitute a separate classification from the Company's branch house truck drivers, who were originally employed at a local distributing facility in St. Paul but were transferred without change in their duties, in September 1942, to the Company's South St. Paul plant. The branch house truck drivers have, for a number of years, been represented in bargaining with the Company by the Teamsters' Union, affiliated with the A. F. of L. and were excluded from the unit previously found appropriate by the Board. However, since the plant truck drivers were specifically included in the unit which we found to be appropriate, and have for several years participated in collective bargaining with the Company as a part of such unit, we shall here include the plant truck drivers.

Hourly paid plant clerks. The hourly paid plant clerks perform the minor clerical tasks which arise in the various plant departments, such as making the initial records of production and shipments and running errands for the department supervisors. They are occasionally interchanged with production workmen in the various gangs. Since they were not excluded in our previous decision, and have been represented in collective bargaining by the Independent as part of the production and maintenance unit, we shall include the hourly paid plant clerks.

Box pullers. The duty of these employees is to make rounds of the plant, checking for fires, water and steam leaks, and "pulling" the A. D. T. boxes, at intervals, on their rounds. The majority of their work is at night, though at least one route is patrolled also in the daytime. Inasmuch as the record discloses that the box pullers are a part of the Company's plant-protection force, their duties being those of watchmen who were heretofore specifically excluded, and since no sufficient reason here appears why we should depart from the unit which we have previously found appropriate, we shall exclude them.

We find that all production and maintenance employees of the Company at its South St. Paul plant including gang leaders, plant truck drivers, and hourly paid plant clerks, but excluding superin-

tendent, assistant superintendents, division superintendents, general foremen, foremen, assistant foremen, plant-protection employees (policemen, watchmen, and firemen), standards department employees, time office employees, salaried plant clerks, chemists, all general office employees, bricklayers, steady-time scalers, plant truck drivers, 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

The parties stipulated at the hearing that, because of the high rate of employment turn-over in the plant, all employees who have been employed by the Company less than 90 days preceding the eligibility date should be ineligible to vote in the election. In support of this request, the plant superintendent testified that turn-over had exceeded 50 percent in the period of 26 weeks preceding the hearing, and that a test-check of employees hired during a stated week in May 1944, reveals that approximately 50 percent of the employees hired during that week quit their jobs within 6 weeks thereafter. In our previous Direction of Election in this plant, we approved a stipulation similar to that offered here.⁴ However, the record here discloses that the turn-over, although high, is much less than it was at the time of the previous hearing.⁵ Further, the record discloses that there is now no probationary period such as that upon which the Board based its previous finding. Inasmuch as the record does not indicate that any distinction is made in the manner of employment, or that employees are hired on other than a permanent basis, we are of the opinion that eligibility should be determined, according to our customary practice, on the basis of employment on the pay-roll date next preceding the Direction of Election.⁶

The Company, at present, employs approximately 300 school boys, over 16 years of age, at full-time summer employment. The majority of these students commenced working for the Company the latter part of May or the first of June 1944. Their conditions of employment, including rights of seniority, are the same as those established for the Company's other employees. The Company is aware, however, that the majority of them expect to return to school at commencement of the full term. Inasmuch as it is known that these school boys will

⁴ See citation in footnote 1.

⁵ The plant superintendent testified that turn-over at the time of the prior representation proceeding probably exceeded 75 percent.

⁶ See *Matter of Southern Prison Company and Southern Steel Company*, 53 N. L. R. B. 604, and cases cited therein.

shortly terminate their employment with the Company, it is apparent that they do not possess sufficient interest in common with the other production and maintenance employees to justify their participation in the selection of representatives for that group. We find, accordingly, that the school boys who intend to quit their employment upon the reopening of the school term are not eligible to vote in the election.⁷

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.⁸

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Swift and Company, South St. Paul, Minnesota, 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 Eighteenth 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 U. P. W. A., Local 167, C. I. O., or by Packinghouse Industrial Union No. 11, for the purposes of collective bargaining, or by neither.

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

[See *infra*, 57 N. L. R. B. 1402 for Amendment to Decision and Direction of Election.]

⁷ See *Matter of Johnson-Handley-Johnson Company and Johnson Furniture Company*, 51 N. L. R. B. 1282

⁸ The C. I. O. requested that it be designated on the ballot as U. P. W. A., Local 167, C. I. O. This request is hereby granted.