

In the Matter of SWIFT AND COMPANY and AMERICAN FEDERATION OF
LABOR AND ITS AFFILIATED UNIONS

Case No. 14-R-981.—Decided August 22, 1944

Messrs. John P. Stanley and D. B. Van Dolah, of Chicago, Ill., and
Messrs. L. N. Gifford and C. R. Crocker, of Fulton, Ky., for the Com-
pany.

Mr. Charles Mathews, of Paducah, Ky., for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Federation of Labor and its affiliated unions, on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 236,¹ herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Swift and Company,² South Fulton, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harry G. Carlson, Trial Examiner. Said hearing was held at Fulton, Kentucky, on July 21, 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY.

Swift and Company is an Illinois corporation with numerous plants and branch houses throughout the United States. This proceeding

¹ The petition was filed in the name of the American Federation of Labor and its affiliated unions. At the hearing, the Teamsters Union appeared and asserted that the petition was filed in its behalf. The pleadings were not amended to reflect this fact.

² At the hearing, on motion of the Company, the pleadings were amended to conform with this, the correct corporate name.

involves only the plant at South Fulton, Tennessee, where the Company operates a creamery and poultry packing plant and also handles eggs. During the year 1943, the Company purchased raw materials for the South Fulton plant in excess of \$800,000 in value, of which 40 percent was purchased outside the State of Tennessee. During the same period, the plant sold products in excess of \$1,000,000 in value, of which approximately 90 percent was shipped from the plant to points outside the State of Tennessee.

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

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 236, affiliated with the American Federation of Labor, 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 its employees until the Union has been certified by the Board in an appropriate unit.

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.³

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 Company and the Union are in substantial agreement as to what constitutes an appropriate unit for bargaining at the South Fulton plant. They disagree only as to whether or not the working foremen in charge of each of the nine departments of the plant are supervisory employees. The Company contends that they are, whereas the Union contends that they are not.

Although, as the Union contends, the department heads earn very little more than the men with whom they work and spend a majority of their time in manual work, they have complete charge of their departments and are responsible for the quality and quantity of the

³ The Field Examiner reported that the Union submitted 39 authorization cards; that the names of 26 persons appearing on the cards were listed on the Company's pay roll of May 6, 1944, which contained the names of 36 employees in the appropriate unit; and that all the cards were dated May 1944.

work of their subordinates. They keep time records and other data relating to the efficiency of the employees with whom they work. Their recommendations to the general foreman or plant superintendent regarding hire, discharge, promotion, discipline, or reclassification of those employees are given great weight and are usually followed. In fact, all matters of personnel are handled by the plant superintendent in conjunction with the head of the department to be affected. We find that the department heads are supervisory employees and shall exclude them from the unit.⁴

We find that all production and maintenance employees and truck drivers at the Company's South Fulton, Tennessee, plant, excluding management personnel, office and clerical employees, field men, city salesmen, cabinet service men, buying station employees, department heads, 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.⁵

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 Fulton, Tennessee, 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 Fourteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to

⁴ See *Matter of Swift and Company*, 30 N. L. R. B. 86; 42 N. L. R. B. 1184; 51 N. L. R. B. 24, wherein the Board discussed similar employees in other plants of the Company and found them to be supervisory employees.

⁵ The Union requests that its name appear on the ballot as "Chauffeurs, Teamsters' and Helpers' Union, Local No. 236, AFL." The request is hereby granted.

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 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 Chauffeurs', Teamsters' and Helpers' Union, Local No. 236, AFL, for the purposes of collective bargaining.

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