

In the Matter of SWIFT AND COMPANY *and* AMALGAMATED MEAT CUTTERS
& BUTCHER WORKMEN OF NORTH AMERICA, LOCAL #574, A. F. OF L.

Case No. 18-R-1051.—Decided September 1, 1944

Messrs. E. L. Crain and G. B. Cook, of Chicago, Ill., for the Company.

Messrs. Kenneth Lowers and J. T. McCoy, of Cedar Rapids, Iowa, for the A. F. L.

Mr. E. R. Fitzpatrick, of Waterloo, Iowa, and *Mr. Horace S. Gates, Jr.*, of Marshalltown, Iowa, for the C. I. O.

Mr. Don Mahon, of Des Moines, Iowa, for the Independent.

Mr. Philip Licari, 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, Local #574, A. F. of L., herein called the A. F. L., alleging that a question affecting-commerce had arisen concerning the representation of employees of Swift and Company, Marshalltown, Iowa, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Marshalltown, Iowa, on August 1, 1944. The Company, the A. F. L., United Packinghouse Workers of America, Local 261, C. I. O., herein called the C. I. O., and Independent Brotherhood of Swift Employees, Local No. 50, herein called the Independent, 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. At the hearing, the Independent moved to dismiss the petition on the ground, *inter alia*, that an existing contract between the Company and the Independent is a bar to the instant proceeding. The motion was referred to the Board by the Trial Examiner. For reasons stated in Section III, *infra*, the motion is denied. 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 its principal office and place of business at Chicago, Illinois. The Company operates several meat processing plants in various parts of the United States. The instant proceeding solely concerns the Company's plant located at Marshalltown, Iowa. The Company purchases all its needed livestock for the Marshalltown plant from stockyards located within the State of Iowa. During the year 1943, the Company shipped from this plant to points outside the State of Iowa processed meat valued in excess of \$10,000,000.

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, Local #574, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Packinghouse Workers of America, Local 261, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Independent Brotherhood of Swift Employees, Local No. 50, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Sometime in 1942, the Company and the Independent entered into a collective bargaining agreement which provided, in part, as follows:

This contract shall take effect as of August 20, 1942, . . . and shall 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 thirty days prior to August 11 of any year.

In 1943 this contract was automatically renewed.

On June 22, 1944, the A. F. L. advised the Company that it represented a majority of the Company's production and maintenance employees at the Marshalltown plant, and requested recognition as the

exclusive bargaining agent of these employees. On June 29, 1944, the Company replied that because of a current agreement between the Company and the Independent it could not grant such recognition.

It is urged by the Independent that its existing contract serves to bar the instant proceeding. Since, however, the A. F. L. apprised the Company of its claim to representation prior to the operative date of the automatic renewal clause contained in the contract, it is clear that the contract does not preclude a present determination of representatives.¹

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the A. F. L. 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 A. F. L. and the C. I. O. seek a unit embracing all the production and maintenance employees at the Company's Marshalltown plant, including livestock handlers and watchmen, but excluding office employees, the superintendent, the general foreman, foremen, assistant foremen, the chief engineer and master mechanic, livestock buyers, livestock scalers, timekeepers, the nurse 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. The Company and the Independent do not oppose the establishment of the unit sought, except that the Independent urges that the watchmen comprise a separate appropriate unit because they have not been embraced by the contract between it and the Company, and the Company contends that watchmen are closely allied with management and consequently should be excluded from any unit.

The Company employs four watchmen who are neither armed nor uniformed. Their duties are confined to performing functions usually associated with their classification. Thus, they patrol the

¹ *Matter of Erie City Iron Works*, 47 N. L. R. B. 381.

² The Field Examiner reported that the A. F. L. submitted 71 authorization cards, all of which bore apparently genuine signatures; that the names of 66 persons appearing on the cards were listed on the Company's pay roll of June 20, 1944, which contained the names of 160 employees in the alleged appropriate unit; and that the cards were dated between May and July 1944.

The Field Examiner further reported that the C. I. O. submitted 40 authorization cards, all of which bore apparently genuine signatures; that the names of 38 persons appearing on the cards were listed on the Company's pay roll above mentioned; and that the cards were dated between May and July 1944.

The Independent relies on its contract with the Company as evidence of its interest in this proceeding.

Company's premises, guarding it against theft, sabotage, and fire. Although they work 40 hours a week at their regular duties, the Company permits them, at their option, to work 8 additional hours, during which time they perform work similar to that of the maintenance employees. The record reveals that, at one time, the watchmen had been militarized; however, since January 1944, they have not been militarized. It is clear, moreover, that they are not supervisory or managerial employees. In view of the foregoing facts, we are of the opinion that the watchmen should be included in the unit.

We find, in accordance with the agreement of the parties and our foregoing determination relating to watchmen, that all the Company's production and maintenance employees at its Marshalltown plant, including livestock handlers and watchmen, but excluding office employees, livestock buyers, livestock scalers, timekeepers, the nurse, the superintendent, the general foreman, foremen, assistant foremen, the chief engineer and master mechanic, 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.³

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, Marshalltown, Iowa, 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

³ The Independent's request to appear on the ballot as "Independent Local No. 50, I. B. S. E.," is hereby granted

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 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 Amalgamated Meat Cutters & Butcher Workmen of North America, Local #574, affiliated with the American Federation of Labor, or by United Packinghouse Workers of America, Local 261, affiliated with the Congress of Industrial Organizations, or by Independent Local No. 50, I. B. S. E., for the purposes of collective bargaining, or by none of these organizations.

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