

In the Matter of SWIFT AND COMPANY and BROTHERHOOD OF PACKING  
HOUSE WORKERS

Case No. 18-R-1061.—Decided September 29, 1944

Messrs. F. L. Crain and J. L. Fike, of Chicago, Ill., for the Company.

Mr. Don Mahon, of Des Moines, Iowa, Mr. W. A. Lindusky, of South St. Paul, Minn., and Messrs. John H. Terveen and A. J. French, of Watertown, S. Dak., for the Brotherhood.

Messrs. Max Crowell and Sam Twedell, of Sioux Falls, S. Dak., and Messrs. Eldon Clark and Joe B. Stricherz, of Watertown, S. Dak., for the Amalgamated.

Mr. Julius Kirle, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition filed by Brotherhood of Packing House Workers, herein called the Brotherhood, alleging that a question affecting commerce had arisen concerning the representation of employees of Swift and Company, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Watertown, South Dakota, on August 16, 1944. The Company, the Brotherhood, and Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., Local 52, herein called the Amalgamated, 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 Company moved to dismiss the petition on the ground that no evidence was adduced showing a substantial interest by the Brotherhood which would justify the direction of an election. Ruling on the motion was reserved for the Board. For reasons stated in Section III, footnote 1, *infra*, 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 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, an Illinois corporation having its home offices at Chicago, Illinois, is engaged in the purchase and slaughtering of livestock, and in the processing and sale of meat products. The Company owns and operates meat-processing plants in many States throughout the United States. The Company's Watertown, South Dakota, plant is the only plant involved in this proceeding. During the fiscal year ending October 30, 1943, the Company purchased livestock for processing at its Watertown plant valued in excess of \$10,000,000, approximately 1 percent of which was purchased from sources outside the State of South Dakota. During the same period the Company's sales at this plant were valued in excess of \$11,000,000, approximately 98 percent of which was made to sources outside the State.

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

### II. THE ORGANIZATIONS INVOLVED

Independent Union, Brotherhood of Packing House Workers, is a labor organization admitting to membership employees of the Company.

Amalgamated Meat Cutters and Butcher Workmen of North America, 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 Brotherhood as the exclusive bargaining representative of certain of the Company's employees until the Brotherhood has been certified by the Board in an appropriate unit.

A statement of a Board agent, together with other evidence, introduced at the hearing, indicates that the Brotherhood and the Amalgamated each represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

<sup>1</sup> The Field Examiner reported that the Brotherhood submitted a petition bearing 29 signatures, all of which were listed on the Company's pay roll of July 15, 1944, containing the names of 151 employees in the appropriate unit. Twenty-six of the signatures were dated in July 1944, 1 in 1944, and 2 were undated. The Brotherhood submitted an additional petition at the hearing, bearing 10 more signatures listed on the pay roll of July 15,

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

All parties substantially agree that the appropriate unit should comprise all production and maintenance employees of the Company at its Watertown, South Dakota, plant, excluding the superintendent, departmental foremen, chief engineer and master mechanic, standards department employees, clerical employees in plant superintendent's office, general office employees, clerical employees in livestock buyer's office, livestock buyers, livestock scalers, and watchmen. The Brotherhood, however, would exclude salaried assistant foremen, but would include assistant foremen paid an hourly wage rate, production clerks, and the part-time watchman. The Amalgamated would include all assistant foremen, contending that these employees are not supervisory employees under the Board's definition, but would exclude production clerks, and the part-time watchman. The Company would exclude all officially designated assistant foremen, production clerks, and the part-time watchman, taking no position with respect to assistant foremen not officially designated as such.

*Assistant Foremen:* A. N. Nygaard, assistant foreman in the pork and veal room, and H. A. Lewis, assistant foreman in the beef and lamb room, have been officially designated by the Company as assistant foremen, are salaried employees, and attend meetings of the supervisory personnel. They have full authority over operations, including the assignment of work, in their respective rooms during the absence of the foreman, and otherwise possess authority to hire, discharge, and effectively recommend changes in the status of employees under their supervision. O. C. Waite, employed in the loading, shipping, and cooler department, has been acting as assistant foreman and will be officially designated as assistant foreman by the Company in the near future. He is, however, paid an hourly wage rate, does production work, and has not, to date, attended meetings of the supervisory personnel. He

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1944, 9 of which were dated in August 1944 and 1 in July 1944. The Amalgamated submitted membership lists establishing a membership of 109 employees in the appropriate unit, and at the hearing, submitted 6 additional applications for membership, 4 of which appeared on the pay roll of July 15, 1944.

The Amalgamated and the Company were parties to a contract covering production and maintenance employees, which expired on August 11, 1943. This contract contained a maintenance of membership clause, which has been continued in operation by the contracting parties. Neither the Amalgamated nor the Company contends that the contract is a bar to the instant proceeding. While the showing of the Brotherhood is only approximately 25 percent of the claimed appropriate unit, we find that this showing is substantial in view of the provision in the 1943 contract, continued in effect by the contracting parties, requiring maintenance of membership in the Amalgamated. *Matter of Sayles Finishing Plants, Inc.*, 49 N. L. R. B. 532, *Matter of Oregon Plywood Company*, 33 N. L. R. B. 1234; *Matter of Certain-Teed Products Corporation*, 28 N. L. R. B. 915.

performs generally the same duties as the two officially designated assistant foremen and possesses the authority effectively to recommend the discipline, discharge, and changes in the status of employees under his supervision. E. Schultz, employed in the casing-grading room, and listed on the pay roll as a casing grader, checks the work of the casing graders and spends a substantial part of his time in production work. He possesses only limited authority in directing the work of other employees. He is an hourly paid employee, does not attend meetings of the supervisory personnel, and is not under consideration for designation as an assistant foreman by the Company. He does not possess authority effectively to recommend changes in the status of other employees. We shall exclude A. N. Nygaard, H. A. Lewis, and O. C. Waite, but include E. Schultz.

*Production Clerks:* There are three production clerks. Two of them keep production records, load finished products on trucks, and occasionally assist in the loading of refrigerator cars. The third production clerk keeps production reports and unloads and stores supplies. All are under the supervision of the factory supervisory personnel. Although they are salaried employees, their duties and interests are such as would more closely identify them with the production and maintenance employees; we shall include them.

We find that all production and maintenance employees of the Company at its Watertown, South Dakota, plant, including production clerks, and casing grader in the casing-grading room,<sup>2</sup> but excluding the plant superintendent, departmental foremen, chief engineer and master mechanic, standards department employees, clerical employees in plant superintendent's office, time and employment office employees, general office employees, clerical employees in livestock buyer's office, livestock buyers, livestock scalers, full-time watchmen, assistant foreman in pork and veal room, assistant foreman in beef and lamb room, assistant foreman in loading, shipping, and cooler department,<sup>3</sup> 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 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

<sup>2</sup> E. Schultz.

<sup>3</sup> O. C. Waite.

Election herein, subject to the limitations and additions set forth in the Direction.

F. Hulsebus devotes 24 hours of his work week of 48 hours as a watchman, and 24 hours as a janitor. He is presently included in a separate unit of watchmen.<sup>4</sup> Notwithstanding his inclusion in the watchmen's unit, since he spends 50 percent of his work week as a janitor, we are of the opinion and we find that he has a substantial interest in the conditions of employment in the production and maintenance unit and in the outcome of the election in that unit to entitle him to vote in the election hereinafter directed. Accordingly, we find that he is eligible to vote.<sup>5</sup>

### 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, Watertown, South Dakota, plant, 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, and the part-time watchman, 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 they desire to be represented by Independent Union B. of P. H. W., or by A. F. L., A. M. C. & B. W. of N. A., for the purposes of collective bargaining, or by neither.<sup>6</sup>

<sup>4</sup> There is presently in existence a contract between the Company and the Amalgamated covering this unit.

<sup>5</sup> *Matter of Wadham's Division of Socony-Vacuum Oil Company*, 54 N. L. R. B 1165.

<sup>6</sup> The Brotherhood and the Amalgamated requested that they be designated on the ballot as set forth above. The request is hereby granted.