

In the Matter of FOREST CITY PRODUCE COMPANY and AMALGAMATED
MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL
#170, A. F. OF L.

Case No. 18-R-1078.—Decided October 7, 1944

Mr. George E. Pike, of Waterloo, Iowa, for the Company.

Mr. Sam Twedell, of Sioux Falls, S. Dak., for the Union.

Mr. Jack Mantel, 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 #170, A. F. of L, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Forest City Produce Company, Forest City, Iowa, 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 Forest City, Iowa, on September 5, 1944. The Company and the Union 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. 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

Forest City Produce Company is a copartnership maintaining a poultry processing and egg distribution plant at Forest City, Iowa. For the fiscal year ending January 31, 1944, the Company purchased containers and package materials valued at approximately \$37,250,

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which was shipped to its plant from points outside the State of Iowa. During the same period, the Company sold eggs and poultry valued at approximately \$1,412,800, substantially all of which was shipped to customers located outside the State.

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

II. THE ORGANIZATION INVOLVED

Amalgamated Meat Cutters & Butcher Workmen of North America, Local #170, 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.

The Company contends that an election should not be held at this time because the Union failed to receive a majority vote in a consent election held on March 29, 1944.¹ However, the Union has submitted a substantial number of additional designations,² indicating that a majority of the Company's employees desire representation by the Union. We believe that the policies of the Act will best be effectuated by entertaining the present petition.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 agreement that all production and maintenance employees of the Company, including truck drivers, but excluding the plant manager, plant foreman, and clerical employees, constitute an appropriate unit.⁴ The parties are in dispute, however, concerning the inclusion of the hatchery employee.

The Company has only one full-time employee at the hatchery, whose duties are to service hatching flock, operate incubators, and cull chickens. This employee is in general charge of the hatchery, and dur-

¹ *Matter of Forest City Produce Company*, Case No. 18-R-970

² A Board agent reported that the Union submitted 25 application for membership cards, all of which were dated July 1944, and that there are 42 employees in the appropriate unit.

³ See *Matter of The Superior Castings Corporation*, 56 N. L. R. B. 1735; *Matter of Wagner Electric Corporation*, 53 N. L. R. B. 543.

⁴ This unit is substantially the same as that agreed upon in the consent election of March 1944.

ing certain peak periods directs the work of 2 or 3 employees who are transferred from the main plant to assist him during the busy season. The hatchery employee is the only worker paid on a weekly basis. In the prior consent election agreement between the parties, the hatchery employee was not included among the eligible employees in the appropriate unit. In view of the foregoing, we shall exclude the hatchery employee.

We find that all production and maintenance employees of the Company, including truck drivers, but excluding the plant manager, plant foreman, the hatchery employee, clerical employees, 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.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 Forest City Produce Company, Forest City, 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 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

⁵ The Union requested that its name appear on the ballot as "Local 170, A F of L." This request is hereby granted.

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 Amalgamated Meat Cutters & Butcher Workmen of North America, Local 170, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.