In the Matter of SWIFT & COMPANY *and* UNITED CANNERY, AGRICULTURAL, PACKING & ALLIED WORKERS OF AMERICA, LOCAL 19, AFFILIATED WITH CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 15–R–1209.—Decided October 21, 1944

Mr. John P. Staley, of Chicago, Ill., and *Mr. J. S. Gassaway*, of Memphis, Tenn., for the Company.

Mr. Joseph W. Hellinger, of Memphis, Tenn., for the C. I. O.

Messrs. Wilson W. Rowland and *Homer Gerig*, of Memphis, Tenn., for the A. F. L.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Cannery, Agricultural, Packing & Allied Workers of America, Local 19, affiliated with Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Swift & Company, Memphis, Tennessee, herein called the Company,[1] the National Labor Relations Board provided for an appropriate hearing upon due notice before Laurence H. Whitlow, Trial Examiner. Said hearing was held on August 14, 1944, at Memphis, Tennessee. The Company, the C. I. O., Amalgamated Meat Cutters & Butcher Workmen of North America, A. F. L., Local No. 586, herein called the A. F. L., 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. The A. F. L.'s motions to dismiss are hereby denied for reasons hereinafter stated. All parties were afforded an opportunity to file briefs with the Board.

[1] Incorrectly described in the petition on other formal papers as "Swift Cotton Oil Company," and corrected by motion at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Swift & Company, an Illinois corporation with its principal place of business and offices in Chicago, Illinois, operates among other plants in various parts of the United States, a plant at Memphis, Tennessee, the only one involved in this proceeding, at which plant the Company processes cottonseed and manufactures cottonseed oil. During the fiscal year ending July 31, 1944, the Company purchased for use at its Memphis plant, raw material valued in excess of $1,000,000, of which amount approximately 70 percent was obtained from points outside the State of Tennessee. During the same period, the Company manufactured and sold from its Memphis plant products valued in excess of $1,500,000, of which about 20 percent was shipped to points outside the State of Tennessee.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Cannery, Agricultural, Packing & Allied Workers of America, Local 19, affiliated with Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 586, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 11, 1944, the C. I. O. claiming majority representation among the Company's employees at its Memphis plant, requested that the Company agree to a consent election. The Company replied that it could not recognize the C. I. O. upon the ground that the A. F. L. was the duly certified bargaining representative for the Company's Memphis plant employees. At the hearing the A. F. L. intervened and claimed that the present proceeding was barred by reason of existing contractual relations between the Company and the A. F. L.

The Company and the A. F. L. have maintained collective bargaining relations since 1941. The only contracts urged as a bar in the present instance consist of the last written agreement between the

parties and an alleged extension or modification thereof. The written agreement in question is an exclusive bargaining contract effective as of June 14, 1943, and for 1 year thereafter, subject to automatic renewal from year to year in the absence of notice given by either party at least 30 days prior to the yearly expiration date, of a desire to terminate or modify the agreement.

The evidence discloses that, while no formal notice of a desire to terminate or modify the agreement was given by either party prior to May 14, 1944, the effective renewal date under the terms of the automatic renewal provision, the A. F. L. presented to the Company on or about May 30, 1944, the draft of a proposed substitute agreement with a request that the Company negotiate with respect thereto. Thereafter, the A. F. L. and the Company entered into negotiations. The parties continued to negotiate until August 11, 1944, when the Company learned of the C. I .O.'s claim to majority representation and terminated the negotiations before an agreement could be fully completed and signed by the parties herein concerned. Since it appears that the Company and the A..F. L., by their negotiations, retroactively waived the automatic renewal provision and thereby indicated that they considered the 1943 agreement to be terminated as of June 14, 1944, and not subject to automatic renewal, we find that the Company and the A. F. L. cannot assert that such agreement now constitutes a bar to the present proceeding.[2]

There remains for consideration the question of an alleged oral understanding of an extension or modification of the written contract as affecting the right of the C. I. O. to maintain its present petition for investigation and certification of representatives. While the record reveals that the Company and the A. F. L. orally agreed that, pending negotiations, the 1943 written agreement should continue in force and effect, and had, prior to the break in negotiations, come to an oral understanding with respect to substantially all the terms of the proposed agreement, it is clear that, since such agreements have not been reduced to writing, they are not a bar to a determination of representatives.[3]

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, indicates that the C.'I. O. represents a substantial number of employees in the unit hereinafter found appropriate.[4]

[2] See *Matter of C H Dutton Company*, 48 N L R B 27

[3] See *Matter of Eicor, Inc*, 46 N L. R. B 1035; *Matter of South Texas Cotton Oil Company*, 54 N L R B 416

[4] The Field Examiner reported that the C I O had submitted 62 designations dated August 1944, of which 27 checked with names on the Company's pay roll of August 15, 1944, containing 64 names within the unit claimed appropriate by the C I. O.

The Field Examiner further reported that the A. F. L submitted no designations but contended that it had a contract with the Company and that the contract was a bar to the present proceeding.

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 C. I. O. contends that all maintenance and production employees, excluding superintendents and assistant superintendents, office and clerical employees, constitute an appropriate unit. The only dispute between the C. I. O. on the one hand, and the Company and the A. F. L. on the other, concerns the question of including or excluding specific categories and individual employees. The C. I. O. would include, while the A. F. L. and the Company would exclude, the machinist foreman, the expeller foreman, the seed sampler, watchmen, and truck drivers.

The machinist foreman: The machinist foreman is a weekly salaried employee who is responsible to the superintendent for the proper performance of all machine work and the economical use of labor in the machine shop. While the machinist foreman is the only machinist employed by the Company and performs manual labor, he supervises and directs from one to three laborers, whom he has authority to discharge. We find that the machinist foreman is a supervisory employee within the meaning of our usual definition. We shall, accordingly, exclude him from the unit hereinafter found appropriate.

The expeller foreman: The employee occupying the position of expeller foreman is a weekly salaried employee who is in charge of expeller operations and is responsible to the plant superintendent for the maintenance and repair of all machines connected therewith. While the expeller foreman has but one employee under his personal supervision during daytime operations, he is also responsible for the work of two employees on the night shift for whom he leaves orders and as to whom he may recommend discharge, which recommendations would be seriously considered by the plant superintendent. We find that the expeller foreman is a supervisory employee within the meaning of our usual definition, and shall, therefore, exclude him from the unit hereinafter referred to.

The seed sampler: This employee, who has recently been hired by the Company, has the duty of procuring samples of the seeds shipped to the Company's plant and ascertaining by weighing and shaking the amount of foreign matter present in any given sample of seeds. The Company contends that, inasmuch as the reports of the seed sampler to the Company's chemist on the quality of seeds delivered, form the basis for the grade and price which the Company pays to the producer thereof, the seed sampler is allied to management and

has no community of interest with the production and maintenance employees. With respect to the objection based on the relation of the seed sampler to management, the fact that the work of an employee determines the price which the company pays for its raw material has been held insufficient to warrant excluding such employee from collective bargaining.[5] So far as the relative interests of the seed sampler and those of production and maintenance employees are concerned, the record reveals that the seed sampler performs manual labor, has no supervisory duties and is an hourly paid employee whose earnings approximate those of the production and maintenance employees. In view of the above considerations, we shall include the seed sampler in the unit hereinafter found appropriate.[6]

Watchmen: The Company employs four watchmen who make regular rounds and punch time clocks in the performance of duties usual to watchmen, particularly with regard to fire prevention. The watchmen herein concerned do not wear uniforms and are in no respects militarized. While the A. F. L. would exclude watchmen from the appropriate unit, watchmen have been included under the collective bargaining agreements between the Company and the A. F. L.[7] Under the circumstances we shall include watchmen within the unit hereinafter found appropriate.[8]

Truck Drivers: The Company employs no truck drivers at the present time and has no definite plans to employ them in the future. We are of the opinion that, in the absence of evidence that the Company now employs truck drivers or that there is a definite likelihood of such employment in the immediate future, any finding as to the propriety of inclusion or exclusion of truck drivers would be premature.[9]

We find that all production and maintenance employees of the Company's Memphis Cotton Oil plant, including the seed sampler and watchmen, but excluding office and clerical employees, superintendents, assistant superintendents, foremen (including the machinist foreman

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[5] See *Matter of Collins Pine Co*, 54 N L R. B 670, wherein log scalers and graders having duties comparable to those of the seed sampler in the present matter were included within the appropriate unit

[6] See *Matter of American Cyanamid Co*, 27 N L R B. 1176; *Matter of Vermont Marble Co*, 28 N L R. B 1239, *Matter of Sullivan Mining Co*, 36 N. L. R B 107 · *Matter of Godchaux Sugar*, 36 N L R B 926; *Matter of Interlake Iron Corporation*, 38 N L R B 139, *Matter of Swift & Company Fertilizer Works*, 40 N. L. R B 931; cf *Matter of The Midvale Company*, 57 N L R B 1359

[7] The terms of the last collective bargaining agreement provide that "the Company recognizes the Union as the sole bargaining agency for those employees covered by this agreement, as set aside by the National Labor Relations Board in matters pertaining to wages, hours and working conditions" The record of the only prior Board proceeding affecting this particular plant of the Company (Case No. 10–R–379), discloses that the A F L won a consent election covering "all hourly paid production and maintenance employees and watchmen, exclusive of supervisory and clerical employees"

[8] *Matter of Pass and Seymour, Inc*, 51 N L R. B. 1135; *Matter of The Arundel Corporation*, 53 N. L. R. B 466.

[9] See *Matter of Western Freight Handlers, Inc.*, 49 N L. R B 66.

and the expeller foreman) 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.

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 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 & Company, Memphis, 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 Fifteenth 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 appropriate unit 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 United Cannery, Agricultural, Packing & Allied Workers of America, Local 19, affiliated with Congress of Industrial Organizations, or by Amalgamated Meat Cutters & Butcher Workmen of North America, Local 586, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.