

In the Matter of THE RATH PACKING COMPANY and UNITED PACKING-HOUSE WORKERS OF AMERICA, C. I. O., LOCAL #46

*Case No. 18-R-1123.—Decided November 30, 1944*

*Messrs. B. F. Swisher and A. D. Donnell, of Waterloo, Iowa, for the Company.*

*Messrs. Joseph C. Miller and Maurice J. P. Casey, of Waterloo, Iowa, and Mr. H. S. Gates, of Cedar Rapids, Iowa, for the Union.*

*Mrs. Augusta Spaulding, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Packinghouse Workers of America, C. I. O., Local #46, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Rath Packing Company, Waterloo, Iowa,<sup>1</sup> 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 Waterloo, Iowa, on October 20, 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 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

The Rath Packing Company is engaged in the purchase of livestock and the processing of meat products. Its plant at Waterloo, Iowa, is the only plant involved in this proceeding. During the year 1943,

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<sup>1</sup> The petition and other formal papers were amended at the hearing to show the correct name of the Company.

the Company purchased for use at this plant raw materials valued at approximately \$90,000,000, of which approximately 10 percent was shipped to the plant from points outside Iowa. During the same period, the Company finished at its plant products valued at approximately \$120,000,000, of which approximately 95 percent was shipped from the plant to points outside Iowa.

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

## II. THE ORGANIZATION INVOLVED

United Packinghouse Workers of America, Local #46, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

After an oral conference, the Union, on September 28, 1944, formally notified the Company by letter that it represented a majority of shipping employees of the Company in certain named categories and requested recognition as their bargaining representative. The Company did not consent at the oral conference to bargain with the Union for these employees and it did not reply to the Union's letter.

A statement prepared by the Trial Examiner and read into the record at the hearing indicates that the Union represents a substantial number of these employees.<sup>2</sup>

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 DETERMINATION OF REPRESENTATIVES

On October 29, 1942, in a prior representation proceeding involving employees at the Company's Waterloo plant,<sup>3</sup> the Board found that all hourly paid production and maintenance employees of the Company, including watchmen and stockyard employees, but excluding executives, superintendents, assistant superintendents, foremen, assistant foremen, all other persons employed in a supervisory capacity, clerical employees (including test clerks), general office employees, superintendents' office employees, time office employees (including timekeepers), employment office employees, policemen, fire department employees, medical department employees, salesmen (including student salesmen), and outside truck drivers, constituted an appropriate

<sup>2</sup> The Union submitted to the Trial Examiner 46 membership cards dated in September 1944, of which 41 bear the names of shipping employees on the Company's pay roll of October 20, 1944. There are listed on this pay roll 57 employees, whom the Union presently desires to represent.

<sup>3</sup> *Matter of The Rath Packing Company*, 45 N. L. R. B. 129.

bargaining unit, and on December 2, 1942, certified the Union as their exclusive bargaining representative.<sup>4</sup> On March 14, 1944, the Company and the Union entered into an exclusive bargaining contract covering employees in this bargaining unit, which is presently in full force and effect. No question has arisen concerning the representation of employees in this broad production and maintenance group. The Union has, however, presently extended its organizational activities among the Company's plant clerical employees, and it seeks to represent assemblers, checkers, checkers' office clerks, look-up men, and tag pullers, preferably, as part of the production and maintenance unit described above, or, in the alternative, as a separate bargaining unit restricted to such named employees.<sup>5</sup> The Company opposes the inclusion of clerical employees in the production unit and contends that the contract between the Company and the Union executed on March 14, 1944, covering employees in the unit already found appropriate, constitutes a bar to the extension of the bargaining unit at this time. The Company took no position as to the appropriateness of a separate bargaining unit for employees in the shipping department.

The Company divides the supervision of its plant operations among several divisional superintendents, one of whom is a superintendent of shipping, who supervises, with the aid of foremen and assistant foremen, shipping work and facilities at the plant, including the loading dock, the checking department, and the assembly room. Employees in the five categories who are the subject of the Union's petition herein perform their work under the direction of the superintendent of shipping and his assistant supervisory employees. Adjacent to the loading docks at the plant is the assembly room, to which boxes and packages of meat products from production departments are sent for shipping to the Company's customers. "Skid" men remove the parcels

<sup>4</sup> The name of the Union as it appears in the Board's certification reads, "Packinghouse Organizing Committee, United Packinghouse Workers of America, Local 46, C. I. O."

<sup>5</sup> The Union contends, in part, that employees in the five categories concerned in this proceeding are properly to be deemed included in the term "production employees," and that consequently these employees are already part of the unit found appropriate by the Board. The Company does not agree. The record does not disclose that employees in the disputed categories participated in the election held in the prior representation proceeding noted above, nor does it disclose that the Union ever seriously attempted to bargain for these employees during the period that it has been the exclusive bargaining representative of production and maintenance employees in the Company's plant. Moreover, not only was the unit found appropriate by the Board in the prior proceeding limited to hourly paid employees, but it expressly excluded clerical employees. Employees for whom the Union would now bargain, and whom it would include in the production unit, are all, according to the Company's brief, weekly rather than hourly paid, and the duties of all except assemblers are admittedly clerical in character. While we have frequently included in production and maintenance units plant clerical employees, as distinguished from office clerical employees, finding that neither variance in methods of payment nor variance in the nature of their plant work militated against their inclusion within the same bargaining group, we find that clerical employees in the Company's shipping department were not included in the bargaining unit found appropriate in the prior representation proceeding, noted above.

for shipment from the conveyor belt or skid, and pile them in rows according to the notation on each package, indicating the car into which it is to be loaded. The work of transferring these parcels from the assembly room into transportation cars at the loading dock is effected by a crew of men, consisting of an assembler, a checker, 3 truckers, a car loader and helper, and a tag puller. The loading dock foreman informs the assembler which car in turn is to be loaded. The assembler who acts as the gang leader coordinates the work of the crew. He assembles the items, and as he reads aloud certain information on the shipping tags attached to each package, including the invoice number, the items of merchandise contained therein, and the gross weight, the checker verifies the information against information upon an order form supplied from the checkers' office in the assembly room, and records upon the form the gross weight of each package. The order sheet thus checked is given to the truckers, who deliver it to the tag puller on the loading platform. The truckers physically convey the packages thus checked to the loading platform and turn them over to the car loader and his helper, who, in turn, load the packages into the proper car. The tag puller tears from each package placed in the car a stub or duplicate portion of the tag, identifying the package, and sends the stubs to the clerks in the checkers' office for further check on the records. The assembler, the checker, the truckers, the car loader and his helper, and the tag puller thus work together as a group. There were 11 such working groups at the time of the hearing.<sup>6</sup> In addition to employees in these groups are the checkers' office clerks, noted above, who work in the office in the assembly room.

Look-up men are charged with the responsibility of making a final check to determine that the complete order of the customer is in the correct car, after the car loaders have deposited in the car all parcels sent by the assemblers to the loading platform. If the records show that certain items are missing to complete an order, look-up men contact employees in the various production departments and see that missing articles are located and placed in the proper cars for shipment. The look-up men thus complete the shipping work.

The Company contends that assemblers are working foremen and that, as supervisory employees, they should be excluded from any bargaining unit. While it is true that the assembler is in charge of coordinating the work of employees assigned to his gang and that he receives 13 or 14 cents more per hour than any other member thereof, the record does not disclose that assemblers have been given by the

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<sup>6</sup>At the time of the hearing, the Company employed 11 assemblers, 19 checkers, 7 checkers' office clerks, 6 look-up men, and 14 tag pullers. The number of checkers indicates the number of gangs employed by the Company during its more busy season. Checkers and other shipping employees, who are from day-to-day not needed in the shipping process, are temporarily transferred to other departments, where their skills may be utilized.

Company, or exercise, any authority to hire or to discharge any employee working with them, or to recommend the hire or discharge of such employees. On the basis of the entire record, therefore, we conclude and find that although the assembler is charged with greater responsibility than other members of the crew and coordinates their efforts, the assembler is not a supervisory employee within our definition of that term.

So far as the record discloses, employees in the five categories mentioned above, and skid men, the truckers, car loaders and their helpers, who are presently covered by the contract between the Company and the Union, constitute all non-supervisory employees in the shipping department. Since assemblers, checkers, checkers' office clerks, look-up men, and tag pullers work closely with skid men, truckers, and car loaders and their helpers, and since we have frequently included plant clerical employees in production and maintenance bargaining groups,<sup>7</sup> we see no reason to preclude the inclusion of the employees named in the plant bargaining group already formed.<sup>8</sup> We shall, however, permit them to determine whether they shall be added to the existing unit of production and maintenance employees. If, in the election which we shall now direct, these shipping employees select the Union as their bargaining representative, we shall consider that they have thereby indicated their desire to be included in a unit with production and maintenance employees at the Company's plant already represented by the Union, and the Union may thereafter accordingly bargain for them as part of this larger unit.<sup>9</sup>

We shall, therefore, direct that an election by secret ballot be held among assemblers, checkers, checkers' office clerks, look-up men, and tag pullers employed in the shipping department of the Company's Waterloo plant, excluding assistant foremen, foremen, and all other supervisory employees within the Board's definition of that term.

Those eligible to vote in the election shall be all employees in the group indicated above, 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.<sup>10</sup>

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<sup>7</sup> *Matter of New York Butchers Dressed Meat Company*, 45 N. L. R. B. 816; *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 641, and cases cited therein.

<sup>8</sup> We find no merit in the Company's contention that its contract with the Union covering production and maintenance employees in the unit established in the prior representation proceeding bars the inclusion of employees in the five named categories in the same bargaining group. The extension of a unit does not carry with it any such effect, but leaves the employer and the exclusive representative of employees in the unit as extended free to enter into bargaining relations on the basis of the broader unit.

<sup>9</sup> *Matter of John Morrell & Co.*, 55 N. L. R. B. 24.

<sup>10</sup> The Union requests that its name appear on the ballot as Local 46, United Packinghouse Workers of America, C. I. O. We shall grant the request.

## 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 The Rath Packing Company, Waterloo, 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 assemblers, checkers, checkers' office clerks, look-up men, and tag pullers in the shipping department at the Company's Waterloo plant, 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 assistant foremen, foremen, 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, and 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 United Packinghouse Workers of America, C. I. O., Local #46, for the purposes of collective bargaining.