

In the Matter of SWIFT & COMPANY and UNITED PACKING HOUSE
WORKERS OF AMERICA—C. I. O.

Case No. 20-R-1146.—Decided January 3, 1945

Brobeck, Phleger & Harrison, by *Mr. Richard Ernst*, of San Francisco, Calif., for the Company.

Mr. Arnold F. Campo, of Oakland, Calif., and *Mr. A. J. Shippey*, of San Francisco, Calif., for the CIO.

Mr. Charles J. Janigian, of San Francisco, Calif., for the AFL.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Packing House Workers of America—C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Swift & Company, South San Francisco, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Wallace E. Royster, Trial Examiner. Said hearing was held at San Francisco, California, on November 13 and 14, 1944. The Company, the CIO, and Amalgamated Meat Cutters and Butcher Workmen of North America, herein called the Butchers, International Union of Operating Engineers, Local No. 64, herein called the Operating Engineers, United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, Local No. 590, herein called the Plumbers, International Association of Machinists, Lodge No. 1305, herein called the Machinists, and Coopers International Union of North America, Local No. 65, herein called the Coopers, all affiliated with the American Federation of Labor, herein collectively called the AFL, appeared and participated.¹ All parties were afforded full opportunity to be heard,

¹ Although duly served with Notice of Hearing, International Brotherhood of Electrical Workers, Brotherhood of Painters, Decorators and Paperhangers of America, and United Brotherhood of Carpenters and Joiners of America, Local 271, failed to appear.

to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the hearing, the AFL moved to dismiss the petition on various grounds. The Trial Examiner referred the motion to the Board for determination. For reasons hereinafter appearing, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.² 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 & Company is an Illinois corporation engaged in the slaughtering of livestock and processing of meat at its plant in South San Francisco, California. During September and October 1944, the Company purchased for use at said plant raw materials, exclusive of livestock, valued at \$397,778, of which \$267,868, represented the value of raw materials obtained from sources outside the State of California. During the same period; products finished at said plant were valued at \$2,918,800, of which shipments of the value of \$111,800 were made to points outside the State.

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

II. THE ORGANIZATIONS INVOLVED

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

Amalgamated Meat Cutters and Butcher Workmen of North America, International Union of Operating Engineers, Local No. 64, United Association of Journeymen Plumbers and Steamfitters, of the United States and Canada, Local No. 590, International Association of Machinists, Lodge No. 1305, and Coopers International Union of North America, Local No. 65, all affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated July 10, 1944, the CIO informed the Company that it represented a substantial number of the Company's employees and

² The Trial Examiner properly denied the Company's motion to continue the proceeding until Lodge 68, International Association of Machinists, was made a party herein or a written disclaimer of interest was obtained from it. The record discloses that after the petition was filed Lodge 68 was informed thereof by the Field Examiner and requested to attend a conference if interested. However, it did not attend. Moreover, it appears that the Company has had no dealings with Lodge 68 for the past 5 years.

requested a conference with a view towards obtaining recognition as their exclusive bargaining representative. The Company refused, asserting that it was under contractual relations with the AFL. While the Company does not now contend that this proceeding is barred, the AFL urges that certain alleged contracts with the Company preclude a present determination of representatives.

The Butchers and the Company entered into a master agreement covering, among other plants, certain employees at the South San Francisco plant. This agreement became effective as of August 20, 1942, and was to continue in full force and effect until August 11, 1943, "and from year to year thereafter, subject to reopening by either party on written notice mailed at least thirty (30) days prior to August 11 of any year." Since, admittedly, in 1944 the CIO served notice of its claim to representation prior to the effective date of the automatic renewal clause, it is clear that this contract does not operate as a bar.

Turning to the other alleged agreements, the record indicates that, at most, they are informal oral understandings without any specified term. Under the circumstances, they do not preclude a present determination of representatives.³

A statement of a Board Field Examiner, introduced into evidence at the hearing, and the Trial Examiner's tabulation of proof of interest indicate that the CIO, the Operating Engineers, the Plumbers, the Machinists, and the Coopers each represents a substantial number of employees in the unit each claims to be appropriate.⁴

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.

³ See *Matter of Elicor, Inc.*, 46 N. L. R. B. 1035; and *Matter of Ben Sadoff Iron & Metal Company*, 58 N. L. R. B. 1574

⁴ The Field Examiner reported that the CIO submitted 34 authorization cards bearing the names of persons listed on the Company's pay roll, which contained the names of 42 employees in the unit alleged by the CIO to be appropriate

The following tabulation sets forth the Trial Examiner's statement of interest of the several labor organizations, parties to this proceeding.

	Employ- ees on pay roll	CIO	Plumb- ers	Machin- ists	Coopers	Operat- ing en- gineers
CIO's proposed unit.....	55	34	4	1	2	6
Engine room.....	11	9				6
Coopers.....	3				2	
Auto mechanics.....	2			1		
Pipefitters.....	5	5	4			
Janitors.....	6	1				
Laundry employees.....	3					
Elevator operators.....	3	1				
Miscellaneous.....	22	18				

The Butchers apparently relies on its contract as evidence of its interest.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The CIO seeks a unit of all maintenance and mechanical employees at the Company's South San Francisco, California, plant, including elevator operators, laundry workers, janitors, boiler and engine room employees, coopers, pipefitters, and the auto mechanic (helper), but excluding the chief engineer and master mechanic, the assistant chief engineer and assistant master mechanic, the supply man, the fire marshal,⁵ the cooper supervisor, the auto mechanic supervisor, the carpenter foreman, the electrician foreman, and other supervisory employees. Without taking an affirmative position respecting the unit, the Butchers urges the exclusion of elevator operators, laundry workers, and janitors, whom it claims to have bargained for and included in its contract with the Company. The other AFL unions oppose the formation of a single unit and argue for separate units of employees engaged in occupations which bring them within their respective jurisdictions. Furthermore, these unions would include the cooper supervisor, the auto mechanic supervisor, the carpenter foreman, and the electrician foreman. Except that it would exclude the supervisory employees specified by the CIO, the Company assumes a neutral position with respect to the appropriate unit.

As noted above, the Butchers urges the exclusion of elevator operators, laundry workers, and janitors. The uncontradicted testimony indicates that, since 1942, the Butchers has bargained with the Company for these employees under the terms of the agreement mentioned in Section III, above. It appears that, in accordance with the maintenance-of-membership and check-off provisions of the contract, these employees are members of the Butchers and their dues are checked off. In view of this history of collective bargaining, we are persuaded to exclude elevator operators, laundry workers, and janitors.⁶

The Operating Engineers seeks a unit of employees in the boiler and engine room. The Company employs four engineers, three firemen, three expansion men (temperature control men), and one relief man. They work in shifts, and, in common with other maintenance and mechanical employees, are under the supervision of the chief engineer and master mechanic, and the assistant chief engineer and assistant master mechanic. The boiler and engine room is located in a building which is physically separated from the rest of the plant.

⁵ The supply man and the fire marshal are supervisory employees within the meaning of the Board's definition.

⁶ While the Butchers claims in its brief that its contract also embraces all maintenance employees not sought by the other AFL unions, the record is barren of any evidence sustaining this position. We therefore find no merit in the Butchers' contention.

Engineers, firemen, and expansion men perform closely related functions in connection with the distribution of power, steam, and refrigeration throughout the plant. Engineers operate the engines, firemen maintain the steam and operate the boiler, and expansion men control the temperature in the various departments in the plant. The normal line of promotion in the engine room is from expansion man to fireman to engineer.

The Coopers requests a unit of coopers. There are two coopers in the Company's employ who repair and assemble half barrels, barrels, tierces, and "kits" for the various production departments. They are skilled mechanics and work in a separate building in the plant under the supervision of the cooper supervisor.

The Plumbers claims a unit of pipefitters. There are about five or six such employees who perform the necessary plumbing, steamfitting, and pipefitting work in the plant.

The Machinists seeks a unit of auto mechanics. It appears that there is one auto mechanic supervisor, and one auto mechanic, also called a helper, who performs such jobs as changing tires, and greasing and washing the Company's cars.

In addition to the employees comprising the units proposed by the A. F. L. unions, there is a miscellaneous group of maintenance and mechanical employees such as machinists, electricians, a scale repairman, oilers, a welder's helper, a toolroom man, a blacksmith, carpenters, tinnerns, a bricklayer, and a painter, whom the C. I. O. would include in its unit. These employees, like those in the proposed A. F. L. units, are engaged in various phases of maintenance and mechanical work indicated by their various classifications throughout the plant. Except for coopers, and possibly the auto mechanic, all these maintenance and mechanical employees are under the supervision of the chief engineer and master mechanic, and the assistant chief engineer and assistant master mechanic, although some of them may be directly supervised by a foreman. The bulk of these employees are housed in the same building, and the record indicates that there is no interchange between maintenance and mechanical employees and production workers.

The foregoing facts clearly demonstrate that all maintenance and mechanical employees could properly be merged into a single unit for the purposes of collective bargaining.⁷ On the other hand, it is apparent that, since the units sought by the Operating Engineers, the Coopers, and the Plumbers comprise skilled, homogeneous, and readily identifiable craft groups possessing similar interests, they may properly constitute separate bargaining units. With respect to the unit re-

⁷ *Matter of White-Rodgers Electric Company*, 58 N. L. R. B. 312; *Matter of Rome Cable Corporation*, 58 N. L. R. B. 197.

requested by the Machinists, however, it embraces two employees, the auto mechanic supervisor and the auto mechanic (helper). Inasmuch as the auto mechanic supervisor, as hereinafter found, is a supervisory employee, and since a unit composed of one employee is inappropriate,⁸ we shall include the auto mechanic (helper) in the residual voting group described below. In view of all the facts herein, we shall first ascertain the desires of the employees themselves before making a final determination concerning the appropriate unit or units.

There remains for consideration whether or not to include the cooper supervisor, the auto mechanic supervisor, the carpenter foreman, and the electrician foreman. The record discloses that these employees have the power effectively to recommend changes in the status of employees whom they supervise.⁹ The cooper supervisor, the auto mechanic supervisor, the carpenter foreman, and the electrician foreman, like other supervisory employees, attend foremen's meetings, and are salaried, whereas the employees below them in rank are generally paid an hourly rate. Moreover, they purchase materials needed in their work, with authority vested in the auto mechanic supervisor, the carpenter foreman, and the electrician foreman to pledge the Company's credit for their respective purchases. It also appears that the electrician foreman "participate[s] in the making of decisions" whether or not to subcontract certain electrical jobs, and the carpenter foreman is likewise consulted with respect to subcontracting certain other mechanical jobs.¹⁰ Since it appears that the cooper supervisor, the auto mechanic supervisor, the carpenter foreman and the electrician foreman, fall within our customary definition of supervisory employees, we shall exclude them.

As hereinabove indicated, we shall make no final determination with respect to the appropriate unit or units of the Company's employees. Such determination will depend, in part, upon the desires of the employees as reflected by the outcome of the elections hereinafter directed. We shall direct that separate elections by secret ballot be held among the employees in each of the voting groups set forth below, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, excluding all production employees, elevator operators, laundry workers, janitors, the chief engineer and master mechanic, the assistant chief engineer and assistant master mechanic, the supply man, the fire marshal, the

⁸ *Matter of Burke Brewery, Inc*, 54 N. L. R. B. 1061

⁹ The cooper supervisor is in charge of coopers, the auto mechanic supervisor supervises the auto mechanic (helper), the carpenter foreman directs carpenters, tanners, and the painter; and the electrician foreman is in charge of electricians, and possibly the elevator operators jointly with the chief engineer.

¹⁰ While the carpenter foreman is exempt from the provisions of the Fair Labor Standards Act, the cooper supervisor, the auto mechanic supervisor, and the electrician foreman are not.

cooper supervisor, the auto mechanic supervisor, the carpenter foreman, the electrician 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, subject to the limitations and additions set forth in the Direction :

1. All employees in the boiler and engine room, including engineers, firemen, and expansion men (temperature control men), to determine whether they desire to be represented by the CIO, the Operating Engineers, or neither ;

2. All coopers, to determine whether they desire to be represented by the CIO, the Coopers, or neither ;

3. All pipefitters, to determine whether they desire to be represented by the CIO, the Plumbers, or neither ;

4. All remaining maintenance and mechanical employees, including the auto mechanic (helper), machinists, electricians, the scale repairman, oilers, the welder's helper, the toolroom man, the blacksmith, carpenters, tinnerns, the bricklayer, and the painter, to determine whether or not they desire to be represented by the CIO.

DIRECTION OF ELECTIONS

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 & Company, South San Francisco, California, separate elections 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 Twentieth 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 groups of employees described below, 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, and excluding all production employees, elevator operators, laundry workers, janitors, the chief engineer and master mechanic, the assistant engineer and assistant master mechanic, the supply man, the fire mar-

shal, the cooper supervisor, the auto mechanic supervisor, the carpenter foreman, the electrician 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:

1. All employees in the boiler and engine room, including engineers, firemen and expansion men (temperature control men), to determine whether they desire to be represented by United Packing House Workers of America—C. I. O., or by International Union of Operating Engineers, Local No. 64, for the purposes of collective bargaining, or by neither;

2. All coopers, to determine whether they desire to be represented by United Packing House Workers of America—C. I. O., or by Coopers International Union of North America, Local No. 65, for the purposes of collective bargaining, or by neither;

3. All pipefitters, to determine whether they desire to be represented by United Packing House Workers of America—C. I. O., or by United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, Local No. 590, for the purposes of collective bargaining, or by neither;

4. All remaining maintenance and mechanical employees, including the auto mechanic (helper), machinists, electricians, the scale repairman, oilers, the welder's helper, the toolroom man, the blacksmith, carpenters, tinnerns, the bricklayer, and the painter, to determine whether or not they desire to be represented by United Packing House Workers of America—C. I. O., for the purposes of collective bargaining.

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