

In the Matter of PLANKINTON PACKING COMPANY and UNITED  
PACKINGHOUSE WORKERS OF AMERICA, C. I. O.

*Case No. 13-C-3049.—Decided November 19, 1947*

*Mr. Herman J. DeKoven*, for the Board.

*Mr. Arthur R. Curtis*, of Chicago, Ill., for the respondent.

DECISION  
AND  
ORDER

On February 13, 1947, the Trial Examiner, Isadore Greenberg, issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report, attached hereto. Thereafter, the respondent filed its exceptions to the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the respondent's exceptions and the entire record in the case.<sup>1</sup> The Board has also considered the fact that this case was pending but not yet decided by the Board on August 22, 1947, the effective date of the Labor Management Relations Act of 1947, and finds, in accordance with its decision in *Matter of Marshall and Bruce Company*,<sup>2</sup> that the enactment of these amendments to the National Labor Relations Act does not impair the Board's power to adjudicate the present case and to issue an appropriate order herein. The Board accordingly adopts the findings, conclusions and recommendations of the Trial Examiner, except insofar as they relate to what constitutes an appropriate order in the light of the facts of this case.

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<sup>1</sup> Contrary to the respondent's allegations, the Board fully considered all contentions submitted by the respondent during this proceeding and the representation proceeding herein concerned.

<sup>2</sup> 75 N L R B 90 Decision and Order dated October 24, 1947.

75 N L R. B., No. 32.

The Trial Examiner, having found that the respondent has violated Section 8 (5) of the Act, recommended, in accordance with established Board policy at that time, that the Board order the respondent, upon request, to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit. However, it appears that the Union has not as yet complied with the provisions of Section 9 (f), (g), and (h) of the Act, as amended, which provisions are now in effect. The situation, therefore, is similar to that which confronted us in the *Marshall and Bruce Company* case, *supra*. Therefore, in accordance with the majority decision of the Board in that case and for the reasons stated therein, we shall not issue the recommended unqualified order but shall instead condition our order, in part, upon compliance by the Union with that section of the amended Act within 30 days from the date of the Order herein.<sup>3</sup>

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the respondent, Plankinton Packing Company, Milwaukee, Wisconsin, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Packinghouse Workers of America, CIO, if and when said labor organization shall have complied, within 30 days from the date of this order, with Section 9 (f), (g) and (h) of the Act as amended,<sup>4</sup> as the exclusive bargaining representative of all the respondent's office and clerical employees, including the office janitor, the load dispatcher, the clerks in the time and employment office, the credit union employee, the teletype operators, the general cashier, the paymaster, the departmental clerks in the departmental department, the general ledger clerk, the general utility office man in the auditing department, and the cost clerks in the cost figuring department, but excluding all plant clerical employees other than the clerks in the time and employment office and load dispatcher, the stenographers in the purchasing department and superintendent's office, the confidential clerk and confidential secretary in the superintendent's office, the secretary to the plant employment manager and head timekeeper, the confidential secretary to the plant manager, the confidential secretaries to the auditor and office manager

<sup>3</sup> Members Houston and Murdock have indicated in the *Marshall and Bruce Company* case their disagreement with the qualification placed upon this Order. However, inasmuch as the majority position is now law, they accept it without expressing a dissent

<sup>4</sup> As to what constitutes compliance in this respect, see *Matter of Northern Virginia Broadcasters, Inc.*, 75 N. L. R. B. 11.

and to the department heads of the plant sales and city sales departments, the confidential secretary in the industrial relations department, switchboard operators, salesmen, nurses, the discrepancy investigator, the department heads and assistant department heads of beef, provision, by-products, plant sales, purchasing, credit, transportation, industrial relations, city sale, voucher, departmental, cost figuring, bookkeeping, order writing and sales distribution departments, the head of the invoice department, the director of country beef sales, the director of soap and canned goods sales and distribution, the plant superintendent and assistant plant superintendent, the buyers, graders, weight takers and sorters in the livestock buyer's office, the auditor and office manager, the assistant auditor, the casualty and liability insurance manager, the "beef, lamb and veal man," the "smoked meat man," the plant employment manager, the head timekeeper, the assistant plant employment manager and assistant head timekeeper, and all other supervisors;

(b) In any manner interfering with the efforts of United Packinghouse Workers of America, C. I. O., if and when such labor organization shall have complied with the filing requirements of the Act, as amended, in the manner set forth above, to negotiate for or to represent the employees in the aforesaid bargaining unit, as their exclusive bargaining representative.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, and upon compliance by United Packinghouse Workers of America, C. I. O., with the filing requirements of the Act, as amended, in the manner set forth above, bargain collectively with United Packinghouse Workers of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post in conspicuous places throughout its plant at Milwaukee, Wisconsin, copies of the notice attached hereto marked "Appendix A."<sup>5</sup> Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for thirty (30) consecutive days thereafter and also for an additional thirty (30) consecutive days in the

<sup>5</sup> In the event that this Order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words, "A decision and Order" the words "Decree of the United States Circuit Court of Appeals Enforcing"

event of compliance by United Packinghouse Workers of America, C. I. O., with the filing requirements of the Act as amended, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the date of this Order, and again within ten (10) days from the future date, if any, on which the respondent is officially notified that United Packinghouse Workers, C. I. O., has met the condition hereinabove set forth, what steps the respondent has taken to comply herewith.

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with United Packinghouse Workers of America, C. I. O., as the exclusive representative of all the employees in the appropriate unit described below; provided said labor organization complies, within thirty (30) days from the date of the aforesaid order of the Board, with Section 9 (f), (g) and (h) of the National Labor Relations Act, as amended.

WE WILL NOT in any other manner interfere with the efforts of United Packinghouse Workers of America, C. I. O., to negotiate for or represent employees of the said bargaining units, as their exclusive bargaining agent; provided said labor organization complies within thirty (30) days from the date of the aforesaid order of the Board, with Section 9 (f), (g) and (h) of the National Labor Relations Act, as amended.

WE WILL BARGAIN collectively upon request with United Packinghouse Workers of America, C. I. O., as the exclusive bargaining representative of all employees in the unit described herein with respect to labor disputes, grievances, wages, rates of pay, hours of employment, or other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement: provided said labor organization complies within thirty (30) days from the date of the aforesaid order of the Board, with Section 9 (f), (g) and (h) of the National Labor Relations Act, as amended. The bargaining unit is:

All of the respondent's office and clerical employees, including the office janitor, the load dispatcher, the clerks in the time and employment office, the credit union employee, the teletype operators, the general cashier, the paymaster, the departmental clerks in the departmental department, the general ledger clerk, the general utility office man in the auditing department, and the cost clerks in the cost figuring department, but excluding all plant clerical employees other than the clerks in the time and employment office and the load dispatcher, the stenographers in the purchasing department and superintendent's office, the confidential clerk and confidential secretary in the superintendent's office, the secretary to the plant employment manager and head timekeeper, the confidential secretary to the plant manager, the confidential secretaries to the auditor and office manager and to the department heads of the plant sales and city sales departments, the confidential secretary in the industrial relations department, switchboard operators, salesmen, nurses, the discrepancy investigator, the department heads and assistant department heads of beef, provision, by-products, plant sales, purchasing, credit, transportation, industrial relations, city sales, voucher, departmental, cost figuring, bookkeeping, order writing and sales distribution departments, the head of the invoice department, the director of country beef sales, the director of soap and canned goods sales and distribution, the plant superintendent and assistant plant superintendent, the buyers, graders, weight takers and sorters in the livestock buyer's office, the auditor and office manager, the assistant auditor, the casualty and liability insurance manager, the "beef, lamb and veal man," the "smoked meat man," the plant employment manager, the head timekeeper, the assistant plant employment manager and assistant head timekeeper, and all other supervisors.

All our employees are free to become or remain members of the above-named union or any other labor organization.

PLANKINTON PACKING COMPANY,

*Employer.*

By -----  
(Representative)

-----  
(Title)

INTERMEDIATE REPORT

*Mr. Herman J. DeKoven*, for the Board.

*Mr. Arthur R. Curtis*, of Chicago, Ill, for the respondent.

STATEMENT OF THE CASE

Upon a charge duly filed on October 17, 1946, by United Packinghouse Workers of America, C. I. O., herein called the Union, the National Labor Relations Board,

herein called the Board, by its Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated December 23, 1946, against Plankinton Packing Company, of Milwaukee, Wisconsin, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint together with copies of the charge and notices of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleges in substance that the Union, having been duly chosen on August 13, 1946, by a majority of the employees in a unit of the employees of the respondent defined therein and alleged to be appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, as their representative for purposes of collective bargaining, by virtue of Section 9 (a) of the Act, has been and is now the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to wages, hours of employment, rates of pay, and other conditions of employment; that on or about September 20, 1946, the Union requested the respondent to bargain collectively with it in respect to wages, hours of employment, rates of pay, and other conditions of employment as the exclusive representative of the employees in the unit; and that on September 20, 1946, the respondent refused and ever since has continued to refuse to bargain collectively with the Union as such representative, and by such action has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

In its answer duly filed herein, the respondent admits its corporate existence; that it engages in interstate commerce; that on or about August 13, 1946, a majority of the persons voting in an election conducted by the Board, had designated the Union as their representative for the purposes of collective bargaining; that the Union has requested the respondent to bargain collectively with it and that the respondent has and does refuse to bargain collectively with the Union. The answer further alleges that the employees participating in the election above referred to, and constituting the unit alleged in the complaint to be appropriate for purposes of collective bargaining, are office or clerical employees, and hence may not properly be represented by the Union, which also represents the respondent's production and maintenance employees for purposes of collective bargaining; that the said bargaining unit contains employees whose conditions of work and interests are so varied and conflicting that their inclusion in one bargaining unit tends not to effectuate, but to defeat the policies of the Act; that the said bargaining unit includes some supervisory and/or confidential employees, who are not "employees" within the meaning of the Act, that the inclusion of such managerial and/or confidential employees in the same unit with the other employees contained therein is beyond the authority of the Board; that by reason of the foregoing the unit alleged in the complaint to be appropriate for purposes of collective bargaining was erroneously found to be appropriate by the Board; and that, consequently, the respondent is under no duty to recognize or bargain collectively with the Union as the representative of the employees in the aforesaid unit, and has committed no unfair labor practices by refusing to bargain with it.

Pursuant to notice a hearing was held in Chicago, Illinois, on January 13, 1947, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel. The Union did not appear. Both the parties present participated in the hearing and

were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence pertinent to the issues. At the close of the hearing a motion of counsel for the Board to conform the pleadings to the proof as to the correction of names, dates, and other matters not going to the issues was granted without objection. Decision was reserved on a motion made by the respondent's counsel at the close of the hearing to dismiss the complaint. That motion is disposed of by the recommendations hereinafter made. Counsel for the Board and the respondent were heard in oral argument at the conclusion of the hearing. Counsel for the respondent filed with the undersigned proposed findings of fact and conclusions of law,<sup>1</sup> and a brief in support thereof, and a brief was filed by counsel for the Board.

On the basis of the foregoing and on the entire record, after having heard and observed all the proceedings and considered all the evidence offered and received, the undersigned makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The respondent, Plankinton Packing Company, is a Wisconsin corporation, having its principal office and place of business at Milwaukee, Wisconsin, where it is engaged in the meat packing business. The respondent in its afore-mentioned operations during the year 1945, used materials valued in excess of \$30,000,000, of which more than 10 percent was shipped from points outside the State of Wisconsin, and processed goods valued in excess of \$37,000,000, of which more than 60 percent was shipped to points outside the State of Wisconsin.

The respondent admits that it is engaged in commerce within the meaning of the Act.

#### II. THE ORGANIZATION INVOLVED

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

#### III. THE UNFAIR LABOR PRACTICES

##### A. *The refusal to bargain*

##### 1. The appropriate unit, representation by the Union of a majority therein

On July 25, 1946, after the usual proceedings, the Board issued a Decision and Direction of Election,<sup>2</sup> in which it found that all office and clerical employees of the respondent, including the office janitor, the load dispatcher, the clerks in the time and employment office, the credit union employee, the teletype operators, the general cashier, the paymaster, the departmental clerks in the departmental department, the general ledger clerk, the general utility office man

<sup>1</sup> The undersigned rules as follows upon the Proposed Findings of Fact and Proposed Conclusions of Law submitted by counsel for the respondent: Proposed Findings of Fact numbers 1 and 8 are accepted. Proposed Findings of Fact numbers 2 through 5, and 9 through 30 are rejected. Proposed Findings of Fact numbers 6 and 7 are rejected insofar as they do not specify the local of the United Packinghouse Workers of America, C. I. O., which is alleged to represent the respondent's production and maintenance employees for purposes of collective bargaining. Each and every Proposed Conclusion of Law is rejected.

<sup>2</sup> *Matter of Plankinton Packing Company*, Case No. 13-R-3352, 69 N. L. R. B. 920.

in the auditing department, and the cost clerks in the cost figuring department, but excluding all plant clerical employees other than the clerks in the time and employment office and the load dispatcher, the stenographers in the purchasing department and superintendent's office, the confidential clerk and confidential secretary in the superintendent's office, the secretary to the plant employment manager and head timekeeper, the confidential secretary to the plant manager, the confidential secretaries to the auditor and office manager and to the department heads of the plant sales and city sales departments, the confidential secretary in the industrial relations department, switchboard operators, salesmen, nurses, the discrepancy investigator, the department heads and assistant department heads of beef, provision, by-products, plant sales, purchasing, credit, transportation, industrial relations, city sales, voucher, departmental, cost figuring, book-keeping, order writing, and sales distribution departments, the head of the invoice department, the director of country beef sales, the director of soap and canned goods sales and distribution, the plant superintendent and assistant plant superintendent, the buyers, graders, weight takers and sorters in the livestock buyer's office, the auditor and office manager, the assistant auditor, the casualty and liability insurance manager, the "beef, lamb and veal man," the "smoked meat man," the plant employment manager and head timekeeper, the assistant plant employment manager and assistant head timekeeper, 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.

On August 13, 1946, pursuant to said Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director of the Board for the Thirteenth Region, among the employees in the above-described bargaining unit. The tally of ballots showed that of the approximately 59 eligible voters, 56 cast valid votes, of which 31 were for the Union, and 25 against. No objections were filed by any of the parties within the time provided therefor, and, on September 6, 1946, the Board certified the Union as the exclusive representative for the purposes of collective bargaining, of the employees in the unit hereinabove described.<sup>3</sup>

The respondent contests the appropriateness of the unit found by the Board. In substance, the respondent's position herein is, as it was in the representation proceeding leading to the Board's Direction of Election and Certification of Representatives, that:

1. Since the Union represents the respondent's production and maintenance employees,<sup>4</sup> it is inappropriate for it also to represent the office and clerical employees;

2. The unit is inappropriate because it contains both plant clerical employees, and general office employees, who have no community of interest;

<sup>3</sup> *Matter of Plankinton Packing Company*, Case No 13-R-3352, *supra*

<sup>4</sup> In support of the above contention, the respondent introduced into evidence copies of a contract whose terms make it effective from December 23, 1946, to August 11, 1948, whereby Local 50 of the Union is recognized as the exclusive collective bargaining representative of the production and maintenance employees at the respondent's Milwaukee plant. This exhibit, constituting the only evidence bearing on the contested issues introduced in the present proceeding which was not before the Board in the prior representation proceeding, was offered to establish that a local of the Union is still recognized, as it was in preceding contracts, as the bargaining representative of the respondent's production and maintenance employees.

3. Certain employees included in the unit perform managerial and/or confidential functions and are so closely associated with management that they are:

(a) employers, and not employees within the meaning of the Act, (b) not appropriately included in the same unit with the rest of the employees therein contained.

Identical contentions were urged by the respondent and fully considered by the Board<sup>6</sup> in the representation proceeding, and there ruled upon adversely to the respondent. In the instant complaint proceeding, the respondent adduced no further evidence, and in substance relied upon the same arguments. The undersigned therefore feels that the Board's determination as to the appropriate unit in the representation proceeding is fully dispositive of the contentions with respect thereto advanced by the respondent. The undersigned is not persuaded by the arguments addressed to him by the respondent in its brief nor by the record herein that he should not adhere to the findings of the Board in the representation case.

The undersigned, therefore, finds that all office and clerical employees of the respondent, including the office janitor, the load dispatcher, the clerks in the time and employment office, the credit union employee, the teletype operators, the general cashier, the paymaster, the departmental clerks in the departmental department, the general ledger clerk, the general utility office man in the auditing department, and the cost clerks in the cost figuring department, but excluding all plant clerical employees other than the clerks in the time and employment office and the load dispatcher, the stenographers in the purchasing department and superintendent's office, the confidential clerk and confidential secretary in the superintendent's office, the secretary to the plant employment manager and head timekeeper, the confidential secretary to the plant manager, the confidential secretaries to the auditor and office manager and to the department heads of the plant sales and city sales departments, the confidential secretary in the industrial relations department, switchboard operators, salesmen, nurses, the discrepancy investigator, the department heads and assistant department heads of beef, provision, by-products, plant sales, purchasing, credit, transportation, industrial relations, city sales, voucher, departmental, cost figuring, bookkeeping, order writing, and sales distribution departments, the head of the invoice department, the director of country beef sales, the director of soap and canned goods sales and distribution, the plant superintendent and assistant plant superintendent, the buyers, graders, weight takers and sorters in the livestock buyer's office, the auditor and office manager, the assistant auditor, the casualty and liability insurance manager, the "beef, lamb and veal man," the "smoked meat man," the plant employment manager and head timekeeper, the assistant plant employment manager and assistant head timekeeper, 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.

<sup>6</sup> As counsel for the Board indicated at the hearing and in his brief, the Board, in its determination in the representation proceeding, did not specifically and explicitly reject the respondent's contentions that certain employees included in the bargaining unit perform managerial and/or confidential functions, and therefore should be excluded from the said unit. The undersigned extends to the Board's determination the presumption of regularity to which it is entitled, and assumes that though it did not feel called upon to discuss these contentions, the Board gave due consideration to them in arriving at its decision.

The undersigned further finds that on and at all times after August 13, 1946, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid bargaining unit and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on August 13, 1946, and at all times thereafter has been and is now the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

## 2. The refusal to bargain

It is undisputed that "shortly after September 6, 1946," the Union requested the respondent to bargain collectively with it as the exclusive representative of all the employees in the above-described appropriate unit and that on September 20, 1946, as well as at all times thereafter, the respondent refused to do so.

The undersigned finds that the respondent on September 20, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Because of the basis of the respondent's refusal to bargain as indicated by the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, the undersigned will not recommend that the respondent cease and desist from the commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from the unfair labor practices found and from any other acts in any manner interfering with the efforts of the Union to negotiate for or represent the employees as exclusive bargaining agent in the unit herein found appropriate.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following.

## CONCLUSIONS OF LAW

1. United Packinghouse Workers of America, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All office and clerical employees of the respondent, including the office janitor, the load dispatcher, the clerks in the time and employment office, the credit union employee, the teletype operators, the general cashier, the pay-

master, the departmental clerks in the departmental department, the general ledger clerk, the general utility office man in the auditing department, and the cost clerks in the cost figuring department, but excluding all plant clerical employees other than the clerks in the time and employment office and the load dispatcher, the stenographers in the purchasing department and superintendent's office, the confidential clerk and confidential secretary in the superintendent's office, the secretary to the plant employment manager and head timekeeper, the confidential secretary to the plant manager, the confidential secretaries to the auditor and office manager and to the department heads of the plant sales and city sales departments, the confidential secretary in the industrial relations department, switchboard operators, salesmen, nurses, the discrepancy investigator, the department heads and assistant department heads of beef, provision, by-products, plant sales, purchasing, credit, transportation, industrial relations, city sales, voucher, departmental, cost figuring, bookkeeping, order writing, and sales distribution departments, the head of the invoice department, the director of country beef sales, the director of soap and canned goods sales and distribution, the plant superintendent and assistant plant superintendent, the buyers, graders, weight takers and sorters in the livestock buyer's office, the auditor and office manager, the assistant auditor, the casualty and liability insurance manager, the "beef, lamb and veal man," the "smoked meat man," the plant employment manager and head timekeeper, 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.

3 United Packinghouse Workers of America, C I O., was on August 13, 1946, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4 By refusing on September 20, 1946, and at all times thereafter, to bargain collectively with United Packinghouse Workers of America, C I O., as the exclusive representative of all its employees in the aforesaid unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5 By said acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6 The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Plankinton Packing Company, of Milwaukee, Wisconsin, and its officers, agents, successors, and assigns shall:

1 Cease and desist from:

(a) Refusing to bargain with United Packinghouse Workers of America, C I O., as the exclusive representative of all its office and clerical employees, including the office janitor, the load dispatcher, the clerks in the time and

employment office, the credit union employee, the teletype operators, the general cashier, the paymaster, the departmental clerks in the departmental department, the general ledger clerk, the general utility office man in the auditing department, and the cost clerks in the cost figuring department, but excluding all plant clerical employees other than the clerks in the time and employment office and the load dispatcher, the stenographers in the purchasing department and superintendent's office, the confidential clerk and confidential secretary in the superintendent's office, the secretary to the plant employment manager and head timekeeper, the confidential secretary to the plant manager, the confidential secretaries to the auditor and office manager and to the department heads of the plant sales and city sales departments, the confidential secretary in the industrial relations department, switchboard operators, salesmen, nurses, the discrepancy investigator, the department heads and assistant department heads of beef, provision, by-products, plant sales, purchasing, credit, transportation, industrial relations, city sales, voucher, departmental, cost figuring, bookkeeping, order writing, and sales distribution departments, the head of the invoice department, the director of country beef sales, the director of soap and canned goods sales and distribution, the plant superintendent and assistant plant superintendent, the buyers, graders, weight takers and sorters in the livestock buyer's office, the auditor and office manager, the assistant auditor, the casualty and liability insurance manager, the "beef, lamb and veal man," the "smoked meat man," the plant employment manager and head timekeeper, 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;

(b) Engaging in any other acts in any manner interfering with the efforts of United Packinghouse Workers of America, C. I. O., to negotiate for or represent the employees in the aforesaid unit as exclusive bargaining agent.

2 Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with United Packinghouse Workers of America, C. I. O., as the exclusive bargaining representative of all employees in the bargaining unit described herein with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement:

(b) Post at its plant in Milwaukee, Wisconsin, copies of the notice attached to the Intermediate Report herein, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) File with the Regional Director for the Thirteenth Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of the Intermediate Report the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203 39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203 38 of said Rules and Regulations, file with the Board, Rochembeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof, and any party or counsel for the Board may within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203 39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

ISADORE GREENBERG,

*Trial Examiner.*

Dated February 13, 1947.

#### ERRATUM IN INTERMEDIATE REPORT

In paragraph 1 (a) of the RECOMMENDATIONS contained in the Intermediate Report herein, as originally issued under date of February 13, 1947, the words, "the assistant plant employment manager and assistant head timekeeper" were inadvertently omitted from the description of the appropriate unit therein set forth.

IT IS, THEREFORE, HEREBY ORDERED that the aforesaid description of the appropriate unit be corrected by the insertion, following the words, "the plant employment manager and head timekeeper," at line 22, page 252, of the Intermediate Report, of the following: "the assistant plant employment manager and assistant head timekeeper."

ISADORE GREENBERG

*Trial Examiner.*

Dated March 4, 1947.

#### APPENDIX A

##### NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT engage in any acts in any manner interfering with the efforts of UNITED PACKINGHOUSE WORKERS OF AMERICA, C. I. O., to negotiate for or represent the employees in the bargaining unit described below.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment or

other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our office and clerical employees including the office janitor, the load dispatcher, the clerks in the time and employment office, the credit union employee, the teletype operators, the general cashier, the paymaster, the departmental clerks in the departmental department, the general ledger clerk, the general utility office man in the auditing department, and the cost clerks in the cost figuring department, but excluding all plant clerical employees other than the clerks in the time and employment office and the load dispatcher, the stenographers in the purchasing department and superintendent's office, the confidential clerk and confidential secretary in the superintendent's office, the secretary to the plant employment manager and head timekeeper, the confidential secretary to the plant manager, the confidential secretaries to the auditor and office manager and to the department heads of the plant sales and city sales departments, the confidential secretary in the industrial relations department, switchboard operators, salesmen, nurses, the discrepancy investigator, the department heads and assistant department heads of beef, provision, by-products, plant sales, purchasing, credit, transportation, industrial relations, city sales, voucher, departmental, cost figuring, bookkeeping, order writing, and sales distribution departments, the head of the invoice department, the director of country beef sales, the director of soap and canned goods sales and distribution, the plant superintendent and assistant plant superintendent, the buyers, graders, weight takers and sorters in the livestock buyer's office, the auditor and office manager, the assistant auditor, the casualty and liability insurance manager, the "beef, lamb and veal man," the "smoked meat man," the plant employment manager and head timekeeper, the assistant plant employment manager and assistant head timekeeper, 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.

PLANKINTON PACKING COMPANY,

*Employer.*

Dated -----

By -----  
(Representative) (Title)