

In the Matter of WILSON & Co., INC. and UNITED PACKINGHOUSE
WORKERS OF AMERICA, C. I. O.

Case No. 13-R-2883.—Decided April 18, 1945

Mr. M. R. Swanson, of Chicago, Ill., for the Company.

Miss Virginia Spence and *Mr. Refugio Ramon Martinez*, of Chicago, Ill., for the Union.

Miss Melvern R. Krelow, 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., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Wilson & Co., Inc., Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert T. Drake, Trial Examiner. Said hearing was held at Chicago, Illinois, on March 21, 1945. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the conclusion of the hearing the Company moved to dismiss the petition on the ground, *inter alia*, that according to the constitution of the Union the latter cannot admit to membership the employees herein concerned. The Trial Examiner reserved ruling on the motion.¹ The motion is hereby denied. All parties were afforded an opportunity to file briefs with the Board.

¹ We find it unnecessary to determine the exact extent of the Union's constitutional jurisdiction since there is no showing that the Union will not accord adequate representation to all employees included within the unit hereinafter found appropriate. Moreover, it affirmatively appears from the record that the Union does admit to membership, and currently represents elsewhere, the same categories of employees sought herein. See *Matter of Emil D and Emil W. Platzer, co-partners doing business as Platzer Boat Works*, 59 N. L. R. B. 292, and *Matter of Virginia Smelting Company*, 60 N. L. R. B. 616.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Wilson & Co., Inc., a Delaware corporation, having its principal offices and place of business in Chicago, Illinois, operates 8 packing house plants, and about 90 branch houses throughout the United States. This proceeding involves the Company's Chicago plant where the Company purchases and slaughters livestock and processes, manufactures, and distributes various meat products and meat byproducts. During the past 12-month period, the Company purchased livestock, valued in excess of \$1,000,000, of which approximately 50 percent was shipped to the Company from points outside the State of Illinois. During the same period, the Company sold products, valued in excess of \$1,000,000, of which in excess of 50 percent was shipped to points outside the State of Illinois.

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, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 1, 1945, the Union advised the Company that it represented the Company's employees in the fire department, and requested a conference for bargaining purposes. The Company has declined to recognize the Union as the representative of such employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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 Union contends that all employees of the Company in its fire hall department, excluding supervisory employees, constitute an ap-

² The Field Examiner reported that the Union submitted eight application cards; that the names of seven persons appearing on the cards were listed on the Company's pay roll of February 23, 1945, which contained the names of seven employees in the appropriate unit; and that the cards were dated in January 1945; one was undated.

propriate unit. In the alternative, it suggests that the firemen be included in the large unit it now represents.³ The Company contends that these employees are part of management and are therefore not eligible for membership in a labor organization, and opposes enlarging the unit the Union now represents to include firemen because of the latter's prior exclusion therefrom.

The Company employs nine employees in the fire hall department, including the fire marshal and his assistant. These employees operate and maintain the Company's fire-fighting equipment; see that the Company's fire protection rules are obeyed, and engage in fire fighting where necessary. These employees wear uniforms and some are assigned to the fire hall, while others tour the plant. Contrary to the contention of the Company, we are of the opinion that these employees are not so closely allied to management as to warrant a denial of their right to collective bargaining under the Act.⁴ In view of their exclusion from the unit previously found appropriate by the Board and from the contract executed pursuant to the Board's prior certification, we are of the opinion that the firemen should constitute a separate appropriate unit.

The fire marshall has authority to hire and discharge the firemen under his supervision, and his assistant has the authority to effectively recommend discharge. We find, therefore, that the fire marshal and his assistant are supervisory employees, and, as such, we shall exclude them from the unit.

We find that all employees of the Company in the fire hall department, excluding the fire marshal and his assistant and any 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

³ Pursuant to a certification by the Board, the Union and the Company executed a written contract covering a plant-wide unit of production and maintenance employees from which the fire-protection employees, *inter alia*, are specifically excluded. *Matter of Wilson and Co., Inc.*, issued January 11, 1943

⁴ See *Matter of Armour & Company*, 42 N. L. R. B. 495.

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 Wilson & Co., Inc., Chicago, Illinois, 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 Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during 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 election, to determine whether or not they desire to be represented by United Packinghouse Workers of America, C. I. O., Local 25,⁵ for the purposes of collective bargaining.

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

⁵ The Union requested to appear on the ballot in the manner set forth above.