

In the Matter of WILSON & Co., INC. and UNITED PACKINGHOUSE
WORKERS OF AMERICA, LOCAL NO. 62, C. I. O.

Case No. 17-R-1074.—Decided May 30, 1945

Mr. M. R. Swanson, of Chicago, Ill., and *Mr. L. H. Fuqua*, of Omaha, Nebr., for the Company.

Messrs. Patrick Ratigan and *Arthur E. Williams*, both of Omaha, Nebr., for the Union.

Miss Katharine Loomis, 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, Local No. 62, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Wilson & Co., Inc., Omaha, Nebraska, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Margaret L. Fassig, Trial Examiner. Said hearing was held at Omaha, Nebraska, on March 8, 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. At the hearing the Company moved to dismiss the petition. For reasons set forth in Section IV, *infra*, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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

Wilson & Co., Inc., is a Delaware corporation having its principal office and place of business in Chicago, Illinois. The Company is engaged in the purchase and slaughter of livestock, and the processing,

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sale, and distribution of meat and meat products. This proceeding is concerned only with the Company's Omaha, Nebraska, plant. The total purchases of the Omaha plant during 1944 were valued in excess of \$500,000, of which approximately 40 percent was received in interstate commerce. During the same year the sales of the Omaha plant were valued in excess of \$500,000, of which 50 percent or more was made to points outside the State of Nebraska.

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

II. THE ORGANIZATION INVOLVED

United Packinghouse Workers of America, Local No. 62, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During the latter part of December 1944 the Union requested recognition as the collective bargaining representative of the plant-protection force at the Company's Omaha plant. In January 1945 the Company denied this request.

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.¹

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 at the present time represents employees of the Company's Omaha plant in two separate units, one of production and maintenance employees and the other of restaurant employees. It now seeks a unit comprised of the members of the Omaha plant's plant-protection force, excluding the chief of police and the two assistants to the chief of police. The Company contends that the plant guards, who comprise the Company's plant-protection force, are representatives of management and, consequently, should be denied collective bargaining rights under the Act. The Company also appears to take the position that, since the Union already represents

¹ The Trial Examiner reported that the Union submitted 10 membership cards, all of which bore apparently genuine original signatures; that the names of 9 persons appearing on the cards were listed on the Company's pay roll of March 3, 1945, which contained the names of 15 employees in the alleged appropriate unit; and that the cards were dated during October 1944 and January and February 1945.

other employees in this plant, it cannot properly represent the plant-protection employees.

The plant guards are not uniformed and are for the most part unarmed, but they wear the insignia of the auxiliary military police force, of which they are all members. Their duties are to require identification of persons entering the Company's premises, to watch for fire hazards, and pull fireboxes, and to report infractions of plant rules prohibiting fighting, gambling, smoking, intoxication, and pilfering among the Company's production and maintenance employees. In reporting infractions of such rules it is the guard's duty to write a memorandum to the chief of police describing the particular incident. These reports are mere summaries of fact situations and the guards have no authority and are not expected to recommend whether disciplinary action should be taken against any employee who violates the rules; nor after it has been decided that action should be taken are they consulted regarding its nature. The Company's employment manager accepts recommendations regarding applicants for employment from any of the employees in the plant, including the guards, but all hiring of personnel must have his final approval. The Company's contention that the guards are "arms" of management is based in large measure on the premise, clearly not borne out by the record, that these employees make effective recommendations in regard to hiring and discharging employees in the production and maintenance unit. Contrary to the Company's position, however, the record clearly demonstrates that the duties of these employees are merely monitorial, being similar to those customarily performed by plant-protection employees.² Moreover, the guards are paid by the Company, take their directions from the chief of police, and their duties are substantially the same as before they took their oath of allegiance to the United States. Their militarization does not affect their status as employees under the Act nor their right to collective bargaining. However, we have recognized that it does distinguish them from other employees to the extent that they should be placed in a unit separate from non-militarized employees.³ For reasons which we have set forth in other decisions, we are of the opinion that the Company's plant-protection employees constitute a separate appropriate unit and may be represented in such separate unit by the same union which represents its other employees.⁴

² See *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892; *Matter of Bethlehem-Fairfield Shipyard, Inc.*, 61 N. L. R. B. 901.

³ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of International Harvester Company, Milwaukee Works*, 61 N. L. R. B. 912

⁴ See *Matter of Chrysler Corporation, Highland Parks Plant*, 44 N. L. R. B. 881; *Matter of Bohn Aluminum and Brass Corporation*, 53 N. L. R. B. 231; *Matter of Swift and Company*, 58 N. L. R. B. 120. See also *Matter of Bethlehem Steel Company, supra*, and *Matter of International Harvester Company, Milwaukee Works, supra*.

We find that all militarized plant-protection employees at the Company's Omaha, Nebraska, plant, excluding the chief of police, the two assistants to the chief of police, 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 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 Wilson & Co., Inc., Omaha, Nebraska, 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 Seventeenth 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 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 or not they desire to be represented by United Packinghouse Workers of America, Local No. 62, C. I. O., for the purposes of collective bargaining.