

In the Matter of SWIFT AND COMPANY and INTERNATIONAL BROTHERHOOD OF SWIFT EMPLOYEES, LOCALS 1021 AND 26

Case No. 18-R-1216.—Decided May 31, 1945

Mr. John P. Staley, of Chicago, Ill., for the Company.

Messrs. Clem Van Thuyne and Emil G. Paape, of Winona, Minn., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Swift Employees, Locals 1021 and 26, herein called the Union,<sup>1</sup> alleging that a question affecting commerce had arisen concerning the representation of employees of Swift and Company, Winona, Minnesota, 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 Winona, Minnesota, on April 12 and 13, 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 reserved for the Board a ruling on the Company's motion to dismiss the petition because of the alleged inappropriateness of the unit sought by the Union. For reasons stated in Section IV, *infra*, the said motion is hereby 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

Swift and Company, an Illinois corporation having its principal office and place of business in Chicago, Illinois, is engaged in process-

<sup>1</sup> The formal papers designated the petitioner only as Local 26. Near the close of the hearing, the petitioner's motion to amend all formal papers, as designated in the caption and the body of the Decision, was granted.

ing meats at plants located in different parts of the United States. This proceeding is solely concerned with the Company's plant in Winona, Minnesota. During the fiscal year ending on October 28, 1944, the Company purchased at its Winona plant, livestock valued in excess of \$10,000,000, of which approximately 45 percent was shipped to the plant from points outside the State of Minnesota. During the same period the Company processed in this plant meat products valued at more than \$11,000,000, of which about 97 percent was shipped to points outside the State.

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

## II. THE ORGANIZATION INVOLVED

International Brotherhood of Swift Employees, Locals 1021 and 26, unaffiliated, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On January 22, 1945, the Union requested recognition of the Company as the exclusive bargaining representative of the employees in an alleged appropriate unit. On February 3, 1945, the Company refused to accord such recognition.

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 which it originally alleged to be appropriate.<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 UNITS

The Union seeks two separate units:<sup>3</sup> unit (1) would comprise all office and clerical employees, including the assistant head of the beef, lamb and veal department, dressed cost clerks, order writer and typist, accounts payable and dressed costs accountant, livestock paying clerks, supply and discrepancy man, head timekeeper, assistant timekeeper, plant clerks, secretaries, assistant auditor, purchasing agent and transportation manager, time-study man, livestock buyers, yardmen, and foremen, but excluding watchmen, auditor and office manager,

<sup>2</sup> The Field Examiner reported that the Union submitted a petition bearing the names of 27 persons; that 15 of the names also appeared on the Company's pay-roll list which contained the names of 22 persons in the alleged appropriate unit; and that the petition was signed on January 10 and 11, 1945.

<sup>3</sup> The Union filed only one petition asking for a single unit. The positions above set forth are those finally taken at the hearing.

general manager, manager of beef, lamb and veal department, head of standards department, and superintendent; unit (2) would be limited to watchmen and guards.<sup>4</sup> The Company agrees that a unit of watchmen and guards is appropriate, and while agreeing with the Union's proposed list of exclusions in the office and clerical unit, would also exclude the employees discussed hereinafter, whom the Union would include.

*Secretaries:* The Company employs individual secretaries to the superintendent, the general manager, and the plant auditor and office manager. In the course of performing their usual stenographic and secretarial duties these employees acquire knowledge of the Company's position concerning confidential matters affecting labor relations. In accordance with our policy, we shall exclude the secretaries as confidential employees.<sup>5</sup>

*Assistant head of beef, lamb and veal department:* There are only two employees in this department, the head and the assistant head. The assistant, who is on the general office pay roll, spends about one-half to two-thirds of his time in the general office and most of the remaining time in the plant cooler. He check-grades lamb, veal and some beef, checks all salesmen's orders, writes employee plant orders, checks or issues quotas to salesmen, writes office orders for car and branch house shipments, and sells meat to customers who call at the plant. The assistant does not supervise the work of any employees and is himself supervised by the head of the department. Although this employee's work is generally of a more responsible nature than that of most of the other employees in the unit, we believe that his interests nevertheless lie with the office and clerical employees; we shall include him.<sup>6</sup>

*Assistant auditor:* This employee substitutes for the office manager while the latter is sick or on vacation, works on confidential business and pay-roll records, has access to personnel records and files pertaining to confidential labor relations matters, and is consulted by the office manager with respect to personnel problems in the office. It is clear that the assistant auditor's substitution for the office manager is too infrequent and irregular to justify his exclusion as a supervisor, and that his knowledge of confidential business and pay-roll information is not of itself sufficient to bring him within the Board's definition of a confidential employee. However, as indicated above, he does have access to confidential personnel and labor relations data and participates in the solution of personnel problems within the depart-

<sup>4</sup> The watchmen and guards are armed and deputized.

<sup>5</sup> *Matter of Aluminum Company of America*, 61 N. L. R. B. 1066

<sup>6</sup> Cf. *Matter of Armour and Company*, 43 N. L. R. B. 307; where graders were excluded from a production and maintenance unit.

ment. On all the facts we are of the opinion that he enjoys a confidential status with management; we shall exclude him.<sup>7</sup>

*Dressed cost clerks:* There are three clerks in this category who figure the dressed costs on livestock slaughtered and perform other clerical work. Although they acquire information which is no doubt confidential from a business standpoint, it does not relate directly to labor relations matters. We shall include them.<sup>8</sup>

*Order writer and typist:* This employee types orders, tags, and labels, work which is entirely clerical in nature. We shall include her.

*Accounts payable and dressed costs accountant:* This employee does cost figuring, invoicing voucher and other similar work. He is under the supervision of the office manager and, in turn, directs the work of the three dressed cost clerks. However, it does not appear that he is a supervisor within the Board's definition in his relationship to these three clerks. Although the Company claims that this employee works with highly confidential records, the information he obtains therefrom relates to business rather than to labor relations matters. We shall include him.

*Livestock paying clerks:* There are two clerks in this category working in the livestock buying office under the supervision of the office manager. They have identical duties, keeping records in connection with livestock purchases and making out, signing, and issuing checks for such purchases on the order of the livestock buyers. Although Kilian, one of the clerks, is senior to the other who is regarded as his assistant, we find, despite the Company's contention to the contrary, that Kilian is not a supervisor within the Board's definition of that term. We also find that the two clerks are not confidential employees since the information they obtain in the course of their duties involves confidential business rather than labor relations matters. We shall include them.

*Purchasing agent and transportation manager:* This employee serves in a two-fold capacity, as purchasing agent for the buying of all supplies used for production purposes in the plant, and as traffic manager in charge of all transportation. Inasmuch as he has the power to make substantial financial commitments in behalf of his employer, we are of the opinion that his duties are managerial in nature; we shall exclude him from the unit.<sup>9</sup>

*Time-study man:* This employee, who serves as assistant to the head of the standards department, performs duties which are analogous to those of an industrial engineer. He studies and suggests changes in

<sup>7</sup> *Matter of Aluminum Company of America, supra.*

<sup>8</sup> *Matter of Chrysler Corporation, Chrysler Motor Division, 58 N. L. R. B. 239; Matter of American Can Company, 55 N. L. R. B. 530.*

<sup>9</sup> *Matter of Aluminum Company of America, supra; Matter of Inland Steel Container Company, 56 N. L. R. B. 138; Matter of Hudson Motor Car Company, 55 N. L. R. B. 509.*

manufacturing methods, makes time studies and determines time standards for operations on the basis of which incentive earnings are calculated. In view of his duties, which we regard as managerial in nature, we shall exclude him from the unit.<sup>10</sup>

*Supply and discrepancy man:* This employee maintains supply records, checks supply orders for conformance to specifications, investigates errors made in shipments or weights of shipments after they have been called to his attention by the invoice department, takes samples of tankage, tallow, and grease, for transmittal to a laboratory for analyses and keeps the records of such analyses. Since his duties are essentially clerical in nature, we shall include him in the unit.

*Head timekeeper:* This employee directs the activities of 10 employees among whom are an assistant timekeeper, watchmen, janitors, calf feeders and yard cleaners. He has full supervision over the activities of all these employees. Although there is conflict in the testimony regarding his power to affect the status of his subordinates, we are satisfied that he is a supervisor within the Board's definition; we shall exclude him from the unit.

*Assistant timekeeper:* This employee acts as a clerk to the head timekeeper, assisting the latter in the computation of the pay roll, Federal taxes and bond deductions. We shall include him.

*Livestock buyers:* These employees devote all their time to purchasing livestock, making large financial commitments on the part of the Company. Since their duties are managerial in nature, we shall exclude them.<sup>11</sup>

*Plant clerks:* The two plant clerks act as clerks to production department foremen performing all of the clerical work required by the latter. They combine the duties of timekeepers, stockroom and shipping clerks. One of the clerks also substitutes for the foreman when the latter is absent on sick leave or vacation. Most of their time is spent in purely clerical work. They are excluded from the production and maintenance bargaining unit presently represented by the Union. While these clerks might with equal appropriateness be included in either a production and maintenance or an office and clerical unit, we shall include them in the present unit since they are excluded from the existing production and maintenance unit in the plant.<sup>12</sup>

*Yardmen:* These employees are engaged in feeding, watering, and handling the livestock. In view of the total dissimilarity of their work to that of the other employees in the unit, we shall exclude them.<sup>13</sup>

<sup>10</sup> *Matter of Aluminum Company of America, supra*; *Matter of Swift and Company*, 56 N. L. R. B. 147; *Matter of Armour and Company*, 54 N. L. R. B. 1462.

<sup>11</sup> See footnote 8, *supra*.

<sup>12</sup> *Matter of Swift and Company*, 56 N. L. R. B. 147.

<sup>13</sup> The Company stated that the yardmen were included within the coverage of the existing contract covering production and maintenance employees.

*Foremen:* The Union seeks to include various production foremen, including the master mechanic and chief engineer, who supervise the activities of from 12 to 52 employees and have the power to hire and discharge their subordinates. In view of the nature of their work and their supervisory status, we shall exclude them from the unit.

Local 1021 represents the production and maintenance employees in the plant; Local 26 has been organized to represent the employees in the office and clerical unit which the Union in the present proceeding claims is appropriate. The Company urges that it is improper for the same union which represents production and maintenance workers also to represent office and clerical workers. We perceive no merit in this argument and no reason why the same labor organization may not, if chosen by the employees, represent both production and maintenance employees and office and clerical employees in separate units.<sup>14</sup>

We find that the following units excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, are appropriate for the purposes of collective bargaining within the meaning of Section 9 (c) of the Act:

(1) All office and clerical employees employed at the Winona, Minnesota, plant of the Company, including the assistant head of the beef, lamb and veal department, dressed cost clerks, order writer and typist, accounts payable and dressed costs accountant, livestock paying clerks,<sup>15</sup> supply and discrepancy man, assistant timekeeper, and plant clerks,<sup>16</sup> but excluding secretaries,<sup>17</sup> assistant auditor, purchasing agent and transportation manager, time-study man, head timekeeper, livestock buyers, yardmen, foremen, master mechanic and chief engineer, watchmen, guards, auditor and office manager, general manager, manager of beef, lamb and veal department, superintendent, and head of standard department;

(2) All watchmen and guards employed at the Winona, Minnesota, plant of the Company.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction. In accord with the agreement of the parties, we shall direct that Local 26

<sup>14</sup> *Matter of Swift and Company*, 56 N. L. R. B. 147; *Matter of Armour and Company*, 54 N. L. R. B. 1462; *Matter of Armour and Company*, 49 N. L. R. B. 688.

<sup>15</sup> Leo J. Killian, Arnie G. Ahearn.

<sup>16</sup> John M. Chuchel, Dan Glubka.

<sup>17</sup> Grace M. Herndon, Alice A. Przytarski, Florence Bechter.

appear on the ballot in the office and clerical unit and Local 1021 in the watchmen and guards unit.

### 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 and Company, Winona, Minnesota, 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 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 the employees in the units 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 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, to determine whether or not they desire to be represented for the purposes of collective bargaining in unit (1) by International Brotherhood of Swift Employees, Local 26, and in unit (2) by International Brotherhood of Swift Employees, Local 1021.