

In the Matter of AGAR PACKING & PROVISION CORPORATION and UNITED
PACKING HOUSE WORKERS OF AMERICA, C. I. O.

Case No. 13-R-2815.—Decided June 12, 1945

Mr. David Silbert, of Chicago, Ill., for the Company.

Miss Virginia Spence and Messrs. Herbert Marsh and R. P. Martinez,
all of Chicago, Ill., for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Packing House Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Agar Packing & Provision Corporation, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jack Evans, Trial Examiner. Said hearing was held at Chicago, Illinois, on May 3, 1945. The Company and the Union appeared, participated, and 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. 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

Agar Packing & Provision Corporation, a Virginia corporation, is engaged in the meat packing business. For this purpose it operates facilities in Chicago, Illinois, for slaughtering and processing hogs and for pre-

paring tanned, smoked, and fresh pork products. At its Chicago operations, with which we are concerned herein, the Company handles approximately 1,500,000 to 2,000,000 pounds of products weekly and processes products valued in excess of \$40,000,000 per year, more than 20 percent of which is 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 Packing House Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the collective bargaining representative of certain of its employees in the absence of certification by the Board.

A statement of the Trial Examiner for the Board, read in the record 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 Company and the Union are agreed upon the propriety of a collective bargaining unit consisting of production and maintenance employees, including hourly paid checkers and scalers, truck loaders, coal passers, and temperature men, but excluding operating engineers and firemen in the boiler room, general office employees, stock record clerks, timekeepers, truck drivers, cripple hog driver,² truck dispatchers, guards and watchmen, Barbadians,³ superintendents, assistant superintendents, foremen, hog buyers, assistant hog buyers, and all other supervisory employees.

However, the Company seeks the inclusion of assistant foremen, employees engaged at the Company's 36th Street warehouse, gang leaders, gang checkers, plant clerks, weekly paid checkers and scalers, and hog drivers, whereas the Union requests their exclusion.

¹ The Trial Examiner reported that the Company submitted a pay roll for the period ending March 3, 1944, which contained the names of 868 persons, that 69 of these were persons not working for various reasons; and that 9 were apparently on leave of absence. He further reported that the Union submitted petitions containing 427 names.

² The cripple hog driver, as part of his duties drives a truck, whereas the remaining hog drivers do not. This employee and the truck drivers are presently represented for collective bargaining purposes by another labor organization.

³ Counsel for the Company, in summing up the Company's contentions, agreed to the exclusion of these employees, whose tenure of employment is limited and whose continued employment is uncertain.

Assistant Foremen: These employees are responsible for groups ranging from 10 to 70 workers. They control the allocation of work to their subordinates, and "direct" them as to their duties. Under certain circumstances, the assistant foremen have control over the number of hours to be worked by subordinates. Although the Company's personnel manager testified that assistant foremen have no authority to hire, discharge, or make recommendations affecting the status of employees, he agreed that they were "essential management employees," who, in his opinion, should be excluded. In view of their duties and the control they exercise over such large numbers of employees, we conclude that their interests are identified with management. We shall exclude them.⁴

36th Street warehouse employees. The 36th Street warehouse is a receiving station for cans and supplies received by the Company. Engaged therein are four employees under the direct supervision of the Company's purchasing agent, whose office is located at the main plant and who supervises the work of these employees by means of daily trips from the main plant to the warehouse. The four employees are manual laborers, and the record indicates that they are interchangeable with employees of the other Chicago operations of the Company. One of these employees acts as gang leader of the remaining three. However, he works along with, and under the same conditions of employment as, the remaining three employees, and has no effective authority to make recommendations with respect to their status. We are of the opinion and find that all employees at the 36th Street warehouse of the Company are properly a part of the collective bargaining unit.⁵

Gang checkers: The Company employs several workers whose job is to check for the foremen the presence or absence of employees in the various gangs. They are under the supervision of their respective foremen at all times. They spend approximately 85 percent of their time performing production work together with other employees in the departments wherein they are engaged, and their pay and their working conditions are similar to those of regular production employees. Since the only clerical work that they perform is that of checking absentees, we are of the opinion and find that their clerical duties are not sufficient to warrant their exclusion from the bargaining unit. We shall, therefore, include them.

Plant clerks: The Company employs 8 to 10 plant clerks who, in addition to keeping absentee records and placing tags on trucks, also perform production work such as packing, sealing, and shipping cans. The record indicates that a substantial portion of their time is spent in work performed

⁴ Cf. *Matter of Shartle Brothers Machine Company*, 57 N. L. R. B. 1546.

⁵ In seeking the exclusion of gang leaders, the Union refers to the 36th Street warehouse gang leader.

directly on the production line. We shall include those employees within the unit.

Weekly paid checkers and sealers: These employees perform the same functions and duties as do hourly paid checkers and sealers, whom the Union would include within the unit. Since the difference in the payment of wages appears to arise from administrative reasons rather than from a difference in functions, we see no reason to distinguish between the hourly paid checkers and sealers and those who are paid by the week. Accordingly, we shall include the latter.

Hog drivers: These employees are engaged both at the stockyards and at the plant. At the stockyards they drive hogs to trucks and, at the plant, unload the hogs from the trucks and drive them to the killing room. They are not concerned with the operation of the trucks, their duties being confined to the driving of hogs. In this connection, they perform an integral part of the Company's production processes, and we shall include them within the unit.

Accordingly, we find that all production and maintenance employees of the Company at its Chicago, Illinois, operations, including those engaged at the 36th Street warehouse, and the South Morgan Street warehouse,⁶ checkers and sealers (whether hourly or weekly paid), truck loaders, coal passers, temperature men, gang leaders, gang checkers, plant clerks, and hog drivers, but excluding operating engineers and firemen in the boiler room, general office employees, stock record clerks, timekeepers, truck drivers, cripple hog driver, truck dispatchers, guards and watchmen, Barbadians, superintendents, assistant superintendents, foremen, assistant foremen, hog buyers, and assistant hog buyers, 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 purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot.

The Union objects to the participation in the election of part-time employees, whereas the Company contends that they should be eligible to vote. The record discloses that several employees work between 10 and 30 hours per week; that a large number of them have been engaged by the Company for the past 2 years; and that they perform their duties under working conditions similar to full-time employees. We shall permit such workers to cast ballots. The record also indicates that the Company intends to employ considerable numbers of students after the school vacation period commences. It has been our policy to permit students who intend

⁶ There appears to be no dispute with respect to the inclusion of these employees

to continue their employment after the end of the vacation period to vote; conversely, we have refused to permit students who intend to sever their employment on their return to school to participate in elections.⁷ Accordingly, only those students employed by the Company who fall within the former category will be eligible to vote.

The Union would also exclude from participation in the election those employees who are carried on the Company's pay roll, but who are presently on leave of absence. The Company contends that they should be permitted to vote. Many of these employees are on sick or maternity leave. Since they are considered by the Company as employees, and since they are expected to return to work upon the expiration of their leave,⁸ we find that they are eligible to participate in the election.

We shall direct that the employees of the Company eligible to vote in the election shall be those 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 Agar Packing & Provision Corporation, 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 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 Packing House Workers of America, C. I. O., for the purposes of collective bargaining.

⁷ *Matter of Johnson-Handly-Johnson and Johnson Furniture Company*, 51 N. L. R. B. 1282

⁸ There is no evidence that those who may be on leave for reasons other than illness or maternity care have been absent for unreasonable periods