

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

*Cases Nos. 4-R-1751, 18-R-1335, and 16-R-1355.—Decided  
November 21, 1945*

*Messrs. Clarke Munn, Jr., J. L. Pike, John E. Blevins, William N. Strack, and John P. Staley, of Chicago, Ill., and Mr. W. F. Joy, of Boston, Mass., for the Company.*

*Mr. Lemuel Ward, of New York City; Mr. Milton Siegel, of St. Paul, Minn.; Messrs. Lindsay P. Walden and A. J. Pittman, of Fort Worth, Tex.; and Mr. Ralph Helstein, of Chicago, Ill., for the C. I. O.*

*Mr. Don Mahon, of Washington, D. C.; and Mr. George M. Hauck, of Mechanicsburg, Pa., for Union No. 1 of the Independent.*

*Mr. Emil G. Paape, of Winona, Minn., for Local 1021 of the Independent.*

*Mr. W. J. Pattie, of Minneapolis, Minn., for the Amalgamated.*

*Mr. Don Mahon, of Des Moines, Iowa; Mr. J. T. Kelly, of Dallas, Tex.; and Mr. Walter Butler, of Chicago, Ill., for the N. B. P. W.*

*Mr. Tom Lillard, of Fort Worth, Tex., for the Plan of the Independent.*

*Mrs. Augusta Spaulding, of counsel to the Board.*

DECISION

DIRECTION OF ELECTIONS

AND

ORDER

STATEMENT OF THE CASE

On separate petitions duly filed by United Packinghouse Workers of America, a labor organization affiliated with the Congress of Industrial Organizations, herein called the C. I. O., each alleging that a question affecting commerce had arisen concerning the representation of employees of Swift and Company, Chicago, Illinois, herein called the Company, at three plants of the Company hereinafter named, the National Labor Relations Board provided for separate appropriate hearings upon due notice. The respective hearings were held as

follows: in Case No. 4-R-1751, on June 25, 1945, at Harrisburg, Pennsylvania, before Eugene M. Purver, Trial Examiner; in Case No. 18-R-1335, on July 20, 1945, at Winona, Minnesota, before Stanley D. Kane, Trial Examiner; and, in Case No. 16-R-1355, on July 10, 1945, at Dallas, Texas, before Elmer Davis, Trial Examiner. From the location of the three plants of the Company herein concerned, which is also the place of the hearing in each case, these cases are hereinafter respectively identified as the Harrisburg, the Winona, and the Dallas cases.

At the hearing on the Harrisburg case, the Company, the C. I. O., and Employees' Independent Union No. 1, a labor organization affiliated with the Independent Brotherhood of Swift Employees, herein called Union No. 1 of the Independent, appeared and participated. At the hearing on the Winona case, the Company, the C. I. O., Local 1021, Independent Brotherhood of Swift and Company Employees, herein called Local 1021 of the Independent, and Amalgamated Meat Cutters and Butcher Workmen of North America, herein called the Amalgamated, appeared and participated. At the hearing on the Dallas case, the Company, the C. I. O., Swift Employees Negotiation Plan, a labor organization affiliated with Independent Brotherhood of Swift Employees, herein called the Plan of the Independent, and National Brotherhood of Packinghouse Workers, herein called the N. B. P. W., appeared and participated. All parties at the several hearings were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of each hearing the local of the Independent respectively concerned, and in the Dallas case the N. B. P. W., also, moved that the petition in the case be dismissed. The Trial Examiners did not rule on the several motions. For reasons which appear in Section III, below, the several motions are denied except insofar as production and maintenance employees at the Dallas plant are concerned. The rulings made by the Trial Examiners at the several hearings are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Pursuant to notice, a consolidated hearing was held before the Board at Washington, D. C., on October 2, 1945, for the purposes of oral argument. The Company, the C. I. O., and the N. B. P. W., on behalf of the several locals of the Independent, its affiliate, appeared and participated. The Amalgamated did not appear.

The Board hereby orders, and the three cases are consolidated for the purposes of decision.

Upon the entire records in these proceedings, the Board makes the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Swift and Company is an Illinois corporation with its principal office and place of business at Chicago, Illinois. The Company is engaged in meat processing and meat packing and operates many plants throughout the United States. Employees of the Company's plants at Harrisburg in Pennsylvania, Winona in Minnesota, and Dallas in Texas are principally involved in these proceedings.

With respect to its Harrisburg plant, during the fiscal year ending October 28, 1944, the Company purchased livestock, materials, and supplies, valued in excess of \$2,000,000, of which approximately 25 percent was shipped to the plant from points outside Pennsylvania. During the same period, the Company sold materials and other products manufactured at its Harrisburg plant, valued in excess of \$3,000,000, of which approximately 52 percent was sold and delivered to points outside Pennsylvania. With respect to the Winona plant, during the last fiscal year, the Company purchased livestock, valued in excess of \$10,000,000, approximately 45 percent of which came to the plant from States other than Minnesota. During the same period, the Company processed at the Winona plant products, valued in excess of \$11,000,000, of which 97 percent was sold and shipped from the plant to customers outside Minnesota. With respect to the Dallas plant, during the year 1944, the Company purchased livestock, supplies, and other materials, valued in excess of \$5,000,000, of which approximately 23 percent was purchased outside Texas. During the same period, the Company sold meat and other products finished at the Dallas plant, valued at \$6,000,000, of which approximately 26 percent was shipped outside Texas.

The Company admits that it is engaged in commerce, with respect to each of the three plants herein involved, within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

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

Employees' Independent Union No. 1, Local 1021, and Swift Employees Negotiation Plan are labor organizations, chartered by International Brotherhood of Swift Employees, affiliated with National Brotherhood of Packinghouse Workers, C. U. A., admitting to membership employees of the Company.

Amalgamated Meat Cutters and Butcher Workmen of North America is a labor organization affiliated with the American Fed-

eration of Labor, admitting to membership employees of the Company.

### III. THE QUESTIONS CONCERNING REPRESENTATION

Swift and Company processes meat at many plants throughout the United States. Employees at several meat plants are represented by the C. I. O., by International Brotherhood of Swift Employees, herein called the Independent, and by the Amalgamated, respectively. Each of these three labor organizations negotiates with the Company contracts of 1-year duration, covering all employees at the Company's meat plants respectively represented by them through their local unions. Employee representation is generally newly acquired by the several labor organizations by plant units. When any labor organization acquires representation of employees at a new plant during a contract year, such employees are, by negotiation with the Company, deemed covered by the master contract between that organization and the Company. The terminal date of all these master contracts is August 11. The contracts provide that they are automatically renewable unless opened by either party by written notice 30 days prior to August 11 of any given year. The contracts, however, further provide that they may be opened once during the contract year by appropriate notice for negotiation as to wages. In 1944, the Amalgamated and the C. I. O. opened their master contracts for labor negotiations by appropriate notice before August 11, the annual terminal date. The Independent did not open its master contract before August 11, but after August 11,<sup>1</sup> exercising its option, the Independent gave appropriate notice that it desired to open its master contract as to wages. The master contract of the Independent covers employees at several plants, including employees at the Harrisburg, Winona, and Dallas plants, who are directly involved in these proceedings.

Subsequent to August 11, 1944, contested issues between the Company and the Independent as to wages were submitted to the War Labor Board for settlement. On February 20, 1945, the War Labor Board issued a supplementary directive to the effect that the Company and the Independent should negotiate with respect to certain issues between them, embody their agreement on these issues in writing, and report back to the War Labor Board for approval. At this time the Company clearly asserted its position that, if wages were to be increased at that mid-point in the course of the normal contract year, the terms of the master contract should be extended to August 11, 1946, without any further negotiation as to wages.

---

<sup>1</sup> The records in the several cases do not specifically disclose the date after August 11 on which the Independent gave notice to the Company to open the contract as to wages. It is clear that the date was prior to December 26, 1944, since a contract negotiated on that date, concerning employees at the Dallas plant, indicates that contested issues were then pending in a proceeding before the War Labor Board.

On May 15, 1945, the Company and the Independent executed a supplement to their master contract, embodying their agreement as to wage increases and extending the term of the master contract to August 11, 1946. On May 23, 1945, the War Labor Board approved the contract. The Independent contends that its master contract, thus supplemented and extended, constitutes a bar to a determination of representatives among employees at the Harrisburg, Winona, and Dallas plants, respectively. Since the sequence of events leading to the filing of the petition differs in each of the three cases before us, we will treat the cases separately at this point.

#### A. *The Harrisburg plant*

On April 30, 1945, while the Company and the Independent, as directed by the War Labor Board, as noted above, were engaged in formulating their supplementary master contract, the C. I. O. asked the Company for recognition as bargaining representative of employees at the Harrisburg plant. The Company refused, contending that its current contract with the Independent terminating August 11, 1945, constituted an immediate bar to recognition of another labor organization during the term of the contract. On May 5, the C. I. O. filed the petition in Case No. 4-R-1751, covering employees at the Harrisburg plant. On May 15, 1945, as set forth above, the Company and the Independent entered into a new contract, supplementing their master contract and providing that the same should be extended to August 11, 1946. On May 23, 1945, the War Labor Board approved the new contract.

The Independent now takes the position that the new supplementary master contract approved by the War Labor Board and extending the contract term to August 11, 1946, constitutes a bar to a determination of representatives for employees at the Harrisburg plant at this time.<sup>2</sup> We do not agree. The claim of the C. I. O. was clearly made at a time when a master contract between the Independent and the Company was due to terminate on August 11, 1945, and prior to the execution of the May 15 supplemental contract. A contract made subsequent to the claim of a rival union is not a bar to an election.<sup>3</sup> We find that the supplementary master contract executed on May 15 does not constitute a bar to a present determination of representatives for employees at the Harrisburg plant.

<sup>2</sup> Independent Union No 1, urging the *Allis Chalmers* doctrine as a bar, is clearly not dependent upon the negotiation of the recent contract for proof to the employees for whom it is the recognized bargaining representative of its efficacy as a bargaining representative, and it must now look to the employees themselves for affirmation and continuation of its role as such. See *Matter of Rane Tool Company, Inc.*, 63 N L R B 352, and cases cited therein.

<sup>3</sup> *Matter of The Mead Corporation, Hcald Division*, 63 N L R B 1129.

### B. *The Winona plant*

On April 20, 1945, Local 1021 of the Independent, the recognized representative of employees at the Company's Winona plant, notified the Company that it desired to open the contract renewed as of August 11, 1944, and on April 28, requested a bargaining conference. As noted above, on May 15, 1945, the Company and the Independent, with which Local 1021 is affiliated, entered into a supplementary master contract, which the War Labor Board on May 23 approved, covering, *inter alia*, employees at the Winona plant. On June 18, 1945, some 3 or 4 weeks later, the C. I. O. made its initial demand on the Company for recognition as bargaining representative of employees at the Winona plant, and the Company refused the recognition.

The Independent contends that the supplementary master contract, executed on May 15, extending the term of the master contract to August 11, 1946, constitutes a bar to a determination of representatives for employees at the Winona plant. We do not agree. Since the supplementary contract of May 15 constitutes a premature extension of the then existing master contract terminating on August 11, 1945, we find that the supplementary master contract of May 15, 1945, does not constitute a bar to a determination of representatives for employees at the Winona plant at this time.<sup>4</sup>

### C. *The Dallas plant*

The petition covering the Company's employees at Dallas covers two distinct groups of employees (a) production and maintenance employees at the Dallas meat processing plant and (b) employees at the Dallas Branch House, a sector of the sales and distribution division of the Company's operations, under separate supervision, but located on the same property as the meat processing plant at Dallas. The Company's branch houses elsewhere are located on property apart from the meat processing houses. Bargaining relations for branch house employees and for employees at meat packing plants are by custom entirely separate. Thus, employees at the Company's branch houses have not been covered under the master contracts of the several labor organizations representing the Company's production and maintenance employees at the meat processing plants. The Independent's master contract, the validity of which is in issue here as a bar to a

---

<sup>4</sup> See *Matter of Memphis Furniture Manufacturing Company*, 51 N. L. R. B. 1447, *Matter of Michigan Light Alloys Corporation*, 58 N. L. R. B. 113; and *Matter of Virginia-Lincoln Corporation*, 63 N. L. R. B. 590.

Chairman Herzog does not join in so much of the decision as applies the "premature extension" doctrine to the Winona plant, being doubtful whether that doctrine should govern where a premature extension is made in good faith and in the absence of any conflicting claim or knowledge thereof.

determination of representatives for production and maintenance employees at the meat processing plant, does not concern employees at the Dallas Branch House. The contract here in issue therefore constitutes no bar to a determination of representatives for employees not directly concerned therein.

With respect to employees at the meat processing plant at Dallas, the following events are pertinent; (1) Prior to March 1944, Swift Employees Negotiating Plan, herein called the Plan, was an unaffiliated labor organization made up of production and maintenance employees at the Dallas plant. This organization negotiated with the Company, but entered into no formal contract on behalf of the Company's employees. In 1944 employees at the plant who were members of the Plan decided to affiliate with International Brotherhood of Swift Employees, herein called the Independent, retaining its old name and becoming Local 15 of the Independent, herein called the Plan of the Independent. The Company, on request, refused to recognize the Plan of the Independent as bargaining representative of its employees and would not execute a written contract unless and until the Plan of the Independent were certified by the Board. Pursuant to a petition for certification filed in Case No. 16-R-1080, the Regional Director conducted a consent election and, on November 23, 1944, announced that the Plan of the Independent had won the election. (2) On December 26, 1944, the Company and the Plan of the Independent entered into a contract, providing that the master agreement between the Company and the Independent, concerning which disputed issues were then pending before the War Labor Board, should be applicable to employees at the Dallas plant. (3) In April, the C. I. O. commenced its organization of the Company's employees at Dallas and held its first organizational meeting on April 12. On April 23, the C. I. O. asked the Company for recognition as bargaining representative of employees at the Dallas plant. On May 15, the supplementary master contract between the Independent and the Company was finally executed and, on May 23, the same was approved by the War Labor Board. The Independent contends that this master contract as supplemented and extended to August 11, 1946, is a bar to a determination of representatives at this time among employees at the Dallas plant. We agree with this contention.

The Plan of the Independent became the bargaining representative of the Company's employees at Dallas on November 23, 1944, and its first contract with the Company, executed on December 26, recited that the provisions settling the disputed issues then pending before the War Labor Board for approval should be incorporated into the contract. The War Labor Board subsequently imposed on the parties

the negotiation of a supplementary contract. The supplementary contract executed on May 15, 1945, and approved on May 23 by the War Labor Board must be identified as the first fruits of bargaining achieved by the Plan of the Independent, since its selection as bargaining representative by these employees. Absent unusual circumstances, the Board will not order an election less than 1 year after a prior certification.<sup>5</sup> That a comprehensive contract was not achieved until a substantial part of the year was passed was not due to fault or neglect on the part of the newly designated representative. The term of the completed contract, in view of the delays incident to the submission of disputed issues to the War Labor Board, is not unreasonable. Because the Plan of the Independent is a newly designated organization, and it has not, as such, had an ample opportunity to enforce its contract and thus demonstrate its ability as a bargaining representative to represent employees at the Dallas plant, we find that the contract between the Company and the Independent constitutes a bar to a determination of representatives with respect to these employees.<sup>6</sup>

Statements prepared by Board agents and received into evidence at the respective hearings indicate that the C. I. O. represents a substantial number of employees at the Company's Harrisburg and Winona plants in the units hereinafter respectively found appropriate.<sup>7</sup>

We find that no question affecting commerce has arisen concerning the representation of production and maintenance employees at the Dallas plant within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act, and we shall dismiss the petition covering employees at Dallas so far as it affects these employees.

We find that questions have arisen concerning the representation of employees at the Company's Harrisburg and Winona plants and at the Dallas Branch House, respectively, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

---

<sup>5</sup> *Matter of Aluminum Company of America, Newark Works*, 57 N. L. R. B. 913.

<sup>6</sup> *Matter of American Marsh Pumps, Inc.*, 59 N. L. R. B. 1084

<sup>7</sup> The Field Examiner reported that the C. I. O. submitted 49 authorization cards, 43 of which bore the names of employees on the Company's pay roll of May 21, 1945, for the Harrisburg plant. In addition to its current contract, the Independent submitted 79 authorization cards dated in June 1945, bearing the names of employees on the Harrisburg pay roll. In view of the current contract, these cards were not checked against the pay roll.

There are approximately 119 employees in the unit appropriate for the employees at the Harrisburg plant.

The Field Examiner reported that the C. I. O. had submitted 94 authorization cards, all of which bore the names of employees on the Company's pay roll of June 26, 1945, for employees at the Winona plant; and that the Amalgamated submitted 8 authorization cards bearing the names of the employees on the same pay roll. The Independent submitted no cards, relying on its contract for its showing of interest among these employees.

There are approximately 120 employees in the unit found appropriate for the employees at the Winona plant.

## IV. THE APPROPRIATE UNITS

A. *The Harrisburg plant*

The parties in interest agree that the appropriate bargaining unit for employees at the Harrisburg plant should include all production employees, excluding all general office employees, livestock buyers and yardmen, plant clerks, checkers and timekeepers, standards department employees, employment office employees, receiving clerks, plant-protection employees, part-time workers, the superintendent, general foremen, foremen, assistant foremen, the chief engineer and master mechanic, and all other supervisory employees. The C. I. O. would exclude, and the Company and the Independent would include, maintenance employees.

There are approximately 12 maintenance employees in the Harrisburg plant. The C. I. O. bases its claim for their exclusion on the sole ground that it has not organized maintenance employees. We find no merit in this claim. The Independent is the recognized bargaining representative of the plant unit, and maintenance employees have been a part of the bargaining unit and covered by the contracts between the Company and the Independent. The record discloses no reason why maintenance employees should, at this stage of the bargaining history, be excluded from the unit. We will, therefore, include maintenance employees in the appropriate unit.

We find that all production and maintenance employees at the Company's Harrisburg plant, excluding all general office employees, livestock buyers and yardmen, plant clerks, checkers and timekeepers, standards department employees, employment office employees, receiving clerks, plant-protection employees, part-time workers, the superintendent, general foremen, foremen, assistant foremen, the chief engineer and master mechanic, 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.

B. *The Winona plant*

The parties in interest agree, and we find, that all production and maintenance employees at the Company's Winona plant, excluding all general office employees, the superintendent's secretary, the supply and discrepancies clerk, livestock buyers, assistant buyers, clerks, scalers, plant clerks, timekeepers, standards department employees, employment office employees, receiving clerk, plant-protection employees, part-time workers, the superintendent, general foremen, foremen, assistant foremen, the chief engineer and master mechanic, 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.

### *C. The Dallas plant*

As noted above, the Company's employees at Dallas include not only the production and maintenance employees at the meat processing plant, concerning the representation of whom we have found no question has arisen, but also employees at the Dallas Branch House, whom the C. I. O. claims to have organized and whom the C. I. O. would include in the same unit with production and maintenance employees of the meat processing plant.

On May 31, approximately 3 weeks after the C. I. O. filed its petition for certification in the Dallas case, the Independent asked the Company for recognition as bargaining representative of the Dallas Branch House employees as a separate bargaining unit. Employees in the Dallas Branch House, whom the two labor organizations desire to represent, include employees classified as truck drivers, boners, helpers, and checkers, excluding salesmen and accounting department employees and clerical and supervisory employees. The Independent and the Company contend that these employees constitute a separate bargaining unit. Since branch house employees are not regularly included in the same bargaining unit with meat processing employees, and since employees in the Dallas Branch House have never been represented in the past by any labor organization, we find that employees at the Dallas Branch House constitute a separate appropriate bargaining unit.

We find that all employees at the Company's Dallas Branch House, excluding salesmen, accounting department employees, clerical employees, and all supervisory employees who have 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 questions concerning representation which have arisen be resolved by separate elections by secret ballot among employees in the respective appropriate units who were employed during the pay-roll period immediately preceding the date of this Decision and Direction of Elections, subject to the limitations and additions set forth in the Direction.

## ORDER

On the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Swift and Company, Chicago, Illinois, filed in Case No. 16-R-1355, by United Packinghouse Workers of America, C. I. O., be, and it hereby is, dismissed so far as it pertains to employees at the meat processing plant at Dallas, Texas.

## 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, Chicago, Illinois, separate elections by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Directors for the Fourth, Eighteenth, and Sixteenth Regions, respectively, acting in this matter as agents for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among employees in the respective groups noted below, 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 elections:

(1) Among all production and maintenance employees at the Company's Harrisburg plant in the unit found appropriate in Section IV, above, to determine whether they desire to be represented by United Packinghouse Workers of America, C. I. O., or by Employees' Independent Union No. 1, National Brotherhood of Packinghouse Workers, C. U. A., for the purposes of collective bargaining, or by neither;

(2) Among all production and maintenance employees at the Company's Winona plant in the unit found appropriate in Section IV, above, to determine whether they desire to be represented by United Packinghouse Workers of America, C. I. O., or by International Brotherhood of Swift Employees, Local 1021, or by Amalgamated

Meat Cutters & Butcher Workmen of North America, A. F. L., or by none; and

(3) Among all employees at the Dallas Branch House in the unit found appropriate in Section IV, above, to determine whether they desire to be represented by United Packinghouse Workers of America, C. I. O., or by Swift Employees Negotiation Plan, for the purposes of collective bargaining, or by neither.