

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

Case No. 17-R-1210.—Decided November 29, 1945

Mr. H. L. Burns, of Kansas City, Kans., for the Company.

Mr. Leslie Grear, of Kansas City, Mo., for the Union.

Miss Margaret M. Farmer, 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., Kansas City, Kansas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer L. Hunt, Trial Examiner. The hearing was held at Kansas City, Missouri, on September 17, 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 Company moved to dismiss the petition on the ground that the unit petitioned for is not appropriate within the meaning of the Act. For the reasons hereinafter stated, this 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 with its main offices in Chicago, Illinois. The Kansas City plant, located at Kansas City, Kansas, is the only plant involved in this proceeding. At its Kansas City plant, the Company purchases and slaughters livestock and

processes, sells, and distributes meat and meat products. During the year 1944 the Kansas City plant's sales of finished products exceeded \$1,000,000 in value, more than 50 percent of which was shipped to points outside the State of Kansas.

The Company admits, and we find, 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

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its guards, until the Union has been certified by the Board.

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, now representing the Kansas City plant's production and maintenance employees, seeks a separate unit of guards,² excluding the two chief guards, Raymond Ballende and Ora Martindale, who the Company agrees are supervisory employees within the meaning of our customary definition. The guards are armed, uniformed, and militarized and perform the functions normally associated with their position. They guard the plant against sabotage, check all persons and vehicles entering and leaving the plant, check on fire equipment, and enforce company rules and regulations. The guards are employed and paid by the Company.

The Company contends that the guards cannot properly be included in any unit, or indeed be represented by a union because they are militarized and because they are allied to management in the performance

¹ The Regional Director reported that the Union submitted 10 membership cards, all of which bore the names of persons listed on the Company's pay roll, which contained the names of 24 employees in the appropriate unit; and that the cards were dated August 1945. One card, dated August 1945, was submitted to the Trial Examiner during the hearing.

² Guards were also referred to in the record as watchmen.

of their duties. We have considered both these contentions in numerous recent cases involving militarized guards with substantially similar duties and have found them to be without merit.³

The Company also contends that the guards cannot properly be represented by the same union which represents the production and maintenance employees. But the Union is here seeking to represent these employees in a separate unit, in accordance with our established requirements; consequently, as in other cases, we reject this contention.⁴

The Union requests the inclusion of Charles Agee, the chief of the sanitary squad. This employee supervises the night sanitary squad of workers in all the buildings. Agee is paid by the week, receives the same weekly wage as the guards, and is carried, as are the guards, on the "watch department" pay roll. He has the authority effectively to recommend the hiring and discharging of 35 sanitary employees who work under his direction and control. He spends less than 20 percent of his time in manual labor and more than 60 percent of his time in his duties as a supervisory official. He lays out, directs, and assumes responsibility for the performance of the work of these 35 employees. He will be excluded from the unit.

We find that all guards of the Company at its Kansas City, Kansas, plant, excluding chief guards, chief of the sanitary squad, 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

³ *Matter of The B. F. Goodrich Company*, 62 N. L. R. B. 206; *Matter of General Motors Corporation, Packard Electric Division*, 62 N. L. R. B. 174; *Matter of National Lead Company, Titanium Division*, 62 N. L. R. B. 107; *Matter of Sealed Air Corporation*, 61 N. L. R. B. 1639; *Matter of Pullman-Standard Car Manufacturing Company*, 61 N. L. R. B. 1398; *Matter of International Harvester Company, Milwaukee Works*, 61 N. L. R. B. 912; *Matter of The Babcock & Wilcox Company*, 61 N. L. R. B. 529; *Matter of The Colorado Fuel and Iron Corporation, Minnequa Works*, 63 N. L. R. B. 1049; *Matter of Bendix Radio Division of Bendix Aviation Corporation*, 63 N. L. R. B. 1265.

⁴ *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892; *International Harvester Company, Milwaukee Works*, 61 N. L. R. B. 912; *Bethlehem-Fairfield Shipyard, Inc., et al.*, 61 N. L. R. B. 901.

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., Kansas City, Kansas, an election 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 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 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., for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.