

In the Matter of WILSON & COMPANY, INC. and UNITED PACKINGHOUSE WORKERS OF AMERICA, DISTRICT 8 (C. I. O.), LOCAL 227

In the Matter of WILSON & COMPANY, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION No. 886, A. F. L.

Cases Nos. 16-R-1406 and 16-R-1411, respectively.—Decided November 30, 1945

Mr. R. C. Winkler, of Chicago, Ill., and *Mr. Frank G. Anderson*, of Oklahoma City, Okla., for the Company.

Messrs. Joe Dernoncourt, Horace Gates, and Buck Whitaker, of Oklahoma City, Okla., and *Mr. A. J. Pittman*, of Fort Worth, Tex., for the C. I. O.

Mr. A. J. Moore, of Oklahoma City, Okla., for the Teamsters.

Messrs. William L. Murphy and Roy Decker, of Oklahoma City, Okla., for the E. R. C.

Mr. Stanley B. Korengold, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by United Packinghouse Workers of America, District 8 (C. I. O.), Local 227, herein called the C. I. O., and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 886, A. F. L., herein called the Teamsters, each alleging that a question affecting commerce had arisen concerning the representation of employees of Wilson & Company, Inc., Oklahoma City, Oklahoma, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Glenn L. Moller, Trial Examiner. The hearing was held at Oklahoma City, Oklahoma, on August 15, 1945. At the hearing, the Employees Representative Committee, herein called the E. R. C., filed a motion to intervene in the proceedings. The Trial Examiner granted the mo-

tion.¹ The Company, the C. I. O., the Teamsters, and the E. R. C. 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.

During the course of the proceedings, the Company and the E. R. C. moved to dismiss the petitions filed by the C. I. O. and the Teamsters. Ruling on the motions was reserved for the Board. For reasons hereinafter stated, the motions are 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

Wilson & Company, Inc., is a Delaware corporation with its principal office and place of business in Chicago, Illinois. It is engaged in the operation of 9 meat packing plants and 85 branch houses located in the various States of the United States. Only the Company's Oklahoma City plant is involved in this proceeding. The Company annually receives at its Oklahoma City plant raw materials consisting chiefly of livestock valued in excess of \$1,000,000, of which approximately 10 percent is shipped to the Oklahoma City plant from points outside the State of Oklahoma. The Company annually produces at its Oklahoma City plant finished products valued in excess of \$1,000,000, of which 80 percent is sold and shipped to points outside the State of Oklahoma.

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

II. THE ORGANIZATIONS INVOLVED

United Packinghouse Workers of America, District 8, Local 227, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 886, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

¹ Subsequent to the hearing, the Board found that the E R C. was a company-dominated union and, therefore, an illegal labor organization under the Act *Matter of Wilson & Co Inc., et al.*, 63 N. L. R. B. 636. Inasmuch as the Company is thereby precluded from recognizing the E R. C. as a collective bargaining representative, the E. R. C. can have no interest in or claim to representation justifiable in these proceedings.

III. THE QUESTIONS CONCERNING REPRESENTATION

On or about June 15, 1945, the Teamsters informed the Company that it desired recognition as the exclusive bargaining representative of the Company's cross-country truck drivers. On June 23, 1945, the C. I. O. filed a petition with the Board requesting certification as the bargaining representative of the Company's hourly paid and piece-work production and maintenance employees. The Company has refused to accord recognition to either the Teamsters or the C. I. O. on the ground that it has an existing contract with the E. R. C. which it now urges as a bar to both petitions. However, as stated above, the Board issued a Decision and Order on August 30, 1945, disestablishing the E. R. C. for reasons of company domination and rendering ineffectual its contract with the Company. The contract, therefore, affords no bar to a present determination of representatives.²

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Teamsters and the C. I. O. each represents a substantial number of employees in the unit each alleges to be appropriate.³

We find that questions affecting commerce have arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the A. t.

IV. THE APPROPRIATE UNITS

The C. I. O. seeks a unit of all hourly paid and piece-work production and maintenance employees, including gang leaders and city truck drivers, but excluding salaried production and maintenance employees, office and clerical employees, cafeteria employees, wholesale market employees, timekeepers, sectional timekeepers, all produce employees, technical employees, plant-protection employees, firemen,⁴ salesmen and stock buyers, cross-country truck drivers, and supervisory employees. The Teamsters desires to represent only the Company's cross-country truck drivers. The Company contends that the Board should adhere to the unit established by the Company's bargaining history with the E. R. C., and urges the Board to find appropriate a single unit which would include all production and maintenance employees, whether hourly paid or salaried, both city and cross-country truck

² See footnote 1, *supra*

³ The Field Examiner reported that the Teamsters submitted 8 authorization cards out of the 14 employees in the unit petitioned for. Of these 8 cards, 7 were dated May 1945, and 1 was dated June 1945.

The C. I. O. submitted 655 authorization cards out of the 1100 employees in the unit petitioned for. Of these 655 cards, 324 were dated between January and December 1944, and 331 were dated between January and July 1945.

⁴ The Company states that it has no separate classification of firemen but that its plant-protection employees are watchmen who also act as firemen.

drivers, firemen, and plant-protection employees. With exception of the foregoing categories, the Company agrees to the exclusions desired by the C. I. O.

While we normally give considerable weight to the past bargaining history of a company, we have refused to do so where, as here, the company has been found to have dominated the union with which it has carried on its collective bargaining, since such a bargaining history cannot be said to reflect the true representation desires of the employees.⁵ We shall, therefore, make our determination of the appropriate bargaining units without regard to the bargaining pattern which previously existed between the E. R. C. and the Company.

As indicated above, the Teamsters seeks a unit of cross-country truck drivers, excluding city truck drivers, inside plant-workers, clerical employees, and supervisory personnel. The Company takes the position that, because of the close integration between the duties and interests of the city drivers and the cross-country drivers, all truck drivers should be placed in the same bargaining unit; further, it would include both the cross-country truck drivers and the city truck drivers in the broad unit of production and maintenance employees. The C. I. O., however, which is the only *bona fide* union desiring to represent the production and maintenance employees, seeks also to represent the city, but not the cross-country drivers.

The record indicates that the cross-country and city truck drivers receive the same rate of pay, are paid on the same weekly basis, and get the same overtime compensation. The drivers frequently interchange duties, the cross-country drivers making city deliveries, and the city drivers taking long distance trips. All drivers ring in at the same place, share the same locker room, and take the physical examination required by the Interstate Commerce Commission for driving in interstate commerce. The two groups are under the same supervision, being subject to the direction of a single foreman.

From the foregoing, it appears that the cross-country truck drivers and the city truck drivers are closely integrated in their functions and enjoy a community of interest. We are, therefore, of the opinion that all the truck drivers should be represented in the same bargaining unit. We have frequently stated that truck drivers are a skilled and functionally coherent group entitled to be represented in a separate bargaining unit,⁶ and since the C. I. O. has not indicated that it desires to include both the cross-country and the city truck drivers in the production and maintenance unit, we shall exclude all

⁵ See *Matter of Johnson Bronze Company*, 59 N. L. R. B. 957; *Matter of New Idea, Inc.*, 25 N. L. R. B. 265

⁶ See *Matter of Sutherland Paper Company*, 55 N. L. R. B. 38.

truck drivers from such unit and place them in a separate bargaining unit.

The C. I. O. requests that the Board include within the production and maintenance unit only employees who are paid by the hour or by piece work; it would exclude from the unit any production and maintenance employee who receives a regular salary. The desire of the C. I. O. conflicts, however, with the Board's established policy of refusing to delineate a bargaining unit by the manner in which the employees are paid. The Board has repeatedly held that in determining the appropriate bargaining unit it will not distinguish between employees paid on a salary basis and those paid on an hourly basis solely on the ground of the difference in mode of payment; the method of compensation must have a direct relation to the functions, skill, or status of the employees before it may operate as a demarcation factor.⁷ In the instant case, the record presents no evidence affording a reasonable basis for distinguishing between the salaried and the hourly paid or piece-work production and maintenance employees. We are, therefore, of the opinion that all production and maintenance employees, whether they are salaried, hourly paid, or compensated by piece work, should be included in the production and maintenance unit.⁸

'The Company would include its plant-protection personnel in the unit of production and maintenance employees, whereas the C. I. O. would exclude them. The Company has several employees who act both as watchmen and firemen and are responsible for the protection of the plant. Although they bear arms, they are neither militarized, uniformed, nor deputized; nor does the record show that they perform any monitorial duties. We shall include these employees in the production and maintenance unit.⁹

We find that each of the following groups constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All production and maintenance employees, including gang leaders and plant-protection employees, but excluding office and clerical employees, cafeteria employees, wholesale market employees, timekeepers, sectional timekeepers, produce employees, technical employees, salesmen and stock buyers, truck drivers, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

⁷ See *Matter of Jones and Laughlin Steel Corporation, Pittsburgh Works*, 57 N. L. R. B. 357, *Matter of Edgewater Steel Company*, 56 N. L. R. B. 1778

⁸ The only reference in the record to salaried production and maintenance employees concern the scalers, part of whom the C. I. O. contends are salary paid. We shall include all scalers, whether hourly or salary paid, in the bargaining unit

⁹ See *Matter of Congoleum Nairn, Inc.*, 64 N. L. R. B. 95, and cases cited therein. Cf. *Matter of Kelsey-Hayes Wheel Company*, 62 N. L. R. B. 421.

2. All city truck drivers and cross-country truck drivers, excluding the foreman, the assistant foreman, 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.

V. THE DETERMINATION OF REPRESENTATIVES

Inasmuch as the C. I. O. has given no indication that it wishes to represent the cross-country and city truck drivers in the bargaining unit which we have heretofore found appropriate, we shall not place its name on the ballot in the election to determine a bargaining representative for such employees. Should the C. I. O., however, desire to appear on the ballot, it may do so by notifying the Regional Director within five (5) days of the date of the issuance of the Decision and Direction of Election herein, that it desires to participate in such election.

We shall direct that the questions concerning representation which have 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.

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 Wilson & Company, Inc., Oklahoma City, Oklahoma, 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 Director for the Sixteenth 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 following employees 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 elections:

1. All production and maintenance employees, including gang leaders, and plant-protection employees, but excluding office and clerical employees, cafeteria employees, wholesale market employees, timekeepers, sectional timekeepers, produce employees, technical employees, salesmen and stock buyers, truck drivers, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether or not they desire to be represented by United Packinghouse Workers of America, District 8, Local 227, C. I. O., for the purposes of collective bargaining.

2. All city truck drivers and cross-country truck drivers, excluding the foreman, the assistant foreman, 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, to determine whether or not they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 886, A. F. L., for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.