In the Matter of ARMOUR AND COMPANY *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL UNION No. 296, CIO

Case No. 19–R–1592.—Decided March 1, 1946

Mr. J. C. Moore, of Chicago, Ill., for the Company.

Messrs. A. J. Shippey and *R. R. Engelking*, of Spokane, Wash., and *Mr. Roy Atchison*, of Seattle, Wash., for Local 296 of the Packinghouse Workers.

Messrs. David Dolnick and *John I. Powderly*, of Chicago, Ill., and *Mr. Joseph Y. Henderson*, of Spokane, Wash., for Local 235 of the Amalgamated.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon petition duly filed by United Packinghouse Workers of America, Local Union No. 296, CIO, herein called Local 296 of the Packinghouse Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Armour and Company, Spokane, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Erwin A. Peterson, Trial Examiner. The hearing was held at Spokane, Washington, on October 30, 1945. The Company, Local 296 of the Packinghouse Workers, and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 235, A. F. of L., herein called Local 235 of the Amalgamated, appeared and participated. During the course of the hearing, Local 235 of the Amalgamated moved to dismiss the petition on the ground that its contract with the Company constitutes a bar to a determination of representatives at this time. For reasons which appear in Section III, below, the motion is granted. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

Armour and Company is a corporation engaged in slaughtering and meat processing. Its principal office and place of business is at Chicago, Illinois. It operates a plant at Spokane, Washington, which is the plant principally involved in this proceeding.

During the 12 months preceding September 1, 1945, the Company received at its Spokane, Washington, plant livestock and raw materials, approximately 55 percent of which came to the plant from points outside the State. During the same period, the Company processed at its Spokane plant materials valued in excess of $12,000,000, of which approximately 15 percent was consigned 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 ORGANIZATIONS INVOLVED

United Packinghouse Workers of America, Local Union No. 296, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Amalgamated Meat Cutters and Butcher Workmen of North America, Local 235, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

The Company operates approximately 34 meat processing plants in the United States at which employees are presently presented by collective bargaining agents. Amalgamated Meat Cutters and Butcher Workmen of North America, herein called the Amalgamated, through its several local unions, among which is Local 235, the intervenor herein, represents employees at 12 such plants. United Packinghouse Workers of America, herein called the Packinghouse Workers, the parent organization of Local 296, the petitioner herein, represents employees of the Company at 23 other plants. Prior to 1941, contracts covering employees in the meat packing industry were executed on a plant basis. In 1941 the Packinghouse Workers and the Company executed a master contract covering all employees then represented by the former and its local unions. Other labor organizations thereafter adopted this practice of negotiating master

contracts covering all employees of each concern in the industry represented by their respective local unions.

On August 14, 1943, the Company and the Amalgamated entered into a master contract covering employees at plants where locals of the Amalgamated were recognized as bargaining representatives for the period of 1 year and from year to year thereafter, unless notice to reopen any section or sections of the same were given by either party to the contract 30 days prior to the annual terminal date. A special provision of the contract reserved the right to either contracting party to request, upon 30 days' notice during the contract year, a change as to wage rates, and provided for the convention of joint conferences of representatives on the issue within 1 week thereafter. Among employees covered by this 1943 master contract were employees at the Spokane plant immediately concerned in this proceeding.

On July 7, 1944, a little more than 30 days before the terminal date of the contract, the Amalgamated gave due written notice to the Company of its desire to reopen the same. On July 11, 1944, Local 235 of the Amalgamated, the recognized bargaining representative of the employees at the Spokane plant, informed the Company by letter that it concurred in the action of its parent body in fixing the "expiration date" of the 1943 contract as of August 1944.

Thereafter the Company and the Amalgamated carried on negotiations looking forward to a new contract, submitting to the War Labor Board certain issues then in dispute between them.[1] Pending the settlement of the issues between them, the Company and the Amalgamated orally agreed to be bound by the provisions of their 1943 contract. On February 20, 1945, the War Labor Board, deciding certain matters in dispute, directed the parties to negotiate further with respect to other issues and report back the result of their efforts. On April 24, 1945, the Company and the Amalgamated executed, and thereafter submitted to the War Labor Board for approval, a new contract embodying therein provisions covering the issues heretofore in dispute between them, including, *inter alia*, matters submitted to the War Labor Board. This agreement concludes with the following provision:

> The Master Agreement between the parties as modified by the provisions set forth herein shall be continued in effect until August 11, 1946. In the event of a change in National Wage Stabilization policy, and only in the event of such change, either party shall have the right to reopen the Master Agreement, on

[1] Other petitions were filed with the War Labor Board by the Amalgamated, the Packinghouse Workers, and other labor organizations covering employees of leading operators in the meat packing industry, and cases involving like issues, some of which had been pending over a long period of time, were consolidated for decision.

the subject of general wages only, on 30 days notice.

The Master Agreement will be revised to incorporate the provisions set forth in this agreement, and will thereupon be reexecuted by the parties hereto.

On May 11, 1945, the War Labor Board approved the agreement of April 24, 1945.

On May 29, 1945, Local 296 of the Packinghouse Workers, the petitioner herein, made its demand upon the Company for exclusive recognition. At the time of the hearing upon the petition filed herein, the Company and the Amalgamated had not reexecuted in single documentary form all the terms of their agreements covering employees represented by the Amalgamated and its locals.

The Company and Local 235 of the Amalgamated contend that the agreement executed on April 24, 1945, constitutes a bar to a determination of representatives at this time. Local 296 of the Packinghouse Workers, however, contends that this agreement is not a bar, urging that a termination of the 1943 agreement was not necessary to reopen the contract as to wages only; that, therefore, the master contract of 1943 was not terminated in 1944, but automatically renewed; that, as renewed, it would normally have terminated on August 11, 1945; and that, therefore, the newly executed agreement of April 24, 1945, constitutes a premature extension of the master contract of 1943, and, as such, does not bar a determination of representatives at this time.[2]

It seems clear that in July 1944 the Amalgamated and Local 235 might have opened their master contract of 1943 as to wages only and thus preserved, through the exercise of the automatic renewal clause therein, the continuance of their bargaining relations in the form of a written contract for an additional term. Whether all the changes in the contractual relations desired by the Amalgamated and its local unions could have been negotiated by opening the provision of their contract covering wage rates only is questionable.[3] But whether the termination of the master contract of 1943 was or was not ill advised, and whatever may have prompted their actions, it is clear that the intention of the contracting unions was to prevent an automatic renewal of the contract term by timely notice before the close of the contract year. Their notices to the Company cannot otherwise be interpreted. Pending the settlement of certain matters submitted to the War Labor Board in compliance with lawful

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[2] *Matter of Swift and Company*, 64 N. L. R. B 880.

[3] The new terms of the April 24, 1945, contract relate to payment for time spent in changing clothes, the furnishing of work clothes, tools, and equipment, the payment of time in preparation of tools for use, provisions for adjustment of wage inequalities within plants and between plants, lunch periods, and matters of rates of pay for the employees concerned.

authority, they made an oral agreement to remain bound by the terms of the master contract of 1943. Had the petitioner herein presented its claim to represent employees at the Spokane plant prior to April 24, 1945, there would have been no written contract between the Company and the Amalgamated to preclude an immediate determination of representatives.[4] On April 24, 1945, however, the Company and the Amalgamated executed a new written agreement resolving the issues heretofore the subject of their immediate negotiations and incorporated therein the terms of the 1943 master agreement not inconsistent therewith, and fixed for their new contract a term of approximately 16 months. Since the contracting parties failed to carry out their expressed intention to make a formal document embodying therein the new agreed provisions and the terms of the 1943 contract carried over into a new term, the real question before us is whether the agreement of April 24, 1945, constitutes a sufficient and comprehensive written memorandum of the understanding between the parties to stabilize bargaining relations for the employees concerned and hence constitute a bar to a determination of representatives for the term of the contract.[5] We believe that it does. The agreement of April 24, 1945, incorporating the provisions of the 1943 contract was not inconsistent therewith, constitutes an explicit written record of the entire immediate understanding between the parties covering provisions as to wages and other conditions of employment customarily found in contracts in this industry for a reasonable term. Therefore, the reexecution of the documents, intended but not effected by the parties, does not bear upon their accord committed to a writing or impair the effectiveness of their binding agreement for the term set. Although contracts for periods of 1 year are customary in the meat packing industry, in view of the delays incident to the submission of disputed issues to the War Labor Board, we find that the term of the new agreement is not unreasonable.[6] Accordingly, we find that the contract of April 24, 1945, constitutes a bar to a determination of representatives at this time. We shall dismiss the petition filed by Local 296 of the Packinghouse Workers, without prejudice, however, to the filing of a new petition near the close of the present contract term.[7]

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[4] *Matter of J. Laskin & Sons Corp.*, 49 N. L. R. B 1183.

[5] *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035; *Matter of The Trailer Company of America*, 51 N. L. R. B. 1106.

[6] The Packinghouse Workers likewise executed an agreement with the Company expiring in August 1946. See also *Matter of Swift and Company, supra.*

[7] We find it unnecessary to consider at this time the contentions of the parties with respect to the unit appropriate for the Company's employees. There is nothing in the record upon which to base a finding that employees covered by the contract do not constitute an appropriate unit for bargaining purposes

For the reasons above stated, we find that no question has arisen concerning the representation of employees of the Company at the Spokane plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for the investigation and certification of representatives of employees of Armour and Company at its Spokane, Washington, plant, filed by United Packinghouse Workers of America, Local Union No. 296, CIO, be, and it hereby is, dismissed without prejudice.

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