

In the Matter of ARMOUR AND COMPANY *and* UNITED PACKING HOUSE
WORKERS OF AMERICA, LOCAL 317, C. I. O.

Case No. 19-R-1655.—Decided March 6, 1946

Messrs. W. A. Coon and L. J. Fitzpatrick, of Portland, Oreg., for the Company.

Mr. A. F. Hartung, of Portland, Oreg., and *Mr. R. E. Engelking*, of Spokane, Wash., for the C. I. O.

Messrs. Herman Fahlbusch and Lyle Augee, of Portland, Oreg., for the A. F. L.

Mr. Phil E. Thompson, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Packing House Workers of America, Local 317, C. I. O., herein called the C. I. O.,¹ alleging that a question affecting commerce had arisen concerning the representation of employees of Armour and Company, Portland, Oregon, 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 Portland, Oregon, on December 13, 1945. At the start of the hearing, the Trial Examiner overruled the objection of the C. I. O. to a motion to intervene filed by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 656, A. F. L., herein called the A. F. L. The Company, the C. I. O., and the A. F. L. 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 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:

¹The parties stipulated that all formal papers herein be amended to show the name of the C. I. O. as indicated in the caption and in the body of the Decision.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Armour and Company, an Illinois Corporation, having its principal place of business at Chicago, Illinois, is engaged at its Portland, Oregon, plant in the slaughtering of livestock and the processing of meat products. During the past year the Company purchased for slaughter and processing at its Portland, Oregon, plant, livestock valued in excess of \$2,750,000, approximately 32 percent of which was received from points outside the State of Oregon. During the same period the Company sold finished meat products from its Portland, Oregon, plant valued in excess of \$2,750,000, approximately 25 percent of which was shipped to points outside the State of Oregon.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Packing House Workers of America, Local 317, 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 656, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the C. I. O. as the exclusive bargaining representative of certain of its employees at its Portland, Oregon, plant, until the C. I. O. has been certified by the Board in an appropriate unit.

From 1935 to 1941, the A. F. L. was the recognized bargaining representative of the employees involved herein, under a written contract with the Company's predecessor. When the Company assumed ownership of the Portland plant in 1941, although not assuming this contract, it proceeded, generally, to abide by its terms, continuing the A. F. L. as the recognized bargaining representative. In 1942, negotiations between the Company and the A. F. L. for a new contract resulted in disputed issues being submitted to the War Labor Board, which issued its final directive in April 1945. However, no contract was executed pursuant to the directive, and at the time of the hearing further negotiations were pending between the Com-

pany and the A. F. L. On October 18, 1945, the C. I. O. filed its petition herein.

The A. F. L. maintains that the proceedings before the War Labor Board, and the outstanding directive of that agency, constitute a bar to the instant proceeding. We find no merit in the A. F. L.'s contention. The A. F. L. is not in a position of a newly certified or recognized bargaining representative which has been deprived of an opportunity to demonstrate its effectiveness as a bargaining agent because of the submission of disputed issues to the War Labor Board. The A. F. L. has been the bargaining representative of the employees involved herein since 1935 and has enjoyed ample opportunity to obtain, and has obtained, substantial benefits for such employees.²

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.³

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 parties generally agree that the bargaining unit should consist of all plant employees, including mechanics and poultry workers, but, excluding all office employees, truck drivers, and salesmen. However, the parties are in disagreement as to several categories. The C. I. O. would exclude the master mechanic, killing room foreman, and wholesale market foreman and would include the shipping clerks, the receiving clerk, and the watchmen. The A. F. L. would include all the foregoing employees except the receiving clerk. The Company would exclude all the disputed categories, which are hereinafter discussed.

Master mechanic, killing room foreman, wholesale market foreman, and shipping clerks:

These employees are in charge of groups numbering from 4 to 30 employees. The record indicates they all have authority to hire, discipline, and discharge employees under their supervision. Accordingly,

² *Matter of Higgins Industries, Inc.*, 65 N. L. R. B. 50; *Matter of Lonsdale Company (Blackstone Cotton Mill)*, 63 N. L. R. B. 75; *Matter of American Car and Foundry Company*, 60 N. L. R. B. 735; *Matter of Federal Screw Works*, 61 N. L. R. B. 387; *Matter of Na-Mac Products Corporation*, 60 N. L. R. B. 1463; *Matter of Kennecott Copper Corporation, Nevada Mines Division*, 51 N. L. R. B. 930.

³ The Field Examiner reported that the C. I. O. submitted 29 designations and that there are approximately 50 employees in the appropriate unit. The A. F. L. relies upon its past bargaining relationship with the Company as evidence of its interest in this proceeding.

we find that they are supervisory employees, and we shall exclude them from the unit.

Receiving clerk:

The Company employs one receiving clerk. He performs the customary duties of such an employee, including the distribution and allocation of supplies and equipment to the various production departments. He is also in charge of dispensing tools to the workmen. His work is clerical, he receives instructions from the general plant superintendent, and performs substantially all his duties in the receiving department. His work is in close proximity to the production workers. We are of the opinion that plant clerical employees who work in production departments, under the same supervision as production employees, have a community of interest with such employees, and, accordingly, belong in the same unit.⁴ We shall include this employee.

Watchmen:

The Company employs three watchmen. They make regular rounds, protect against fire and theft, and are paid on an hourly basis. They are neither militarized nor deputized. Inasmuch as the duties of the watchmen are custodial and not monitorial, we shall include them within the unit.⁵

We find that all production and maintenance employees, including mechanics, poultry workers, the receiving clerk, and watchmen, but excluding all office employees, truck drivers, salesmen, the master mechanic, shipping clerks, killing room foreman, wholesale market foreman, and all or any 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 employees 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.

⁴ See *Matter of Sylvania Industrial Corporation*, 61 N. L. R. B. 1585; *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 531.

⁵ See *Matter of Lectrolite Corporation*, 63 N. L. R. B. 369; cf. *Matter of Kelsey-Hayes Wheel Company*, 62 N. L. R. B. 421.

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 Armour and Company, Portland, Oregon, plant, 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 Nineteenth 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 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 they desire to be represented by United Packing House Workers of America, Local 317, affiliated with the Congress of Industrial Organizations, or by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 656, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

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