

In the Matter of WILSON & COMPANY, INC. and FOREMEN'S
ASSOCIATION OF AMERICA, CHAPTER NO. 115

Case No. 13-R-3077.—Decided March 29, 1946

Mr. R. C. Winkler, of Chicago, Ill., for the Company.

Mr. W. Allen Nelson, of Detroit, Mich., and *Mr. Hugh P. Davis*,
of Chicago, Ill., for the Association.

Messrs. Sam Parks and *Herbert March*, both of Chicago, Ill., for
the C. I. O.

Mr. Warren H. Leland, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Foremen's Association of America, Chapter No. 115, herein called the Association, alleging that a question affecting commerce had arisen concerning the representation of employees of Wilson & Company, Inc., Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John R. Hill Trial Examiner. The hearing was held at Chicago, Illinois, on September 25, 26, 27, 28, and October 25 and 26, 1945. The Company, the Association, and United Packinghouse Workers of America, C. I. O., herein called the C. I. O.,¹ 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. At the hearing the Company moved to dismiss the petition on the following grounds: (1) the supervisors sought to be included in the alleged appropriate unit are not "employees" within the meaning of the National Labor Relations Act, and (2) the unit sought is not appropriate because the supervisors are a part of management and the establishment of such a collective bargaining unit would not effectuate the policies of the Act. The motion is hereby denied

¹ A motion to intervene by the C. I. O. to protect its interest among certain non-supervisory employees of the Company whom it represents as bargaining representative, was granted at the hearing.

for reasons stated in Sections III and IV, *infra*. 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. Inasmuch as both the Company and the Association have filed briefs fully discussing the issues involved, the request made by the Company for oral argument is hereby denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Wilson & Company, Inc., a Delaware corporation having its principal offices and place of business in Chicago, Illinois, operates 8 packinghouse plants and about 90 branch houses throughout the United States. This proceeding involves the Company's Chicago plant solely, where the Company purchases and slaughters livestock, and processes, manufactures, and distributes various meat products and meat byproducts. During the past 12-month period, the Company purchased livestock valued in excess of \$1,000,000, of which approximately 50 percent was shipped to the Company from points outside the State of Illinois. During the same period, the Company sold products valued in excess of \$1,000,000, of which more than 50 percent was shipped to points outside the State of Illinois.

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

II. THE ORGANIZATIONS INVOLVED

Foremen's Association of America, Chapter No. 115, is an unaffiliated labor organization, admitting to membership supervisory employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Association as the exclusive bargaining representative of certain of its supervisory personnel until the Association has been certified by the Board in an appropriate unit.

In support of its motion to dismiss the petition, the Company contends that the supervisory personnel sought to be included in the alleged appropriate unit are not "employees" within the meaning

of the Act. In the *Young* case² we recently had occasion to reaffirm our holding in the *Packard*³ and *Soss*⁴ cases that supervisors, in relation to their employer, are "employees" within the meaning of the Act. In accord with these prior determinations, we find that the supervisors involved in the present proceeding are "employees" within the meaning of the Act.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Association represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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 Association seeks a unit of all general foremen, assistant general foremen, foremen and assistant foremen, including seven named gang leaders,⁶ the engine room chief, boiler room chief, assistant boiler room chief, first marshal, assistant fire marshal and general clerks supervisor, but excluding the plant superintendent, division superintendents, gang leaders (except the seven sought to be included), foreladies, police chief, and assistant police chiefs, time office supervisors, employment managers, general office employees, and all other employees. The Company contends that this unit is inappropriate because supervisory employees are part of management, and such a unit would not effectuate the policies of the Act. But, in the event the Board finds a unit of supervisory employees to be appropriate, the Company agrees to the composition of the unit sought except that it would exclude the seven named gang leaders, the fire marshal and the assistant fire marshal, and include the time office supervisors and the employment managers.

The Company attempts to distinguish this case from the *Packard* case, wherein we rejected unit contentions similar to those made by the Company, on the grounds that the authority and responsibilities of the supervisors here concerned are much broader than those of the supervisors in that case. It also argues that here there are no highly integrated production units such as are found in mass pro-

² *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298, and cases cited therein.

³ *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4.

⁴ *Matter of Soss Manufacturing Company, et al.*, 56 N. L. R. B. 348.

⁵ The Trial Examiner stated that at the hearing the Association submitted 142 application cards bearing the names of 98 employees listed on the Company's pay roll of October 19, 1945.

⁶ There are approximately 189 employees in the appropriate unit.

⁷ C. E. Nelson, Arthur Nester, Anthony Scrifs, William Stube, Lester Deutschman, George Jobe, and William Laidlaw.

duction industries. Nevertheless, we held in the *Young* case, as we do here, that the application of the Act to supervisors does not depend upon the variation in the duties and responsibilities of such personnel from company to company or upon the type of industry involved, whether mass production or not, and that as "employees" supervisors are entitled to be placed in some unit under Section 9 (b) of the Act.

All parties are in agreement that gang leaders should be excluded as a classification. Inasmuch as there is no persuasive evidence to indicate that the seven named gang leaders possess sufficient indicia of supervisory authority to warrant their inclusion, we shall also exclude them.

The unit sought is basically one of production and maintenance supervisors. Thus, the fire marshal and assistant fire marshal, both of whom are apparently concerned with the maintenance of the Company's property through fire prevention, have interests related to those of other employees within the unit. Accordingly, we shall include the fire marshal and assistant fire marshal.

However, as clerical supervisors, the general clerks supervisor, time office supervisors, and employment managers do not have interests in common with production and maintenance supervisors. Consequently, we shall exclude them.⁷

We find that all general foremen, assistant general foremen, foremen, and assistant foremen of the Company's Chicago, Illinois, plant, including the engine room chief, boiler room chief, assistant boiler room chief, fire marshal and assistant fire marshal,⁸ but excluding the plant superintendent, division superintendents, foreladies,⁹ police chief, assistant police chiefs,¹⁰ all gang leaders, employment managers, time office supervisors, general clerks supervisor, general office employees, and all other employees, 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

⁷ See *Matter of Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997.

⁸ It is clear from the record that the Company considers all included supervisors as being on the same level of responsibility and none as having supervisory authority as such over the others.

⁹ Foreladies are not supervisory employees within the meaning of our customary definition.

¹⁰ All plant police are armed, militarized, and deputized.

period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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 & Company, Inc., Chicago, Illinois, 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 Thirteenth 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 Foremen's Association of America, Chapter No. 115, for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinion in *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, I am constrained to dissent from the majority opinion in this case.