

In the Matter of ARMOUR AND COMPANY *and* UNITED PACKINGHOUSE
WORKERS OF AMERICA, C. I. O.

Case No. 3-R-1165.—Decided March 29, 1946

Mr. P. C. Newsom, of Albany, N. Y., and *Mr. E. J. Pyper*, of
Syracuse, N. Y., for the Company.

Mr. John J. Maurillo, of Syracuse, N. Y., for the Union.

Mr. Emil C. Farkas, 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 Armour and Company, Syracuse, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. The hearing was held at Syracuse, New York, on February 14, 1946. The Company and the Union appeared and participated.¹ 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The parties stipulated and we find that Armour and Company is an Illinois corporation, with its principal office in Chicago, Illinois,

¹ International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Amalgamated Meat and Butcher Workmen of North America, AFL, were both served with notice of hearing but neither organization appeared.

engaged in the operation of a number of packing and processing plants throughout the United States. The plant involved in this proceeding is located in the city of Syracuse, New York, wherein the Company is engaged in meat packing, processing, and distribution of dairy, poultry, and meat products. Raw materials used by the Company at its Syracuse, New York, plant include livestock, dairy and poultry products. Purchases of raw materials for the calendar year 1945 were in excess of \$1,000,000, approximately 96 percent of which was made outside the State of New York and shipped in interstate commerce to the plant at Syracuse. For the same period, the Company sold and processed products valued at approximately \$2,500,000 (gross sales value), all of which were sold to customers located in the State of New York. Processed products transferred by the Company to other Armour plants for the same period were valued at approximately \$500,000.

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

II. THE ORGANIZATION INVOLVED

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

On January 24, 1946, the Union, by registered letter, requested recognition as bargaining representative for certain of the Company's employees. On the same day, the Union, without waiting for the Company's reply, filed its petition for certification in this case. The position of the Company at the time of the receipt of the letter and at the present time is that it will not recognize the Union's request unless and until certified by the National Labor Relations 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.²

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.

² The Field Examiner reported that the Union submitted 32 cards, 1 dated in January 1945, 19 dated in January 1946, and 12 undated. There are approximately 38 employees in the appropriate unit.

IV. THE APPROPRIATE UNIT

The Union requests a unit composed of all processing and manufacturing employees at the Syracuse, New York, plant, excluding regular salesmen, office clerical employees, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, but including truck drivers and two peddler salesmen. The Company takes the position that the two peddler salesmen are, in fact, salesmen and should be excluded as such. There is no other dispute as to the composition of the unit.

The record discloses that the two employees in question operate trucks owned by the Company. They load, deliver, and distribute their products in much the same manner as the other truck drivers. Like the truck drivers, they spend the major part of the day on the road on their trucks and follow a regular route. They work under a supervisor, whose job is limited exclusively to working with these two men and who travels with each alternately for the purpose of promoting trade and sales.

Those employees classified as regular salesmen, and excluded from the unit by mutual agreement, are engaged solely in promotional sales work. They drive personally owned cars, book orders for future delivery by the truck drivers, and solicit sales and customers in a free lance manner within the Syracuse territory area. They are normally dressed in business clothes in contrast to the uniforms or white frocks of the peddler salesmen and truck drivers, and are paid for the use of their cars on a nuleage basis.

It would appear from the facts presented in the record that the two employees in question come more appropriately within the category of truck drivers than regular salesmen. For this reason, and in view of the fact that the two peddler salesmen have a substantial unity of interest with the truck drivers, we shall include them in the unit.

We find that all employees at the Syracuse, New York, plant of the Company, including truck drivers, peddler salesmen, and the processing foreman,³ but excluding regular salesmen, office clerical employees, branch manager, assistant branch manager, sausage foreman, peddler truck supervisor, shipping 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, constitute a unit appropriate for

³ It was agreed by both parties at the hearing that the processing foreman, William Lowery, is in fact, a working foreman or gang leader and should, properly, be included in the unit

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.

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, Syracuse, New York, 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 Third 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 or not they desire to be represented by the United Packinghouse Workers of America, C. I. O., for the purposes of collective bargaining.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.