

In the Matter of ARMOUR AND COMPANY *and* INTERNATIONAL UNION
OF OPERATING ENGINEERS, LOCAL No. 835, A. F. L.

Case No. 4-R-1911.—Decided May 29, 1946

Mr. Edward M. Leaverton, of Philadelphia, Pa., for the Operating Engineers.

Mr. Hyman H. Ostrin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union of Operating Engineers, Local No. 835, A. F. L., herein called the Operating Engineers, alleging that a question affecting commerce had arisen concerning the representation of employees of Armour and Company, Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Helen F. Humphrey, Trial Examiner. The hearing was held at Philadelphia, Pennsylvania, on April 12, 1946. The Operating Engineers alone 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.

¹ The Company and International Brotherhood of Firemen & Oilers, Powerhouse Operators, Ice Plant Employees and Maintenance Men, Local No. 473, A. F. L., hereinafter called the Firemen and Oilers, were served with notice of hearing but did not appear or participate. After the Company and the Firemen and Oilers had failed to make appearances, the Trial Examiner, before proceeding, telephoned the Company's offices seeking an explanation for the failure to appear. She was told that the attorney who had been handling the matter was out of town and that no appearance would be made. The Company made no request for an adjournment. The Trial Examiner also called on a representative of the Firemen and Oilers who informed her that the present proceeding involved a jurisdictional dispute between two affiliates of the A. F. L. and that his union would not appear. The Trial Examiner then proceeded with the hearing.

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

FINDINGS OF FACT

I THE BUSINESS OF THE COMPANY

Armour and Company, an Illinois corporation, is engaged in slaughtering, packing, and distributing meats and meat products at various plants throughout the United States. The instant proceeding involves only the packing house at Philadelphia, Pennsylvania. During the year 1945, the Company used raw materials at its Philadelphia plant valued in excess of \$1,000,000, 99 percent of which was received from points outside the Commonwealth of Pennsylvania. During the same period, the Company produced finished products valued in excess of \$1,000,000, 35 percent of which was shipped to points outside the Commonwealth.

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

II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, Local No. 835, and International Brotherhood of Firemen & Oilers, Powerhouse Operators, Ice Plant Employees and Maintenance Men, Local No. 473, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has declined to recognize the Operating Engineers as the collective bargaining representative of the employees involved in this proceeding on the ground that it has been extending such recognition to the Firemen and Oilers for a number of years. It appears that for 5 years the Company and the Firemen and Oilers have been parties to an oral collective bargaining contract covering the engineers. However, an outstanding oral contract is not a bar to a present determination of representatives.²

As previously stated, the present proceeding involves a jurisdictional dispute between two unions affiliated with the American Federation of Labor. In the past, we have, as a matter of policy, refused to permit rival unions affiliated with the same parent organization to resort to the administrative processes of the Act for the settlement of representation disputes where adequate and appropriate machinery was available

² See *Matter of Republic Steel Corporation*, 63 N. L. R. B. 451, *Matter of Eico, Inc.*, 46 N. L. R. B. 1035.

to them, under the procedure of the parent organization. The record discloses, however, that for several years, the parent organization has been unsuccessful in resolving the jurisdictional dispute between the unions involved herein. It is, therefore, apparent that effective solution of the dispute cannot be had without resort to the administrative processes of the Act.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Operating Engineers represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 Operating Engineers seeks a unit consisting of all engineers, including the chief engineer, employed in the powerhouse of the Company's Philadelphia packing plant. This is the same unit presently represented by the Firemen and Oilers.

The engineers, who are licensed by the City of Philadelphia, constitute a well recognized craft group who, the Board has frequently found, may constitute an appropriate unit.⁵ Some question exists as to the position of the chief engineer who performs the same manual duties as the other engineers and, in addition, directs the work of the other engineers and does a small amount of paper work. However, it does not appear that he has the power to change or effectively to recommend a change in the status of his subordinates. Accordingly, we find that he is not a supervisor, within the Board's customary definition. We shall, therefore, include him in the unit.

We find that all engineers, including the chief engineer, employed in the powerhouse of the Company's Philadelphia packing plant, but excluding all 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.

³ See *Matter of The Champion Hardware Company*, 62 N. L. R. B. 434; see also *Matter of Lexington Water Company*, 58 N. L. R. B. 536; and *Matter of Keystone Steel & Wire Company*, 65 N. L. R. B. 274, where we assumed jurisdiction in representation proceedings involving the same unions.

⁴ The Field Examiner reported that Operating Engineers submitted six membership cards, and that five of these cards bore the names of employees appearing on the Company's pay roll of March 14, 1946. There are six employees in the appropriate unit.

⁵ See *Matter of Keystone Steel & Wire Company*, *supra*, *Matter of Kennecott Copper Corporation*, 51 N. L. R. B. 1140.

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.⁶

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, Philadelphia, Pennsylvania, 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 Fourth 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 International Union of Operating Engineers, Local No. 835, A. F. L., for the purposes of collective bargaining.

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

⁶ We take notice that the Firemen and Oilers has represented the employees involved for a number of years under an oral agreement. For this reason, we shall accord it a place upon the ballot if, within ten (10) days from the date of this Decision, it notifies the Regional Director of its desire to be placed thereon.