

In the Matter of WILSON & Co., INC. (CHICAGO WHOLESALE MARKET)
and UNITED PACKINGHOUSE WORKERS OF AMERICA—CIO, ON BEHALF
OF LOCAL 25-A

In the Matter of WILSON & Co., INC. (CHICAGO PLANT) and UNITED
PACKINGHOUSE WORKERS OF AMERICA—CIO, ON BEHALF OF LOCAL
25-C

*Cases Nos 13-R-3350 and 13-R-3399, respectively.—
Decided June 13, 1946*

Mr. J. L. Cockerill, of Chicago, Ill., for the Company.
Messrs Harvey Mader and Refugio Martinez, both of Chicago, Ill.,
for the Union.
Mr Melvin J. Welles, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by United Packinghouse Workers, of America. CIO, herein called the Union, on behalf of Locals 25-A and 25-C, alleging that questions affecting commerce had arisen concerning the representation of employees of Wilson & Co., Inc., Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin B. Salvaty, Jr. Trial Examiner. The hearing was held at Chicago, Illinois, on April 18, 1946. The Company and the Union 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.

The Company moved to dismiss the petition in Case No. 13-R-3350 on the ground that the unit petitioned for is not appropriate. For the reasons stated in Section IV, *infra*, this motion is hereby denied.

The Company also moved to dismiss the petition in Case No. 13-R-3399 on the grounds of inappropriateness of the unit and the ineligibility of the clerks for membership in the Union. For the reasons stated in Section IV, *infra*, this motion 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 & Co., Inc., is a Delaware corporation with its principal offices in Chicago, Illinois. It operates 8 packinghouse plants and about 90 branch houses throughout the United States. Only the Company's Chicago Wholesale Market and its Chicago Plant are involved in the present proceeding.

The Chicago Wholesale Market is a branch of the Company engaged in the sale and distribution of meat and produce. It purchased, in the past 12 months, products of a value in excess of \$500,000, of which more than 50 percent was shipped to it from points outside the State of Illinois. During the same period the Company's sales at the Chicago Wholesale Market exceeded \$500,000, approximately 7½ percent of which represented products shipped to points outside the State of Illinois.

The Company's Chicago Plant is engaged in the purchase and slaughter of livestock, and the processing, manufacturing, and distribution of various meat products and by-products. During the past 12 months, the Company's purchases for its Chicago Plant were in excess of \$1,000,000, of which approximately 50 percent was shipped to it from points outside the State of Illinois. During the same period the Company's sales at its Chicago Plant exceeded \$1,000,000, more than 50 percent of which represented products shipped to points outside the State of Illinois.

The Company admits that its Chicago Plant is engaged in commerce within the meaning of the Act, but makes no such admission concerning its Chicago Wholesale Market. We find that the Company, both at its Chicago Wholesale Market and at its Chicago Plant, 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 QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of production and maintenance employees at its Chicago Wholesale Market, or of clerks and salaried scalers at its Chicago Plant, until the Union has been certified by the Board in appropriate units.

We find that questions affecting commerce have 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 UNITS

Case No. 13-R-3350

The Union seeks a unit of all production and maintenance employees, excluding supervisory employees, salesmen, and junior salesmen, at the Company's Chicago Wholesale Market. The Company agrees with the Union that a unit of production and maintenance employees at the Chicago Wholesale Market is appropriate but contends that the checkers, scalers, shippings clerks, and receiving clerk should be excluded from this or any other unit because they are confidential employees and representatives of management, and their duties affect the industrial relations policies of the Company. If the Board does not accept this contention, the Company would have these employees comprise a separate unit from the production and maintenance employees. The Union, on the other hand, desires that the checkers, scalers, shipping clerks, and receiving clerk be included in the production and maintenance unit, and, as an alternative, that they be established as a separate unit. The Company and the Union are agreed that supervisory employees should be excluded from the unit of production and maintenance employees, but differ with respect to the supervisory status of Hornburg, Wungluck, and Adams. The Company would exclude, the Union include, these employees.

Checkers: The Chicago Wholesale Market employs three checkers, who are salaried employees. They compare invoices with the products received and shipped to ascertain the correctness of the loads, and occasionally assist with the loading and unloading of the trucks. They work on the loading and unloading platform with production and maintenance employees, and are supervised by production foremen. They assist in the taking of monthly inventories. The records of receipts and shipments which they prepare are sent to the office manager and are considered confidential by the Company. But these records have no relation to the Company's labor policies. Moreover, the checkers do not formu-

late or determine management policies, nor do they act in a confidential capacity to persons who exercise managerial functions in the field of labor relations. We do not believe, therefore, that the checkers are confidential employees or representatives of management. Although their work is primarily clerical, the checkers work with production and maintenance employees and are supervised by production foremen. Furthermore, they were included in the same unit with production and maintenance employees in previous recognition of the Union by the Company.¹ We shall, therefore, include the checkers in the production and maintenance unit at the Chicago Wholesale Market found to be appropriate.²

Scalers: The Chicago Wholesale Market employs 7 scalers, all of whom are salaried. They weigh incoming and outgoing products and record weights on invoices and bills. They work at 14 different scales located at various points on the production floor, and are supervised by production foremen. They do not formulate or determine management policies, nor do they act in a confidential capacity to persons who exercise managerial functions in the field of labor relations. We cannot, therefore, agree with the Company's contention that they are confidential employees or representatives of management. Since the scalers work with production and maintenance employees, are supervised by production foremen, and have previously been included in the same unit with production and maintenance employees,³ we shall include them in the production and maintenance unit hereinafter found to be appropriate.

Shipping clerks: The Chicago Wholesale Market employs a shipping clerk and an assistant shipping clerk, both of whom are salaried employees. They arrange loads on trucks for the most expeditious distribution. They work on the loading platform, with production and maintenance employees, and have a small office on the production floor. They are supervised by the plant superintendent, who supervises all production and maintenance employees. Nothing in the record indicates any duties which concern the formulation of management policies or which connect these shipping clerks to persons exercising managerial functions in the field of labor relations. Considering the close contact between the shipping clerks and the production and maintenance employees, we shall include them in the production and maintenance unit hereinafter found to be appropriate.

Receiving clerk: The Chicago Wholesale Market employs one receiving clerk, who is a salaried employee. He checks load slips on in-

¹ In 1942, the Company voluntarily recognized the Union as the representative of all production and maintenance employees at its Chicago Wholesale Market, including checkers and scalers, and excluding the manager, superintendent, foreman, truck drivers, office workers and salesmen. The plant superintendent stated at the hearing that he did not know whether or not the shipping clerks and the receiving clerk were included in the unit.

² See *Matter of Armour and Company*, 66 N. L. R. B. 324; *Matter of Sylvania Industrial Corporation*, 61 N. L. R. B. 1585.

³ See footnote 2, *supra*.

coming merchandise and checks products for correct weight, number of pieces, and proper condition. Although he maintains records of goods and loads received, he is not concerned with the formulation of management policies. He is supervised by the plant superintendent. Since his interests lie with those of the production and maintenance employees, checkers, and scalers, we shall include him in the unit hereinafter found to be appropriate.

With regard to the three employees, Hornburg, Wungluck, and Adams, who the Company contends are supervisors, we shall make the following disposition:

Hornburg: He is classified as shipping-dock foreman. He is salaried, as are the Company's other foremen, and reports directly to the superintendent. He has the authority to recommend effectively the hiring or discharging of employees. We shall exclude him from the unit as a supervisory employee.

Wungluck: He is classified as a roustabout foreman, and is a salaried employee. He normally supervises the laborers in storing the various meat products⁴ and can effectively recommend the hiring or discharging of employees. We shall exclude him from the unit as a supervisory employee.

Adams: He is a salaried employee who works in the produce department, and reports to the manager of that department. His job consists of tagging produce items for shipment and directing laborers in placing the items on the trucks for delivery. He occasionally helps the laborers load the trucks. Since he has the authority to recommend the hiring or discharging of employees and such recommendations have been made and followed, we shall exclude him from the unit as a supervisory employee.

Accordingly, we find that all production and maintenance employees at the Company's Chicago Wholesale Market,⁵ including checkers, scalers, shipping clerks, and receiving clerk, but excluding salesmen, junior salesmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action,⁶ constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

⁴ Testimony adduced at the hearing reveals that the recent meat shortage has temporarily left Wungluck without any supervisory duties, but that he normally has four to six employees under him and will again have supervisory functions when the shortage ends.

⁵ Among the production and maintenance employees is one part-time employee, John Donersberger. He is regularly employed, works 24 or 25 hours per week, and works the same hours each day. He is entitled to representation for the purposes of collective bargaining and is to be deemed as included in the unit, despite the agreement of the parties to the contrary. See *Matter of Norfolk Southern Bus Corporation*, 60 N. L. R. B. 630.

⁶ Among those excluded as supervisory employees are the afore-mentioned Hornburg, Wungluck, and Adams.

Case No. 13-R-3399

The Union seeks a unit of plant clerks and salaried scalers⁷ at the Company's Chicago Plant. The Company maintains that these employees cannot form an appropriate unit for collective bargaining purposes because of the alleged ineligibility of the plant clerks for membership in the Union, and because of the confidential nature of the work of plant clerks and scalers.

The Company employs approximately 147 plant clerks and salaried scalers at its Chicago Plant, all of whom are salaried, and, therefore, have longer vacations than production and maintenance employees, who are hourly paid. They are also eligible for group insurance and hospitalization and are paid when sick, unlike production and maintenance employees.

Plant clerks: The Union disputes the Company's contention that the clerks are ineligible for union membership. And, what is more important under the Act, the Union is willing to represent them for collective bargaining purposes. We consequently find no merit in the Company's contention that the unit sought is inappropriate because plant clerks are allegedly ineligible for membership in the Union.

The plant clerks record time and production figures. They keep time, costs, and rates on each employee and take inventories. These records go to the office. Within the category of plant clerk are departmental clerks and general clerks.

The departmental clerks keep production and labor control sheets, which show whether or not each department is operating profitably. They also take inventories and report to the general clerks on production yields, and keep track of product transfer sheets. Although the records which departmental clerks keep concern productivity, these employees do not help in the formulation or determination of management policies, nor do they act in a confidential capacity to persons who exercise managerial functions in the field of labor relations. We do not, therefore, consider them to be confidential employees or representatives of management. We shall include the departmental clerks in the unit hereinafter found appropriate.

⁷ Hourly paid scalers were included by stipulation in a production and maintenance unit at the Chicago Plant found appropriate in *Matter of Wilson & Co., Inc.*, 45 N. L. R. B. 831. Separate units of steady-time checkers and firemen at this plant have been held appropriate in *Matter of Wilson & Company*, 61 N. L. R. B. 105, and *Matter of Wilson & Co., Inc.*, 61 N. L. R. B. 617, respectively.

The unit herein sought by the Union is comprised of all production and maintenance clerks and salaried scalers, including general and departmental clerks, clerks in the insulation, mechanical, receiving, shipping, and coal house departments, and messengers and tube operators in the shipping departments, excluding employees in the employment and time offices, chief clerks, all other supervisory employees, and all other employees. The Company agrees if any unit is found appropriate, that the composition of this proposed grouping is proper.

The general clerks accumulate and record the reports of the departmental clerks. They train new departmental clerks and coordinate between departmental and chief clerks. There is nothing in the record to indicate that they help in the formulation or determination of management policies, nor do they act in a confidential capacity to persons who exercise managerial functions in the field of labor relations. We shall include the general clerks in the unit hereinafter found appropriate.

Other employees classified as clerks are messengers and tube station attendants. All of these employees perform routine clerical and non-clerical duties. They are not confidential employees or representatives of management. We shall include them in the unit hereinafter found appropriate.

Scalers: The Company employs both salaried and hourly paid scalers at its Chicago Plant. We are concerned here only with the salaried scalers. These employees scale and record weight of products entering or leaving each department, and enter items on a rate sheet. They are, as mentioned above, eligible for the extra benefits accruing to salaried employees. The nature of their work is not such as to support the contention that they are confidential employees or representatives of management, for they do not formulate or determine management policies, nor do they act in a confidential capacity to persons who exercise managerial functions in the field of labor relations. We shall include them in the unit hereinafter found to be appropriate.

We find, accordingly, that all production and maintenance clerks and salaried scalers at the Company's Chicago Plant, including general and departmental clerks, clerks in the insulation, mechanical, receiving, shipping and coal house departments, and messengers and tube operators in the shipping departments, excluding employees in the employment and time offices, chief clerks, 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, 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 questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the appropriate units who were employed during the payroll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction

DIRECTION OF ELECTIONS

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 & Co., Inc., Chicago, Illinois, separate elections 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 employees in the units 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 elections, to determine whether or not the employees in the unit found appropriate in Case No. 13-R-3350 desire to be represented by United Packinghouse Workers of America, CIO, Local 25-A, for the purposes of collective bargaining; and to determine whether or not the employees in the unit found appropriate in Case No. 13-R-3399 desire to be represented by United Packinghouse Workers of America, CIO, Local 25-C, for the purposes of collective bargaining.

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