

In the Matter of WILSON & Co., INC., EMPLOYER and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, A. F. OF L., LOCAL #238, PETITIONER.

Case No. 18-R-1537.—Decided August 14, 1946

Messrs. J. L. Cockrill and M. R. Swanson, of Chicago, Ill., for the Employer.

Mr. Harry J. Wilford, of Cedar Rapids, Iowa, for the Petitioner.

Messrs. E. R. Fitzpatrick and Horace S. Gates, Jr., of Cedar Rapids, Iowa, for the Intervenor.

Mr. Melvin J. Welles, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Cedar Rapids, Iowa, on June 14, 1946, before Stephen M. Reynolds, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing, the Intervenor moved to dismiss the petition on the ground that its contract with the Employer is a bar to an election. The Trial Examiner referred this motion to the Board. For reasons stated in Section III, *infra*, this motion is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Wilson & Co., Inc., is a Delaware corporation operating many plants and branch plants throughout the United States. Only the Employer's Cedar Rapids, Iowa, plant is involved in the present proceeding. The Cedar Rapids plant is engaged in the processing of meat and food products. Its purchases of livestock and materials exceed \$500,000 value annually, of which more than 25 percent is shipped to it from points outside the State of Iowa. Its annual sales exceed \$500,000; of which more than 50 percent represents products shipped to points outside the State of Iowa.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

United Packinghouse Workers of America, Local No. 3, herein called the Intervenor, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

The Intervenor contends that its contract with the Employer is a bar to the present proceeding. This contract, executed on March 12, 1946, provides that it is to continue in effect until August 11, 1946, and for yearly periods thereafter, in the absence of notice to reopen given by either party to the other at least 30 days prior to any anniversary date. On May 14, 1946, the Petitioner filed its petition herein. Inasmuch as the petition was filed before the 1946 effective date of the agreement's automatic renewal clause, we find that the agreement does not preclude a current determination of representatives.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner seeks a unit of all truck drivers at the Cedar Rapids plant of the Employer, excluding yard drivers and supervisory employees. The Employer takes no position with respect to the appropriateness of any unit, but the Intervenor contends that the unit sought by the Petitioner is inappropriate because the plant-wide unit established by past bargaining history should not be disturbed.

The Employer has bargained with the Intervenor on a plant-wide basis since 1937. The first written contract between the Employer and the Intervenor was not, however, executed until 1943. The record shows that the truck drivers have received benefits under this contract, and have had their grievances processed by the Intervenor, as have all other employees. In addition, the truck drivers have been members of the Intervenor.

But the truck drivers concerned are a functionally distinct and physically segregated group of employees, are separately supervised,

and are carried on a separate pay roll. Moreover, we have held that truck drivers belong to a clearly defined and historical craft, and that their interests are identified with the business of transportation rather than with the particular industry which they serve.¹ Under all the circumstances, we are of the opinion that the craft unit sought is appropriate for the purposes of collective bargaining.²

Accordingly, we find that all truck drivers of the Employer at its Cedar Rapids, Iowa, plant, excluding yard drivers, all 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.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Wilson & Co., Inc., Cedar Rapids, Iowa, 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 Eighteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, as amended, 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 they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L., Local #238, or by United Packinghouse Workers of America, CIO, Local No. 3, for the purposes of collective bargaining, or by neither.

¹ *Matter of Sutherland Paper Company*, 55 N. L. R. B. 38, and cases cited therein.

² *Matter of Sutherland Paper Company*, *supra*; see also *Matter of Sioux City Brewery Company*, 63 N. L. R. B. 964.