

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations named below claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.¹

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees, including all hourly rated employees, but excluding salaried, clerical, and professional employees, guards, and supervisors as defined in the Act.²

[Text of Direction of Election ³ omitted from publication.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

¹ The hearing officer properly denied the Intervenor's motion to dismiss the instant proceeding on the ground that the petitions were "untimely" in that (1) the Intervenor and Employer had not had an opportunity to consummate negotiations commenced at the suggestion of a member of the Senate Labor Committee during the course of a hearing before that committee; and (2) that there was still allegedly pending before the Board a petition filed by the Intervenor in October 1953, and resulting in a consent election, which was, however, held invalid by a United States Court of Appeals in a Board enforcement proceeding. Neither of these grounds is sufficient to bar an election under the Board's established policy.

² The unit conforms to the stipulation of the parties.

³ The Intervenor contends, alternatively, (1) that the eligibility list should be the same as that used in the 1953 election mentioned above or that (2) the eligibility list should include those persons employed immediately prior to a strike which began June 14, 1954, and which is apparently still current. As to (1), no valid reason appears for adopting the list used in the 1953 election, thereby disfranchising any current employees who were not employed at the time of that election. As to (2), the record shows that at the time of the hearing there were 128 employees, including 8 replacements for the strikers; that there were 259 employees prior to the strike; and that there is no prospect of business conditions improving in the foreseeable future so as to warrant the hiring of additional employees. As the strike has been in progress for more than a year, we find, in the absence of any evidence to the contrary, that any replacements for the strikers are permanent. We find further that the Employer has no present need for additional workers, and so has no unfilled vacancies. Accordingly, we find that those who struck on June 14, 1954, are not eligible to vote unless they have been recalled by the eligibility date.

The Petitioner in Case No. 3-RC-1574 contends that the eligibility date should be the date its petition was filed. However, no reason appears for believing that such an eligibility date will assure a more representative electorate than will the more current date customarily used by the Board. Accordingly, we find no merit in this contention and will adhere to our usual practice in this regard.

Swift & Company and Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL. Case No. 20-CA-1110. November 10, 1955

DECISION AND ORDER

Upon a charge duly filed on June 13, 1955, by Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, 114 NLRB No. 146.

herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Acting Regional Director for the Twentieth Region, issued a complaint dated August 3, 1955, against Swift & Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (5) and (1) and Section 2 (6), and (7) of the Act. Copies of the complaint, the charge, and the notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that since on or about April 27, 1955, the Respondent has refused to bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit for which the Union was certified as bargaining representative on March 28, 1955.¹ On or about August 10, 1955, the Respondent filed an answer to the complaint admitting the refusal to bargain, but contending that the petition in Case No. 20-RC-2695 should have been dismissed because the individuals sought to be represented by the Union did not constitute an appropriate unit.

Thereafter, on or about August 19, 1955, all parties entered into a stipulation setting forth an agreed statement of facts. The stipulation provides that the parties waive their rights to a hearing, to the issuance of a Trial Examiner's Intermediate Report and Recommended Order, and to the filing of exceptions and oral argument before the Board. It also provides that the entire record in the proceeding shall consist of the stipulation, the charge, the complaint, the notice of hearing, the Respondent's answer, the affidavits and proof of service of the foregoing documents, and the official reporter's transcript in *Swift & Company*, Case No. 20-RC-2695, and all exhibits introduced in said proceeding. The stipulation further provides that, upon such stipulation and the record as therein provided, the Board may make findings of fact and conclusions of law, and may issue an appropriate Decision and Order which shall have the same force and effect as if made after full hearing and presentation of evidence.

The aforesaid stipulation is hereby approved and accepted and made a part of the record in this case. In accordance with Section 102.45 of National Labor Relations Board Rules and Regulations—Series 6, as amended, this proceeding was duly transferred to and continued before the Board.

Upon the basis of the aforesaid stipulation, the record and proceeding in Case No. 20-RC-2695, and the entire record in this case, the

¹ An election was held on March 18, 1955, pursuant to the Board's Decision and Direction of Election in *Swift & Company*, 20-RC-2695, not reported in printed volumes of Board Decisions and Orders.

Board, having duly considered the briefs filed by the General Counsel and the Respondent, makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Illinois corporation, is engaged in slaughtering, handling, and dressing livestock and selling of meat and related products, with its principal office in Chicago, Illinois, and branch plants and offices located throughout the United States. During the 1954 calendar year, the Respondent purchased and received at its plant in South San Francisco, California, which is alone involved herein, products valued in excess of \$10,000,000, of which approximately 56 percent was received directly from points outside the State of California. During the same period, the Respondent sold products from its South San Francisco plant valued in excess of \$10,000,000, of which approximately 20 percent was shipped directly to points outside the State. We find that the Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. THE LABOR ORGANIZATION INVOLVED

Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNEFAIR LABOR PRACTICES

A. *The appropriate unit and representation by the Union of a majority therein*

We find that all plant clerks and standards checkers at the Employer's South San Francisco, California, plant, excluding all other employees, guards, and supervisors as defined in the Act, presently constitute, and at all times since March 3, 1955,² have constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We also find that since March 18, 1955, on which date a majority of the employees in the appropriate unit designated the Union as their exclusive representative, the Union has been the representative of all employees in the unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.³

² On that date the Board issued its Decision and Direction of Election in *Swift & Co., supra*, finding the above-described unit to be appropriate.

³ On March 28, 1955, following the election, the Regional Director certified the Union as bargaining representative of the employees in the aforesaid appropriate unit.

B. *The refusal to bargain*

The Respondent admits that on or about March 23, 1955, and at various times thereafter, the Union requested the Respondent to bargain collectively with it as the exclusive representative of employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment; and that since April 27, 1955, the Respondent has refused to accede to such requests. The Respondent contends that it rightfully refused to bargain with the Union because the standards checkers and plant clerks are either supervisors, confidential employees, or managerial representatives and therefore cannot constitute an appropriate unit. In the representation proceeding, the Respondent made the same contention as to the status of these individuals. The Board rejected the contention and found that the plant clerks and standards checkers were employees entitled to the protection of the Act. We perceive no reason for altering our determination in the representation proceeding that the individuals in dispute are not supervisors within the meaning of Section 2 (11) of the Act, or confidential employees,⁴ or managerial representatives⁵ as those terms are used by the Board. Nor do we perceive any incompatibility between the honest performance of duty by these plant clerks and standards checkers and membership in a labor organization.

In view of the foregoing, we find that by refusing on and after April 27, 1955, to bargain collectively with the Union, the certified bargaining representative of employees in the appropriate unit, the Respondent has violated Section 8 (a) (5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, B, above, occurring in connection with the operations of the Respondent, as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that the Respondent violated Section 8 (a) (5) and (1) of the Act by refusing to bargain collectively with the Union as the exclusive representative of the employees in the above-described unit, we shall order the Respondent to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

⁴ *The Yale and Towne Manufacturing Company*, 112 NLRB 1268; *Continental Baking Company*, 109 NLRB 33.

⁵ *Bachmann Uxbridge Worsted Corporation*, 109 NLRB 868, 870; *Chase Brass & Copper Co., Incorporated*, 102 NLRB 62.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All plant clerks and standards checkers at the Employer's South San Francisco, California, plant, excluding all other employees, guards, and supervisors as defined in the Act, presently constitute, and at all times since March 3, 1955, have constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, was on March 18, 1955, and at all times thereafter has been, the exclusive representative of the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on April 27, 1955, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By said refusal to bargain, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, as the exclusive representative of its employees in the appropriate unit.

(b) In any like or related manner interfering with the efforts of such representative of its employees to bargain collectively on their behalf.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act :

(a) Upon request bargain collectively with Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, as the exclusive bargaining representative of its employees in the appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant in South San Francisco, California, where the employees in the appropriate unit are employed, copies of the notice attached hereto and marked "Appendix."⁶ Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

⁶In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that :

WE WILL cease and desist from :

(a) Refusing to bargain collectively with Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, as the exclusive representative of our employees in the appropriate unit.

(b) In any like or related manner interfering with efforts of such representative of our employees to bargain collectively on their behalf.

WE WILL bargain collectively upon request with Local 508, Amalgamated Meat Cutters and Butcher Workmen of North

America, AFL, as the exclusive representative of employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All plant clerks and standards checkers at our South San Francisco, California, plant, excluding all other employees, guards, and supervisors as defined in the Act.

SWIFT & COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Star Garter Company and Local 444, United Textile Workers of America, AFL, Petitioner. *Case No. 13-RC-4222. November 10, 1955*

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, hearings were held before Albert Kleen, hearing officer. The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Employer is an Illinois corporation engaged in the manufacture and sale of infants' and women's wear, with its sole place of business in Chicago, Illinois. Its total sales during the calendar year 1954 amounted to \$137,521. During the same period, its purchases totaled \$68,862, of which about 80 percent was received directly from points outside the State of Illinois.

During this period out-of-State sales totaled \$22,665, of which \$2,401 went to unidentified customers and \$20,254 were in shipments to Sears Roebuck stores located in other States. All remaining sales were shipments to purchasers located in the State of Illinois. To local customers whose annual out-of-State shipments fell short of \$50,000, sales totaled \$6,284. To Illinois customers—nonretail enterprises—each of whose direct out-of-State shipments exceeded \$50,000,