

and make mathematical calculations to assist the engineers in the research work. They are located in a separate building and utilize highly specialized equipment to test the material under development. These employees work under a minimum of instruction and require at least 6 months' training. We find these employees are technicals and, in view of the Employer's objection, we shall exclude them.⁴

Accordingly, we find the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed at the Employer's Arlington, Texas, plant, including inspectors, machinists, the foreman and laboratory assistants in the research laboratory, specialists, loaders, shipping and receiving employees, but excluding technical employees,⁵ the assistant laboratory technicians and helpers in the core laboratory, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁴ *Leland Electric Company, et al.*, 126 NLRB 406. Chairman Leedom would not find on this record that these helpers exercise independent judgment and utilize the specialized training of technical employees; accordingly, he would include the helpers in the unit.

⁵ The Petitioner alternatively contended that if any of the classifications it sought were found technicals, it desired to represent such employees in a separate unit. However, Petitioner would be entitled to an election in a separate technical unit only if it sought all technicals in the plant and it had an appropriate showing of interest for such employees. *The Monarch Machine Tool Co.*, 98 NLRB 1243; *Westinghouse Air Brake Company, Union Switch & Signal Division*, 119 NLRB 1391. These requirements have not been established here to justify a separate unit confined to the laboratory technicians.

Swift and Company and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO and National Brotherhood of Packinghouse Workers, Party to a Contract.
Case No. 4-CA-2024. August 22, 1960

DECISION AND ORDER

Upon a charge duly filed on October 12, 1959, by Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, herein called Meat Cutters, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fourth Region, issued a complaint and notice of hearing dated November 30, 1959, against Swift and Company, herein called Respondent, alleging that the Respondent had engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) and (2) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Sec. 151, *et seq.*), herein called the Act. On December 7, 1959, the complaint was amended by the General Counsel. The complaint and amended

complaint named the National Brotherhood of Packinghouse Workers, herein called the Brotherhood, as Party to a Contract. On December 21, 1959, the Respondent filed an answer to the amended complaint in which it admitted certain allegations thereof, denied others, and prayed that the complaint be dismissed. On December 21, 1959, the Brotherhood filed an answer to the amended complaint in which it admitted certain allegations thereof, and denied others. Copies of the charge, the complaint and notice of hearing,¹ the amended complaint, and the answers were duly served on all parties.

With respect to the unfair labor practices, the complaint alleged, in substance, that, on or about September 18, 1959, and at all times thereafter, Respondent rendered unlawful aid, assistance, and support to the Brotherhood in violation of Section 8(a)(2) of the Act; and also interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act, by extending an existing collective-bargaining agreement, and subsequently entering into a new agreement, with the Brotherhood at a time when there was pending before the National Labor Relations Board a representation petition filed by a rival labor organization.²

Thereafter, all the parties entered into a stipulation³ which set forth an agreed statement of facts, waived a hearing before a Trial Examiner, waived the issuance of an Intermediate Report and Recommended Order by a Trial Examiner, and, in effect, moved that the proceeding be transferred to the Board. The stipulation, in effect requested the Board to make findings of fact, conclusions of law, and to issue a Decision and Order. On March 17, 1960, the Board granted the aforesaid motion and transferred the proceeding to the Board.⁴ The stipulation is hereby approved and accepted and made a part of the record in this case.⁵

Upon the basis of the stipulation, and the entire record in the case, the Board⁶ makes the following:

¹ Brotherhood moved that the hearing be rescheduled for an earlier date than named in the notice of hearing. The Regional Director denied the motion.

² Swift and Company, Employer, and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Petitioner, Case No 4-RC-3988 (unpublished).

³ The stipulation reserved to the parties the right to file with the Board motions and briefs in support thereof.

⁴ The Respondent and the Brotherhood filed motions to dismiss and briefs in support thereof, asserting that on the facts in this case the rule in *Shea Chemical Corporation*, 121 NLRB 1027 (1958), should not be applied. In view of the decision herein these motions are denied. The Respondent also requested oral argument before the Board. The request is hereby denied as the stipulation, motions and briefs, and the answer to the complaint, in our opinion, adequately present the issues and positions of the parties.

⁵ The motion of the General Counsel to strike certain paragraphs in the stipulation and to reject certain exhibits is hereby denied as, in our opinion, such paragraphs and exhibits are acceptable as background information.

⁶ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins]

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is an Illinois corporation engaged in the slaughtering and processing of meat in various plants throughout the United States. Annually, the Respondent ships its finished meat products, valued in excess of \$1,000,000, between and among the various States of the United States.

We find that the Respondent is engaged in commerce, and that it will effectuate the policies of the Act to assert jurisdiction.

II. THE LABOR ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, and National Brotherhood of Packinghouse Workers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Respondent and the Brotherhood were parties to a master agreement, effective from September 24, 1956, to September 1, 1959, covering the employees of Respondent at various plants throughout the United States, including the production and maintenance employees at Respondent's Harrisburg, Pennsylvania, plant. On October 11, 1956, the date of the execution of the master agreement, Respondent and Brotherhood executed supplemental agreements to the master agreement, which included the following provision:

. . . if at any time during the term of the new Master Agreement or between the date hereof and the effective date of said new Master Agreement the National Labor Relations Board should certify as the bargaining agent for any of the employees in any of the bargaining units covered by such Master Agreement a labor organization other than your own, then in such event said new Master Agreement would cease and terminate as to such employees effective with the date of the Board's certification.

On June 18 and 25, 1959, respectively, Brotherhood and Respondent served on the other notice of termination of the master and supplemental agreements. Thereafter, beginning on July 23, 1959, the parties met and began negotiations toward a new collective-bargaining agreement.

On August 13, 1959, the Meat Cutters filed a representation petition with the National Labor Relations Board, requesting an election at Respondent's Harrisburg, Pennsylvania, plant in a unit of production and maintenance employees, including truckdrivers. Hearing on the petition was scheduled for September 9, 1959. It was postponed on September 8 by the Regional Director, Fourth Region, and was re-

scheduled for September 17, 1959. On the latter date a hearing was held at Harrisburg, Pennsylvania. Respondent, Meat Cutters, and Brotherhood each participated in the hearing.

On August 21, 1959, Respondent and Brotherhood entered into an agreement continuing in effect the master and supplemental agreements beyond their expiration date of September 1, 1959, until new agreements were executed or the extended agreements were terminated by notice. Thereafter, on September 18, 1959, Respondent and Brotherhood executed an agreement amending the master agreement and supplemental agreements as extended on August 21. This agreement modified the latter agreements and included therein wage increases and provisions relative to improvements in working conditions. The terms were made retroactive to September 1, 1959, and were made applicable, among others, to employees at the Harrisburg, Pennsylvania, plant of Respondent.

On October 22, 1959, Respondent and Brotherhood executed a new master agreement, effective the same date, covering employees at Respondent's various plants, including the production and maintenance employees at the Harrisburg, Pennsylvania, plant. On the same date, Respondent and Brotherhood executed a supplemental agreement to the new master agreement, which included the same language as to certification of another union as was part of the supplemental agreement to the expired master agreement, as hereinbefore noted.

In the *Shea Chemical Corporation* case,⁷ the Board held that upon presentation of a rival or conflicting claim which raises a real question concerning representation, an employer may not go so far as to bargain collectively with an incumbent union unless and until the question concerning representation has been settled by the Board. The foregoing facts show that at a time when a petition for representation of the employees at its Harrisburg, Pennsylvania, plant was pending before the Board, the Respondent extended its expiring contract, entered into a supplemental agreement granting wage increases and improved working conditions, and executed a new master agreement with Brotherhood. We hold that by these acts Respondent violated the Act under the *Shea Chemical* principle.

Respondent contends⁸ that *Shea Chemical* is not controlling because no real question concerning representation existed when the Respondent committed the acts in question. In this connection, Respondent points to the fact that practically every employee in the unit had continued his dues checkoff authorizations, although this is a period when such authorizations could have been revoked. Re-

⁷ *Shea Chemical Corporation*, *supra*. See also *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060; *Novak Logging Company*, 119 NLRB 1573

⁸ In its brief the Brotherhood, in substance, sets up the same defense as Respondent, and, therefore, will not be treated separately.

spondent's contention, however, is without merit, inasmuch as the timely filing of the petition supported by an administratively determined showing of interest in fact raises a real question concerning representation. *Shea Chemical Corporation, supra*, footnote 8.

Respondent also contends that its neutrality as to claims by rival unions is evidenced by the provision in the supplemental agreements which provide that the master agreement shall cease and terminate as to any unit covered upon certification by the Board of a union other than the contracting union. We find this contention also without merit, as the effect of assistance to the contracting union in the face of a rival claim is not dissipated by the mere inclusion in the contract of such a provision. Moreover, such a provision does not allay the fact that Respondent has concluded for itself which of two competing unions the employees desire as their representative. As previously noted, the Board has held that this is not the employer's prerogative.

Respondent further contends that consideration must be given to the fact that for many years past its collective bargaining has been conducted on the same basis as shown in this case. It states that on many occasions in the past it has executed master agreements while petitions for representation elections were pending, and no allegation of illegal activity was leveled against the practice by the Meat Cutters, a petitioning union in some cases, or by any other union. The contention is likewise without merit. A failure to challenge Respondent's past conduct in similar situations is no defense to a present charge that the same, or similar, conduct is presently unlawful.

For the foregoing reasons we find that Respondent violated Section 8(a) (1) and (2) by signing an agreement on August 21, 1959, continuing in effect on and after its termination date of September 1, 1959, amending the master agreement previously extended and granting wage increases and improved working conditions for employees; and by executing a new master agreement and supplemental agreements with Brotherhood on October 22, 1959—all at a time when there was a real question concerning representation by reason of the Meat Cutters' rival claim.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations 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 of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices violative of Section 8(a) (1) and (2) of the Act, we shall order

it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. However, since the master agreement covers employees at a number of Respondent's plants, but the Meat Cutters' representation claim is for only the production and maintenance employees at Respondent's Harrisburg, Pennsylvania, plant, the remedy and order herein shall be limited to that plant.

CONCLUSIONS OF LAW

1. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, and National Brotherhood of Packinghouse Workers are labor organizations within the meaning of Section 2(5) of the Act.

2. By entering into the various collective-bargaining agreements with National Brotherhood of Packinghouse Workers described hereinabove, thereby contributing unlawful aid, assistance, and support to the said labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (2) of the Act.

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

4. 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, Swift and Company, Harrisburg, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect, to the extent that it applies to the employees at its Harrisburg, Pennsylvania, plant, to the collective-bargaining agreement, dated October 22, 1959, between the Respondent and the National Brotherhood of Packinghouse Workers, or to any extension, renewal, or modification thereof, or any other contract or agreement between the Respondent and the said labor organization which may now be in force.

(b) Recognizing National Brotherhood of Packinghouse Workers as the representative of its employees at its Harrisburg, Pennsylvania, plant for the purposes of dealing with the Respondent concerning

grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until the said labor organization shall have been certified by the Board as the representative of the Respondent's production and maintenance employees at its Harrisburg, Pennsylvania, plant.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Withdraw and withhold all recognition from National Brotherhood of Packinghouse Workers of America as the collective-bargaining representative of any of its employees at its Harrisburg, Pennsylvania, plant, unless and until the said labor organization shall have been certified by the Board as the representative of such employees.

(b) Post at its Harrisburg, Pennsylvania, plant, copies of the notice attached hereto marked "Appendix."⁹ Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall be duly signed immediately upon receipt thereof, and shall be posted and maintained by the Respondent for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily placed. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fourth Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

⁹In 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, you are notified that:

WE WILL NOT give effect to our contract dated October 22, 1959, with National Brotherhood of Packinghouse Workers as the collective-bargaining representative of any of our employees at our plant in Harrisburg, Pennsylvania, and will not recognize the said labor organization as such representative, unless and until the said labor organization shall have been certified by the Board as such representative of the employees.

WE WILL withdraw and withhold all recognition from National Brotherhood of Packinghouse Workers as the collective-bargaining representative of any of such employees, and will not recognize the said labor organization as such representative, unless and until the said labor organization shall have been certified by the Board as the representative of the employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act, including the right to join or assist Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

SWIFT AND 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.

Sherry Manufacturing Company, Inc. and International Ladies' Garment Workers' Union, AFL-CIO, Local Chapter No. 415.
Case No. 12-CA-1090. August 22, 1960

DECISION AND ORDER

On March 8, 1960, Trial Examiner Arthur E. Reyman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and Respondent¹ filed exceptions to the Intermediate Report, and briefs in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

¹ Respondent, in its exceptions, excepts to the failure to enforce subpoenas served upon the Florida Industrial Commission. The points raised by Respondent in support of its exception were considered by the Board in its Order, dated December 22, 1959, which revoked the subpoenas and denied enforcement thereof. Accordingly, they will not be further considered herein.