

In the Matter of WILSON & Co., INC. and UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL #3, CIO

Cases Nos. 18-R-985 to 18-R-987 inclusive.—Decided June 6, 1944

*Mr. Richard C. Winkler* and *Mr. M. R. Swanson*, of Chicago, Ill., for the Company.

*Mr. Harold J. Smith* and *Mr. E. R. Fitzpatrick*, of Cedar Rapids, Iowa, for the Union.

*Mr. William Strong*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by United Packinghouse Workers of America, Local #3, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Wilson & Co., Inc., Cedar Rapids, Iowa, herein called the Company, the National Labor Relations Board, having ordered that the cases be consolidated, provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Cedar Rapids, Iowa, on May 5, 1944. 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. The Company moved for dismissal of the petition on various grounds. The Trial Examiner reserved ruling for the Board. The motions are denied. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a Delaware corporation with principal offices in Chicago, Illinois. The Company operates a plant at Cedar Rapids, 56 N. L. R. B., No 220.

Iowa, where it is engaged in slaughtering livestock and processing and distributing meats. About 3 percent of the livestock slaughtered annually originates outside the State of Iowa, and about 75 percent of the finished products is shipped to points outside that State.

The Company also operates a wholesale market at Cedar Rapids, Iowa, contiguous to the main plant. The market is under the direct supervision of the "branch house department" at Chicago, which controls similar sales units throughout the United States.

We find that the Company, both with respect to its plant and wholesale market operations, is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

United Packinghouse Workers of America, Local #3, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the units hereinafter found appropriate.<sup>1</sup>

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 UNITS

The Union filed three separate petitions, one in each of the cases herein, in which it requested separate units, respectively, of plant clerks and scalers, watchmen and patrolmen, and wholesale market employees. At the hearing the Union stated that it desires the inclusion of these groups of employees in an existing unit of production and maintenance employees, in which the Union is the recognized exclusive bargaining agent, and from which the categories of employees under consideration here were excluded, among others. The Company opposes the desired inclusion of these employees in the production and

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<sup>1</sup> The Regional Director reported that the Union submitted 49 application cards in Case No. 18-R-985, 15 cards in Case No. 18-R-986, and 4 cards in Case No. 18-R-987. At the hearing it developed that there are about 63 employees in the unit petitioned for in Case No. 18-R-985, about 18 employees in the unit petitioned for in Case No. 18-R-986, and about 5 employees in the unit petitioned for in Case No. 18-R-987.

maintenance unit, and further contends that these employees are management representatives, are ineligible for membership in the Union, that the categories of employees in question "should not be affiliated with any organization with members that work in the plant," and should not be constituted into appropriate units for collective bargaining purposes.

The plant clerks and scalers involved are salaried employees.<sup>2</sup> The scalers weigh the production of production employees, and record the weights. The plant clerks check the production claimed by the production employees and the applicable pay rates, and engage in various inventory taking functions. The actual computation of wages is performed by time office employees. We find nothing in the record to support the Company's contention that the plant clerks and scalers are a part of management or that their duties are of such a nature as to require the denial to them of rights under the Act.<sup>3</sup>

The plant police and watchmen are engaged in the protection of Company property against fire, theft, and other destructive or illegal acts and situations. Some appear to be, or were, uniformed and members of the auxiliary military police, while others are not. All are paid on a weekly salary basis. We have heretofore considered the problem of the relationship of watchmen, guards, and other types of plant-protection employees to management, and have concluded that they are "employees" within the meaning of the Act and entitled to exercise rights under it.<sup>4</sup> Nothing in the instant case compels a departure from that conclusion. Moreover, we see no cogent reason for denying to these employees, if they so desire, representation for collective bargaining purposes under the Act by the labor organization which represents other employees of the Company for similar purposes. Nothing in our experience leads us to conclude that the exercise of rights under the Act by employees is incompatible with their loyal, full, and honest performance of duties. The remedy for inefficiency, disregard or neglect of duty, collusion or other improper practices by employees lies implicitly in the power of the employer to discipline and discharge.

The wholesale market employees whom the Union seeks to represent pack orders for local meat markets. In addition they receive

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<sup>2</sup> The Company also has hourly paid scalers, who are already in the production and maintenance unit

<sup>3</sup> There is some testimony to the effect that plant clerks "inform the employees as to what rate is" for work performed and "the employment department" may ask a clerk to "check up on an employee to find out when he started to work, and if his work was satisfactory, and if he has any complaints that they know of, of the work," and may perform similar functions. It is clear, nevertheless, that these plant clerks do not have access to such personnel or labor relations records or participate in such activities of that type as to require the denial to them of collective bargaining rights under the Act

<sup>4</sup> See, e. g., *Matter of Maryland Drydock Corp.*, 50 N. L. R. B. 363, *Matter of Dravo Corp.*, 52 N. L. R. B. 322.

stock from the plant, place it in coolers, and perform other general functions.<sup>5</sup> These packers work in the market 8 hours daily. After 4 p. m. each day most of the packers work in the plant, performing production duties. They are paid separately, and on different bases, for the work performed in the market and in the plant. The sole objection to their participation in the selection of a collective bargaining agent is on jurisdictional grounds. The wholesale market employees clearly fall within our jurisdiction under the Act.<sup>6</sup>

As we have stated, the Union would add all of these categories of employees to the unit of production and maintenance employees, while the Company would deny to them collective bargaining rights altogether.

The production and maintenance employees are hourly paid, while those under consideration here are on a weekly salary basis. The Company and different locals of the Union are parties to a contract covering the production and maintenance employees at five plants of the company, including the instant plant. The unit definitions under that contract for all plants except that here involved, exclude from the production and maintenance units employees in the categories which the Union here seeks to add to its production and maintenance unit.<sup>7</sup> We are of the opinion that in the light of all considerations before us, the plant clerks and scalers, the plant police and watchmen, and the wholesale market employees constitute separate appropriate units.<sup>8</sup>

The record is ambiguous as to the militarized status of all the plant police and watchmen. Since it appears that some of them may be militarized, we shall find separate appropriate units of the militarized and the non-militarized plant police and watchmen.

We find that all salaried plant clerks and scalers at the Cedar Rapids plant, 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.

We find that all Cedar Rapids wholesale market employees, excluding salesmen, office employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend

<sup>5</sup> The Union does not ask to represent the office employees, supervisors, and salesmen of the wholesale market.

<sup>6</sup> See Section I, *supra*.

<sup>7</sup> The unit for the instant plant is merely described as composed of "all production and maintenance employees."

<sup>8</sup> The wholesale market employees who are employed by the Company in its main plant on a part-time basis at production or other work, in addition to constituting a part of the wholesale market employees which we find appropriate, may also be included within the production and maintenance unit if their part-time employ at the plant is regular.

such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We find that all militarized plant police and watchmen, at the Cedar Rapids plant, 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.

We find that all non-militarized plant police and watchmen, at the Cedar Rapids plant, 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.

#### V. THE DETERMINATION OF REPRESENTATIVES

The Union would include Rex Liens among the employees in the plant police and watchmen's unit. The Company asserts that he should be excluded because he is the "assistant chief" of police. The Company's pay roll fails to list Liens as "assistant chief." He is a uniformed patrolman, receiving the same rate of pay as the other patrolmen. Until about 3 weeks preceding the hearing herein, Liens was assigned to the night shift. While on that assignment he was in charge of the other patrolmen and watchmen on the same shift; however, he performed the functions of a regular patrolman. At the time of the hearing, Liens was no longer on the night shift. It appears that most of the watchmen and patrolmen periodically change shifts. The record fails to reveal who acts as supervisor over the night shift when Liens is not on it, nor does it reveal how often or how long Liens performed that function, nor whether he will be assigned that function in the future. While there is also testimony that Liens "did our fingerprint work in checking up on employees, and other confidential matters," it is not shown whether such work was assigned exclusively to Liens, what the precise nature of the work was, and whether it related to such matters and was of such a nature as to place Liens in a supervisory or managerial category. "Sometimes" Liens has substituted for the police chief during the latter's absence. We are not persuaded from this state of the record that Liens is a supervisory employee within the meaning of our definition. We shall, therefore, include Liens in the militarized patrolmen's unit.

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units 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.

### 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, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Wilson & Co., Inc., Cedar Rapids, Iowa, 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 Eighteenth 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 the 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 any 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 they desire to be represented by United Packinghouse Workers of America, Local #3, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.