

In the Matter of ARMOUR & COMPANY and INTERNATIONAL ASSOCIATION
OF MACHINISTS, LOCAL 92

Case No. R-476.—Decided February 21, 1938

Meat Packing Industry—Investigation of Representatives: controversy concerning representation of employees; rival organizations; controversy between craft and industrial unions as to appropriate bargaining units—*Unit Appropriate for Collective Bargaining:* craft or plant; where other considerations determinative of appropriate unit are such that either of two contentions is valid, decisive factor is the desire of the employees involved—*Representatives:* proof of choice: signed authorizations; ballots cast in consent election—*Certification of Representatives:* upon proof of majority representation.

Mr. Paul Broderick, for the Board.

Mr. J. G. Campbell, of Kansas City, Mo., for the I. A. M.

Mr. B. A. McWilliams and *Mr. Neil Beam*, of Kansas City, Mo., for the United.

Mr. Harry E. Selekman, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On July 30, 1937, the International Association of Machinists, Local 92, herein called the I. A. M., filed with the Regional Director for the Seventeenth Region (Kansas City, Missouri) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Armour & Company, herein called the Company, at its Kansas City, Kansas, plant, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 9, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On December 1, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon

the I. A. M., and upon the United Packing House Workers, affiliated with the Committee for Industrial Organization, herein called the United, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on December 9 and 10, 1937, at Kansas City, Missouri, before Theo R. Bland, the Trial Examiner duly designated by the Board. The Board was represented by counsel, and the I. A. M. and the United were represented by their officials. All participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Armour & Company, an Illinois corporation, is engaged in the meat packing and distributing industry. It also manufactures allied products, such as fertilizer, soap, and leather; operates creameries; and owns establishments which slaughter and dress poultry, and package and sell eggs. The Company, which is one of the four largest meat packing houses in the United States, operates 28 meat packing houses in 22 States and about 300 branch houses throughout the United States. The Company advertises in magazines of national circulation and in local newspapers at the branch house points. The total amount of business done by the Company in the fiscal year of 1936 was \$748,935,218.

The packing house at Kansas City, Kansas, occupies 67 acres, on which are located 45 buildings, and is served by the St. Louis & San Francisco Railroad Co. The average number of employees in the plant for 1936 was 2100, approximately 90 per cent of whom are engaged in production and maintenance work. About 1,500,000 animals of all kinds were slaughtered in the plant during 1936. The purchases of livestock are made principally in Kansas, but 40 per cent of the livestock comes from outside the State. Approximately 90 per cent of the finished products are shipped outside the State of Kansas.¹

¹ All the facts set forth in this paragraph are taken from Board Exhibit No 6, a letter written to the Board by Mr. McElroy, the superintendent of the plant.

II. THE ORGANIZATIONS INVOLVED

The International Association of Machinists, Local 92, is a labor organization affiliated with the American Federation of Labor, admitting to its membership machinists and machinist helpers of the Company.

United Packing House Workers is a labor organization affiliated with the Committee for Industrial Organization. It admits to its membership production and maintenance employees of the Company, excluding foremen, assistant foremen, clerical workers, employees in the wholesale market, and the plant police.

III. THE QUESTION CONCERNING REPRESENTATION

On June 3, 1937, the United filed with the Regional Director a petition² alleging that a question affecting commerce had arisen concerning the representation of employees of Armour & Company, at its Kansas City, Kansas, plant, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. The hearing on this petition, scheduled for July 19, 1937, was recessed while counsel for the Company, the United, and the Employees Bargaining Association of Armour & Company, an unaffiliated labor organization claiming to represent employees in the plant, discussed the possibility of holding a consent election. On July 22, 1937, John G. Campbell, the local representative of the I. A. M., informed Irving G. McCann, the Trial Examiner duly designated by the Board, that the I. A. M. desired to intervene in the hearing because the machinists in the plant constituted a separate and distinct bargaining unit. The Trial Examiner replied that the hearing was in recess for the purpose of allowing the parties to agree to a consent election, but that if no such agreement was made he would permit the I. A. M. to intervene. On the same day the Company, the United, and the Association agreed that an election should be held on August 5, 1937, under the supervision of the Regional Director among the production and maintenance employees of the Company, excluding foremen, assistant foremen, clerical workers, employees in the wholesale market, and the plant police. On July 23, 1937, the Regional Director received from the I. A. M. a motion to intervene in the hearing.

Thereafter, the Board in a telegram³ dated July 31, 1937, notified the Regional Director that the I. A. M. should file a petition, and that if such a petition was filed prior to the holding of the consent

² *Matter of Armour & Company and United Packing House Workers, Armour Local, Case No. R-207.*

³ Board Exhibit No. 3.

election on August 5, 1937, the ballots of the machinists should be segregated and kept in a sealed envelope pending determination of the claim of the I. A. M. that the machinists constituted a separate bargaining unit. On July 30, 1937, the I. A. M. filed the instant petition.

The consent election was held on August 5, 1937, the United receiving a majority of all the ballots cast. In accordance with the instructions of the Board and of the Regional Director, the machinists and machinist helpers wrote their choice of a representative on the ballots used in the consent election. These votes of the machine shop employees were not counted, but were segregated and placed in a sealed envelope.

The United has now begun to bargain collectively with the Company on behalf of all the production and maintenance men in the plant. We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The United contends that the entire plant constitutes a single unit appropriate for the purposes of collective bargaining. The I. A. M. alleges that the machine shop employees constitute a separate unit. Although the I. A. M. has had members in the plant since 1924, the machinists have participated until 1935 in the employee representation plan set up by the Company and which functioned on a plant-wide basis. There was testimony that the foreman in the machine shop usually called the I. A. M. for additional machinists when they were needed, but that this was only an unofficial arrangement. The United did not appear in the plant until May 1937, and has bargained collectively with the Company only since August 5, 1937. The machinists are the only craft in the plant seeking to be represented by a separate organization, although there are other crafts in the plant.

A consideration of these facts leads us to the conclusion that the machine shop employees could operate either as a separate unit or

as a part of the larger unit. In similar cases⁴ we have held that the desires of the employees are the determining factor. An examination of the wishes of the employees, discussed in Section VI, *infra*, shows that the machine shop employees want to be represented by the I. A. M. as a separate unit.

We find, therefore, that the machinists and machinist helpers of the Company constitute a unit appropriate for the purposes of collective bargaining, and that such a unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing officials of the I. A. M. testified that 15 out of a total of 21 machinists and machinist helpers were members of their organization. They also introduced into evidence 21 authorization cards signed on December 6 and 7, 1937, by the employees of the machine shop. It was stipulated⁵ by the I. A. M. and by the United that the ballots cast by the machinists and machinist helpers in the election of August 5, 1937, under the instructions set forth in Section III, *supra*, should be a part of the record in this case. An examination by the Board of these ballots shows that of a total of 21 cast, 18 were for the I. A. M., one was for the United, and two were void. Under these circumstances we find that the I. A. M. has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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. A question affecting commerce has arisen concerning the representation of employees of Armour & Company at its Kansas City, Kansas, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The machinists and machinist helpers of the Company constitute a unit appropriate for the purposes of collective bargaining

⁴ *Matter of The Globe Machine and Stamping Co., and Metal Polishers Union, Local No. 3, International Association of Machinists, District No. 54, Federal Labor Union 18783, and United Automobile Workers of America*, 3 N. L. R. B. 294; *Matter of Allis-Chalmers Manufacturing Company and International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159; and *Matter of Schick Dry Shower Company and Lodge No. 1557, International Association of Machinists*, 4 N. L. R. B. 246.

⁵ Board Exhibit No. 2.

within the meaning of Section 9 (b) of the National Labor-Relations Act.

3. International Association of Machinists, Local 92, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that International Association of Machinists, Local 92, has been designated and selected by a majority of the machinists and machinist helpers of Armour & Company at its Kansas City, Kansas, packing house as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, International Association of Machinists, Local 92, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

EDWIN S. SMITH, dissenting:

I disagree with the finding of the majority of the Board that the machinists and machinist helpers constitute an appropriate bargaining unit. I see no reason in the circumstances of this case for imperilling the effectiveness of the industrial unit by the severance from it of an important craft group.

My dissent is based on considerations which I have urged *In the Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159, and in other cases.