

In the Matter of PLANKINTON PACKING COMPANY *and* PACKING HOUSE WORKERS ORGANIZING COMMITTEE ON BEHALF OF LOCAL 681 OF THE UNITED PACKING HOUSE WORKERS OF AMERICA

Case No. R-585.—Decided March 5, 1938

Meat Packing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize either as exclusive representative—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding watchmen, fire-prevention employee and temporary employees; no controversy as to—*Employee Status:* temporary employees—*Election Ordered*

Mr. Morris L. Forer, for the Board.

Mr. William N. Strack, of Chicago, Ill., for the Company.

Mr. Michael Pietrzak, of Chicago, Ill., for the Amalgamated.

Mr. Phil J. Kingsland, of Milwaukee, Wis., for the Operating Engineers.

Mr. I. E. Goldberg, of Milwaukee, Wis., for the Operating Engineers and the Amalgamated.

Mr. W. O. Sonnemann, of Milwaukee, Wis., for the United.

Mr. Wallace M. Cohen, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On December 1, 1937, Packing House Workers Organizing Committee, herein called the P. H. W. O. C., on behalf of United Packing House Workers of America, Local 681,¹ herein called the United, filed with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Plankinton Packing Company, Milwaukee, Wisconsin, herein called the Company, and requesting an investigation and certification of representatives, pursuant to Section 9 (c) of the National Labor Relations

¹ At the hearing the petitioner moved to amend its petition by substituting "Local 681" for "Local 370." The motion was allowed without objection.

Act, 49 Stat. 449, herein called the Act. On January 26, 1938, 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 January 28, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon counsel for the Company, upon the P. H. W. O. C., and upon the Amalgamated Meat Cutters and Butcher Workmen of North America, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on February 2, 1938, at Milwaukee, Wisconsin, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The International Union of Operating Engineers, Local 311, herein called the Operating Engineers, appeared for the purpose of objecting to the inclusion of the engineers in the bargaining unit. The Board, the Company, and the Amalgamated were represented by counsel, and the United and the Operating Engineers by their representatives, and 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. The only ruling made by the Trial Examiner related to the amendment of the petition which, as noted, was allowed without objection.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Plankinton Packing Company, a Wisconsin corporation, has its principal office and packing plant in Milwaukee, Wisconsin, and a branch sales agency in Calumet, Michigan. The company is the wholly owned subsidiary of Swift and Company.

The Company's business consists of slaughtering livestock, chiefly cattle, calves, sheep, and hogs; processing some of the products of such slaughtering; and selling fresh and smoked meats, processed items, and byproducts. All but 3.3 per cent of the raw materials are purchased in Wisconsin from local stockyards. These stockyards obtain livestock from sources both within and outside the State of Wisconsin. For the fiscal year ending October 31, 1937, the Company's gross sales amounted to approximately \$24,000,000. About 75 per cent of such sales were made outside the State of Wisconsin.

II. THE ORGANIZATIONS INVOLVED

United Packing House Workers of America, Local 681, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production and maintenance employees of the Company, excluding supervisory employees, clerical workers, truck drivers, watchmen and fire-prevention employee, and engine and boiler room employees.

Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 248, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all production and maintenance employees of the Company, excluding supervisory employees, clerks, truck drivers, and engine and boiler room employees, but including watchmen and fire-prevention employee.

International Union of Operating Engineers, Local 311, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all operating engineers of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Organizational activities first began in the Company's plant in 1936. At the present time there are established and functioning organizations of the operating engineers and truckmen. On September 10, 1937, the Company issued to its employees a "Statement of Policy covering Company-Employee Relationships," to which was attached a "Memorandum of Company Policies." The Statement of Policy announced that the Company recognized the Amalgamated as the exclusive bargaining agency for all production employees (except chauffeurs and engineers) and that no change in the policies as posted would be made without first discussing it with representatives of the employees. The Memorandum of Company Policies covered vacation, seniority, hours, weekly guarantees, and holidays. By letter dated September 10, 1937, bearing its seal, the Amalgamated wrote to the Company that it had voted upon and accepted the Statement of Policy governing Company-Employee Relationships and the Memorandum of Company Policies. The duration of the policy arrangement was not fixed. Subsequently, the United at a conference with a representative of the Company and the Regional Director for the Twelfth Region claimed that it represented a majority of the employees of the Company's plant. At the hearing, the Amalgamated and the United stipulated that an election should be held, and the Company interposed no objection. The Company assumes a neutral position, alleging that it does not know with which organization it should now bargain.

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 and the Amalgamated stipulated at the hearing that all production and maintenance employees of the Company at its Milwaukee, Wisconsin, plant, including wholesale market operators and company inspectors, but excluding supervisory employees, clerical workers, truck drivers, engine and boiler room employees and temporary employees constitute an appropriate unit for the purposes of collective bargaining. Although the Company did not join in the stipulation concerning the appropriate unit, it raised no objection thereto.

The only question raised concerned the contention of the Amalgamated that 19 watchmen and one fire-prevention employee should be included within the bargaining unit. The United opposed such inclusion. The watchmen's duties consist in plant protection, fire prevention and in policing the plant against robbery and theft. They perform no manual labor on livestock. The fire-prevention man looks after the extinguishers, fire apparatus and equipment, and at times performs the duties of a watchman. It has been our practice not to include watchmen within a bargaining unit composed essentially of production and maintenance employees if objection thereto is raised by a participating labor organization.² We find, therefore, that the watchmen and fire-prevention employee should be excluded from the unit.

We find that the production and maintenance employees of the Company at its Milwaukee, Wisconsin, plant, including wholesale market operators and company inspectors, but excluding clerical workers, supervisory employees, truck drivers, engine and boiler room employees, watchmen, fire-prevention employee, and tempo-

² See *Matter of American Tobacco Company and Tobacco Workers' International Union, Local No 192*, 2 N. L. R. B. 198; *Matter of R C A Manufacturing Company, Inc. and United Electrical & Radio Workers of America*, 2 N. L. R. B. 159.

rary employees, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the Company the full benefit of their rights to self-organization and to collective bargaining, and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

Although both the United and the Amalgamated claimed to represent a majority of the employees of the Company within the appropriate unit, no evidence tending to substantiate such claims was submitted. The United and the Amalgamated stipulated that an election should be held. The Company did not join in the stipulation but stated that it had no objection thereto. We find that the question which has arisen concerning the representation of employees can best be resolved by the holding of an election by secret ballot.

The United, the Amalgamated, and the Company stipulated that the Company's pay roll of December 25, 1937, should be used in determining the list of eligible voters. We find such pay roll to be satisfactory.

The parties also agreed that the term "temporary employees" should be defined as: "All persons not on the pay roll of September 18, 1937, who had less than four months of accumulated service in the period from January 1, 1937, to September 18, 1937." We shall accordingly hold that of the employees on the pay roll of December 25, 1937, those not on the pay roll of September 18, 1937, who had less than four months of accumulated service during the year 1937, prior to September 18, 1937, shall be considered as temporary employees for the purposes of the election.

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 Plankinton Packing Company at its Milwaukee, Wisconsin, plant within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of Plankinton Packing Company, at its Milwaukee, Wisconsin, plant, including wholesale market operators and company inspectors, but excluding clerical workers, supervisory employees, truck drivers, engine and boiler room employees, watchmen, fire-prevention employee, and temporary employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the powers vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Plankinton Packing Company, Milwaukee, Wisconsin, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twelfth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees employed by the Company at its Milwaukee, Wisconsin, plant as of the payroll date of December 25, 1937, including wholesale market operators and company inspectors, but excluding clerical workers, supervisory employees, truck drivers, engine and boiler room employees, watchmen, fire-prevention employee, and temporary employees, and excluding also those employees who have since quit or been discharged for cause, to determine whether they desire to be represented, for the purposes of collective bargaining, by United Packing House Workers, Local 681, affiliated with the Committee for Industrial Organization, or by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 248, affiliated with the American Federation of Labor, or by neither.