

In the Matter of ARMOUR & COMPANY *and* AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL UNION No. 413

*Case No. R-494.—Decided March 15, 1938*

*Meat Packing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining:* hourly paid production workers and yardmen; community of interest—*Election Ordered*

*Mr. Thurlow Smoot*, for the Board.

*Mr. Walter C. Kirk*, of Chicago, Ill., for the Company.

*Mr. Harry Lashkowitz*, of Fargo, N. D., for the Amalgamated.

*Mr. James A. Garrity*, of Moorhead, Minn., for the Alliance.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 1, 1937, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 413, herein called the Amalgamated, filed with the Acting Regional Director for the Eighteenth Region (Minneapolis, Minnesota) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Armour & Company, herein called the Company, at its West Fargo, North Dakota, 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 November 27, 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 Acting Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On December 3, 1937, the Acting Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Amalgamated, and upon the Independent Workers Alliance,

herein called the Alliance, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on December 16 and 17, 1937, at Fargo, North Dakota, before J. J. Fitzpatrick, the Trial Examiner duly designated by the Board. The Board, the Company, the Amalgamated, and the Alliance were represented by counsel and 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.

At the hearing the Trial Examiner first admitted in evidence a list of the members of the Alliance, but he later ruled that such list should be excluded on the grounds that the names were copies from slips of paper and cards which he thought would also be introduced in evidence but were not and that no person who wrote down the names testified at the hearing. We believe the Trial Examiner erred in his ruling and shall admit these exhibits.<sup>1</sup> The weight to be given them will be discussed in Section VI, *infra*. During the course of the hearing the Trial Examiner made several rulings on motions and on other objections to the admission of evidence. The Board has reviewed such 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, toilet goods, 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 West Fargo, North Dakota, plant covers an area of approximately 25 acres, on which are situated six buildings and the feeding yards. During 1936 over 200,000 cattle, hogs, sheep, and calves were slaughtered and processed at this plant. All the livestock is purchased in stock yards located in North Dakota, but approximately 24 per cent of this livestock originates outside the State. Of the

<sup>1</sup> These were marked for identification as Intervenor's Exhibit Nos. 1-4 and included with the other exhibits.

total amount of fresh products sold by the plant, 94 per cent is sent outside of North Dakota. The number of workers in the plant varied from 359 to 506, and the annual pay roll was over \$400,000 for the year 1936.

## II. THE ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 413, is a labor organization affiliated with the American Federation of Labor, admitting to its membership hourly paid production employees of the Company and of the Union Stock Yards, excluding supervisory and clerical employees, temporary workers, and salaried employees.

Independent Workers Alliance is an unaffiliated labor organization. It admits to its membership all of the employees of the Company, excluding supervisory employees.

## III. THE QUESTION CONCERNING REPRESENTATION

The Amalgamated first began to organize the employees of the Company in July 1937, and the local received its charter on August 16, 1937. On August 31, 1937, at a meeting of the members of the Amalgamated a committee was authorized to negotiate with officials of the Company. On September 1, 1937, the committee met with J. E. Pyle, the general manager of the plant, requested that the Company recognize it as the exclusive bargaining agent for the hourly paid production employees, and submitted a contract<sup>2</sup> to be signed by the Company. However, the Company refused to comply with the request of the Amalgamated, but agreed to bargain with the Amalgamated for its own members and posted a notice<sup>3</sup> to this effect on its bulletin board. On September 3, 1937, a committee of the Alliance, at a conference with Pyle, sought recognition of their organization as the sole bargaining agent, but the Company refused to deal with it except for its own members.

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,

<sup>2</sup> Petitioner's Exhibit No. 1.

<sup>3</sup> Petitioner's Exhibit No. 2.

and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE APPROPRIATE UNIT

The Company for bookkeeping purposes has placed its employees on two different pay rolls, a salary and a plant pay roll. Testimony introduced by the Company indicates that the salary pay roll is composed of local executives, head buyers, and office force and that the plant pay roll contains certain salaried employees, as well as the hourly paid workers. The Alliance alleges that the appropriate unit should consist of the employees on both pay rolls, excluding the supervisory employees on the salary pay roll. The Amalgamated contends that the bargaining unit should be composed of the hourly paid production employees on the plant pay roll and seeks to exclude from the unit supervisory and clerical employees, temporary workers, and the following salaried employees on the plant pay roll: Hog and stock yardmen, plant cleaners, police and watchmen, chemists, plant and storeroom clerks, messengers, and truck drivers. The parties, therefore, are in accord only with respect to the exclusion of the supervisory employees.

*Hog and Stock Yardmen.* Testimony given by the Company shows that it employed four hog and fourteen stock yardmen during the week of October 30, 1937. These workers are paid weekly wages, whereas the production employees are paid on an hourly basis. The yardmen load the animals on trucks from the cars, drive them to the stock yards where they are unloaded, take care of the livestock, and keep the yards clean.

The constitution of the Amalgamated Meat Cutters and Butcher Workmen of North America indicates that such employees are eligible to membership in the Amalgamated, stating that "the [Amalgamated] shall comprise all wage earners in any way connected with wholesale and retail markets, slaughtering and packing establishments. Bookkeepers, office clerks, timekeepers and managers of packers' branch houses are exempt."<sup>4</sup> The Amalgamated has included laborers among the workers it seeks to represent in its petition. In the case of *Matter of St. Joseph Stock Yards and Butcher Workmen of North America, Local Union No. 159*,<sup>5</sup> the Amalgamated sought and the Board included yardmen among the workers in the bargaining unit.

In the light of these facts, we feel that the hog and stock yardmen should be included in the bargaining unit.

*Temporary Employees.* The Company produced monthly averages of the number of men employed from November 1936 to October 1937. An examination of these figures shows that there are substantial dif-

<sup>4</sup> Article I, Section 1 of the Constitution, introduced as Petitioner's Exhibit No. 4.

<sup>5</sup> 2 N. L. R. B. 39, Case No. C-43, decided July 7, 1936.

ferences from month to month. The record indicates these fluctuations are caused by the intermittent receipt of livestock by the Company. Upon the arrival of the livestock a rush period ensues which necessitates the hiring of additional workers until the animals are all slaughtered, processed, and distributed. There is no evidence in the record relating to the duration of these rush periods, how often they occur, or the frequency with which these temporary workers are hired from one period to the next. The evidence does show, however, that the Company pays a smaller wage rate to those persons who have worked less than a total of 60 days for the Company. In the absence of an adequate showing that the interests of the temporary workers are closely related to those of the other workers in the bargaining unit, we conclude that the temporary workers should be excluded from the bargaining unit. Temporary employees shall be defined as those persons who have been employed by the Company for less than a total of 60 days.

*The Plant Cleaners.* It appears from the evidence that six men, who are engaged in general cleaning work about the plant, have been hired under the terms of a contract between the Company and Nick Paris, an employee of the Company. These men, who receive weekly salaries, are paid by the Company, but Paris has the right to hire and discharge them without the approval of the Company and the duty of supervising the activities of these men. We shall exclude the six cleaners because under all the circumstances they appear to be employees of Paris, rather than those of the Company.

*Other Employees.* In accordance with our previous decisions we shall exclude clerical and office employees, plant police and watchmen, chemists, plant and storeroom clerks, messengers, and truck drivers because their interests and working conditions are substantially different from those of the hourly paid production workers.

We find that the hourly paid production workers and yardmen of the Company, excluding supervisory and clerical employees, temporary employees, plant cleaners, police and watchmen, chemists, plant and storeroom clerks, messengers, and truck drivers 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 right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. DETERMINATION OF REPRESENTATIVES

At the hearing the Company introduced in evidence two plant pay rolls, one <sup>6</sup> for the week ending September 4, 1937, and one <sup>7</sup> for the

<sup>6</sup> Petitioner's Exhibit No. 14.

<sup>7</sup> Petitioner's Exhibit No. 15.

week ending October 30, 1937. The Company objected to the use of the pay roll of September 4, 1937, on the ground that the personnel of the Company had changed considerably since that time. Neither the Amalgamated nor the Alliance raised any objections to comparing their membership list and cards with the pay roll of October 30, 1937. We shall, therefore, use this pay roll for our purposes. An examination of the pay roll shows that there are 399 employees in the appropriate unit.

The Amalgamated submitted in evidence 221 membership cards signed during the months of July to October 1937. A comparison of these cards with the pay roll of October 30, 1937, reveals that 213 members whose names appear on the pay roll, are in the appropriate unit. The chairman of the executive committee of the Alliance, the only witness to testify concerning the membership of that organization, stated that employees of the Company who wished to become members of the Alliance, gave their names to the membership committee, that the names were written down by the members of the committee on slips of paper and cards which were turned over to the secretary of the Alliance, and that the witness had compiled this list from the cards and slips of paper given to him by the secretary and membership committee. An examination of this list shows that 16 employees appearing on it are also included among the members of the Amalgamated. Although we feel that the list submitted by the Alliance has little probative value and cannot under all the circumstances be given much weight in determining the status of the membership of the Alliance, we do believe, however, that the appearance of the name of an employee on that list may raise some doubt as to whether such employee desires representation by the Amalgamated. Since of the 399 employees of the Company within the appropriate unit as of October 30, 1937, only 213 signed membership cards of the Amalgamated, there is clearly no adequate showing that a majority of the employees within the appropriate unit desire representation by the Amalgamated if question is held to exist as to what bargaining representative the 16 employees desire. We feel that under all the circumstances and particularly in view of the fact that even if these 16 employees are held to desire representation by the Amalgamated there is still evidence of only a very slight majority favoring representation by the Amalgamated, an election by secret ballot is necessary to resolve the question concerning representation. Those employees in the appropriate unit who were on the pay roll of the Company during the week ending October 30, 1937, excluding those who have since quit or been discharged for cause between such date and the date of election shall be eligible to vote.

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 West Fargo, North Dakota, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The hourly paid production workers and yardmen of the Company, excluding supervisory and clerical employees, temporary workers, plant cleaners, police and watchmen, chemists, plant and storeroom clerks, messengers, and truck drivers 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 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

DIRECTED that, as part of the investigation ordered by the Board to ascertain representatives for collective bargaining with Armour & Company, at its West Fargo, North Dakota, plant, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Acting Regional Director for the Eighteenth 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 hourly paid production workers and yardmen of the Company who were on the pay roll of the Company during the week ending October 30, 1937, excluding supervisory and clerical employees, temporary workers, plant cleaners, police and watchmen, chemists, plant and storeroom clerks, messengers, truck drivers, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by the Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 413, or the Independent Workers Alliance, for the purposes of collective bargaining, or by neither.