

In the Matter of SWIFT & COMPANY, A CORPORATION and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 641, and UNITED PACKING HOUSE WORKERS LOCAL INDUSTRIAL UNION No. 300

Case No. C-355.—Decided May 20, 1938

Meat Packing Industry—Interference, Restraint, and Coercion—Company-Dominated Union: domination of and interference with formation and administration; support; suggestion that employee-representation plan be continued; circulation of petitions for, during working hours; intimidation and coercion to join; activities of supervisors in soliciting membership; discrimination in favor of, in recognition as representative of employees; disestablished, as agency for collective bargaining.

Mr. Aaron W. Warner, for the Board.

Hughes & Dorsey by *Mr. Montgomery Dorsey*, of Denver, Colo., and *Mr. E. B. Krammiller*, and *Mr. W. N. Strack*, of Chicago, Ill., for the respondent.

Mr. Sylvester Garrett, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641, herein called the Amalgamated, and by United Packing House Workers Local Industrial Union No. 300, herein called the United, the National Labor Relations Board, herein called the Board, by George O. Pratt, Regional Director for the Seventeenth Region (Kansas City, Missouri), issued a complaint, dated September 15, 1937, against Swift and Company, Denver, Colorado, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2), and Section 2 (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The complaint alleged, in substance, that the respondent, by and through its officers, agents, and persons acting directly or indirectly in its behalf, dominated and interfered with the formation and administration of a certain labor organization of its employees known as Packing House Workers Security League, hereinafter called the League; that it encouraged, allowed, and permitted its supervisory employees to organize, promote, and encourage membership in, said organization; and that it threatened and coerced its employees into joining it.

A copy of the complaint, accompanied by notice of hearing, was duly served upon the respondent on September 16, 1937. The Amalgamated, the United, and the League also were duly served. The respondent filed an answer, dated September 21, 1937, in which it denied all of the material allegations of the complaint. The respondent likewise on the same date filed a motion asking that the charge be made more specific or the complaint be dismissed on the ground that the charge failed to state with sufficient particularity the facts constituting the alleged unfair labor practices, thereby precluding the respondent from properly preparing for the hearing.

Pursuant to the notice, a hearing was held in Denver, Colorado, on September 28, 29, and 30, and on October 4, 5, 6, and 7, 1937, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the commencement of the hearing, the respondent moved that the complaint be made more specific in order to enable it to prepare for the hearing, and at the same time pressed its earlier motion. The Trial Examiner denied both motions, reserving to the respondent the right to renew them, or either of them, at the end of the presentation of the Board's proof, or to move for a continuance of the hearing at that time if necessary to prepare its case. The Board completed its proof during the afternoon of September 30, 1937. Thereupon, counsel for the respondent moved for, and the Trial Examiner granted, a continuance of the hearing until October 4, 1937, pursuant to the earlier ruling. On October 4, 1937, the hearing was resumed. The respondent repeated both of its previous motions and requested a further adjournment. These were denied by the Trial Examiner. The respondent then proceeded with its case. In the light of the record and the nature of the evidence presented at the hearing the Board finds that the respondent was afforded

adequate opportunity for preparing its case and was not prejudiced in that regard by the rulings of the Trial Examiner.

During the course of the hearing, the Trial Examiner made various rulings on the admission and exclusion of evidence, to some of which rulings exceptions were made. He also ruled upon the motions of the parties. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On November 16, 1937, the Board, acting pursuant to Article II, Section 37 (c), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the proceeding transferred from the Seventeenth Region to the Twenty-second Region (Denver, Colorado).

Thereafter, the Trial Examiner filed his Intermediate Report, a copy of which was served upon the respondent on December 30, 1937, finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2), and Section 2 (6) and (7), of the Act, and recommending that the respondent cease and desist from its unfair labor practices, withdraw all recognition from the League as representative of its employees for collective bargaining, and take certain other action to remedy the situation brought about by the unfair labor practices. Upon motion of the respondent, its time for filing Exceptions to the Intermediate Report was extended until January 20, 1938. On that date the respondent filed its Exceptions and requested oral argument before the Board. Notice of the hearing of such oral argument on February 8, 1938, was served upon the parties. The respondent moved for, and the Board allowed, a postponement of said hearing until February 15, 1938. On February 15, 1938, oral argument on the Exceptions and record was had before the Board in Washington, D. C., by the respondent.

The Board has reviewed the Exceptions to the Intermediate Report and finds them to be without merit. The Exceptions are hereby overruled.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Swift and Company is an Illinois corporation,¹ having its main executive office at Chicago, Illinois. It is engaged chiefly in the business of purchasing and slaughtering livestock, and marketing the

¹ Swift and Company was incorporated in 1885. It has an authorized and fully issued capital stock of \$150,000,000.

products and byproducts thereof. In addition, it purchases, processes, and sells dairy, poultry, and other food products.² The size of its business ranks it as one of the world's largest distributors of meat, produce, and other foods. Its operating facilities in the United States and Canada include approximately 50 packing plants, 125 produce plants, and 400 refrigerated branch houses. These numerous properties are owned either directly by the respondent, or by wholly owned subsidiary companies.³

The principal livestock, slaughtering, and processing plants operated by the respondent are located in Chicago and East St. Louis, Illinois; Denver, Colorado; Evansville, Indiana; Kansas City, Kansas; Omaha, Nebraska; St. Joseph and St. Louis, Missouri; South St. Paul and Winona, Minnesota; Watertown, South Dakota; South San Francisco and Vernon, California; Cleveland, Ohio; Portland, Oregon; Detroit, Michigan; Nashville, Tennessee; Montgomery, Alabama; Atlanta and Moultrie, Georgia; New York City; Brooklyn, New York; Newark, Harrison, and Jersey City, New Jersey; Baltimore, Maryland; Harrisburg, Pennsylvania; Springfield, Somerville, and East Cambridge, Massachusetts; New Haven, Connecticut; Sioux City and Des Moines, Iowa; Dallas, Fort Worth, and San Antonio, Texas; and Milwaukee, Wisconsin. In all matters of general business policy, these plants are subject to the direction of the respondent's Chicago office.

This proceeding is concerned only with the plant of the respondent located at the Union Stock Yards in Denver, Colorado, herein called

² A statement filed by the respondent with the Securities and Exchange Commission on May 16, 1935, states that the respondent is engaged in, "the general business of acquiring and slaughtering livestock, processing and marketing products produced or derived from livestock, acquiring, processing and marketing poultry, manufacturing or acquiring butter, cheese, margarine, ice cream, milk products and eggs and marketing the same, tanning and preparing hides and skins and marketing the same and products produced or derived therefrom, pulling wool skins, acquiring and marketing wool, maintaining and operating cotton gins, crushing cotton seed, peanuts and other products for the extraction of vegetable oils, refining, manufacturing and marketing vegetable oils, including cotton seed, coconut and peanut oils, manufacturing and marketing cooking oil and other oils, mining and marketing rock salt, mining and marketing phosphate rock, manufacturing or preparing and marketing fertilizer, animal feeds, sulphuric acid, glue, gelatine, glycerine, soap and ice, operating farm lands and properties, growing, feeding and bedding livestock, maintaining and operating facilities for the storage, refrigeration and transportation of some of the above-mentioned products, and in addition thereto, the storage and refrigeration of some products of other persons, and operating and maintaining facilities for the distribution and marketing of some of the above-mentioned products and, in some foreign countries, the products of other persons." In addition, it appears that the respondent, through wholly owned subsidiaries, or through companies in which it holds large controlling interests is engaged in the preparing, canning, and marketing of canned foods, in the operation of public stockyards, and in the conduct of an insurance business.

³ The respondent maintains at least 55 wholly owned subsidiary companies in the United States, as well as 13 wholly owned foreign subsidiaries. In addition, the respondent retains large controlling interests in a number of important companies. Among these is Libby, McNeill & Libby, which itself maintains at least 18 wholly owned subsidiary companies.

the Denver plant. Although this is regarded by the respondent as one of its important processing and slaughtering plants, the respondent contended at the hearing that the Denver plant was operated independently and that, in this view, evidence relating to the business and activities of the respondent in places other than Denver was irrelevant. The record shows, however, that all of the respondent's plants are under unified control, and operated in close coordination. Indeed, such coordination is but the natural outcome of the application of large-scale methods to the meat packing industry.

The Denver plant, located in the heart of one of the world's leading sheep raising areas, plays an important part in the vast business of the respondent. It employs about 780 persons. Through it are made large purchases of live sheep and lambs for direct shipment to other units in the respondent's organization.⁴ More important, large quantities of the animals are slaughtered and processed at the Denver plant, and shipped eastward to the other plants of the respondent in such States as New York, Pennsylvania, Illinois, and New Jersey. To a lesser extent, the same is true in the case of dressed beef and pork. On the other hand, the Denver plant obtains commodities from other plants of the respondent, in order to meet demands of customers in the territory surrounding Denver.

The respondent has assigned to the Denver plant exclusive sales jurisdiction within the "Denver Region," a territory embracing Colorado, Wyoming, Nebraska, New Mexico, Arizona, Utah, Idaho, Montana, and Nevada. In supplying the needs of this region, as well as in carrying on its other functions, the Denver plant required within a given 10-month period over 100,000,000 pounds of raw materials. About 80 per cent of this amount consisted of livestock purchased through the local stockyards, a substantial part of which, in turn, was brought in from outside Colorado. Sixty per cent of the hogs delivered at the Denver plant for processing come from Nebraska.⁵ Apart from the livestock slaughtered, and excluding coal which is obtained in Colorado, at least half of the remaining raw materials necessary to the operation of the Denver plant are derived from sources outside Colorado, in many instances, from other plants of the respondent. In the ordinary course of its business, the Denver plant ships nearly two-thirds of its product to destinations outside of Colorado. During a 10-month period ending September 4, 1937, its total sales amounted to \$10,544,000.

⁴ All such purchases are made on instructions from the respondent's Chicago office. An official of the Denver plant stated: "Our sheep buyers get their instructions every day as to what to buy; and they are shipped to various points east, largely Chicago, and killed there."

⁵ The exact weight of live hogs thus brought into the plant does not appear in the record.

II. THE LABOR ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641, is a labor organization affiliated with the American Federation of Labor. It admits to membership production workers in the meat packing industry employed in the State of Colorado, including employees of the respondent at the Denver plant.

United Packing House Workers Local Industrial Union No. 300, is a labor organization affiliated with the Committee for Industrial Organization, likewise admitting to membership production employees in the meat packing industry throughout the State of Colorado, including workers at the Denver plant.

Packing House Workers Security League is a labor organization drawing its membership from the employees of the respondent in Denver.

III. THE UNFAIR LABOR PRACTICES

A. *Background of the unfair labor practices*

In November 1936, representatives of the Amalgamated commenced organization activities among the respondent's Denver employees. By the end of April 1937, over 400 had joined. About July, a number of the members of the Amalgamated withdrew and joined the United. A charter was granted the United by the Committee for Industrial Organization on July 8, 1937.

At the time the Amalgamated first enlisted members among the respondent's employees, and for many years prior thereto, there existed at the Denver plant an employees' representation plan known as the "Assembly Plan." The Plan had been adopted and put into operation by the respondent in pursuance of a general policy regarding its relations with employees. Similar plans had been adopted by the respondent in over 100 of its other plants. The salient features common to these plans are to be found in the Plan as it operated at Denver. Noteworthy was the direct participation of the plant management in the administration of the Plan. The Plan provided for the selection of eight employee representatives, chosen by the employees in the various departments at elections supervised by the respondent, and eight representatives designated by the management. These 16 persons met at regular intervals to discuss employment problems as they arose from time to time. Meetings were held during working hours in the respondent's office building. There was no provision for separate membership meetings.

B. Interference with, and domination and support of, Packing House Workers Security League

On April 20, 1937, a special meeting of the Assembly Plan was called at the Denver plant, upon orders by Middaugh, the plant manager. The sole purpose was to inform the representatives of the dissolution of the Plan. As was customary, the meeting was held in an assembly room adjoining the main offices of the plant.

At this meeting, Young, the plant superintendent, read to the group a notice which had been received from the Chicago office. The same notice was posted on bulletin boards throughout the plant. It stated:

On Monday, April 12, the United States Supreme Court made public its decision on several cases under the National Labor Relations Act (the Wagner Bill) and held the Act valid.

It is Swift & Company's intention to comply with the law as the court has now construed it and it is not possible to continue the present Representation Plan.

Whether you wish to establish an employees' representation plan for collective bargaining, that will comply with terms of the law, is a matter for you to decide. If you wish to adopt a plan for negotiating with the company on wages, hours, and working conditions, it should not include management participation in elections of employee representatives, the furnishing of printed material by the company, nor company compensation to employee representatives for time spent away from their work, except when conferring with management, as this latter is not prohibited by law.

It shall be the policy of the company to continue to consult with its employees on all matters of mutual interest in an honest effort to find the proper solution to problems. Finally, the company earnestly desires that the understanding growing out of our relationships during these past many years will be the basis upon which the continued good relations between employees and the company will be maintained.

Upon the completion of the reading of the notice Young and the management representatives retired from the meeting, leaving the employee representatives remaining in the room. Young gave them a digest of the Act previously prepared by the Chicago office. The employee representatives then discussed by themselves the situation presented, in the light of the notice and the digest. One Sheldon Schafer assumed leadership. A majority of those present expressed a preference for establishing some form of independent labor organization at the plant rather than one affiliated with any national body.

No immediate action was taken, and it was decided that employee representatives would meet again to consider the problem further.

That same day, Schafer made arrangements with Young for the use of the respondent's facilities for a meeting the following morning. He telephoned Young and asked whether the old employee representatives might rent the plant cafeteria for such a meeting. The amount of rental was not discussed. A few days later, the respondent sent the old employee representatives a bill making a rental charge of 1 dollar. After arranging for the meeting, Schafer informed the representatives about it and told them that they would be docked for time spent at the meeting.

The following morning, at 10 o'clock, the meeting was held. Schafer acted as chairman. The old employee representatives decided to circulate a certain petition, hereinafter described, among the employees; and Schafer proceeded to dictate the form thereof. They further decided that the new organization should be known as "Employees Security League of Swift and Company."

The meeting ended at about 10:45. Fifteen minutes later, the group met with Middaugh and Young, and with one Woolley, the head of the Dairy and Poultry department. Schafer informed the respondent's officials that, "the sentiment of the old Assembly was, by unanimous vote, that we wished to start an independent union and that we had assumed a temporary name and had elected temporary officers, which we felt was in compliance with our Wagner Bill." Young objected to the use of "Swift and Company" in the name of the new organization. While in his testimony, Young failed to recall having suggested a substitute name, another witness stated that he had. The old employee representatives asked several questions, among others whether their proposed organization "would be considered a bargaining agency." They also inquired if they might use the respondent's premises for their meetings and whether they would be permitted to solicit members during working hours. Middaugh told them that the respondent would be willing to furnish a meeting place if rent were paid but would not allow solicitation during working hours.

Following the meeting with the officials, the old employee representatives prepared "petitions," in accordance with the form dictated by Schafer, for circulation through the plant. The evidence conflicts as to the contents of these "petitions". One witness stated that the "petitions" were designed to enlist members, that the representatives were supposed to take them to their respective departments and secure the signature of any employee who wished to join. Other witnesses, testifying for the respondent, asserted that the sole pur-

pose of the petitions was to discover whether the employees wished to be members of an independent or of a nationally affiliated union. In view of the fact that the old employee representatives already had determined upon forming the League, it is difficult to see why at that stage they should have been interested in circulating such a questionnaire. At the hearing, Schafer, called as a witness by the respondent, was asked by the respondent's counsel to give the substance of the petitions. Schafer proceeded to reply that the petitions had stated, "We, the undersigned, of the Employees' Security League . . ." At this point counsel for the respondent interrupted his own witness, and Schafer's statement was never completed. We cannot but observe that the language of the petitions, to the extent stated by Schafer, is inconsistent with any theory that the petitions aimed merely to inquire whether the employees wished to join an independent or a nationally affiliated labor organization. In the light of the foregoing, and upon the entire record, we are satisfied, and find, that the petitions were prepared for the purpose of securing members for the League.

During the afternoon of April 21 the old employee representatives commenced their circulation of the petitions: A number of them testified, and the evidence establishes, that this took place during working hours. The circulation not only was widespread but continued for several days. While various foremen and supervisory employees, called as witnesses for the respondent, stated that they had not observed such circulation, others stated that they had and cautioned the men to stop, which was done. The petitions were written on ordinary full length sheets of typewriting paper.

Within a few days after April 20 other organization activities on behalf of the League were undertaken. Four of the respondent's witnesses, Brennan, Brooks, O'Brien, and Schafer, all employees, admitted that during a period of several weeks they solicited memberships for the League. O'Brien and Schafer further testified that these activities took them through at least three departments. It will be noted, with respect to O'Brien, that his duties as a cattle skinner ordinarily would not have permitted him to roam at will through the plant. Foremen and supervisors of the respondent, however, testified that they had observed no such solicitation during working hours. We are of the opinion that the testimony, in this regard, of the four employees is entitled to credence; that they in fact did solicit memberships for the League during working hours.

A number of other employees,^o called as witnesses for the respondent, denied that in late April and in May they had done any solici-

^o Prominent among this group were Gerlock, Marsaglia, and Vandergriff.

tation during working hours. They testified that they had only "talked to" employees requesting information about the League. However, the evasive character of the responses of these witnesses, as well as the nature of their admitted activities, convinces us, and we find, that their "talking to" employees was actual solicitation. One of these witnesses, Brennan, admitted that it had been his practice, further, to walk about the plant asking employees to attend League meetings. Another of the witnesses, Vandergriff, concededly collected dues for the League during working hours and distributed notices of League meetings. We entertain no doubt that Brennan and Vandergriff carried on these other activities as well.

The evidence with respect to two incidents is worthy of consideration in connection with the denials of the respondent's supervisory employees that they noticed any League activities.

Malone, an employee, testified that on one occasion he found Brooks in a cooler soliciting a number of other employees. Malone further testified that he then went to the foreman, Fling, and persuaded him to go to the cooler, where they both found Brooks in the midst of his activities, that Fling then took Brooks to the assistant superintendent, Horwich, who, in the presence of Malone and Fling, reprimanded Brooks. Fling was a witness at the hearing. Although he remembered having gone to the cooler with Malone, he denied finding Brooks engaged there in solicitation. However, Horwich also was a witness and supported Malone's testimony entirely, stating that not only had he reprimanded Brooks for soliciting in the cooler but that Fling, himself, had reprimanded Brooks. Malone's version is fully established by the record.

During one lunch hour the girls in the sliced-bacon department were solicited in a body, by Schafer, to become members of the League. The girls were taken into the foreman's office and detained there for at least 15 minutes after work should have been resumed. Throughout the time, the power was shut off and the machinery could not be operated. Fugit, the foreman, was absent, and testified that he knew nothing of the occurrence until after it had happened. However, he also testified that there was always someone in the department managing affairs, and that on that occasion, his assistant, Brunson, must have been in charge. The record shows that ordinarily Brunson tended to the task of switching on the power. One witness stated that Brunson, in fact, had observed the entire incident. The respondent did not put Brunson on the stand. We are of the opinion that Brunson or Fugit had knowledge at that time of Schafer's activity. No disciplinary action was ever thereafter taken against Schafer with respect to it.

The evidence shows that supervisory employees of the respondent participated in the League's drive for members. Several employees

testified to having been called to the office of Fugit, the foreman, or drawn aside at work, and threatened by Fugit with loss of vacation, of bonus, and of seniority rights, unless they joined the League. Fugit admitted at the hearing that he had talked "more or less" with the girls in his department but stated that his conversations related merely to requests for information on the subject of unions, or to matters of business. His description of a typical conversation was: "I asked them if they had joined any union yet and possibly they said 'No,' and I said 'Well, you better think it over seriously.'" However, in view of the general nature of his responses, and the record, we conclude that Fugit in fact did systematically canvass the employees in his department in an effort to have them join the League, and that he intimidated and coerced them to that end.

Petsch, the assistant foreman in the smoke house, also was active in enlisting members. On one occasion, he asked Wilson, an employee, where his Security League button was, and upon being told that Wilson was a member of the Amalgamated, proceeded to comment on both unions, concluding with the statement, "Don't you know that this company union would be better for your job and for yourself?" Petsch, on cross-examination, agreed that he had asked Wilson where his green button (Security League emblem) was; indeed, he went on to say that he had asked the same question of the other employees in his department.

There is substantial evidence that Knauss, the foreman in the beef cutting department, was similarly interested in the buttons worn by the men. In addition to "razzing" the Amalgamated members about their affiliation, Knauss, in one instance, at least, pulled an Amalgamated button from an employee's coat and threw it on the floor.⁷ Knauss said: "So you joined the . . . damned outside Union." Knauss' testimony in respect to this incident was:

Q. Did you ever take off a button from a man?

A. Yes . . .

Q. What kind of a button was it?

A. Plain button. If there had been any inscription of any kind on it, it had been scratched off . . .

Q. What did you do with that button?

A. I threw it on the floor.

Q. Why?

A. Oh, just fooling around, I guess.

The greatest pitch of activity on behalf of the League continued during the month succeeding April 21. Throughout this period the

⁷The record is somewhat confused with respect to the identification of the employee whose button Knauss removed

Amalgamated repeatedly protested to the respondent about solicitation by League members and officers during working hours. These protests were without avail. The respondent contends that it was unable to prevent such solicitation because of the rivalry existing between the Amalgamated and the League. Early in the period, on April 25, Horwich, the assistant superintendent, cautioned the leaders of both the League and the Amalgamated against solicitation during working hours. There is no showing, however, that any activity by the Amalgamated occurred comparable in extent with that of the League. Charges of such activity, in some instances affirmatively established as unfounded, were the object of prompt attention by the respondent. On one occasion, before work had begun, two members of the Amalgamated inquired of another employee, one Cook, whether he had solicited for the League during working hours. Upon Cook's complaint to Horwich that he had been interfered with after work had commenced, Horwich threatened the Amalgamated members with discharge. On another occasion, an order by Horwich to the Amalgamated to stop soliciting admittedly was proved to have been without cause. Indeed, the respondent's supervisory employees reprimanded the Amalgamated for protesting against League activity. After two members of the Amalgamated spoke with Fugit, before working hours, about his aiding the League, one of them was reprovved severely by Horwich for having done so, and was told to "quit interfering with the bosses." Horwich never interrogated Fugit about the truth of the matter.

The Amalgamated also protested against the activities which the supervisory employees of the respondent carried on in the interest of the League. Three times prior to mid-June, protests were lodged directly with Middaugh, the plant manager.

The respondent urges that Middaugh, Young, and Horwich took all reasonable steps to prevent the respondent's supervisory employees from soliciting members for the League, showing partisanship towards it, or otherwise aiding in its organization. In the brief filed with the Board, the respondent sets forth four successive occasions when it is alleged to have ordered its foremen not to engage in such activities. The record shows that on April 20 Young instructed Horwich "to notify the foremen of the same information that I was giving to the Assembly." The reference was to the above-mentioned meeting had with the old representatives the same day. Horwich thereafter met with the foremen. According to Knauss, Horwich conveyed only this information, and Horwich's testimony is corroborative. We are of the opinion that on April 20, Horwich merely told the foremen of the matters presented that day to the old representatives. Most of the instructions to foremen were given by Horwich.

On such occasions he "just read the Wagner Act," "kept repeating it," and let the men draw their own conclusions as to its meaning. At a meeting of supervisory employees held on April 29 Young read parts of the Act to the men and informed them "that we did not want any violation of the Wagner Bill . . ." He also interrogated Foremen Brandt, Fugit, and Wilson about their alleged activities, telling them "that their names had been mentioned and I wanted to know if they had violated any of the Wagner Bill Act." Upon receiving a negative answer from them, he was satisfied that they had in no wise interfered with the self-organization of the employees.

The evidence establishes that the assistant superintendent, Horwich, entertained a degree of hostility towards the Amalgamated which he took little pains to conceal. He openly "kidded" the leaders of the Amalgamated during working hours about their affiliation, accused one of them of being a "Red", and told another that there were "ways" of getting him into the League.

During this period membership in the League achieved a mushroom-like growth while that of the Amalgamated declined. The first meeting of the League was held on the evening of April 28. Two "gang bosses" were elected its president and vice president, respectively. Because "gang bosses" were considered supervisory employees by the men, the election gave rise to considerable criticism of the League as a "company union." The two officers thereupon resigned and successors were chosen. On May 13 the League was incorporated under the laws of Colorado. On May 25, 1937, it requested the respondent to recognize it as representative of "all of the employees" at the Denver plant for purposes of collective bargaining.

Upon the request being made, Middaugh instructed the timekeeper to verify the League's claim that it represented a majority of the employees. The timekeeper thereafter met with the secretary of the League, and together the two checked a list of "members" against the respondent's pay roll. The timekeeper reported to Middaugh that 70 per cent of the employees had joined the League. On May 27, 2 days after the request, the League was granted recognition as the exclusive bargaining agency for all of the Denver employees.

Earlier, on May 7, and again on May 17, the Amalgamated had requested the respondent to recognize it as collective bargaining representative of the employees, excluding the supervisory force. Middaugh replied that the matter would have to be referred to Chicago before any action by the respondent could be taken. Subsequently, on several occasions, the Amalgamated communicated with Middaugh to ascertain what position the Chicago office had taken, and was told that the request had not yet been considered. Middaugh inquired whether the Amalgamated would submit its books to the respondent to determine whether it represented a majority of the employees

The Amalgamated refused, suggesting, however, that an election of representatives be held at the plant.

At the time that the League asked for recognition, the respondent neither advised nor consulted with the Amalgamated respecting the granting of the League's request. The respondent's officials testified that they were then satisfied that the Amalgamated's claim to represent a majority was unfounded. Their opinion was based upon a report made by Young who arrived at his conclusion respecting the strength of that organization from the number of Amalgamated buttons he had observed while walking through the plant in the course of his duties.

Shortly after its recognition, the League tendered the respondent a list of the names of certain employees, called "grievers," selected to present employee grievances to the management. Thereafter, Horwich went through the plant informing the employees, without explanation, of the name of the particular "grievers" through whom grievances were to be submitted.

The affairs of the League are "under the control of" a Board of Directors consisting of 10 persons, most of whom are former representatives of the old Assembly Plan. Under the charter and bylaws of the League, the Board is empowered to make such bylaws as it, in its discretion, may deem proper. There is no provision for regular meetings of the members of the League other than semi-annual meetings for the election of officers. Supervisory employees are not excluded from membership. The bylaws expressly caution the "grievers" with respect to the propriety of their conduct in dealing with the respondent, by admonishing them not to resort to "bluffs" or use the League as a "club." They also provide that: "Each griever shall familiarize him or herself with the working rules or agreement of our employer, use extreme caution in not violating this agreement." The president of the League testified that the words "working rules or agreement" referred to the rules of the respondent relating to working conditions, either presently existing "or any that may follow."

Upon the foregoing facts, and the entire record, we are satisfied that coincident with its decision to dissolve the old Assembly Plan, the respondent, through its officers and supervisory force, embarked upon a course of action designed to encourage and dominate the formation and administration of the League, and lend support to it. Viewed in its entirety, the evidence shows that the respondent had resolved that the method of employee representation to succeed the old Plan should be one as congenial to its will as the old Plan, itself, had been.

The circumstances attending the meeting of the representatives on April 20 mark it as the first step. By unilateral action, the respondent already had dissolved the old Plan and posted throughout its plant

the very notice which was read. The language of the notice, considered in the light of how the old employee representatives, as reasonable men, must have understood it, is significant. After setting forth that the provision of the Act barred a continuance of the old Plan, the notice proceeded to state that the employees themselves might adopt an employee-representation plan, and cautioned as to what modifications would be necessary to free it from company domination. Such notice, under the facts, was well calculated to reveal the favorable disposition of the respondent towards an "independent" organization, patterned after the old Plan. The retirement of the management representatives upon the conclusion of Young's reading of the notice, coupled with his leaving the old employee representatives a copy thereof and the prepared digest of the Act, was an invitation for the old employee representatives to proceed.⁵ The ease with which Schafer, later in the day, secured the use of the plant cafeteria for an organizational meeting evidences the manner of management cooperation which the representatives could anticipate; indeed, the incident, along with other facts appearing in the record, casts suspicion on the singleness of Schafer's own interest in the matter.

The meeting of the old employee representatives with the plant officials on April 21 is of relevance chiefly because it discloses how the representatives, themselves, accepted as matter of course the interest of the respondent in the League. Although at that time they had no authority to speak for any of the plant employees but themselves, the representatives nevertheless deemed it of importance to report to the respondent that "the sentiment of the old Assembly was, by unanimous vote," that an "independent" union be set up. The assumption that such a matter was then of concern to the respondent, as well as the inquiries of the representatives as to whether the League would be accorded recognition as a collective bargaining agency and whether they might use the plant premises for solicitation of members and for meetings, point to a tacit assumption that the wishes of the respondent had entered into the formation of the League.

We have already indicated the extent and nature of the support which the respondent lent to the formation of the League. No effective measures were taken to stop the League from circulating membership petitions, soliciting members, distributing notices of meetings, collecting dues, or engaging in other organizational activities, during working hours. The respondent's own supervisory force enlisted

⁵ In a consolidated case decided by the Board today, *In the Matter of Swift & Company and United Automobile Workers of America, Local No 265*, Case No C-484; *In the Matter of Swift & Company and United Packing House Workers, L I Union No 328 Affiliata C I O*, Case No R-605, 7 N L R B 287. It appeared that a similar procedure was followed at the Evansville, Indiana, plant of the respondent with respect to the calling of a meeting of the old representatives, the reading of a notice identical in language with that here involved, and the withdrawal of the management representatives upon the conclusion of the reading.

members for the League, intimidated employees who would not join it, and otherwise aided in its formation. The assistant superintendent of the plant displayed marked partisanship. Throughout the period, the announced policy of the respondent against organizational activity during working hours was vigorously enforced against the Amalgamated, and its protests regarding the activities of and support given the League were unavailing.

Upon the record, the respondent's contention, heretofore mentioned, that it was unaware of League activities at the plant, that it sought to prevent such activities, and that it warned its supervisory force on several occasions against assisting the League, is not persuasive. We are convinced that the respondent's officials and supervisory employees were well aware of the extensive activities carried on by League members during working hours, and that by their neglect to curb such activities, at the same time withholding from the Amalgamated an opportunity to engage in similar activities, they sought to encourage the growth of the League at the expense of the Amalgamated. We are equally convinced that the respondent's supervisory employees, especially Fugit, Knauss, and Petsch, solicited on behalf of the League. We attach little weight or importance to the alleged warnings given the foremen by the respondent about their solicitation of employees, for the evidence thereof, in view of the authority of the respondent in such matters, shows that the respondent could not have seriously believed that it had taken effective means to prevent such practices. Moreover, the respondent, under the circumstances, cannot disavow the support which its supervisory employees accorded the League. There is no showing that the employees understood, or that the respondent sought to make clear to them, that its foremen were acting without the acquiescence, if not pursuant to the direction, of the respondent.

We find that the respondent has dominated and interfered with the formation and administration of the League, and has contributed support to it; that by its aforesaid acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of their right to self-organization, and to form, join, and assist labor organizations.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent 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

We have found that the respondent has dominated and interfered with the formation and administration of the League and has contributed support to it. Under these circumstances, the League cannot and does not offer to the respondent's employees the free representation for collective bargaining which is guaranteed by the Act. We shall, therefore, order the respondent to withdraw from the League all recognition as representative of the respondent's employees for the purposes of collective bargaining, and to disestablish it as such representative.

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. Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641; United Packing House Workers Local Industrial Union No. 300; and Packing House Workers Security League are labor organizations, within the meaning of Section 2 (5), of the Act.

2. The respondent, by interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1), of the Act.

3. The respondent, by dominating and interfering with the formation and administration of Packing House Workers Security League, and by contributing support to said organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) 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 basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Swift and Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of Packing House Workers Security League, or the formation or administration of any other labor organization of its

employees, and from contributing financial or other support to Packing House Workers Security League or to any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act.

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

(a) Withdraw all recognition from Packing House Workers Security League, as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Packing House Workers Security League as such representative;

(b) Post immediately, and keep posted for a period of at least thirty (30) consecutive days from the date of posting, notices to its employees in conspicuous places throughout the Denver plant stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b), and that it will take the affirmative action set forth in 2 (a), of this order; and

(c) Notify the Regional Director for the Twenty-second Region, in writing, within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.