

In the Matter of CUDAHY PACKING COMPANY and PACKING HOUSE
WORKERS UNION LOCAL NO. 5, AMALGAMATED MEAT CUTTERS AND
BUTCHER WORKMEN OF NORTH AMERICA

Case No. R-318

AMENDMENT TO DIRECTION OF ELECTION

November 5, 1937

On October 28, 1937, the National Labor Relations Board, herein called the Board, issued a Direction of Election in the above-entitled proceeding,¹ the election to be held within ten days from the date of the Direction, under the direction and supervision of the Regional Director for the Second Region (New York, New York). The Board having been advised by the Regional Director that a longer period is necessary, hereby amends the Direction of Election issued on October 28, 1937, by striking therefrom the words, "within a period of ten (10) days after the date of this Direction", and substituting therefor the words, "within a period of fifteen (15) days after the date of this Direction".

[SAME TITLE]

Decision, December 30, 1937

Meat Packing Industry—Investigation of Representatives: controversy concerning representation of employees; rival organizations; controversy as to appropriate bargaining units—*Unit Appropriate for Collective Bargaining:* all employees except mechanical employees, teamsters, clerical and supervisory employees; no controversy as to—*Election Ordered—Certification of Representatives.*

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On July 27, 1937, Packing House Workers Union Local No. 5, Amalgamated Meat Cutters and Butcher Workmen of North America herein called the Amalgamated, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Cudahy Packing Company, Jersey City, New Jersey, herein called the Company, and requesting an investigation and

¹ 3 N L R B 936

certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On September 16, 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 September 20, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Amalgamated, and upon the Independent Packing House Workers of Jersey City, herein called the Independent, a labor organization claiming to represent employees directly affected by the investigation. The Regional Director issued on September 23, 1937, an amended notice of hearing and on October 4, 1937, a second amended notice of hearing, copies of both of which were duly served upon all parties. Pursuant to the notices, a hearing was held on October 4, 1937, at New York City, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, the Amalgamated and the Independent 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. 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.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of said Rules and Regulations—Series 1, as amended, issued a Direction of Election on October 28, 1937, in which it found that all employees of the Company at its Jersey City, New Jersey, plant, excluding mechanical employees, teamsters, clerical, and supervisory employees, constituted a unit appropriate for the purposes of collective bargaining. For the purpose of expediting the election and thus insuring to the employees of the Company the full benefit of their right to collective bargaining as early as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law. On November 5, 1937, the Board issued an amendment to Direction of Election which extended the period within which the election was to be held.

Exceptions to the Direction of Election were filed with the Board on November 8, 1937, by the Company and by the Independent.

After consideration of the exceptions, the Board directed the Regional Director for the Second Region to proceed with the election in accordance with its direction.

Pursuant to the Board's Direction of Election and the amendment thereto, an election by secret ballot was conducted on November 10, 1937, by the Regional Director for the Second Region among the employees of the Company constituting the bargaining unit found appropriate by the Board. On November 22, 1937, the Regional Director issued and duly served upon the parties to the proceeding her Intermediate Report upon the secret ballot. The Company and the Independent each filed exceptions to the Intermediate Report.

One exception, filed by the Independent and by the Company, was based upon use of the pay roll furnished by the Company at the hearing to determine the eligibility to vote. As to this, it is to be noted that such pay roll was used at the hearing to determine what persons were eligible to vote on the date in question and at that time the parties to the proceedings raised no objection. Another exception, filed by the Independent, was made upon the ground that there is in existence a contract between the Company and the Independent and certification as recommended in the Intermediate Report would impair the obligations under the contract. Neither the Company nor the Independent introduced evidence of any contract at the hearing, although they had full opportunity to do so. They are, therefore, estopped from raising such objection at this time. The Company and the Independent also contend that certification of representatives is not proper since the total votes cast at the election were less than a majority of the employees of the Company in the appropriate unit. This objection is fully answered by the Board in a prior decision where a like objection was raised.¹

The Board has given careful consideration to the exceptions of the Company and the Independent and finds that no substantial and material issues with respect to the conduct of the Ballot or to the Intermediate report are raised thereby.

As to the results of the secret ballot, the Regional Director reported as follows:

Total number of ballots cast.....	107
Total number of votes in favor of Amalgamated Meat Cutters and Butcher Workmen of N. A., Local No. 5, A. F. of L.....	95
Total number of votes in favor of Independent Packing House Workers Union of Jersey City.....	6
Total number of votes in favor of neither organization.....	4
Total number of blank votes.....	0
Total number of void ballots.....	2
Total number of challenged ballots.....	0

¹ *Matter of R. C. A. Manufacturing Company, Inc., and United Electrical and Radio Workers of America*, 2 N. L. R. B. 168

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a corporation organized in 1915 under the laws of the State of Maine. It is engaged principally in the purchase of livestock for slaughter, the slaughter of livestock, and the sale of meat and various by-products. The Company purchases in addition to livestock various articles necessary in connection with its business. The greater percentage of all finished products are shipped outside New Jersey. The Company employs 32 salesmen, 12 of whom operate in New York.²

Counsel for the Company stated that the normal weekly slaughter at the Jersey City plant was 1,000 calves, 6,000 sheep and 1,000 cattle. He added that the Company purchased all the livestock outside New Jersey and that the livestock was transported to the Jersey City plant principally by rail. He stated also that the edible products are sold mostly to supply the Kosher trade of the New York Harbor District and that an amount in excess of 50 per cent of the beef production was sold to Kosher butchers of New York.

II. THE ORGANIZATIONS INVOLVED

Packing House Workers Union Local No. 5, Amalgamated Meat Cutters and Butcher Workmen of North America, is a labor organization affiliated with the American Federation of Labor. It admits to membership all the employees of the Company at its Jersey City plant, exclusive of mechanical employees, teamsters, clerical and supervisory employees.

The Independent Packing House Workers of Jersey City is an independent labor organization. It is not clear what its eligibility requirements are.

III. THE QUESTION CONCERNING REPRESENTATION

The Amalgamated claimed to represent a majority of the employees of the Company constituting the appropriate unit. The Independent, on the other hand, contended that the Company has recognized it as the collective bargaining agency in the Jersey City plant and that it had been acting for the employees for a period of several months. No evidence was presented as to any contract between the Company and either union.

We find that a question has arisen concerning representation of employees of the Company.

²The above facts concerning the business of the Company were stipulated to by 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

In its petition the Amalgamated alleged that all the cattle butchers, sheep butchers, calf butchers, skinners, wool workers, casing workers, ice box men, hide seller men, meat cutters, luggers, and other packing house workers, excluding mechanical employees, teamsters, clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. At the hearing the Amalgamated stated that all the employees of the Company, exclusive of the mentioned exceptions, constitute an appropriate bargaining unit. The Company and the Independent raised no objection at the hearing to the unit contended for by the Amalgamated.

We find that all the employees of the Company at its Jersey City, New Jersey, plant, excluding mechanical employees, teamsters, clerical and supervisory 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 right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The petition filed by the Amalgamated stated that there were approximately 325 employees of the Company in the appropriate unit and the Amalgamated claimed to represent a majority of such employees. It submitted in evidence 120 cards of application for membership in the Amalgamated. A comparison of the cards and the Company's pay roll of July 27, 1937, indicated that 113 were cards of persons employed by the Company on July 27. The Independent introduced no evidence supporting its claim that it represented employees of the Company.

Since the Board found it impossible to determine the desires of a majority of the employees in the appropriate unit from the evidence submitted at the hearing, an election was ordered. The results of said election are set forth above.

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 Cudahy Packing Company, Jersey City, New Jersey, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the employees of the Company at its Jersey City, New Jersey, plant, excluding mechanical employees, teamsters, clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Packing House Workers Union Local No. 5, Amalgamated Meat Cutters and Butcher Workmen of North America, 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 Packing House Workers Union Local No. 5, Amalgamated Meat Cutters and Butcher Workmen of North America, has been designated and selected by a majority of all the employees of Cudahy Packing Company, Jersey City, New Jersey, at its Jersey City, New Jersey, plant, excluding mechanical employees, teamsters, clerical and supervisory employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Packing House Workers Union Local No. 5, Amalgamated Meat Cutters and Butcher Workmen of North America, 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.