

- In the Matter of ARMOUR & Co. (WEST HARLEM MARKET) *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION
- In the Matter of ARMOUR & Co. (197 FORT GREENE PL.) *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION
- In the Matter of ARMOUR & Co. (164 FORT GREENE PL.) *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION
- In the Matter of ARMOUR & Co. (JAMAICA MARKET) *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION
- In the Matter of ARMOUR & Co. (14TH STREET MARKET) *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION
- In the Matter of BROOKLYN BEEF & PROVISION Co. *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION
- In the Matter of ARMOUR & Co. (WEST ST. MARKET) *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ON BEHALF OF THE EMPLOYEES OF ARMOUR & Co.
- In the Matter of ARMOUR & Co. (WILLIAMSBURGH MARKET) *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ON BEHALF OF THE EMPLOYEES OF ARMOUR & Co.
- In the Matter of ARMOUR & Co. *and* UNITED MEAT WORKERS LOCAL INDUSTRIAL UNION No. 635, affiliated with the C. I. O.
- In the Matter of MORRIS & Co. *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ON BEHALF OF THE EMPLOYEES OF MORRIS & Co.
- In the Matter of ARMOUR & Co. *and* THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ON BEHALF OF THE EMPLOYEES OF ARMOUR & Co.
- In the Matter of ARMOUR & Co. (BROOK AVE. MARKET) *and* UNITED MEAT WORKERS LOCAL INDUSTRIAL UNION, No. 635, affiliated with the C. I. O.

*Meat Packing Industry—Investigation of Representatives:* controversy concerning representation of employees: refusal by employer to recognize union as exclusive representative—*Units Appropriate for Collective Bargaining:* processing and operative employees of each branch house—*Representatives:* proof of choice; membership in union; comparison of pay rolls with membership cards—*Certification of Representatives:* in nine branch houses upon proof of majority representation—*Election Ordered:* employees in two branch houses.

*Cases Nos. R-435 to R-446, Inclusive*

*Decided January 18, 1938*

*Mr. Christopher N. Hoey*, for the Board.

*Mr. Peter F. Curran*, of New York City, for the Company.

*Liebman, Robbins, Pressman & Leider*, by *Mr. Harold I. Cammer*, of New York City, for the United.

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

## DECISION

### CERTIFICATION OF REPRESENTATIVES

AND

### DIRECTION OF ELECTIONS

#### STATEMENT OF THE CASE

On September 15, 1937, the Committee for Industrial Organization<sup>1</sup> filed with the Regional Director for the Second Region (New York City) six petitions alleging that questions affecting commerce had arisen concerning the representation of employees of Armour & Co., Chicago, Illinois, herein called the Company, in its branch houses at 2286 12th Avenue, New York City; 197 Fort Greene Place, Brooklyn; 164 Fort Greene Place, Brooklyn; 147-07 94th Avenue, Jamaica; 54 10th Avenue, New York City; and Brooklyn Beef & Provision Co.,<sup>2</sup> 176 Fort Greene Place, Brooklyn. On November 6, 10, and 18, 1937, the United filed similar petitions concerning the representation of employees of the Company in additional branch houses located at 531 West Street, New York City; 96 North 6th Street, Brooklyn; 42 10th Avenue, New York City; Morris & Co.,<sup>3</sup> 94 North 6th Street, Brooklyn; 176 Fort Greene Place, Brooklyn;<sup>4</sup> and 635 Brook Avenue, New York City. All of the petitions requested 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 October 21, November 13, and 18, 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 investigations and authorized the Regional Director to conduct them and to provide for appropriate hearings upon due notice, and acting pursuant

<sup>1</sup>At the hearing the name of the petitioning union was amended to United Meat Workers Local Industrial Union No 635, herein called the United.

<sup>2</sup>It was stipulated that this was a trade name of Armour & Co.

<sup>3</sup>See note 2, *supra*.

<sup>4</sup>This petition was dismissed because it was a duplicate of that of the Brooklyn Beef & Provision Co.

to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that the cases be consolidated for the purposes of hearing.

On November 10, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company,<sup>5</sup> and upon the United. Pursuant to the notice, a hearing was held on November 17, 20, 22, and 23, 1937, at New York City, before Harold R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, and the United 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. Such rulings are hereby affirmed. At the close of the hearing the Company moved to dismiss the petitions. The motion is hereby denied.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY<sup>6</sup>

Armour & Co., an Illinois corporation with its principal place of business at Chicago, Illinois, is engaged in the meat packing and distributing industry. It also manufactures allied products, such as fertilizer, soap, and leather; operates creameries, and owns establishments which slaughter and dress poultry, and package and sell eggs.

The Company, which is one of the four largest meat packing houses in the United States, operates 28 meat packing houses in 22 States and about 300 branch houses throughout the United States. The Company advertises in magazines of national circulation, such as Good Housekeeping, McCalls, Woman's Home Companion, and the American Weekly. It also advertises 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 11 branch houses here in question are located in the metropolitan district of New York City. They send their orders to the

<sup>5</sup> Notice of hearing with reference to Cases R-441 to R-446, inclusive, was served on the Company during the course of the hearing. The Company waived the requirement of five-day notice.

<sup>6</sup> Most of the evidence relating to the business of the Company dealt with the business of the first six branch houses mentioned in the caption. It was stipulated that this evidence should be considered as applicable to the other branch houses here involved since conditions at all the branch houses are substantially the same.

main office at Chicago, which allocates the orders among the various packing houses throughout the country. Shipments are made directly from such packing houses to the branch houses. All but a very small amount of the fresh meats come to the branch houses from the West. Butter, eggs, cheese, and poultry are shipped mainly from Iowa and Minnesota, although a few purchases of butter and eggs are made locally. The smoked goods and auxiliary products are sent from New Jersey.

Most of the sales are made in New York. However, the branch house at 96 North Sixth Street ships 26 per cent of its goods out of the State, and the branch house at 531 West Street ships 12.8 per cent of its products to other States. For the fiscal year of 1936 the total amount of business of the 11 branch houses was \$30,852,914.23.

## II. THE ORGANIZATION INVOLVED

United Meat Workers Local Industrial Union No. 635 is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership processing and operative employees of the Company, excluding supervisory and clerical employees, salesmen, and drivers.

## III. THE QUESTION CONCERNING REPRESENTATION

The Committee for Industrial Organization began to organize the employees of the Company in the 11 branch houses in July 1937, and on October 21, 1937, a charter was granted to the United. Mr. Sandner, the Field Director for the Committee for Industrial Organization, testified that on September 8, 1937, he attempted to arrange a conference with the local managers of five of the branch houses to discuss recognition of the United, but that they replied they did not desire to talk about this matter.

On September 10, 1937, a telegram<sup>7</sup> was sent to the Company protesting any possible agreement the Company might make without considering the membership of the United. No reply to this telegram was received from the Company. Thereafter, on September 24, 1937, at a conference at the office of the Regional Director of the Second Region attended by representatives of the United and the Company, the United offered to prove by membership cards that it represented a majority of the Company's employees at each of the 11 branch houses and sought recognition as the sole bargaining representative of such employees. Although the Company did not dispute the United's claim to membership, it refused to recognize the United as sole bargaining representative of the employees. It was then proposed that the parties stipulate that a consent election be

<sup>7</sup> Union's Exhibit No. 2.

held. The Company, however, refused to sign such a stipulation, and by a letter,<sup>8</sup> dated October 16, 1937, informed the Regional Director for the Second Region that the Company did not think it necessary to sign such a stipulation in view of its willingness to bargain with the United 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 and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE APPROPRIATE UNIT

The United in its petitions, as amended, alleges that the processing and operative employees in each branch house, including carriers, meat cutters, shippers, sausage makers, sealers, egg handlers, smokehouse men, boners, and maintenance men, constitute an appropriate unit. It seeks to exclude from the units supervisory and clerical employees, salesmen and drivers.

The Company contends that inside salesmen should be included in the units. These salesmen receive salaries about double those received by the operative employees, they must undergo a long period of training as outside salesmen and acquire a specialized knowledge before they can qualify as inside salesmen, and they act in a supervisory capacity by issuing orders to the operative employees of the Company. In the light of these facts, we conclude that the inside salesmen should not be included in the unit.

On November 6, 1937, the smokehouse of the 14th Street Market, 54 10th Avenue, New York City, was torn down. As a result 19 of the employees of this plant were laid off, and only five have since been transferred to other branch houses. The Company has stated that it is willing to rehire these men as vacancies occur in the other branch houses and to take them back when the new building is completed, which will require about 15 months. The United claims that the 14 workers who have not as yet obtained employment in the other branch houses should be considered as employed at the 14th Street branch house for the purposes of an election or certification. We feel, however, that in view of the long period intervening be-

<sup>8</sup> Union's Exhibit No. 4.

fore the completion of the new plant and the resulting possibility that the 14 men may not again work at the 14th Street branch house, the 14 persons in question should not be regarded as retaining their employee status for the purposes of an election or certification.

The Company contends that two stockmen in the same branch house, J. M. Protzman and H. Kuchinsky, should be included in the unit. We find that the duties of the two employees, involving taking, assembling, and filling orders, more closely approximate the duties of salesmen than of other employees, and we will, therefore, exclude them from the unit.

We find that the processing and operative employees in each of the branch houses of the Company, excluding supervisory and clerical employees, salesmen, and drivers, constitute units appropriate for the purposes of collective bargaining and that said units will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing, representatives of the Company and the United compared membership cards of the United and the pay rolls of the Company. It was stipulated that the pay rolls of November 20, 1937, were to be used for the purposes of comparison for election and certification and that, because of the comparison of membership cards with the pay rolls of the Company at the hearing, it would not be necessary to introduce in evidence membership cards or originals of the pay rolls. The comparisons disclosed the following:

*Table I*

<i>Branch House</i>	<i>Total Number of Employees</i>	<i>Number of Union Employees</i>	<i>Number in Appropriate Unit</i>
2286 12th Avenue, New York City-----	28	8	11
176 Fort Greene Place, Brooklyn-----	12	5	6
162-164 Fort Greene Place, Brooklyn-----	17	8	9
197 Fort Greene Place, Brooklyn-----	80	<sup>a</sup> 27	<sup>a</sup> 41
96 North 6th Street, Brooklyn-----	52	19	25
94 North 6th Street, Brooklyn-----	12	6	6
531 West Street, New York City-----	21	7	12
42 10th Avenue, New York City-----	21	10	13
635-637 Brook Avenue, New York City-----	70	19	31
54 10th Avenue, New York City-----	67	<sup>b</sup> 10	27
147-07 94th Avenue, Jamaica-----	76	18	37

<sup>a</sup> Does not include five union members transferred from 54 10th Avenue plant and who are now on this plant's pay roll.

<sup>b</sup> This number does not include the smoke house men laid off.

It appears from the foregoing that a majority of the employees in the appropriate units in nine of the branch houses in question were

members of the United and desired the United to represent them. We find that the United has been designated and selected by a majority of the employees in the appropriate units in the above nine branch houses as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in these units for the purposes of collective bargaining, and we will so certify.

Although evidence indicates that a majority of the employees in the appropriate units in two of the branch houses were not members of the United on November 20, 1937, the United claims that a majority of the employees in these two branch houses desire it to represent them for bargaining purposes. We find that the question which has arisen concerning the representation of employees in the branch houses at 54 10th Avenue, New York City, and at 147-07 94th Avenue, Jamaica, can best be resolved by the holding of an election by secret ballot to determine whether the employees wish the United to represent them. The employees in the appropriate units in the said two branch houses who were on the Company's pay roll of November 20, 1937, excluding supervisory and clerical employees, salesmen, drivers, and those who quit or were 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 & Co., Chicago, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act in the following branch houses: 2286 12th Avenue, New York City; 176 Fort Greene Place, Brooklyn; 162-164 Fort Greene Place, Brooklyn; 197 Fort Greene Place, Brooklyn; 96 North 6th Street, Brooklyn; 94 North 6th Street, Brooklyn; 531 West Street, New York City; 42 10th Avenue, New York City; 635-637 Brook Avenue, New York City; 54 10th Avenue, New York City; 147-07 94th Avenue, Jamaica.

2. The processing and operative employees in the aforesaid branch houses of the Company, excluding supervisory and clerical employees, salesmen, and drivers constitute separate and distinct units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

3. United Meat Workers Local Industrial Union No. 635 is the exclusive representative of all the employees in such units of the first nine of the eleven branch houses mentioned in paragraph 1, supra, 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 Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Meat Workers Local Industrial Union No. 635 has been designated and selected by a majority of the processing and operative employees of Armour & Co., Chicago, Illinois, excluding supervisory, and clerical employees, salesmen and drivers, as their representatives for collective bargaining in the following branch houses: 2286 12th Avenue, New York City; 176 Fort Greene Place, Brooklyn; 162-164 Fort Greene Place, Brooklyn; 197 Fort Greene Place, Brooklyn; 96 North 6th Street, Brooklyn; 94 North 6th Street, Brooklyn; 531 West Street, New York City; 42 10th Avenue, New York City; 635-637 Brook Avenue, New York City; and that, pursuant to the provisions of Section 9 (a) of the Act, United Meat Workers Local Industrial Union, No. 635, 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.

## 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, 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 collective bargaining with Armour & Co., Chicago, Illinois, elections by secret ballot shall be conducted within 15 days from the date of this Direction, under the direction and supervision of the Regional Director for the Second 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 processing and operative employees of the Company employed on November 20, 1937, at the branch houses located at 54 10th Avenue, New York City, and 147-07 94th Avenue, Jamaica, of Armour & Co., Chicago, Illinois, excluding supervisory and clerical employees, salesmen, drivers, and those who quit or were discharged for cause between such date and the date of election, to determine whether or not they desire to be represented by United Meat Workers Local Industrial Union No. 635, for the purposes of collective bargaining.