

In the Matter of CUDAHY BROTHERS PACKING CO., A CORPORATION and
PACKINGHOUSE WORKERS INDUSTRIAL UNION

Case No. R-475.—Decided January 27, 1938

Meat Packing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize either as exclusive representative—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, stipulation, no controversy as to—*Election Ordered*

Mr. Robert R. Rissman and *Mr. Morris L. Forer*, for the Board.
Mr. James D. Shaw, of Milwaukee, Wis., for the Company.
Mr. Paul Smith, of Milwaukee, Wis., for the Amalgamated.
Mr. W. O. Sonnemann, of Milwaukee, Wis., for the United.
Mr. Walter T. Nolte, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 2, 1937, Packinghouse Workers Industrial Union filed with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Cudahy Brothers Company,¹ Cudahy, Wisconsin, herein called the Company, 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 24, 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 November 27, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon counsel for the Company, upon the United Packinghouse Workers

¹ The order directing investigation and hearing erroneously referred to the Company as "Cudahy Brothers Packing Co."

of America, Local 491, herein called the United,² and upon the Amalgamated Meat Cutters and Butcher Workmen of North America, Local 222, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on December 6, 1937, at Milwaukee, Wisconsin, before Herbert Wenzel, the Trial Examiner duly designated by the Board. The Board, the Company, and the United were represented by counsel and the Amalgamated by its representative and all participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Cudahy Brothers Company, a Wisconsin corporation, has its principal office and its only packing plant at Cudahy, Wisconsin, a suburb of Milwaukee. The Company has wholly owned subsidiaries incorporated in Michigan, Illinois, and Tennessee, which it utilizes in connection with the sale and distribution of its products. Branch warehouses are maintained by the Company and its subsidiaries at Milwaukee, Wisconsin; Racine, Wisconsin; New York, New York; Detroit, Michigan; and Chicago, Illinois. Although maintained chiefly in connection with the sale of the Company's products, some of the warehouses do a limited amount of processing. The Company and its subsidiaries employ 52 salesmen, only 20 per cent of whom operate in Wisconsin, and have sales agencies and brokers in most of the principal cities in the eastern half of the United States and commission agents in England, Germany, Holland, and South America.

The Company's business consists of slaughtering cattle, calves, sheep, lambs, and hogs; processing some of the products of such slaughtering; and selling fresh meats, processed items, and various

² On July 30, 1937, Packinghouse Workers Industrial Union, then an unaffiliated organization, voted to affiliate with the Committee for Industrial Organization. A charter was issued to it on August 19, 1937, under the name United Packinghouse Workers of America, Local 491. At the hearing, the Trial Examiner granted a motion to amend the original petition by changing the name of the petitioning union to United Packinghouse Workers of America, Local 491.

byproducts. Approximately one-half of the livestock used at the packing plant is obtained from points in Wisconsin. The other half is purchased in Iowa, Minnesota, Illinois, Nebraska, South Dakota, and Missouri. During the fiscal year ending October 31, 1937, the Company purchased approximately 10 or 11 million dollars worth of livestock outside of the State of Wisconsin. In connection with its purchase of livestock, the Company operates its own private stockyard and also concentration yards at Tama, Iowa; Belleplaine, Iowa; and Adams, Wisconsin. Purchases are also made at public stockyards in Chicago, Illinois; Omaha, Nebraska; Sioux City, Iowa; Sioux Falls, South Dakota; and South St. Paul, Minnesota.

Annual sales of the Company's products amount to 25 or 30 million dollars a year. Eighty per cent of such sales are made outside the State of Wisconsin, either directly by the Company or through its subsidiaries.

II. THE ORGANIZATIONS INVOLVED

United Packinghouse Workers of America, Local 491, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production and maintenance employees of the Company, excluding clerks and supervisors.

Amalgamated Meat Cutters and Butcher Workmen of North America, Local 222, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all production and maintenance employees of the Company, excluding office workers and supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

In the spring of 1937, Packinghouse Workers Industrial Union³ asked the Company for recognition as an exclusive bargaining representative. The Company refused to grant the request, but agreed to deal with it for its own members.

The Company has been bargaining with the Amalgamated through exchanges of correspondence since June of 1934. While terms relative to working conditions, agreed upon in the course of the correspondence, have been and are now observed by the Company, no formal agreement was ever executed and no exclusive recognition was ever given to the Amalgamated. By a letter dated April 27, 1937, the Amalgamated asked the Company for recognition as an exclusive collective bargaining agent. In a letter dated May 5, 1937, the Company replied that the members of another labor organization also claimed the right to act as the sole bargaining agency for the employees on the basis of majority representation and that, in the absence

³ See footnote No 2

of some authoritative determination, the Company would deal with the Amalgamated only as to 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 and the Amalgamated stipulated that all production and maintenance employees, excluding clerical workers, office workers, supervisory employees, and part time and temporary employees, at the Company's plant in Cudahy, Wisconsin, constitute an appropriate unit for the purposes of collective bargaining. Although the Company did not join in the stipulation, it raised no objections thereto.

We find that the production and maintenance employees of the Company, at its Cudahy, Wisconsin, plant, excluding clerical workers, office workers, supervisory employees, and part time and temporary 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

Although both the United and the Amalgamated claim to represent a majority of the employees of the Company within the appropriate unit, no evidence substantiating such claims was submitted. The Company states that it does not know whether either of the organizations represent a majority of such employees. We find that the question which has arisen concerning the representation of employees can best be resolved by the holding of an election by secret ballot.

The United and the Amalgamated stipulated that the Company's pay roll of October 16, 1937, should be used in determining the list of eligible voters. We find such pay roll to be satisfactory.

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

2. The production and maintenance employees of Cudahy Brothers Company at its Cudahy, Wisconsin, plant, excluding clerical workers, office workers, supervisory employees, and part time and temporary employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the 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 the purposes of collective bargaining with Cudahy Brothers Company, Cudahy, Wisconsin, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twelfth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees, employed by the Company at its Cudahy, Wisconsin, plant on October 16, 1937, excluding clerical workers, office workers, supervisory employees, and part time and temporary employees, and excluding also those employees who have since quit or been discharged for cause, to determine whether they desire to be represented, for the purposes of collective bargaining, by United Packinghouse Workers, Local 491, affiliated with the Committee for Industrial Organization, or by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 222, affiliated with the American Federation of Labor, or by neither.