

In the Matter of SOUTH TEXAS COTTON OIL COMPANY and UNITED COTTON OIL REFINERY WORKERS, LOCAL INDUSTRIAL UNION 1338 C. I. O.

Case No. 16-R-703.—Decided January 8, 1944

Mr. Cyril J. Smith, of Houston, Tex., for the Company.

Messrs. T. F. Flynn, J. E. Crossland, and J. A. Greismyer, all of Houston, Tex., for the C. I. O.

Mr. Maurice J. Dineen, of Houston, Tex., for the U. M. W.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Cotton Oil Refinery Workers, Local Industrial Union 1338 C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of South Texas Cotton Oil Company, Houston, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles W. Persons, Trial Examiner. Said hearing was held at Houston, Texas, on November 24, 1943. The Company, the C. I. O., and District 50, United Mine Workers of America, herein called the U. M. W., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

South Texas Cotton Oil Company, a Texas corporation and affiliate of the Wesson Oil and Snowdrift Company, Inc., has its principal office

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and place of business in Houston, Texas, where it is engaged in the production, sale, and distribution of salad oils, shortening, and related products. Of these products, which amount annually to approximately \$9,000,000 in value, approximately 10 to 15 percent is shipped to points outside the State of Texas. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Cotton Oil Refinery Workers, Local Industrial Union 1338, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

District 50, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 30, 1943, the C. I. O. addressed to the Company a letter in which it stated that the Company's employees had voted unanimously to affiliate with the C. I. O. and requested a meeting for the purpose of obtaining recognition as bargaining agent thereof. On August 2, 1943, the Company replied that it would look into the matter and advise the C. I. O. as to the results of its investigation. On August 20, 1943, the C. I. O. having failed to receive any further reply from the Company, filed its original petition for investigation and certification of representatives in the present proceeding. At the hearing, the U. M. W. intervened and claimed that this proceeding was barred by reason of existing contractual relations between the Company and the U. M. W.

While the Company and the U. M. W. have maintained collective bargaining relations continuously since 1940, the only contracts urged as a bar in the present instance consist of the last written agreement between the parties¹ and an alleged oral extension or modification thereof.²

So far as the written agreement is concerned, it appears that on April 27, 1943, the U. M. W. gave timely notice to the Company of its desire to negotiate changes in the agreement in accordance with the terms of the automatic renewal provision therein. Under such

¹ The agreement in question is an exclusive bargaining contract, effective as of May 29, 1942, and for 1 year thereafter, subject to automatic renewal from year to year in the absence of notice, given by either party at least 30 days prior to the yearly expiration date, of a desire to terminate or modify such agreement.

² The oral extension or modification of the written agreement is claimed to have resulted from a series of conferences between the Company and the U. M. W. during June or July of 1943 subsequent to the expiration date of the written agreement.

circumstances, it is clear that since the original term of the contract has now expired, and the automatic renewal thereof was precluded by the timely notice for modification aforesaid,³ the contract is not a bar to the present proceeding.

There remains for consideration the question of an alleged oral understanding for an extension or modification of the contract as affecting the right of the C. I. O. to maintain its present petition for investigation and certification of representatives. While the record does not clearly establish whether the understanding in question involved merely an extension of the written contract pending the negotiation of a new agreement, or the actual consummation of a new agreement complete in all respects except as to the single issue of a wage increase,⁴ the precise character of the agreement is immaterial in the present instance since it is clear that the agreement has not been reduced to writing and hence is not a bar to a determination of representatives.⁵ Moreover, regardless as to the form of the agreement in question, the fact that upon the evidence it appears that a substantial number of the members in the U. M. W. local have changed their affiliation to the C. I. O. local herein concerned, together with the further fact that the validity of this transfer and the release of such members from their previous union obligations is challenged by the U. M. W.,⁶ would indicate that there is an unresolved doubt as to the identity of the labor organization which the employees desire as their bargaining representative. Under the circumstances, therefore, we hold that the agreement does not constitute a bar to the present determination of representatives, and we shall resolve the dispute which has arisen by an election by secret ballot.⁷

³ See *Matter of Joseph P. Cattie & Brothers, Incorporated*, 47 N. L. R. B. 81.

⁴ The evidence is in conflict as to the nature of the understanding. Testimony presented by the C. I. O. would indicate that the understanding contemplated merely a temporary extension of the former written agreement pending the completion of negotiations for a new collective bargaining agreement. On the other hand, both the U. M. W. and the Company introduced evidence to the effect that the parties had come to an informal understanding on all provisions of the new agreement other than the question of a wage increase, the amount of which was tentatively agreed upon subject to the approval of the National War Labor Board.

⁵ See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

⁶ The record discloses that on three different occasions, in June or July 1943, during the progress of negotiations between the Company and the U. M. W., the members of the U. M. W. local voted to disaffiliate with the U. M. W. and affiliate with the C. I. O., the vote in each case being unanimous on the part of the members present, estimated to number between 50 and 60 employees of the Company; that following such votes the seal and charter of the local were returned to the U. M. W. and a new charter obtained from the C. I. O.; that notwithstanding such acts, there has been no change of officers or formal dissolution of the U. M. W. local, of which apparently all present or former members were claimed by the U. M. W. at the hearing in the present proceeding.

⁷ See *Matter of Harbison-Walker Refractories Co.*, 44 N. L. R. B. 1280; *Matter of The A. S. Abell Company*, 51 N. L. R. B. 1162. See also *Matter of W. W. Rushton, M. P. Rushton, E. Wight Rushton and Mary R. Tharpe d/b/a The Rushton Company and Atlanta Playthings Company*, 52 N. L. R. B. 1513.

A statement of the Field Examiner, introduced in evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁸

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, substantially in accordance with the agreement of the parties, that all hourly rated operating employees of the Company and the hourly rated employees performing the duties of assistants in the maintenance department of the Company, excluding office and clerical workers, shipping and receiving clerks, laboratory personnel, foremen, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with South Texas Cotton Oil Company, Houston, Texas, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixteenth Region, acting in this

⁸ The Field Examiner reported that the C. I. O. had submitted 98 application-for-membership cards; that of these, 97 had apparently genuine original signatures affixed thereto and consisted of 66 cards dated in July 1943 with 31 undated; that of the 97 cards, 84 bore the apparently genuine original signatures of persons whose names appear on the Company's pay roll for September 9, 1943, containing 130 names within the claimed appropriate unit.

The U. M. W. submitted no proof of representation, either to the Field Examiner or at the hearing, but relied upon its alleged contractual rights as evidence of its interest in the present proceeding.

matter as agent for the National Labor Relations Board and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by United Cotton Oil Refinery Workers, Local Industrial Union 1338 C. I. O., or by District 50, United Mine Workers of America, for the purposes of collective bargaining, or by neither.