

In the Matter of SOUTHERN EXTRACT COMPANY and DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

Case No. 10-R-1082.—Decided February 7, 1944

*Mr. Forrest Andrews and Mr. S. V. Minsky, of Knoxville, Tenn.,
for the Company.*

Mr. Fred L. Ruscoe, of Knoxville, Tenn., for the Union.

Mr. Leon Novak, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Southern Extract Company, Knoxville, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Knoxville, Tennessee, on December 29, 1943. The Company and the Union appeared and participated. All parties 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

Southern Extract Company is a Delaware corporation with its principal office and place of business in Knoxville, Tennessee, where it is engaged in the manufacture of paper board and chestnut tanning extract. During the year 1943, the Company purchased raw materials valued at approximately \$600,000, more than 50 percent of which was shipped to the Company's plant from points outside the State of

Tennessee. During the same period the Company's gross sales amounted to approximately \$2,250,000, of which approximately 85 percent was shipped to points outside the State of Tennessee.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated at the hearing that the Union, by letter dated December 8, 1943, requested recognition as the bargaining representative of the Company's employees, and that the Company refused to grant such recognition until the Union was certified by the Board in an appropriate unit.

A statement of the Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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

The Union requests a unit consisting of all of the production and maintenance employees of the Company, including watchmen, but excluding clerical employees, foremen and assistant foremen, the office janitor, laboratory workers, chemist, timekeepers, measurers, and all employees having supervisory authority. The Company contends that the laboratory workers, measurers, and the office janitor should be included in the appropriate unit. There is controversy, also, as to whether certain of the Company's employees are, in fact, supervisors with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees.

Laboratory workers. The Union would exclude and the Company include these employees: Their duties are, for the most part, confined to the making of chemical tests, at regular intervals, of the chip mixtures manufactured by the Company. In addition, these employees, using technical apparatus, also test pulp and paper in order to determine their weight, tensile strength, and consistency. Supervision of

¹The Trial Examiner reported that the Union submitted 77 authorization cards all of which bore apparently genuine original signatures; that the names of 75 persons appearing on the cards were listed on the Company's pay roll of December 6, 1943, which contained the names of 150 employees in the appropriate unit.

these functions is under the control of the Company's chemist. In view of the skill required of laboratory workers, and the divergence of their functions and interests from those of production employees herein, we shall exclude them from the appropriate unit.

Measurers. The Union would exclude and the Company include these employees. These employees are chiefly engaged in recording the meter readings indicating the weight and length of the Company's paper products. They perform no manual labor. Computations are made by them on adding machines. In view of the clerical nature of their duties, we shall exclude measurers from the appropriate unit.

Office janitor. The Union would exclude and the Company include this employee. The office janitor, in addition to performing janitorial duties about the office of the Company, also drives the car of the Company's president and runs errands for the officials of the Company. Inasmuch as he does not appear to be engaged in production or maintenance activities in or about the plant, we shall exclude the office janitor from the appropriate unit.

Watchmen. The parties agree as to the inclusion of watchmen in the appropriate unit. Inasmuch as these employees are unarmed and not militarized, we shall include them in the appropriate unit.

Supervisory employees:

a) *J. W. Goo*, an hourly paid employee, is listed on the Company's records as a shipping clerk. He does not perform any manual work, but confines his duties to assigning work to other employees in the shipping department and to obtaining records from the measurers, hereinabove discussed. While he is not, in our opinion, a supervisor, we shall exclude this employee from the appropriate unit inasmuch as his duties appear to be largely clerical.

b) *Charles Helton*, who is listed as a carpenter and has been in the Company's employ for over 25 years, takes the place of the mill superintendent at regular weekly intervals and occasionally relieves the night superintendent in the latter's absence. We find that he is a supervisory employee and as such we shall exclude him from the appropriate unit.

c) *James H. Wright*, is the Company's chief electrician; he exercises supervisory authority over electricians working under his supervision and concerning whom he has authority to recommend disciplinary action. We shall exclude him from the appropriate unit.

d) *N. R. Ballard* is chiefly engaged in manual work in the Company's yard. Nevertheless, he is listed on the Company's records as an assistant yard foreman; takes the place of the yard foreman in the latter's absence and is looked upon, generally, as a supervisor. We shall exclude him from the appropriate unit.

e) *Straude Large*, a backtender, is wholly engaged in manual labor. The record fails to support the Union's contention that Large engages in supervisory duties. We shall include him in the appropriate unit.

f) *James Bartee*, listed on the Company's records as a waste paper man, is engaged in the baling, loading, and unloading of waste paper in a small building detached from the Company's plant. The Union contends that this employee should be excluded from the unit because of the geographical location of his work, apart from other production employees, and because he is, in addition, authorized to purchase waste paper for the Company. The record discloses that Bartee's functions, although separated from that of other production employees, are part of the production processes of the plant. Furthermore, while Bartee is authorized to buy waste paper, this duty appears to be merely ministerial inasmuch as he has no discretion as to how much he may pay for waste paper, and inasmuch as he may buy only from persons who voluntarily bring waste paper to the trucking platform where he works. Regular purchases of waste paper are made elsewhere in the plant. We shall include Bartee in the appropriate unit.

g) *D. F. Haynes*, a conveyor man who is chiefly engaged in looking after repairs of the Company's conveyor, like Charles Helton, hereinabove discussed, sometimes takes the place of the superintendent in the latter's absence. In view of the supervisory functions exercised by him we shall exclude him from the appropriate unit.

We find that all production and maintenance employees of the Company, including watchmen, but excluding foremen, assistant foremen, clerical employees, timekeepers and assistant timekeepers, laboratory workers, measurers, chemist, chief electrician, office janitor, 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 pay-roll 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 Southern Extract Company, Knoxville, Tennessee, 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 Tenth Region, acting in this 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 election, to determine whether or not they desire to be represented by District 50, United Mine Workers of America, for the purposes of collective bargaining.