

In the Matter of SYDNEY-THOMAS CORPORATION and PAPER WORKERS
ORGANIZING COMMITTEE, C. I. O.

Case No. 9-R-1450.—Decided September 5, 1944

Messrs. Harry Kasfir and *Jonah Mehl*, of Cincinnati, Ohio, for the Company.

Messrs. Julius Holzberg and *Howard Forkner*, of Cincinnati, Ohio, for the C. I. O.

Messrs. Earl Taylor, *S. A. Stephens*, and *E. C. Bundy*, of Cincinnati, Ohio, for the A. F. L.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Paper Workers Organizing Committee, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Sydney-Thomas Corporation, Cincinnati, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin E. Cook, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on June 29, 1944. On July 18, 1944, pursuant to an order of the Board reopening the record, a further hearing upon due notice was held at Cincinnati, Ohio, before the same Trial Examiner. At both hearings the Company, the C. I. O., and Local 490, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, A. F. L., herein called the A. F. L., appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ A written waiver signed by the C. I. O., introduced into evidence at the first hearing, states that the C. I. O. waives any right, power, or privilege to protest any election held in this proceeding on any ground set forth in Case No. 9-C-2034.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Sydney-Thomas Corporation, an Ohio corporation with its principal offices and places of business in Cincinnati, Ohio, operates four plants in Cincinnati, Ohio, at which it is engaged in the manufacture of paper, window shades, cellophane bags, paper bags, and confectionery cake decorations. During the year 1943 the raw materials used by the Company in the manufacture of cellophane bags and paper bags consisted of approximately \$1,000,000 worth of paper, cellophane, and glue, of which over 98 percent was shipped to the Company's plants from points outside the State of Ohio. During the same period the Company purchased approximately \$10,000 worth of sugar and egg white for use in the manufacture of confectionery cake decorations, all of which was purchased within the State of Ohio. During 1943 the value of the confectionery cake decorations manufactured by the Company was in excess of \$40,000, of which over 20 percent was shipped to points outside the State of Ohio.

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

II. THE ORGANIZATIONS INVOLVED

Paper Workers Organizing Committee is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Local 490, International Brotherhood of Pulp, Sulphite and Paper Mill Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company's operations are conducted at four locations in the city of Cincinnati, Ohio, known as the Reading Road plant, the West Eighth Street plant, the Central Avenue plant, and the Warehouse, respectively. All of these buildings are situated within a radius of 2½ miles.

At the hearing the parties stipulated that on or about April 1, 1944, the C. I. O. advised the Company by letter that it represented a majority of the employees in the Central Avenue plant who, it contended, constituted an appropriate bargaining unit, requesting recognition as their exclusive bargaining representative, and that the Company

refused to accord the C. I. O. such recognition unless and until it was certified by the Board.

On June 17, 1942, pursuant to the results of a consent election held on February 20, 1942, under the Board's supervision,² the Company and the A. F. L. entered into a collective bargaining contract covering all employees of the West Eighth Street plant with certain exceptions. On January 29, 1943, the same parties executed a second agreement covering the same employees. On or about January 1, 1944, the Company, by means of a business merger, acquired the businesses of the Mehl Manufacturing Company and the Imperial Paper Company, both of Cincinnati, Ohio. Prior to the merger the Mehl Manufacturing Company had operated plants at 1644 West Central Avenue, now known as the Company's Central Avenue plant, where it was engaged in the manufacture of paper bags and cake decorations, and at 2057 Reading Road, now known as the Company's Reading Road plant, where it was engaged in the manufacture of paper bags. Before the merger, Imperial Paper Company operated a plant at 320 West Central Avenue, now known as the Company's Warehouse, where it was engaged in the business of wholesale paper jobbing. On February 29, 1944, subsequent to the merger, the Company and the A. F. L. executed a third contract which provided for a closed shop and dues check-off and, by its terms was to remain in effect "for 1 year from February 1st, 1944, and thereafter for succeeding periods," in the absence of notice by either party to the contrary served upon the other party 60 days prior to any anniversary date of the contract. The contract's recognition clause provides, in part, "The Company hereby recognizes the Union as the sole and exclusive representative for the purposes of collective bargaining with respect to rates of pay, wages, hours of work and other conditions of employment, for all plant production workers, but exclusive of . . ."

The C. I. O. contends that the contract of February 29, 1944, covers only employees of the West Eighth Street plant. The A. F. L. claims that it covers employees of the West Eighth Street and Reading Road plants. The Company takes the position that it covers the employees of all its operations. In the light of the collective bargaining history prior to the execution of the 1944 contract, the language contained in that contract appears to support the C. I. O.'s position. Wage scales are set out only for employees of the "Shade Department" and the "Harness Department," both of which are located in the West Eighth Street plant. Under Article VII of the contract appears the following clause:

² At the time of the consent election the Company operated only the West Eighth Street plant, at which it was engaged in manufacturing window shades, paper bags, and also certain war materials. Only five persons participated in the consent election.

For the purposes of interpreting this agreement, insofar as distribution or sharing work, seniority, wages and overtime payment etc., each department shall be considered as a separate and distinct department of the Sydney-Thomas Corporation, it being understood that the employees of the Shade Department will hold their seniority rights with the Sydney-Thomas Corporation if and when the Harness Department is discontinued.

From the record it appears that in March 1944, the A. F. L. approached the Company with respect to extending the contract's coverage to the Reading Road and Central Avenue plants. Although the Company did not oppose such extension, the contract was not amended nor did the A. F. L. attempt to organize the employees at either the Reading Road or Central Avenue plant until the first week in April 1944. The record contains no evidence to indicate that the closed-shop or dues check-off provisions of the contract were ever put into effect at any but the West Eighth Street plant. Moreover, the A. F. L. admits that it has no members among the employees of the Central Avenue plant.

In view of the foregoing facts, it seems apparent that, at the time the February 29, 1944, contract was executed, the contracting parties intended that it should cover only those employees for whom the A. F. L. had theretofore bargained, namely, the employees of the West Eighth Street plant. Accordingly, since we hereinafter find that a company-wide unit is appropriate, we conclude that the contract does not constitute a bar to a determination of representatives for the employees comprising the appropriate unit.³

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

At the original hearing the C. I. O. requested a bargaining unit comprised of all production and maintenance employees at the Central Avenue plant, excluding office and clerical employees, plant-protection employees, foremen, assistant foremen, foreladies, assistant foreladies, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. However, in view of the additional evidence adduced at the second hearing on July 18, 1944, concerning the proposed centralization of all the Company's operations, the C. I. O. takes the alternative position that a company-

³ See *Matter of Mills Industries, Incorporated, et al.*, 57 N. L. R. B. 467, and *Matter of Dolese & Shepard Company*, 56 N. L. R. B. 532.

wide unit with the same inclusions and exclusions is appropriate. The A. F. L. disclaims any interest in the Central Avenue plant, but is opposed to a determination of representatives affecting the employees at the other plants of the Company who, it claims, are covered by its contract. The Company takes the position that only a company-wide unit is appropriate. There appears to be no dispute with respect to inclusions and exclusions.

At its 4 plants the Company employs approximately 250 production and maintenance employees. As previously mentioned, all 4 plants are situated within a $2\frac{1}{2}$ mile radius. All production work is done at the West Eighth Street Central Avenue, and Reading Road plants. The Warehouse is used as a storage building for the Company's supplies and is operated by 1 man whose duties are comparable to those of a shipping and receiving clerk. The same type of work is performed at each of the 3 production plants; wage scales are uniform at all plants; there is some interchange of personnel among the 3 production plants; and the Company's executive and administrative offices are located at the Reading Road plant. Moreover, the evidence indicates that the Company contemplates moving all of its operations into a single building which it has contracted to purchase. It was estimated that this move would take place in October 1944.

Upon the basis of the above facts and the entire record in the case, we find that all production and maintenance employees at all of the Company's plants, excluding office and clerical employees, plant-protection employees, foremen, assistant foremen, foreladies, assistant foreladies, and all other 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.⁴

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,

⁴The C I O and the A F L requested that their names appear on the ballot as set forth hereinafter in the Direction of Election

and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Sydney-Thomas Corporation, Cincinnati, Ohio, 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 Ninth 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 any 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 Paper Workers Organizing Committee, C. I. O., or by International Brotherhood of Pulp, Sulphite and Paper Mill Workers, Local 490, A. F. of L., for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.