

In the Matter of WHITTIER MILLS COMPANY AND SILVER LAKE COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

Case No. 10-R-1681.—Decided March 12, 1946

Weekes & Candler, by *Mr. Murphy Candler, Jr.*, of Decatur, Ga., and *Messrs. Hansford Sams, Jr., J. H. Dooley, and Frank Swift*, of Atlanta, Ga., for the Companies.

Messrs. Horace White, J. C. Matthews, Paul Fowler, and C. J. Wallace, of Atlanta, Ga., for the Union.

Mr. John A. Nevros, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Textile Workers Union of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Whittier Mills Company and Silver Lake Company, Chattahoochee, Georgia, herein called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Albert D. Maynard, Trial Examiner. The hearing was held at Atlanta, Georgia, on January 9, 1946. 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 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 COMPANIES

Whittier Mills Company, a Georgia corporation, with its principal offices and plant at Chattahoochee, Georgia, is engaged in the manu-

ufacture of hose yarn, cotton twine, cotton corduroy, wool, and rayon yarn. Silver Lake Company, a Georgia corporation, is a wholly owned subsidiary of Whittier Mills Company and has the same offices, directors, and supervisory personnel as its parent company. Its sole function is to manufacture braided cord and sash cord. In connection therewith, it occupies a portion of Whittier's Chattahoochee plant and is treated by the directors and officers of both Companies as a department within the Whittier Company. During 1945 the Companies purchased raw materials consisting of raw cotton, wool, and rayon, valued in excess of \$1,000,000, of which approximately 50 percent represented purchases from sources outside the State of Georgia. During the same period, the Companies sold finished products of a value in excess of \$1,000,000, of which approximately 95 percent represented shipments to points outside the State.

The Companies admit that each is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Textile Workers Union of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Union, by letter dated November 20, 1945, asked the Companies for recognition as the exclusive bargaining representative of the Companies' employees. The Companies received but did not reply to this request, whereupon the Union filed the instant petition.

A statement of a 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 Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union seeks a unit of all employees of the Companies, excluding clerical and office employees, second hands, and overseers. The sole dispute between the parties relates to the second hands, whom the Company would include.

¹ The Field Examiner reported that the Union submitted 201 membership cards. There are approximately 508 employees in the appropriate unit.

The Companies operate their plant on a 3-shift basis:² the first shift is from 7:30 a. m. to 3:30 p. m.; the second shift from 3:30 p. m. to 11:30 p. m.; and the third shift from 11:30 p. m. to 7:30 a. m. The overseers work on the first shift and part of the second shift and are responsible for the operation of their departments on all 3 shifts. They ordinarily work from 7:30 a. m. to 5:00 p. m. With respect to the approximately 11 second hands employed by the Companies, who are in issue in this case, it appears that most of them work on the second and third shifts. During the period each day that the overseer is absent from the second shift and during the entire third shift, the second hands are in charge of their respective departments, write passes for employees, and keep employees' time records. Although the second hands do not have final authority in the hiring and discharging of workers, we are satisfied that they can effectively recommend the promotion, discharge, or discipline of employees under their supervision.³ As to those second hands who work on the first shift, it is clear that they assist the overseers in directing the activities of the production workers, and that their duties differ little from the duties of the second hands on the other shifts. Accordingly, we are of the opinion that second hands are supervisory employees within our customary definition,⁴ and we shall, therefore, exclude them from the unit.

We find that all employees of the Companies excluding clerical and office employees, second hands, overseers,⁵ and all or any 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 means of 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.

²The Weave Department and the Cloth Room Department operate on a 2 and 1 shift basis, respectively

³Superintendent J. H. Dooley was the only witness on this issue. Although there are some contradictions in his testimony concerning the second hands, his over-all testimony supports a finding that they have supervisory functions

⁴See *Matter of Thomaston Cotton Mills, Griffin Division, et al.*, 66 N. L. R. B. 731.

⁵The overseers are clearly supervisory within the Board's customary definition. In accordance with the agreement of the parties, we shall exclude them.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Whittier Mills Company and Silver Lake Company, both of Chattahoochee, Georgia, 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 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 or not they desire to be represented by Textile Workers Union of America, CIO, for the purposes of collective bargaining.