

In the Matter of AMERICAN PAD AND TEXTILE COMPANY and UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 307, AFL

*Case No. 9-R-2073 —Decided June 12, 1946*

*Waite, Schindel and Bayless, by Mr. Herbert Shaffer, of Cincinnati, Ohio, and Mr Mel Shaw, of Greenfield, Ohio, for the Company.*

*Mr. J. W. Brown, of Cincinnati, Ohio, and Mr. Martin Garber, of Chicago, Ill., for the Union.*

*Mr. Emil C. Farkas, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Upholsterers' International Union of North America, Local 307, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Pad and Textile Company, Greenfield, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harold M. Weston, Trial Examiner. The hearing was held at Cincinnati, Ohio, on April 19, 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 upon 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

American Pad and Textile Company is an Ohio corporation with its principal office, place of business, and only plant located at Greenfield,

68 N. L. R. B., No. 80.

Ohio. Prior to 1942 the Company was engaged in the manufacture of collar pads, out-door sporting goods, and marine items. After 1942 and during the war, it manufactured sleeping bags and life preservers for the armed forces; presently it is engaged in the manufacture of horse collar pads and is in the process of reconverting to peacetime production. In the course of its business, the Company uses raw materials, principally cotton textiles, kapok, gunning bagging, and reindeer hair, valued annually at more than \$1,000,000, approximately 99 percent of which is shipped to its plant from points outside the State of Ohio. Annually the Company manufactures finished products exceeding \$2,000,000 in value, 90 percent of which is 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 Act.

## II. THE ORGANIZATION INVOLVED

Upholsterers' International Union of North America, Local 307, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On November 2, 1945, the Union filed a petition for an investigation and certification of representatives of certain of the Company's employees.<sup>1</sup> On November 8, 1945, an agreement for consent election was executed by the Company and the Union, and pursuant thereto an election was held on November 30, 1945, under the auspices of the Board. The results of the election showed 74 votes for the Union, 97 votes against the Union, and 3 challenged ballots; there were 177 eligible voters at the time of the election.<sup>2</sup>

The Company contends that the prior consent election should constitute a bar to this proceeding, or, in the alternative, that the petition herein should be held in abeyance until November 30, 1946. We do not agree.

More than 6 months has elapsed since that election. Moreover, we have been informed by our Regional Office that it ascertained the following facts as a result of the usual preliminary investigation of the petitioning Union's *prima facie* showing of representation: there are now

<sup>1</sup> Case No. 9-R-1982.

<sup>2</sup> On December 6, 1945, the Union filed objections to conduct affecting the results of the election, claiming that the election should be set aside on the ground that the Company had coerced and intimidated its employees so that they were unable to express a free choice. On January 9, 1945, the Company filed an answer in denial and a motion to strike the Union's objections. The Company's motion to strike was denied by the Regional Director on January 18, 1946. On March 4, 1946, after the petition in this proceeding had been filed, the Union withdrew its objections in that case.

between 330 and 400 employees in the alleged appropriate unit; and the Union submitted 160 authorization cards, of which 2 were undated, and the remainder bore dates subsequent to the consent election. Considering the lapse of time between the consent election and our decision herein, the fact that the number of employees in the alleged appropriate unit has approximately doubled and the further circumstance that the Union has submitted as many as 160 authorization cards, virtually all of which were obtained after the last election, we are persuaded that the policies of the Act will best be effectuated by directing another election at this time.<sup>3</sup>

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 that all employees of the Company,<sup>4</sup> excluding cafeteria employees, office and clerical employees, foremen, 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 collective bargaining. The Company is in accord with the Union's position, but contends that cafeteria employees should be included in the appropriate unit.

The record discloses that cafeteria employees perform duties usual to their classification. Since their functions, working conditions, and interests are different from those of production and maintenance workers, who constitute the unit agreed upon, we shall exclude cafeteria employees from the unit.<sup>5</sup>

We find that all employees of the Company, excluding cafeteria employees, office and clerical employees, foremen, 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.

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<sup>3</sup> See *Matter of Vermont Copper Company, Inc.*, 59 N. L. R. B. 853; *Matter of Columbia Aircraft Corporation*, 60 N. L. R. B. 257; *Matter of Edgewater Steel Company (Marine Department)*, 63 N. L. R. B. 674.

<sup>4</sup> The original petition excluded from the unit, firemen, engineers and any other power plant employees, and watchmen. At the hearing, both parties agreeing, the petition was amended to include these classifications in the unit sought.

<sup>5</sup> *Matter of Container Corporation of America, Ogden Plant*, 62 N. L. R. B. 1101; *Matter of Sengamo Electric Company*, 59 N. L. R. B. 364; *Matter of Carrier Corporation*, 46 N. L. R. B. 1319

## 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 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with American Pad and Textile Company, Greenfield, 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 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 or not they desire to be represented by Upholsterers' International Union of North America, Local 307, AFL, for the purposes of collective bargaining.

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