

IN THE MATTERS OF ROSSIE VELVET COMPANY *and* CHARLES B. RAYHALL
and TEXTILE WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE
FOR INDUSTRIAL ORGANIZATION

Cases Nos. R-247 and R-248.—Decided October 7, 1937

Velvet Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; interference by employer with employees' freedom of choice in designating representatives; failure of negotiations for recognition of union as exclusive representative; substantial doubt as to majority status; petition for investigation and certification of representatives filed by non-existent labor organization dismissed—*Unit Appropriate for Collective Bargaining:* production and maintenance employees in two separate plants operated by employer; community of interest; similarity of wage scales, classes of labor, production processes, and products; correlation of production; organization of business; history of past relations between employer and employees—*Election Ordered*

Mr. Edmund J. Blake for the Board.

Mr. Frank R. Wheeler, of New York City, for the Company.

Mr. Sidney L. Cahn, of Norwich, Conn., for the Union.

Mr. Charles B. Rayhall, of Willimantic, Conn., *pro se*.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 24, 1937, and July 7, 1937, respectively, Charles B. Rayhall and Textile Workers Organizing Committee of the Committee for Industrial Organization, herein called the Union, each filed with the Regional Director for the First Region (Boston, Massachusetts) a petition alleging that a question affecting commerce had arisen concerning the representation of production and maintenance employees of Rossie Velvet Company, herein called the Company, in its plants at Willimantic, Connecticut, and Mystic, Connecticut. The petition signed by Rayhall, as amended at the hearing, referred to the employees of the Willimantic plant and was purported to have been filed by the "Willimantic Independent Velvet Workers". (See Section II, *infra*). The petition of the Union referred to the employees of both the Willimantic and Mystic plants. Both petitions

requested an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 23, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3 and 10 (c) (2) of National Labor Relations Board Rules and Regulations—Series 1, as amended, consolidated the cases for the purposes of hearing and authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing.

Pursuant to a notice duly issued and served by the Regional Director upon the Company, the Union, and Rayhall, a hearing was held at New London, Connecticut, on August 23 and 24, 1937, before Henry J. Kent, the Trial Examiner duly designated by the Board. At the hearing, the Board and the Union were represented by counsel, the Company appeared by its treasurer, Frank R. Wheeler, and Rayhall appeared in his own behalf. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. At the conclusion of the hearing, the Union filed a brief which we have considered.

The Board has reviewed the rulings of the Trial Examiner on motions and objections directed to the issues raised by the petitions and finds that no prejudicial errors were committed. The rulings are hereby affirmed. At the conclusion of the hearing, counsel for the Union moved to dismiss the petition of Rayhall in so far as it purported to be the petition of Willimantic Independent Velvet Workers; ruling upon this motion was reserved by the Trial Examiner. The motion will be granted to the extent discussed herein-after under Section II.

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

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

Rossie Velvet Company was incorporated in New Jersey in 1898. It maintains plants at Mystic, Connecticut, and Willimantic, Connecticut, where it is engaged in the manufacture of transparent velvets. The Willimantic plant, which is 40 miles from Mystic, was constructed in 1912 to increase the Company's production of millinery velvets. In 1932 this plant was shut down. It reopened in 1935.

The Company produces approximately 1,500,000 yards of velvet a year, valued at approximately \$1,500,000. Raw materials, consisting principally of silk, cotton yarn, and rayon are purchased outside the State of Connecticut. Silk is purchased from New York brokers, shipped to throwsters in New Jersey and Pennsylvania where

the silk fiber is twisted to specification, and finally shipped to the Company's plants. The Company procures the greater portion of its cotton yarn from New York importers and from Southern and New England cotton mills; rayon is shipped from Richmond, Virginia, and Kingsport, Tennessee. Mr. Frank R. Wheeler, treasurer of the Company, testified that practically 100 per cent of all the products used in the manufacture of velvet are purchased and shipped from States other than Connecticut.

Raw materials are delivered to the plants on spools, cones, and in skeins, where they are prepared for weaving, woven, inspected, dyed, patterned or finished, and shipped as transparent velvet. Both plants have identical departments and engage in the same processes of production, except that the velvet manufactured at Willimantic is shipped to Mystic for dyeing and finishing. As of August 14, 1937, the Mystic plant employed 503 production and maintenance employees, and the Willimantic plant employed 108 similarly designated employees.

The Company sells almost the entire output of both plants through its factor, William Oppenheim and Sons, which owns a majority of stock in the Company. The velvet is shipped by Railway Express on consignment to the factor, and is delivered to a warehouse leased in New York City. All sales are made by the factor, and shipments to customers, chiefly cloak and suit manufacturers throughout the country, originate from the New York warehouse.

II. THE ORGANIZATION INVOLVED

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization and admitting to membership all production and maintenance employees, except supervisory and clerical employees, in the textile industry. Local 110 of the Union, which admits those employees of both the Willimantic and Mystic plants of the Company, was organized in 1932 as the Velvet and Plush Workers Industrial Union. In June 1937, it received a certificate of affiliation from the Union.

The petition filed with the Regional Director on June 24, 1937, and signed by Rayhall, bore the caption "Rossie Velvet Company and Velvet and Plush Workers Association." During the hearing the petition was amended to change the name of the Association to "Willimantic Independent Velvet Workers."

The evidence discloses that the "Willimantic Independent Velvet Workers" had not yet been organized at the time of the hearing. It had no members, officers, constitution, by-laws, membership cards, nor provisions for the payment of initiation fees or dues. Rayhall testified that the organization was not then in existence. The peti-

tion signed by Rayhall, in so far as it purports to be a petition of "Willimantic Independent Velvet Workers," is hereby dismissed.

Although Rayhall was appointed to committees representing the Willimantic employees on various occasions during the controversy that led to the filing of the petition in this case, it appears that he was not authorized by any employees to represent them in this proceeding. Indeed, during the course of the hearing he abandoned any claim to this effect. Consequently it is unnecessary to consider the inclusion of his name on any ballot used in the election which will be directed, as explained below.

III. THE QUESTION CONCERNING REPRESENTATION

In June 1937, Joseph Brill, general counsel for the Union, requested Wheeler to negotiate and enter into a written contract with the Union as the representative of the employees of both plants. Several informal discussions ensued but the parties did not reach an understanding or enter into any agreement. During the same month Wheeler called meetings of the employees at each plant, advised them that the Company had been asked to bargain with the Union as their representative, and that it was incumbent upon the employees to choose their own representative.

The formal petition filed by Rayhall on June 24, 1937, as amended, requests an election among the employees of the Willimantic plant. The Union's petition filed on July 7, 1937, seeks an election among the employees of both plants as a single unit, the Union alleging that it represents some 400 employees, including employees at both the Willimantic and Mystic plants.

We find that since June 1937, a question concerning representation has arisen which has led to discontent and dissatisfaction among the employees of the Willimantic and Mystic plants of the Company. We further find that this question can only be resolved by means of an election by secret ballot.

IV. THE APPROPRIATE UNIT

The issue whether the employees of each plant constitute separate units or a single unit appropriate for the purposes of collective bargaining is resolved from an examination of the facts elicited by Rayhall and the Union at the hearing. Rayhall, contending that the two plants constitute separate appropriate units, laid particular stress upon the result of an informal election held among the employees of the Willimantic plant.

On August 12, 1937, Rayhall, having assumed the chairmanship of a meeting called by him "to decide on a very important question,"¹ conducted a secret poll of the 84 Willimantic employees who attended,

¹ Union Exhibit No. 3.

to determine whether they desired to participate jointly in an election with the employees of the Mystic plant. Fifty-three ballots opposed such participation, 27 favored it, and four ballots were blank. Rayhall argued that the result of the poll indicated the desire of the Willimantic employees to be considered as a unit separate and apart from the Mystic employees.

The Union contended that the circumstances surrounding the meeting, and the rumors current in the Willimantic plant during the period of the controversy completely vitiated the results of the poll. The notice of the meeting did not indicate that a vote would be taken, nor did Rayhall explain his failure to apprise the employees of the definite object of the meeting. We do not know whether the 31 employees who failed to attend the meeting would have been present had they known that a vote would be taken, nor do we know whether the result of the poll would have been different. The inadequacy of the notice, however, throws doubt upon the validity of the result as the reflection of the desires of all the employees.

Of greater importance in weighing the result of the voting is the combination of Company policy and rumor which prevailed in the Willimantic plant at the time of the controversy, and which markedly points to interference by the Company with the decision of its employees. Some months prior to the hearing the Willimantic employees were placed on a 25-hour week shift while the less fortunate Mystic employees worked on a 32-hour alternating week shift. The Company claimed that it was more economical to so operate the plants, although the Union contended that the policy of the Company was calculated to offset the desire of the Willimantic employees to unite with the employees of the Mystic plant. During this period also, the rumor was current that the Company was operating the Willimantic plant in order to destroy the Union, admittedly more powerful at Mystic. On July 7, 1937, Rayhall, addressing a meeting of Willimantic employees on Company property and during working hours, stated, "I know I will be criticized for it, but it has been on my chest for some time, and I am going to say it just the same. If you people join up with Mystic this plant may shut down in the fall." Under the circumstances, we cannot doubt that the Company tacitly gave its support to this rumor.

The fact that Willimantic employees were receiving more favorable treatment than Mystic employees, coupled with the rumor that their joining forces with the Mystic employees for the purposes of collective bargaining meant the cessation of work in the Willimantic plant, leads us to believe that the result of the poll does not reflect the genuine desire of the majority of Willimantic employees. The evidence is persuasive that Rayhall, with the aid of the Company, succeeded in a course of intimidation which, we have no doubt, had

its effect upon his fellow employees. In any event, the result of this particular poll is entitled to but little consideration in the determination of the unit appropriate for the purposes of collective bargaining.

Although the plants are 40 miles apart, the common nature of the employees' problems at both plants, the close relationship between the operations of both plants, and the character of past dealings between the Company and its employees indicate that the employees of both plants constitute a single unit appropriate for the purposes of collective bargaining. As we have noted above, since 1935 the plants have both produced the same type of velvet. Both plants employ the same classes of labor, engage in the same processes of production, and pay the same rates of wages for similar operations. The entire output of the Willimantic plant is shipped to the Mystic plant for finishing and dyeing. One general office at Mystic maintains the accounting records of both plants, and the superintendent of each plant reports and is responsible to, one general manager. Although employees are seldom interchanged between the plants, there is some evidence that residents of Mystic are employed in the Willimantic plant, and residents of Willimantic in the Mystic plant.

That the Company generally treats its employees as a single unit is amply established by the record. Late in 1935, the Company prepared to reopen the Willimantic plant for production by transferring loom fixers, twisters, and floor men from the Mystic plant to Willimantic. In January 1936, when both plants commenced operations after a week's shut-down, the Company announced a wage decrease effective in both plants. The Union called a strike which succeeded in closing both plants for a period of approximately six weeks. During the course of the strike, the Willimantic plant, which the Company was attempting to reopen, was picketed by employees of both plants, and the Company met with a committee representing employees of both plants in an effort to terminate the strike. At the same time, the strikers held mass meetings which were attended by employees of both plants.

The evidence is overwhelming that the rights and interests of the Company's employees may best be protected and furthered by considering the employees of both plants as one unit. We therefore find that, in order to insure to the employees of the Company the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, all production and maintenance employees of the Company at its Willimantic and Mystic, Connecticut, plants, exclusive of supervisory and clerical employees, together constitute a unit appropriate for the purposes of collective bargaining.

V. EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question of representation which has arisen, in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

On the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of the employees in the aforesaid unit within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. All production and maintenance employees of the Company at its Willimantic, Connecticut, and Mystic, Connecticut plants, exclusive of supervisory and clerical employees, together constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Rossie Velvet Company, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among all the production and maintenance employees of Rossie Velvet Company in its Willimantic, Connecticut, and Mystic, Connecticut, plants, who were employed in said plants on July 7, 1937, except supervisory and clerical employees, and those who have since quit or were discharged for cause, to determine whether they desire to be represented by Textile Workers Organizing Committee of the C. I. O., for the purposes of collective bargaining.