

In the Matter of SOUTHERN CHEMICAL COTTON COMPANY and TEXTILE
WORKERS ORGANIZING COMMITTEE

Case No. R-239.—Decided October 23, 1937

Cotton Textile Industry—Investigation of Representatives: controversy concerning representation of employees; rival organizations; refusal by employer to recognize union as exclusive representative—*Strike:* caused by employer's refusal to reinstate two union members after alleged discriminatory discharge—*Closed Shop Contract:* executed with rival union during effective strike by petitioning union; no bar to an election when Board not convinced that rival union represented majority at time of execution of contract—*Unit, Appropriate for Collective Bargaining:* production and maintenance employees; eligibility for membership in both rival organizations; certain laboratory employees and foremen excluded from; nature of duties—*Election Ordercd*

Mr. Maurice J. Nicason for the Board.

Mr. John S. Fletcher and Mr. Mercer Reynolds, Jr., of Chattanooga, Tenn., for the Company.

Mr. Herbert G. B. King, of Chattanooga, Tenn., for the T. W. O. C.

Mr. Gus A. Wood, of Chattanooga, Tenn., for the Federal Union.

Mr. Joseph Friedman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 9, 1937, Textile Workers Organizing Committee, herein called the T. W. O. C., filed with the Regional Director for the Tenth Region (Atlanta, Georgia) a petition alleging that a question affecting commerce had arisen, concerning the representation of the production and maintenance employees of the "Southern Cotton Chemical Company", Chattanooga, Tennessee, herein called the Company, and requesting 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 22, 1937, the T. W. O. C. filed with the Regional Director an amended petition, which was identical with the original petition, except that the name of the Company was altered to read "Southern Chemical Cotton Company".

On July 26, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and provide for an appropriate hearing. On August 4, 1937, the Regional Director issued a notice of a hearing to be held at Chattanooga, Tennessee, on August 16, 1937, copies of which were duly served upon the Company and the T. W. O. C. Thereafter, the Company filed with the Regional Director and served upon the T. W. O. C. an answer to the petition. The answer in substance admitted that the description in the petition of the bargaining unit was correct and alleged that the number of eligible employees in the unit was 130. It denied that the T. W. O. C. represented a majority of the Company's employees, asserting affirmatively that it had recognized, as the exclusive bargaining agent for its employees, Chemical Cotton Workers Federal Union, Local 21061, affiliated with the American Federation of Labor, herein called the Federal Union, which is not named in either the original or amended petition as a labor organization claiming to represent the Company's employees.

Pursuant to the notice, a hearing was held at Chattanooga, Tennessee, on August 16, 17, and 18, 1937, before James C. Paradise, the Trial Examiner duly designated by the Board. At the commencement of the hearing, the Federal Union filed a motion to intervene on the ground that it represented a majority of the Company's production and maintenance employees and had entered into a closed shop contract with the Company, which had recognized it as the exclusive bargaining representative of all such employees, and requesting that the Board certify it as the exclusive bargaining representative. None of the parties raised objections and the Trial Examiner granted the motion to intervene.

The Board, the Company, the T. W. O. C., and the Federal Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all the parties.

The Board has reviewed all the rulings of the Trial Examiner on motions and objections made during the course of the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

Southern Chemical Cotton Company is a Tennessee corporation having its principal office and place of business in Chattanooga, Tennessee. It is engaged in the manufacture of chemical cotton.

The product is shipped to other concerns which utilize it as a raw material for the manufacture of cellulose derivatives, such as nitro-cellulose and cellulose acetate. These in turn are converted by intermediate processes into films, transparent celluloid, celluloid articles, lacquers and varnishes, artificial silk, artificial leather, and a number of other articles.

The principal raw material used by the Company is cotton linters, a by-product of cotton seed oil mills. Of approximately 29,000 bales of cotton linters used by the Company in 1937 up to August 1, all except approximately 5,000 bales were shipped to the Company from outside Tennessee. More than 90 per cent of the chemicals, the other raw materials, and the manufactured articles used by the Company during the same period were received from points outside Tennessee. Of approximately \$1,400,000 of chemical cotton sold by the Company during the same period, all but \$300,000 of that commodity was shipped by the Company to States other than Tennessee and to foreign countries.

The Company at present employs in excess of 100 employees. Its total annual pay roll is approximately \$125,000.

II. THE ORGANIZATIONS INVOLVED

A. *Textile Workers Organizing Committee*

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all the production and maintenance employees of the Company, except supervisory employees.

B. *Chemical Cotton Workers Federal Labor Union, Local No. 21061*

Chemical Cotton Workers Federal Labor Union, Local No. 21061, is a labor organization affiliated with the American Federation of Labor. It was organized on or about July 13, 1937, and was granted a charter by the American Federation of Labor on July 30, 1937. It admits to membership all the production and maintenance employees of the Company, except supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

A union affiliated with the American Federation of Labor had membership in the plant during the period of the National Industrial Recovery Act, but it has not been in existence for the past two years. In April 1937 the T. W. O. C. began to organize the employees. On June 20, 1937, Joe Dobbs, director of the T. W. O. C. in Chattanooga, informed William D. Munson, vice president and general manager of the Company, that the T. W. O. C. represented a majority of the

employees and requested recognition as the exclusive bargaining agent of the Company's employees. Dobbs testified that he offered to produce membership cards or to submit to a consent election, but that Munson did not ask to see the cards or any other evidence of a majority. Munson testified that Dobbs promised to produce the cards, but never did. In any event, nothing was accomplished at the conference.

On June 25th Dobbs returned with a committee of employees for another conference, of which the primary purpose was to discuss the discharge of two employees, Hodge and Green. Munson refused to accede to the committee's requests with respect to Hodge and Green. Thereupon, according to Dobbs, Munson ordered a lock-out; according to Munson, the employees who were members of the T. W. O. C., on their arrival for the 3 o'clock shift, congregated at the entrance to the plant and struck. The weight of the evidence supports the contention that there was a strike and not a lock-out. In any event, the plant shut down on June 25 and remained closed until July 19, during all of which time the members of the T. W. O. C. maintained an effective picket line.

On July 2 another conference was held, at which Munson again refused to reinstate Hodge and Green, but offered to take all other employees back without discrimination, on a pre-strike basis. The committee demanded a contract, which was declined by Munson. The men refused to return to work and continued to picket the plant. The strike was completely effective, and all operations at the plant were at a standstill.

On July 9 the T. W. O. C. filed its original petition herein with the Regional Director. On approximately the same date C. M. Fox, a general organizer for the American Federation of Labor, arrived in Chattanooga. On July 13 he was informed by the vice president of the State Federation of Labor that some of the Company's employees wanted him to address an organization meeting. He addressed the meeting, at which he was shown a petition containing 47 names. On July 15 he conferred with the management, asking recognition of the Federal Union on the basis of 67 signed application cards. The Company refused to negotiate with Fox because the cards did not represent a majority after the elimination of cards signed by casual or extra workers. Finally, on July 19, the Company was satisfied with the 73 cards then submitted by Fox and signed a closed-shop contract providing for the discharge of all employees who failed to become members of the Federal Union within 30 days, a check-off, and a five per cent increase in pay. On the same day the contract was posted outside the plant, letters were dispatched to all employees advising them of the reopening of the plant, and the Federal Union group,

with the assistance of local police, penetrated the picket line, which was still as strong as ever. Considerable violence resulted, but the strike was broken. On July 21 the T. W. O. C. entered into the following agreement for the return of its members to work:

As a basis for ending the labor troubles at the Southern Chemical Cotton Co., the following plan is offered:

The Company agrees to allow all men who were at work when the strike went into effect to return to their same jobs prior to 3 p. m., July 23rd, 1937, to be assigned to shifts at the management's discretion. This to apply to both A. F. of L. men and C. I. O. men. All men returning to work are to have an increase in pay of 5%, and be subject to all the provisions of the existing A. F. of L. contract.

The Company agrees that there will be no discrimination shown among the men. The men agree to work in harmony with their fellow workers and to refrain from discussing Unionism on the Company's time and property.

Both parties to this agreement understand that it will be necessary to hold a forced election under the supervision of the N. L. R. B. to determine the bargaining agency. After the election the cases of the two discharged workers shall be handled with the management by the bargaining agency.

Signed,

SOUTHERN CHEMICAL COTTON CO.

By D. H. WOOD, *President*.

TEXTILE WORKERS ORGANIZING COM.

By NICK DOBBS.

Since July 23 the Company has resumed its normal operations. We find that a question has arisen concerning the representation of employees of the Company.

IV. THE APPROPRIATE UNIT

The T. W. O. C. maintains that all of the Company's production and maintenance employees, except supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. Both the Company and the Federal Union concur in this view.

Questions were raised concerning the inclusion in this unit of three types of employees, namely, foremen, laboratory employees, and casual workers.

Foremen.—The Company's pay roll for the week ending June 27, 1937, having been introduced in evidence, discloses that four employees are designated as "plant foremen", four as "digester foremen", four as "dryer foremen", one as "yard foreman", and one as "foreman". All the parties agree that the four plant foremen, who

have charge of the various shifts, should be excluded from the appropriate unit. There is some conflict concerning the digester and dryer foremen, some of whom are members of the T. W. O. C. and others of whom are members of the Federal Union. The digester foremen have charge of the operations involving the digesting equipment which performs the first process in the purification of the cotton linters, while the dryer foremen have charge of the operations involving the air dryers which perform the final process on the finished product before baling. Both types of foremen, in addition to their duties as foremen, apparently perform work similar to that of the ordinary workers and, similarly, are paid on an hourly basis. They may recommend the hire and discharge of employees who operate the digesting and drying equipment, but this power is rather general and vague and hardly serves to differentiate them from ordinary employees. At first counsel for the T. W. O. C. and counsel for the Federal Union stipulated that the digester and dryer foreman should be included in the appropriate unit, but a vigorous controversy having arisen concerning the other kinds of foremen, the stipulation was rescinded and the question left for determination by the Board. We find that the digester and dryer foremen should be included in the unit.

From the evidence adduced it appeared that the yard foreman and the "foreman", who in reality is the shop foreman, were paid on a salary basis and not on an hourly basis like the digester and dryer foremen and the rest of the employees. When the Company entered into the closed shop contract with the Federal Union, they did not participate in the five per cent increase in wages received by the ordinary employees and the digester and dryer foremen. It further appeared that the yard foreman had on previous occasions hired men of his own accord. It thus seems that the Company itself makes a distinction between these two foremen and the digester and dryer foremen; furthermore they appear to exercise more ample power in hiring and discharging. We find that the yard foreman and the shop foreman should not be included in the unit.

Laboratory workers.—It appears that the Company employs seven employees in its chemical laboratory. It is their function, among others, to determine the contents of certain salt and caustic soda solutions, and other chemical solutions, which are used in the treatment of the cotton linters. Only four laboratory workers are listed on the Company's pay roll for the week ending June 27, 1937, the other three having been excluded, apparently on the Company's own notion that they were expert chemists and not properly classified as production and maintenance workers. The Company and the

Federal Union assert that the four laboratory workers listed on the pay roll are properly classified as production and maintenance workers, while the T. W. O. C. maintains the contrary. The evidence does not specifically disclose the precise functions of the four laboratory workers, but the vice president and general manager of the Company testified in general terms that they perform merely routine work which does not require great skill or training. It appears from the evidence, however, that these four employees work in a chemical laboratory apart from the other workers and under the direction of expert chemists. At least one of them is a college graduate. They have little association with the other employees, and, in fact, seem to be more closely associated with the management of the Company. We find that the expert chemists and the laboratory workers should not be included in the unit.

Casual employees.—The secretary of the Company testified that seven employees on the pay roll for the week ending June 27, 1937, were casual workers and should be excluded from the appropriate unit. He explained that during the short season during which the cotton seed oil mills ship in the cotton linters, extra men are employed to help in the unloading thereof, and that their term of employment averages two or three weeks. Upon the request of counsel for the T. W. O. C., the secretary of the Company furnished a list showing the amount of work performed by the seven alleged casual employees. The list supports the Company's contention as to five of the workers, but discloses that two of them, Carmon Crawley and John W. Slay, have been employed steadily for the past two months or more. Such employees can hardly be denominated casual, even on the basis of the Company's definition. We therefore find that Carmon Crawley and John W. Slay are regular employees and should be included in the unit.

It was shown by competent undisputed evidence that James Grant and Frank Trotter were regular employees, but were not included on the pay roll for the week ending June 27, 1937, because they did not work during that week on account of illness or injuries. We therefore find that they should be included in the unit.

In order to insure to the Company's employees the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that all the employees in the plant, excluding clerical employees, expert chemists and laboratory workers, casual or extra workers, plant foremen, yard and shop foremen, and other supervisory employees, but including digester and dryer foremen, constitute a unit appropriate for the purposes of collective bargaining.

V. THE QUESTION OF THE CLOSED SHOP CONTRACT

The Federal Union in its motion for intervention recognized that its closed shop contract with the Company was not a bar to an election, and, indeed, that it was invalid under the Act, if the Federal Union did not have the free and voluntary membership of a majority of the employees in the appropriate unit at the time the contract was executed. It prayed leave to intervene in order to prove that it had the membership of a majority at the time of the execution of the contract, and that consequently the contract was valid under the Act, and requested that on the basis of such proof the Board should certify it as the exclusive bargaining representative of the employees of the Company. The Company itself indicated that it entertained the same view by entering into the agreement with the T. W. O. C. on July 23, in which it agreed to the reinstatement of the strikers and to the necessity of an election under the supervision of the Board to determine the bargaining agent of its employees, thus suspending the application of its closed shop contract with the Federal Union until the Board issued its certification of the exclusive bargaining representative of the employees. According to the view thus apparently adopted by both the Federal Union and the Company themselves, it is important to determine whether, at the time the closed shop contract was executed, the Federal Union had the free and voluntary membership of a majority of the company's employees.

VI. THE QUESTION OF A MAJORITY

All the parties consented to the use of the Company's pay roll for the week ending June 27, 1937, which includes the workers employed on June 25, 1937, the day of the commencement of the strike, as a basis for determining the number of members in each union. The pay roll lists 132 employees. Deducting therefrom the names of the four plant foremen, of the two yard and shop foremen, of the four laboratory workers, and of the five casual workers, and adding thereto the names of the two regular employees who were ill during that week, there remain 119 employees in the appropriate unit.

The T. W. O. C. introduced membership cards of 86 employees, all of whom were members at the commencement of the strike. The secretary of the Company, upon a comparison of the cards with the pay-roll list, testified that 20 cards represented casual workers, but that the remainder, 66, represented regular employees. The Company admitted that on this showing the T. W. O. C. represented a majority at the beginning of the strike, but that the T. W. O. C. had not proved it at that time. The T. W. O. C. claimed that it also represented a majority of the employees both at the time the Com-

pany and the Federal Union executed the closed shop contract and at the time of the hearing, introducing evidence to the effect that only two of its members had resigned upon joining the Federal Union.

The Federal Union introduced the 73 application cards upon the basis of which the Company entered into the closed shop contract with it. Three cards represented laboratory workers and two cards represented the yard and shop foremen, leaving 68 cards to represent regular employees. Of these 68 cards, approximately 20 represented employees who had previously signed T. W. O. C. membership cards. Evidence was introduced showing that only two of such employees had resigned from the T. W. O. C., after signing application cards for membership in the Federal Union. Thus at the time the Company entered into the closed shop contract with the Federal Union it is very doubtful whether a majority of the employees in the appropriate unit had designated the Federal Union as their representative. Furthermore, at that time the Company had notice that the T. W. O. C. also claimed to represent a majority and had filed its original petition herein. In view of the agreement of July 23 between the Company and the T. W. O. C., in which the Company expressly agreed that an election was necessary to determine the exclusive bargaining agent of its employees, it appears that the Company itself was doubtful whether the Federal Union actually represented a majority of its employees.

We are thus unable to find that the Federal Union represented a majority of the employees in the appropriate unit at the time the contract was made. If, as in this case, an employer enters into an agreement with one of two labor organizations at a time when both are claiming the right of exclusive representation, we must hold that the agreement cannot bar our conducting an election, unless we are convinced that at the time of its execution the labor organization with which it was made represented a majority of the employees.

We conclude that a question concerning representation has arisen which can best be resolved by a secret ballot. Eligibility should be determined as of the last day of normal operations before the commencement of the strike. Since all the parties have acquiesced in the use of the Company's pay roll for the week ending June 27, 1937, which includes June 25, 1937, the last day of normal operations before the commencement of the strike, those eligible to vote should be the regular employees appearing on that pay roll, plus the two employees who were absent on account of illness or injuries.

VII. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question concerning representation which has arisen, occurring 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 with foreign countries, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon 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 employees of Southern Chemical Cotton Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. All the employees of Southern Cotton Chemical Company, excluding clerical employees, expert chemists and laboratory workers, casual or extra workers, plant foremen, yard and shop foremen, and other supervisory employees, but including digester and dryer foremen, 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, 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 Southern Chemical Cotton Company, an election by secret ballot shall be conducted within fifteen (15) 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, Section 9 of said Rules and Regulations, among all the employees of Southern Chemical Cotton Company on its pay roll during the work week ending June 27, 1937, excluding clerical employees, expert chemists and laboratory workers, casual or extra workers, plant foremen, yard and shop foremen, and other supervisory employees, but including digester and dryer foremen and Carmon Crawley, John Slay, James Grant, and Frank Trotter, to determine whether they desire to be represented by Textile Workers Organizing Committee or Chemical Cotton Workers Federal Union, Local No. 21061, for the purposes of collective bargaining, or by neither.