

In the Matter of CALIFORNIA WOOL SCOURING COMPANY and TEXTILE
WORKERS ORGANIZING COMMITTEE

Case No. R-447.—Decided March 4, 1938

Wool Processing Industry—Investigation of Representatives: controversy concerning representation of employees; rival organizations; substantial doubt as to majority status; successor corporation charged with notice of transactions of its predecessor; contract executed with knowledge of petition pending before Board no bar to investigation—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; no controversy as to—*Election Ordered*

Mr. Jonathan H. Rowell, for the Board.

Mr. Hiram W. Johnson, Jr., of San Francisco, Calif., for the Company.

Gladstein, Grossman & Margolis, by *Mr. Richard J. Gladstein*, of San Francisco, Calif., for the T. W. O. C.

Wolff & Wolff, by *Mr. Harry K. Wolff*, of San Francisco, Calif., for the Amalgamated.

Mr. Richard A. Perkins, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 9, 1937, United Textile Workers Union of America filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of California Wool Scouring Company, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, herein called the Act. On July 28, 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, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 12, 1937, Textile Workers Organizing Committee, herein called the T. W. O. C., filed with the Regional Director an amended

and supplemental petition. On October 18, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the T. W. O. C., and upon Amalgamated Meat Cutters and Butcher Workmen, Local 508, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation. On November 1, 1937, the Board issued an amended order directing an investigation and a hearing. Pursuant to the notice and amended order, a hearing was held on November 4, 5, and 6, 1937, at San Francisco, California, before P. H. McNally, the Trial Examiner duly designated by the Board. The Board, the Company, the T. W. O. C., and the Amalgamated 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 parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. Briefs were submitted on behalf of the Company and the Amalgamated. The Board has reviewed the rulings of the Trial Examiner 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 BUSINESS OF THE COMPANY

California Wool Scouring Company, a California corporation, is engaged in the processing of raw wool at its plant in San Francisco, California. About May 22, 1937, the Company took over such operations from the Western Wool Scouring Company, its lessor. The processing consists of cleaning, carbonizing, sorting, grading, blending, and packing in bales and bags. The Company processed over a million pounds of wool in the period from May 22 to September 30, 1937.

The Company does not at any time hold title to the wool which it processes. California wool buyers and brokers purchase raw wool produced in California and transport it at their expense to the Company's plant. The Company stores the wool until receipt of instructions to commence processing operations. At the conclusion of such operations the Company stores the wool until instructed to make delivery.

The principal wool market of the United States is Boston, Massachusetts, and most of the wool handled by customers of the Company is shipped by water to the East coast. The Company stipulated that 75 per cent of the wool processed by the Company is eventually shipped to Boston and there sold.

II. THE ORGANIZATIONS INVOLVED

Textile Workers Organizing Committee is a labor organization affiliated with United Textile Workers Union of America and with the Committee for Industrial Organization, admitting to its membership all production employees of the Company, excluding executives of the rank of foreman and above and clerical workers.

Amalgamated Meat Cutters and Butcher Workmen, Local No. 508, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all employees of the Company excepting the superintendent, executives, watchmen, and office employees.

III. THE QUESTION CONCERNING REPRESENTATION

In April 1937 both the Amalgamated and the T. W. O. C. attempted to organize the employees of the Western Wool Scouring Company, the Company's predecessor. A witness for the T. W. O. C. testified that at a meeting on April 27 a majority of the employees voted to affiliate with the T. W. O. C., and that on May 4 most of them signed applications for membership in that organization. Some of the employees paid initial membership fees to the T. W. O. C.

At the meeting on May 4 Sonia Baltrun, a T. W. O. C. organizer, presented a suggested form of agreement with the Western Wool Scouring Company, and those present authorized her to present it to that corporation. Mrs. Baltrun mailed the proposed agreement to the Western Wool Scouring Company about May 15. On May 19 the plant shut down and the management informed the employees the plant was changing hands. The employees thought the shut-down was a lock-out, because wool was left in process and the plant was not cleaned up. The employees thought the management preferred to deal with the Amalgamated.

On the day the plant closed and again on May 23 Mrs. Baltrun advised groups of employees to join the Amalgamated, and told them the T. W. O. C. would petition the Board for an investigation. The employees accordingly on May 19 and during the next few days joined the Amalgamated. On May 20 the Western Wool Scouring Company replied to the letter addressed to it by Mrs. Baltrun, stating that it had discontinued business. On May 22 the plant reopened under the management of the Company with substantially the same group of employees formerly employed by its predecessor and the same supervisory personnel.

On May 25 Mrs. Baltrun wrote the Company, submitting a form of agreement similar to that sent the Western Wool Scouring Company and requesting that negotiations be opened. The Company replied June 1, stating that having been informed that the Amalga-

mated represented the employees, it was negotiating with that organization. On June 9 the original petition was filed herein. Meanwhile, the employees, acting as members of the Amalgamated, proceeded to consider the Amalgamated's proposed agreement with the Company and finally ratified it on June 22. The agreement, executed on June 30, provided for a closed shop and was to run a year from May 24, 1937, being made retroactive to that date.

Counsel for the Company, the Amalgamated, the T. W. O. C., and the Board stipulated that the Regional Director for the Twentieth Region by letter dated June 10, 1937, advised the Company that a petition had on June 9 been filed by the United Textile Workers Union of America; that by a telephone communication on June 14 from the secretary of the Company to a field examiner for the Twentieth Region, the Company acknowledged receipt of the letter of June 10; that by a letter dated June 14, the Company confirmed the telephone conversation had that day; and that on June 26, representatives of the Amalgamated met the Regional Director and discussed the possibility of a consent election in lieu of a formal investigation and hearing. It is therefore clear that at the time the Company and the Amalgamated signed the closed-shop agreement they had knowledge that this proceeding was pending before the Board. Under the circumstances we conclude that the closed-shop agreement does not affect the determination of the issues herein.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON 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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The T. W. O. C. in its petition alleges that all production workers of the Company, excluding executives of the rank of foreman and above and clerical workers, constitute a unit appropriate for collective bargaining. Neither the Company nor the Amalgamated raised any objection to such a bargaining unit.

We find that all production employees of the Company, excluding executives of the rank of foreman and above and clerical workers, constitute a unit appropriate for the purpose of collective bar-

gaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

A representative of the T. W. O. C. testified that 30 of the approximately 41 production employees of the Company signed T. W. O. C. membership application cards early in May 1937. The evidence indicates that about May 19 a majority of such employees joined the Amalgamated under the circumstances above described. Since a majority of the production employees at about the same period signed applications for membership in both the T. W. O. C. and the Amalgamated, and in view of all the other circumstances present in this case, we feel that sufficient evidence does not exist to permit a certification of either union. We find, therefore, that the question which has arisen concerning representation of employees of the Company can best be resolved by holding an election by secret ballot.

The pay roll of the Company for September 30, 1937, was submitted in evidence. The evidence indicates that the plant was in full operation at the time of the hearing, and that there had been no substantial change in personnel since September 30. We shall therefore direct the election to be held among those employees in the appropriate unit who were on the pay roll of the Company on September 30, 1937, excluding those who have since quit or been discharged for cause.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of California Wool Scouring Company, San Francisco, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.
2. All employees of the Company, excluding executives of the rank of foreman and above and clerical workers, 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 California Wool Scouring Company, San Francisco, California, 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 Twentieth 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 employees of California Wool Scouring Company who were on the pay roll of the Company on September 30, 1937, excluding executives of the rank of foreman and above and clerical workers, and those who have since quit or have been discharged for cause, to determine whether they desire to be represented by Textile Workers Organizing Committee or Amalgamated Meat Cutters and Butcher Workmen, Local 508, for the purposes of collective bargaining, or by neither.