

In the Matter of CENTURY MILLS, INC. and SOUTH JERSEY JOINT BOARD, OF THE INTERNATIONAL LADIES GARMENT WORKERS UNION

Case No. R-544.—Decided March 5, 1938

Women's and Children's Undergarment Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize petitioning union as exclusive representative of its employees—*Unit Appropriate for Collective Bargaining:* production employees, including floor help and learners; membership in union and participation in strike—*Representatives:* proof of choice: union membership cards—*Certification of Representatives:* upon proof of majority representation.

Mr. Joseph F. Castiello, for the Board.

Mr. M. Herbert Syme, of Philadelphia, Pa., for the Union.

Mr. Herbert L. Worth, of Riverside, N. J., for the Company.

Mr. George Turitz, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On November 2, 1937, the South Jersey Joint Board of the International Ladies Garment Workers Union, herein called the Union, filed with the Regional Director for the Fourth Region (Philadelphia, Pennsylvania) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Century Mills, Inc., Riverside, New Jersey, 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 November 13, 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 November 23, 1937, the Union filed an amended petition.

On November 30, 1937, the Regional Director issued a notice of hearing, and on December 8, 1937, he issued a notice of postponement of hearing, copies of both of which were duly served upon the Com-

pany and the Union or on their respective attorneys. Pursuant to the notices, a hearing was held on December 20 and 21, 1937, at Riverside, New Jersey, before Henry W. Schmidt, Jr., the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to 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. 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

Century Mills, Inc., is a New Jersey corporation with its principal place of business at Riverside, New Jersey. The business of the Company is the manufacture of women's and children's underwear.

The principal raw materials used by the Company are cotton and rayon. It also uses buttons, cotton thread, and elastic. Approximately 25 per cent of all the raw materials are obtained from outside the State of New Jersey. The Company ships approximately 95 per cent of its finished product out of the State of New Jersey.

On October 4, 1937, the Company employed about 175 employees, of whom approximately 150 were engaged in production.

II. THE ORGANIZATION INVOLVED

The International Ladies Garment Workers Union is a labor organization affiliated with the Committee for Industrial Organization. It admits to its membership all production employees of the Company, excluding supervisory employees. When there are two or more locals of the International Ladies Garment Workers Union in the same city or locality, engaged in various branches of the same trade, they organize a joint board, which is made up of delegates from the local unions, and one of the functions of which is to organize nonunion shops. The petition in this case was filed by the South Jersey Joint Board of the International Ladies Garment Workers Union.

III. THE QUESTION CONCERNING REPRESENTATION

The Union commenced to organize employees of the Company about July 1937. When the Union thought a majority of the production employees had joined it or applied for membership, it approached the Company and asked that the Union be recognized as the exclusive

bargaining agent for such employees. The Company refused to grant this recognition. Thereafter the Union proposed that a consent election be held, but the Company refused. Following such refusal, approximately 100 employees participated in a strike which began on October 12, 1937 and which terminated on November 5, 1937, shortly after the filing of the petition in this case.

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, and has led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

In its amended petition the Union alleges that "all production employees, (excluding sales, clerical, maintenance and supervisory help)" constitute an appropriate unit. At the hearing the Union and the Company stipulated that the appropriate unit should consist of all the employees of the Company engaged in production, excluding clerical help (including receiving clerks), supervisory and maintenance help, and executives.

There is a dispute between the Company and the Union as to whether five of the employees should be considered as supervisory or as production employees. Two of such employees, under the direct supervision of the forelady, carry work from the forelady to the workers, and report back to the forelady with the finished work; they also cut elastic and binding, cut garments apart, and supply the machines with needles and cotton. Two others carry work away from the binders, under the direct supervision of the forelady; they also cut labels, bindings and ruffles. We conclude on these facts that the four employees are production rather than supervisory workers, and should be included in the bargaining unit. The only information in the record as to the fifth employee is that he "fixes driving belts on the power machines and gives out work to the operators." In the absence of evidence definitely differentiating his duties and interests from those of the other employees in the bargaining unit, we think he should be included.

The Company claimed at the hearing that persons who had been employed by it less than three months should not be included in the bargaining unit on the ground that it takes about that time for

a person to become a competent operator, and that until the Company had had an opportunity to see if they were capable of becoming competent, they were to be considered merely learners and not employees. We do not agree with this contention. There is no evidence that the Company's business is seasonal in nature, and the persons whom the Company termed learners do not appear to have been employed otherwise than for the ordinary purposes of the business. A majority of them joined the Union or applied for membership in it, or at least took part in the strike and received strike benefits from the Union. The mere fact that the Company may at some time desire to terminate the employment of some of them does not justify their exclusion from the bargaining unit.

We find that the employees of the Company engaged in production, exclusive of clerical help (including receiving clerks), supervisory help, maintenance help, and executives, constitute a unit appropriate for the purposes of collective bargaining, 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

The Board and the Company stipulated at the hearing that approximately 150 production employees were employed by the Company on October 4, 1937. The Company introduced in evidence a list of 45 production employees who had been hired between August 1 and October 12, 1937. The list showed that two of the 45 had been hired after October 4. The record shows, therefore, that the Company employed approximately 152 production workers on October 11, 1937.

The Union introduced in evidence 113 cards which its counsel stated were Union membership cards¹ of employees of the Company. Two of the cards were duplicates of other cards. The business agent of the Union testified that all the cards were signed in her presence by persons known to her. She also testified that the first of the membership cards were signed about July 1937, and that she delivered the cards to the Board's Regional Office for the Fourth Region on October 11, 1937. The business agent also testified that all persons signing membership cards, with one exception, were production employees. An examination of the cards shows that four are dated October 12, 1937, and one is dated October 14, 1937. Excluding these five cards and that of the non-production employee, it appears, on the basis of the testimony of the Union's business agent, that 105

¹ The cards were also referred to as application cards. The record is not clear as to whether employees of the Company joined the Union or merely applied for membership.

production employees signed membership cards on or prior to October 11, 1937.

At the hearing counsel for the Company and its chief witness checked the membership cards against a pay roll of the Company. Although counsel for the Company raised the objection that the cards were not witnessed and that the proof concerning their signing was "rather dubious", he did not claim that any person whose name appeared on a membership card was not an employee of the Company. One employee denied that the business agent had been present when she had signed a membership card, but she admitted the genuineness of her signature. The Company also pointed out that a number of persons signing membership cards had not paid initiation fees or dues. This fact does not, however, appear to be material. Their request for membership in the Union indicated a desire to have the Union act as their representative for collective bargaining.²

During the strike which was called on October 12, 1937, the Union paid out strike benefits to 87 employees of the Company, at least 78 of whom were among the aforesaid members of, or applicants for membership in, the Union. From 10 to 15 Union applicants or members struck but did not apply for strike benefits.

We conclude on the basis of the foregoing that the evidence sufficiently establishes that on October 11, 1937, a majority of the Company's employees engaged in production, exclusive of clerical help (including receiving clerks), supervisory help, maintenance help and executives, had designated the Union as their representative for the purposes of collective bargaining. 0

At the hearing the Company stated that it desired to show, by the testimony of employees who had signed the Union's membership cards, that they did not desire representation by the Union. Although the Trial Examiner stated that such testimony was irrelevant, he informed counsel for the Company that he would allow such a showing to be made. The Company thereupon produced four employees who testified that although they had signed membership cards of the Union, they did not want to have anything more to do with it, and did not want it to represent them for the purposes of collective bargaining. All four of those employees had been given increases in their pay during and after the strike, in which they had not taken part, and three of them testified that the representatives of the Company said they would never permit a union to exist in the plant. Although some of them stated that they had joined the Union in order not to be solicited any more by the Union's business agent, it is clear that their joining was in all cases voluntary. The evidence

² See *In the Matter of Clifford M. DeKay, etc and International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No 649, 2 N L R. B. 231.*

produced by the Company is in any event insufficient to indicate that a majority of the employees of the Company no longer desire the Union to represent them.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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 Century Mills, Inc., Riverside, New Jersey, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of the Company engaged in production, exclusive of clerical help (including receiving clerks), supervisory and maintenance help, and executives, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. The South Jersey Joint Board of the International Ladies Garment Workers Union is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 CERTIFIED that the South Jersey Joint Board of the International Ladies Garment Workers Union has been designated and selected by a majority of the employees of Century Mills, Inc., Riverside, New Jersey, engaged in production, exclusive of clerical help (including receiving clerks), supervisory and maintenance help, and executives, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, the South Jersey Joint Board of the International Ladies Garment Workers Union is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.