

In the Matter of NATIONAL CANDY COMPANY, INC., VERIBRITE FACTORY and LOCAL 351 CANDY WORKERS, AFFILIATED WITH BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA (A. F. OF L. AFFIL.)

Case No. R-753.—Decided June 27, 1938

*Candy Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union; petition for, who may file—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, including packers and elevator operators, but excluding department heads, supervisors, office and clerical employees, cost department employees, truck drivers, night watchmen, engineers, firemen, and employees in shipping and receiving department; occupational differences—*Election Ordered*

*Mr. Hyman Abraham Schulson*, for the Board.

*Mr. Otto A. Jaburek*, of Chicago, Ill., for the Company.

*Mr. Abraham W. Brussel*, of Chicago, Ill., for the Union.

*Mr. Robert L. Condon*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 17, 1938, Candy Workers Local 351, affiliated with Bakery and Confectionery Workers International Union of America,<sup>1</sup> filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the Veribrite Factory of the National Candy Company, Inc., Chicago, Illinois, 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 April

<sup>1</sup> By a second amended petition Bakery and Confectionery Workers International Union of America, herein called the Union, was substituted for Candy Workers Local 351 as the petitioner. For the propriety of this amendment, see *infra*, Section II.

14, 1938, 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 May 3, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. On May 4, 1938, the Regional Director issued an Order and Notice of Continuance, copies of which were duly served upon those parties upon whom the original notice of hearing had been served. On May 7, 1938, the Regional Director issued an amended notice of hearing, which the Company and the Union stipulated in the record they received. Thereafter the Union filed an amended petition, and on May 12, 1938, a second amended petition. Pursuant to the amended notice, a hearing was held on May 14, 1938, at Chicago, Illinois, before Horace A. Ruckel, 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 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

National Candy Company, Inc., is a New Jersey corporation, engaged in the manufacture, sale, and distribution of confections. The Company operates the Veribrite factory in Chicago, Illinois, the Pan Confectionery factory in Chicago, Illinois, and branches in Kansas City, Missouri, Grand Rapids, Michigan, and Cincinnati, Ohio. The general offices of the Company are in St. Louis, Missouri. This proceeding is concerned solely with the employees of the Veribrite factory in Chicago.

The Company, with its several branches, is one of the larger candy manufacturing companies in the United States. The Veribrite factory uses, among other things, the following raw materials: Sugar, corn sugar, corn syrup, chocolate, starch, flavors, flavoring extracts, nuts, licorice, glycerin, gum arabic, and egg albumin. For the pur-

poses of packing and shipping its finished products, the Veribrite factory uses boxes, cases, cartons, barrels, bales, sealing wax, string, gum, and twine. During the year from March 1, 1937, to February 28, 1938, the Veribrite factory used approximately 4,700 tons of raw materials. Approximately 99 per cent of these raw materials were received from outside the State of Illinois. The approximate monetary value of these raw materials received from outside the State of Illinois was \$440,000. During this same period, the Veribrite factory sold 4,800 tons of its finished product. Approximately 72 per cent of the finished product, with an approximate monetary value of \$680,000, was transported from the Veribrite factory to States other than the State of Illinois.

The Company admits that it is subject to the jurisdiction of the Board.

#### II. THE ORGANIZATION INVOLVED

Bakery and Confectionery Workers International Union of America is a labor organization affiliated with the American Federation of Labor. On May 3, 1937, it chartered Candy Workers Local 351, which admits to its membership all production and maintenance employees of the Company at its Veribrite factory, including packers and elevator operators, but excluding department heads, supervisors, office and clerical workers, shipping and receiving clerks, cost department employees, truck drivers, night watchmen, engineers, and firemen.

The original petition in this case was filed by Candy Workers Local 351, but the second amended petition substituted the Union for the Local. At the hearing, the Company objected to this substitution. The record shows that the Union usually negotiates agreements for its locals, and that agreements to which Candy Workers Local 351 is a party must be approved by the Union. In view of this fact and since Article III, Section 1, of National Labor Relations Board Rules and Regulations—Series 1, as amended, provides that a petition may be filed by any employee or labor organization acting on his behalf, we find the substitution was proper.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Union began to organize the employees of the Veribrite factory in December 1937. On March 3, 1938, representatives from the Union met with the manager of the Veribrite factory and requested the latter to bargain collectively with the Union. At this meeting the Union claimed to represent a majority of the production and maintenance employees and presented a proposed agreement for the consideration of the Company. The manager of the Veribrite fac-

tory denied the Union's claim of majority, and in addition suggested a later meeting so that the manager might obtain from the Company's president authority to negotiate with the Union. A second meeting was held between representatives of the Union and the manager of the Veribrite factory on March 16, 1938. At this meeting the manager of the Veribrite factory stated that he had obtained authority to bargain, but that he refused to do so on the ground that the Union did not represent a majority of the employees in the appropriate unit. The Company refuses to consent to an election.

We find that a question has arisen concerning representation of employees of the Company at its Veribrite factory.

#### 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 at its Veribrite factory 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

Both the Company and the Union have agreed that an appropriate unit for the purposes of collective bargaining should include all employees of the Veribrite plant engaged in production and maintenance, including packers and elevator operators, except department heads, supervisors, office and clerical employees, cost department employees, truck drivers, night watchmen, engineers, and firemen. The Company contends that this unit should also include employees in the shipping and receiving department. The Union opposes this contention and urges that these employees be excluded from the unit and also asks for the exclusion of John Connelly, who is listed on the pay roll as a "packer" but who works in the shipping room.

There are seven employees in the shipping and receiving department. Their work is largely clerical, consisting mainly of assembling orders, checking invoices, writing bills of lading, and marking cases. Although two of these employees filled out application cards to the Union, they have since been rejected by the Union. The Union has not solicited these employees and considers them ineligible for membership, as they do not at any time directly work in the production of candy. We find it proper, therefore, to exclude the employees of the shipping and receiving department from the unit.

John Connelly is listed on the pay roll as a "packer," but it is his duty to prepare, assemble, and make ready for delivery shipments

for the city of Chicago, Illinois. Connelly works in the shipping and receiving department and his duties are similar to those of the other shipping and receiving department employees. Connelly, therefore, will also be excluded from the unit.

We find the employees of the Company at its Veribrite factory, engaged in production and maintenance, including packers and elevator operators, but excluding department heads, supervisors, office and clerical employees, cost department employees, truck drivers, night watchmen, engineers, firemen, members of the shipping and receiving department, and John Connelly, constitute a unit appropriate for collective bargaining and that said unit will insure to the employees of the Company at its Veribrite factory 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

Although it claimed to represent a majority of the appropriate unit, the Union did not produce at the hearing any proof to show how many employees were members. We accordingly find that an election by secret ballot is necessary to resolve the question concerning representation.

At the meeting between the representatives of the Union and the manager of the Veribrite factory on March 3, 1938, it was agreed that if an election were ordered by the Board the pay roll as of that date should be used to determine eligibility for participation in the election. There was no pay roll on March 3, 1938, and the Union contends that the next pay roll, that of March 15, 1938, should be the pay roll used. The Company opposes this contention and urges that the pay roll of February 28, 1938, the closest in time to March 3, 1938, was the one intended. An examination of the record discloses that with but three exceptions the pay rolls are identical. Since the pay roll of March 15, 1938, is the next preceding the date of the filing of the petition herein, we find that eligibility to vote should be determined on the basis of that pay roll. Therefore, we find it unnecessary to decide what was intended by the oral agreement of March 3, 1938.

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 the Company at its Veribrite factory, Chicago, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. The employees of the Company at its Veribrite factory, Chicago, Illinois, engaged in production and maintenance, including packers and elevator operators, but excluding department heads, supervisors, office and clerical employees, cost department employees, truck drivers, night watchmen, engineers, firemen, members of the shipping and receiving department, and John Connelly, 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 a part of the investigation ordered by the Board to ascertain representatives for collective bargaining with National Candy Company, Inc., at its Veribrite factory, Chicago, Illinois, 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 Thirteenth 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 the employees of National Candy Company, Inc., at its Veribrite factory, Chicago, Illinois, who were employed by it during the pay-roll period immediately preceding March 15, 1938, engaged in production and maintenance, including packers and elevator operators, but excluding department heads, supervisors, office and clerical employees, cost department employees, truck drivers, night watchmen, engineers, firemen, members of the shipping and receiving department, John Connelly, and those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Bakery and Confectionery Workers International Union of America, for the purposes of collective bargaining.