

In the Matter of THE SORG PAPER COMPANY and COMMITTEE FOR
INDUSTRIAL ORGANIZATION

Case No. R-633.—Decided July 27, 1938

Paper and Paper Bag Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy as to appropriate unit; employer's refusal to grant recognition of union—Unit Appropriate for Collective Bargaining: production employees in both Paper Mill and Bag Division, excluding office workers, supervisory employees who have the right to hire and discharge, and watchmen—Election Ordered

Mrs. Mary Telker Iliff, for the Board.

Nichols, Morrill, Wood, Marx and Ginter, by Mr. Robert S. Marx and Mr. Edward M. Brown, of Cincinnati, Ohio, for the Company.

Mr. Julius Holzberg, of Cincinnati, Ohio, for the Union.

Miss Margaret M. Farmer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On December 9, 1937, the Committee for Industrial Organization, on behalf of Local Industrial Union No. 112, United Paper Workers of America, herein called the Union, filed with the Regional Director for the Ninth Region (Cincinnati, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Sorg Paper Company, Middletown, Ohio, 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 January 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 February 2, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon

the Union, and upon Employees Representation Plan. Pursuant to the notice, a hearing was held on March 18, 1937, at Middletown, Ohio, before James L. Fort, the Trial Examiner duly designated by the Board. The Board, the Company; and the Union were represented by counsel and participated in the hearing. Employees Representation Plan did not appear. 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.¹

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Sorg Paper Company is an Ohio corporation, having its principal place of business in Middletown, Ohio. It is the result of a consolidation on January 2, 1931, of the W. B. Oglesby Company, the Paul A. Sorg Paper Company, and the Frank Smith Paper Company. In May 1936, the Company acquired the assets of the Lawrence Bag Company and the Superior Bag and Paper Corporation, also located in Middletown, Ohio, and has since operated said properties as its Bag Division. The Bag Division is located at a distance of a few blocks from the Paper Mill.

The Company at its Paper Mill manufactures paper of various grades and at its Bag Division manufactures paper bags. Approximately 90 per cent of the raw materials used by the Company at its Paper Mill come from sources outside the State of Ohio. Wood pulp

¹ The Company objected to the refusal of the Trial Examiner to permit it to make application for a subpoena to compel the Union to produce the minutes of the meeting at which a resolution was allegedly passed authorizing the petition in the instant case. We find the action of the Trial Examiner proper. The Act authorizes the Board to investigate and certify bargaining representatives. In the exercise of this authority, the Board has provided in Article III, Section 1, of National Labor Relations Board Rules and Regulations—Series 1, as amended, that a "petition requesting the Board to investigate and certify under Section 9 (c) of the Act the name or names of the representatives designated or selected for the purpose of collective bargaining may be filed by any employee or any person or labor organization acting on his behalf." This provision is, however, solely for the convenience and protection of the Board. It does not empower an employer to question the authority of a labor organization to act on behalf of employees or other persons or the authority of a particular individual to act on behalf of a labor organization. The Company also objected to the exclusion of evidence of allegedly coercive measures employed by the Union in gaining members. We are of the opinion that in those cases in which a labor organization chooses not to submit evidence in support of its claim to represent a majority of the employees for the purpose of securing certification but seeks rather an election by secret ballot as the means of determining the validity of such claims, testimony of coercion is irrelevant and is properly excluded at a hearing.

is shipped directly to the mill from New England, from western and southern States, from Canada and from the Scandinavian countries. Coal is sent principally from Kentucky. Paper used by the Company, other than that manufactured by itself, is obtained from Wisconsin and Indiana. Approximately 33 per cent of the finished paper is sold outside the State of Ohio.

Approximately 5 per cent of the raw materials used by the Company in the Bag Division are shipped from sources outside the State. Approximately 70 per cent of the bag output is sold outside the State.

The Company employs 429 persons in the Paper Mill and 117 persons in the Bag Division exclusive of office and sales force.

II. THE ORGANIZATIONS INVOLVED

Local Industrial Union 112, United Paper Workers of America, herein called the Union, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production employees of the Company in both the Mill and Bag Division excluding office workers, supervisory employees who have the right to hire and discharge, and watchmen.

Employees Representation Plan, although duly served with a notice of hearing in this case, did not appear. Nothing is disclosed by the record concerning its membership requirements.

III. THE QUESTION CONCERNING REPRESENTATION

The Company contended at the hearing and in its brief filed after the hearing that no question had arisen concerning the representation of its employees. It asserted that organizational activities at its plants were instigated and carried out by field representatives of the Committee for Industrial Organization, and that the Union has failed to show that the employees of the Company participated to any substantial extent in these activities. It contends that the petition in the instant case was signed by a person unknown to the employees, and that the Union had failed to show that the employees either desired or authorized this petition.

The Union testified that its claim to represent a majority of the employees of the Company and its demand for recognition as a collective bargaining agent were presented to officials of the Company by a committee composed of employees of both the Paper Mill and the Bag Division. It testified that the Company had refused to deal with it on the ground that it had failed to furnish any proof in support of its claim that it represented such a majority.

We find that a question has arisen concerning the 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 Union seeks a bargaining unit consisting of all production employees in both the Paper Mill and Bag Division excluding office workers, supervisory employees who have the right to hire and discharge, and watchmen. The Union witnesses testified at the hearing that the interests of employees in the Paper Mill and Bag Division are similar and that they wish to be represented by one union in negotiations with the Company.²

The Company objects to the inclusion in a single unit of employees of both the Paper Mill and the Bag Division. It contends that the Paper Mill and the Bag Division represent two separate and distinct industries, competing in entirely different markets and operating under separate managements. It points out that at the time the Company acquired the bag companies, the board of directors was wholly unfamiliar with the bag business, and therefore retained E. E. Brown, the president of one of the bag companies, as manager of the newly formed Bag Division. Brown testified that he had accepted such position on the condition that he have the authority to negotiate with the employees of the Bag Division concerning wages, hours, and other conditions of employment. The Company also points out that, due to the difference in manufacturing processes, there is no interchange of employees between the plants.

Notwithstanding the considerations advanced by the Company, we are of the opinion that the employees of the Company at both the Paper Mill and the Bag Division are appropriately included in the same bargaining unit. As stated above, the Paper Mill and the Bag Division are geographically close to each other, being located only approximately three blocks apart. The workers at both plants are semi-skilled and have a similarity of interests. Although the wage scale in the Bag Division is somewhat lower than in the Paper Mill, this results from the large number of women employed as operators in the Bag Division. The wages paid the men in the Bag Division

² Subsequent to the hearing, the Company submitted to the Board a petition signed by a majority of the employees of the Company in the Bag Division, addressed to the Board, requesting that they be not included in the same bargaining unit with the Paper Mill employees

compare favorably with the average obtaining in the Paper Mill. It appears that the Paper Mill and the Bag Division are at the present time operated as substantially separate units and that Brown has been accorded wide administrative powers. However, the Paper Mill and the Bag Division are both parts of a single corporate entity and the ultimate control of all the policies of the Company as they relate to the employees of the Paper Mill and the Bag Division would appear to rest in the same hands. The Company conceded that the Board of Directors might conceivably veto policies proposed by Brown, and also that there is a community of interest between the employers at the two plants naturally arising from the fact that they are members of one company.

We find that the production employees of the Company in both Paper Mill and Bag Division, excluding office workers, supervisory employees who have the right to hire and discharge, and watchmen, 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 Union claims to represent a majority of the employees within the unit which we have determined to be appropriate. The Union did not introduce membership or application cards in support of this claim. We find that the question which has arisen concerning representation can best be resolved by the holding of an election by secret ballot. The Union requested that if the Board should order an election, the pay-roll dates of March 15 and March 16, 1938, shall be used to determine eligibility to vote. The Company made no objection to this choice of date.

On 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 Sorg Paper Company, Middletown, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company in both the Paper Mill and the Bag Division, excluding office workers, supervisory employees who have the right to hire and discharge, and watchmen, 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 Sorg Paper Company, Middletown, Ohio, 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 Ninth 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 production employees in both the Paper Mill and the Bag Division of the Sorg Paper Company on the company pay rolls of March 15 and 16, 1938, excluding office workers, supervisory employees who have the right to hire and discharge, and watchmen, and excluding also employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Local Industrial Union No. 122, United Paper Workers of America, for the purposes of collective bargaining.