

In the Matter of CENTURY WOVEN LABEL CO. and CENTURY WOVEN LABEL UNION LOCAL No. 21116, AMERICAN FEDERATION OF LABOR

Case No. R-704.—Decided July 28, 1938

Label and Tie Silk Weaving Industry—Investigation of Representatives: petition for, dismissed, where no question concerning representation has arisen; evidence shows that petitioning union is bargaining with company on basis of oral agreement; showing of membership by intervening union not sufficiently strong as compared with showing of petitioning union in either unit contended for, plant-wide or departmental, to raise question of representation.

Mr. Richard J. Hickey, for the Board.

Mr. Henry Utall, of New York City, for the Company.

Mr. Louis Josephson, of Trenton, N. J., for the Label Union.

Mr. Alfred Udoff, of New York City, and *Mr. Irving Abramson*, of Paterson, N. J., for the T. W. O. C.

Mr. Willard Y. Morris, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On January 14, 1938, Century Woven Label Union, Local No. 21116, affiliated with the American Federation of Labor, herein called the Label Union, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Century Woven Label Co., Inc.,¹ Prospect Park, 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 February 17, 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.

¹ Erroneously referred to in the petition as Century Woven Label Company.

On March 4, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the Label Union, and Textile Workers' Organizing Committee, herein called the T. W. O. C., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, hearings were held on March 28, 1938, and April 9, 1938, at New York City before Joseph L. Maguire, the Trial Examiner duly designated by the Board. The Board, the Company, the Label Union and the T. W. O. C. 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 these rulings 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 Woven Label Co., Inc., is a New York corporation engaged in the manufacture and sale of woven labels and tie silks. Its factory is situated in Prospect Park, New Jersey. In 1937 its total purchases of raw materials amounted to \$100,000. Approximately 95 per cent of this amount was purchased from sources in States other than New Jersey and in foreign countries. In the same year the Company's total sales amounted to nearly \$400,000. Approximately 95 per cent of this amount was shipped to customers outside New Jersey.

II. THE ORGANIZATIONS INVOLVED

Century Woven Label Union, Local No. 21116, is a labor organization affiliated with the American Federation of Labor, admitting to its membership production employees of the Company engaged in the manufacture of labels, but excluding employees engaged in the manufacture of tie silks.

Textile Workers' Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. It has two locals for employees at the Company's plant, Local 87 admitting to its membership employees engaged in the manufacture of tie silks, and Local 157 admitting to its membership employees engaged in the manufacture of labels, both locals excluding executives, foremen, and clerical employees.

III. THE QUESTION CONCERNING REPRESENTATION

The Label Union and the T. W. O. C. present conflicting claims regarding the appropriate unit in this case. The Label Union contends that the Company's employees in the label department alone constitute an appropriate unit. The T. W. O. C. takes the position that all of the Company's employees, both in the tie-silk and label departments, should be included in a single unit. It is unnecessary for us, however, to resolve this controversy, since the showing of each union of the extent of its representation among the Company's employees convinces us that a question has not arisen concerning representation of employees of the Company.

The Company's plant is divided into a tie-silk department in which 29 persons are employed and a label department in which 90 persons are employed.² In June 1937, the T. W. O. C. executed a closed-shop contract with the National Weavers' Institute to be "effective in all mills and plants engaged in this industry³ that are owned and operated by the manufacturers who are members of the Institute." At the time the contract was executed the Company was a member of the Institute. Subsequently a dispute arose between the Company and the T. W. O. C. as to the scope of the contract. The Company contended that the contract applied only to the employees in the tie-silk department. Accordingly, it apparently enforced the closed-shop provision in the tie-silk department, but not in the label department. The T. W. O. C. contended that it applied to the employees in both departments. This dispute was referred to an impartial chairman whose decisions on such questions are claimed by the T. W. O. C. to be final and binding under the terms of the contract. On November 27, 1937, the impartial chairman ruled "that the agreement affects all workers in the Century Woven Label Company with the exceptions expressly provided for in Article 2 (c)⁴ and the respondent is hereby ordered, upon request by the Union, to replace all employees who are not members of the Union with members of the Union as provided for in Article 3 (b) of the agreement." On December 18, 1937, after rehearing, the impartial chairman affirmed his decision. The company did not comply with this decision, claiming that the impartial chairman was without jurisdiction to decide the dispute.

It was testified at the hearing that the contract expired on March 31, 1938, a date falling between the first and last days of the hearing

² These figures are taken from the pay roll of January 11, 1938, the only pay roll in evidence.

³ The contract defines "Industry" as including "the manufacture of jacquard, novelty and fancy broad goods made primarily of silk, rayon or combination thereof."

⁴ Article 2 (c) provided: "This agreement shall apply to all employees of the manufacturers with the exception of office help, salesmen, watchmen, firemen, truckmen, executives, superintendents, and foremen, and those doing supervisory work."

herein. The Company also testified that at the time of the hearing it was no longer a member of the National Weavers' Institute. At the hearing, a great deal of time was devoted to the contract and the rights and duties of the parties thereunder. These matters are not in issue in the present proceeding; we are confronted with this initial issue: Is there a question concerning representation of employees of the Company? For the purpose of determining this issue we will assume alternately the correctness of each union's claim as to the appropriate unit.

1. The Label Union claims that only the employees in the label department, with certain exceptions, constitute an appropriate bargaining unit. The president of the Label Union testified that it was organized during the summer of 1937 and installed its American Federation of Labor charter in August of that year. He further testified that the Label Union had succeeded in enrolling virtually all the Company's employees in the label department. Officials of the T. W. O. C. did not deny this, but testified that in March 1937, when the United Textile Workers of America, herein called the U. T. W., changed affiliation from the American Federation of Labor to the Committee for Industrial Organization, the T. W. O. C. by operation of law succeeded to all members enrolled by the U. T. W. among the employees of the Company; and that thereby the T. W. O. C. had approximately 27 members among the employees in the label department. It was further claimed that the T. W. O. C. had succeeded in enrolling an additional 20 members among the employees in that department. No evidence, other than that stated above, was offered in support of these claims by the T. W. O. C., and it was admitted that of these 47 claimed members only one had paid dues since May 1937, which was several months before the Label Union was formed. In support of its claim the Label Union introduced in evidence 84 signed forms, which confer authority for purposes of representation on the American Federation of Labor and all its affiliated organizations. The Label Union also introduced six signed applications for membership. The president of the Label Union testified that the signatures on these signed forms and applications were obtained in August and September 1937. Comparing these signatures with the names on the Company's pay roll of January 11, 1938, we find that 83 of the 90 names appearing on that pay roll as employees in the label department, appear among the Label Union's signed forms and applications.

The Label Union alleged in its petition that: "The aforesaid company has declared that it will not bargain or deal with the petitioning union unless, and until, it receives the certification of this board that it represents these workers, and that it is the legal and proper bargaining agency."

However, at the hearing the president of the Label Union and the superintendent of the Company both testified that the Company had recognized the Label Union as the representative of the employees in the label department and had entered into an oral collective bargaining agreement with it under which they are still operating. We find that a question has not arisen concerning the representation of the Company's employees in the label department.

2. The T. W. O. C. contends that all employees of the Company, with certain exceptions, constitute an appropriate bargaining unit. As previously found, it is apparent that the T. W. O. C. represents very few, if any, employees in the label department. Its membership is confined almost exclusively to employees in the tie-silk department. Thus, at most, it represents those employees, of whom there were 29 on January 11, 1938. This figure would be slightly less if supervisory employees are excluded. On the other hand there are slightly less than 119 employees in the entire plant, excluding clerical and supervisory employees. In view of the fact that the T. W. O. C.'s representation is confined to the employees in the tie-silk department, who comprise only about one-fourth of all of the employees, we do not feel that under the circumstances of this case there is a question concerning representation of the employees of the Company in the unit claimed to be appropriate by the T. W. O. C.

Since no question concerning representation exists, whichever of the claimed units is assumed to be appropriate, we find that no question has arisen concerning representation of employees of the Company.

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

CONCLUSION OF LAW

No question has arisen concerning representation of the employees of Century Woven Label Co., Inc., within the meaning of Section 9 (c) of the National Labor Relations Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusion of law, the National Labor Relations Board orders that the petition for investigation and certification filed by Century Woven Label Union, Local No. 21116, American Federation of Labor, be, and it hereby is, dismissed.