

In the Matter of UTICA KNITTING COMPANY and AMERICAN FEDERATION OF LABOR, LOCAL NO. 21500

*Case No. R-943.—Decided August 3, 1938*

*Knitwear Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees—*Contract:* no bar to investigation, where period to terminate by giving notice is almost at hand—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding clerical and supervisory employees; stipulation as to—*Election Ordered—Certification of Representatives.*

*Mr. Maurice J. Nicoson*, for the Board.

*Mr. Niel P. Sterne*, and *Mr. Fred L. Blackman*, of Anniston, Ala., for the Company.

*Mr. J. J. King*, of Atlanta, Ga., *Mr. Sam Roper*, of Birmingham, Ala., and *Mr. Charles F. Douglas*, of Anniston, Ala., for the A. F. of L.

*Mr. Herbert G. B. King*, of Chattanooga, Tenn., for the T. W. O. C.

*Mr. William B. Barton*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 20, 1938, the American Federation of Labor, Local No. 21500, herein called the A. F. of L., filed with the Regional Director for the Tenth Region (Atlanta, Georgia) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Utica Knitting Company, Anniston, Alabama, 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 June 29, 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.

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On July 7, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the A. F. of L., and upon 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, a hearing was held on July 14, 1938, at Anniston, Alabama, before Peter F. Ward, the Trial Examiner duly designated by the Board. At the hearing the T. W. O. C. filed a petition to be permitted to intervene in the proceedings in accordance with Article II, Section 19, of said Rules and Regulations. This petition was granted by the Trial Examiner. We affirm this ruling. The Board, the Company, and the T. W. O. C. were represented by counsel and the A. F. of L. by its officials, and all parties 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 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

Utica Knitting Company is a New York corporation with head offices in New York. It operates nine mills, eight of which are located in the State of New York and the ninth at Anniston, Alabama. The plants are engaged in the manufacture, sale, and distribution of knit underwear, and knit outerwear, such as sweaters and bathing suits. In 1936 the Company in all its plants produced four per cent of all the knitwear goods produced in the United States.

This proceeding is concerned solely with the employees of the Anniston mill. It normally employs about 575 workers. In 1937 it produced 431,000 dozen garments of the value of \$1,251,000. These operations involved the use of 2,266,000 pounds of yarn, 75 per cent of which came from the State of New York and the balance from the State of Alabama. Ninety-five per cent of the goods produced in the Anniston plant are sold and distributed outside of the State of Alabama.

##### II. THE ORGANIZATIONS INVOLVED

Local No. 21500, American Federation of Labor, is a labor organization, admitting to its membership all employees of the Company, except clerical and supervisory employees.

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization, likewise admitting to membership all employees of the Company, except clerical and supervisory employees.

### III. THE QUESTION CONCERNING REPRESENTATION

On October 1, 1937, the Company and the T. W. O. C. entered into an agreement whereby the T. W. O. C. was recognized as the sole collective bargaining agency for all of the employees of the Company's plant at Anniston. The contract is for a term of one year, with the further provision that it shall remain in effect from year to year thereafter unless either party thereto by 30 days' notice in writing prior to expiration of any year period advises the other of a desire to change, modify, alter, amend or terminate such contract. Since the initial period of the contract ends on October 1, 1938, it is not necessary in this case to determine the effect of the contract on the question of representation prior to such date. It is clear that the contract does not preclude the Board from investigating or certifying a bargaining representative for the purpose of negotiating new agreements for the period following October 1, 1938, if such are desired.

In the early part of 1938 the A. F. of L. commenced organizational activities and both the A. F. of L. and the T. W. O. C. now claim to represent a majority of the employees of the Company.

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 A. F. of L., the T. W. O. C., and the Company stipulated at the hearing and we find that the production and maintenance employees of the Company at its Anniston plant, exclusive of clerical and supervisory employees, 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-organi-

zation and collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

The Company normally employs approximately 575 employees in the appropriate unit. Both labor organizations claimed to represent a majority of said employees. In support of its claim, the A. F. of L. introduced in evidence 305 application cards signed for the most part in January, February, and March, 1938, and a "statement of purpose" dated July 1, 1938, signed by 249 persons. On the other hand, the T. W. O. C. offered for identification a "petition of allegiance" signed during March and April 1938, by 323 persons and introduced in evidence membership application cards signed during June 1938, by 299 persons.

Under the circumstances outlined above and in view of the fact that there is considerable duplication in the membership claims of the labor organizations, we conclude that the question which has arisen concerning representation can best be resolved by an election by secret ballot.

Evidence was introduced at the hearing that the employees on the pay roll of the Company do not now work regularly, but are being alternated in their work because of a slack in production. It was agreed, however, by all parties that the pay rolls for the last week in May and for the month of June 1938, would include all employees of the Company. Eligibility to vote in the election shall, therefore, be determined on the basis of said pay-roll periods.

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 Utica Knitting Company, Anniston, Alabama, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.
2. The production and maintenance employees of the Company at its Anniston, Alabama, plant, excluding supervisory and clerical employees, 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 Utica Knitting Company, at its Anniston, Alabama, plant, 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 Tenth 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 and maintenance employees of Utica Knitting Company at its Anniston, Alabama, plant, who were employed by it during any or all of the pay-roll periods for the last week in May and for the month of June 1938, excluding supervisory and clerical employees and those who have since quit or been discharged for cause, to determine whether they desire to be represented by the Textile Workers Organizing Committee, affiliated with the Committee for Industrial Organization or by Local No. 21500, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Decision and Direction of Election.

[SAME TITLE]

## CERTIFICATION OF REPRESENTATIVES

*September 24, 1938*

On August 3, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding. The Direction of Election provided that an election by secret ballot be held within fifteen (15) days from the date of the Direction among all production and maintenance employees of Utica Knitting Company at its Anniston, Alabama, plant who were employed by it during any or all of the pay-roll periods for the last week in May 1938, and for the month of June 1938, excluding supervisory and clerical employees and those who had since quit or been discharged for cause, to determine whether they desire to be represented by the Textile Workers Organizing Committee, affiliated with the Committee for Industrial Organization or by Local No. 21500, affiliated with the American Federation of Labor, for the purpose of collective bargaining, or by neither.

Pursuant to the Direction, an election by secret ballot was conducted on August 18, 1938, at Anniston, Alabama, under the direction and supervision of the Regional Director for the Tenth Region (Atlanta, Georgia). Full opportunity was accorded to all parties to participate in the conduct of the secret ballot and to make challenges. On August 22, 1938, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties to the proceeding his Intermediate Report upon the secret ballot.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible.....	475
Total ballots cast.....	461
Total number of ballots cast for Local No. 21500, affiliated with American Federation of Labor.....	199
Total number of ballots cast for Textile Workers Organizing Committee, affiliated with Committee for Industrial Organization.....	249
Total number of ballots cast for neither.....	3
Total number of challenged ballots.....	10
Total number of void ballots.....	0
Total number of blank ballots.....	0

On August 31, 1938, the American Federation of Labor filed with the Regional Director certain objections to the conduct of the ballot and a motion that the election be set aside and a new election held. The Board has considered these objections, and finds them to be without merit. The motion is hereby denied.

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, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Textile Workers Organizing Committee has been selected by a majority of all production and maintenance employees of Utica Knitting Company at its Anniston, Alabama, plant, excluding clerical and supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, Textile Workers Organizing Committee 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.

MR. EDWIN S. SMITH took no part in the consideration of the above Certification of Representatives.