

In the Matter of GATE CITY COTTON MILLS and LOCAL No. 1938,  
UNITED TEXTILE WORKERS OF AMERICA

*Case No. R-17.—Decided December 7, 1935*

*Cotton Textile Industry—Evidence—Unit Appropriate for Collective Bargaining: plant—Election Ordered: question affecting commerce: confusion and unrest among employees—controversy concerning representation of employees: majority status disputed by employer; request by substantial number in appropriate unit; substantial doubt as to majority status.*

*Mr. Thomas I. Emerson and Mr. Mortimer Kollender for the Board.*

*Mr. Winfield P. Jones and Mr. Carroll Payne Jones, of Atlanta, Ga., Mr. Scott Russell, of Macon, Ga., and Mr. Alfred C. Broom, of College Park, Ga., for the Company.*

*Mr. Frank A. Constangy, of Atlanta, Ga., for the Union.*

*Mr. Ernest A. Gross, of counsel to the Board.*

DECISION

STATEMENT OF CASE

Local No. 1938 of the United Textile Workers of America, a labor organization, hereinafter called the Union, petitioned the National Labor Relations Board on October 12, 1935, for an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act (Exhibit B-1). The petition states that the Union at that time represented approximately 140 employees out of about 150 then alleged to be employed by the Gate City Cotton Mills, East Point, Georgia, hereinafter called the Mills, that no other individuals or labor organizations claim to represent any of the employees, that a question has arisen concerning the representation of employees of the Mills, and that said question is a question affecting commerce within the meaning of the National Labor Relations Act. Attached to the petition is a statement alleged to have been signed by 91 employees of the Mills authorizing the Union "to enter into negotiations with our employer for the purpose of reaching agreement on wages, hours and working conditions". The signatories agree "to abide by all provisions of agreement reached by these representatives and our employer".

On October 16, 1935, the Board, pursuant to Section 9(c) of the Act and Article II, Section 3 of the National Labor Relations Board

Rules and Regulations, Series 1, ordered the Regional Director for the Tenth Region, National Labor Relations Board, to conduct an investigation and provide for an appropriate hearing upon due notice (Exhibit B-3).

Notice of hearing was issued by the Regional Director October 23, 1935, setting the hearing for November 4, 1935 (Exhibit B-1). Notice was duly served (Exhibit B-6 and B-7), and hearings were held on November 4, 5 and 6, 1935, before a Trial Examiner designated by order of the Board dated October 26, 1935, (Exhibit B-4). During the course of the hearing, the Mills submitted a list of its employees as of November 2, 1935 (Exhibit B-14).

#### I. ISSUES RAISED BY MOTIONS TO DISMISS

Before proceeding to a discussion of the evidence adduced at the hearing, we wish to consider two motions to dismiss made by the Mills before evidence was introduced. The grounds of the motions were:

a. That no question had arisen "affecting commerce" within the meaning of the Act.

b. That the Act contravenes the Fifth Amendment to the Constitution by authorizing the Board to prejudge the facts upon which the Board's jurisdiction is alleged to be based in that no provision is made in the Act for notice or opportunity to be heard prior to the institution of the investigation.

c. That the Act transcends the authority delegated to Congress to regulate commerce by Article I, Section 8, Clause 3 of the Constitution of the United States.

d. That the Act, in authorizing an investigation under Section 9 (c) thereof, has as its object the vesting in the representatives chosen by the majority of the employees for collective bargaining with their employer, the exclusive right to bargain collectively for all the employees of said employer, in contravention of the Fifth Amendment to the Constitution.

e. That the Act is void in that it violates the Tenth Amendment of the Constitution, and

f. That no question concerning representation had arisen.

The Trial Examiner denied the motion to dismiss, and we believe his action was proper. We do not deem it necessary to discuss the constitutional objections urged by the Mills. We do not wish, however, to discuss the contention that the Mills was entitled to be heard before the Board authorized an investigation pursuant to Section 9 (c) of the Act.

We think that the contention is without merit. It is true that Section 9 (c), by its terms, requires that a hearing be held as part

of the investigatory procedure therein provided for. But the investigation required under Section 9 (c) is broader than is assumed in the argument of the Mills, and is not limited to that phase of the Board's activity which precedes the hearing. The Board's decision to order an investigation need be based only upon the existence of a reasonable probability that a question affecting commerce concerning representation has arisen. If, as the Mills argues, a hearing must be held at this stage, the only purpose which such a hearing could serve would be to determine whether a question affecting commerce concerning the representation of employees has arisen. This is, however, the very purpose of the hearing which was in fact held pursuant to the order of the Board. As long as a hearing is held before a certification is made, the Mills has no complaint under the Act or under the Constitution.

We now consider whether, on the basis of the evidence adduced at the hearing, a question affecting commerce concerning the representation of employees has arisen.

## II. WHETHER A QUESTION CONCERNING THE REPRESENTATION OF EMPLOYEES HAS ARISEN

The petition for certification in this case was filed by three persons purporting to be a committee of the Union. Two of the signers are employees of the Mills, the third is a former employee. Attached to the petition is a statement alleged to have been signed by 91 employees of the Mills authorizing the Union to represent the signatories for the purposes of collective bargaining.

This statement was admitted over the strenuous protest of the Mills. The objection was based on the fact that no signatures appear on the copy of the statement placed in evidence. The only proof of such signatures is hearsay testimony adduced at the hearing. The Mills contended that unless the name or names of the alleged signers are revealed, it is impossible to cross-examine the signers or otherwise to prove that such signatures were not in fact given or if given, that they were obtained by misrepresentation or threats. The Union refused to disclose the names, giving as its reason the fear of reprisal or discrimination against the signatories.

We think the contention of the Mills unsound. The statement purported to have been signed by 91 employees is relevant merely as one piece of evidence on the issue of whether a question concerning representation has arisen. We recognize the undesirable aspects of ordering elections merely at the instance of an individual employee, or very small and non-representative groups. On the other hand, it suffices if there is evidence showing probable cause for holding a secret ballot in order to dispel doubt or to remove a fruit-

ful source of strife. The degree or magnitude of the question concerning representation is discretionary rather than jurisdictional. The objection of the Mills is therefore directed to the exercise of discretion by the Board, and we think there is evidence other than the authorization statement, compelling us to proceed under Section 9 (c).

The statement is therefore not conclusive on any material point in issue. If on the basis of all the evidence, it appears that a question affecting commerce concerning representation has arisen, we are empowered to certify. It is therefore unnecessary to consider at this point the policy of withholding from employers the names of employees who are alleged to have authorized union representation.

The Union contends that it has been designated by the majority of the employees as their representative for collective bargaining (Exhibit B-1). The Mills, through its Executive President, denies that the Union represents a majority. This clearly presents a question concerning representation, and satisfies the bare jurisdictional requirements of Section 9 (c).

As a matter of sound discretion, is the question concerning representation of sufficient importance under all the circumstances to warrant further proceedings looking toward the requested certification?

Three points were developed at the hearing which seem to us to bear directly on this point.

1. Evidence of membership of a substantial number of employees in the Union and their interest in its affairs.

(a) The Secretary-Treasurer of the Union testified that at the present time 94 employees of the Mills are members in good standing in the Union. The Mills objected to the introduction of this testimony on the ground that the best evidence of the number of members is the membership books of the Union. The Union refused to produce the books on the ground that the members might be subjected to reprisals. The Trial Examiner sustained the Union's argument and allowed admission of the testimony.

The degree to which the rules of evidence prevailing in courts of law or equity should control hearings before us cannot be answered categorically. A reasonable latitude of discretion must be allowed, and more particularly is this true where, as here, the testimony in question is not materially prejudicial to any person involved. The policy of the Act must be balanced in the scales with technical rules of evidence. Section 9 (c) of the Act is based in large part upon the policy of allowing to employees a free and untrammelled choice in the selection of their representatives by means of a secret ballot. This free choice would be thwarted by revealing to the employer in

advance the names of those employees who desire to designate the Union as their representative for collective bargaining.

The objection of the Mills would be worthy of some consideration if the Board, in reliance upon this testimony and in absence of more, certified the Union as having been selected by the employees without ordering an election. But the hearing in question is merely one step in the investigation. The technical defect in the evidence under discussion becomes insignificant upon the taking of a secret ballot before we certify representatives to the parties.

We have dwelt on the matter of admissibility at some length because at several stages of the hearing, the Mills voiced objection to evidence relating to acts or intentions of employees, on the ground that such evidence was hearsay and therefore inadmissible. In the light of the scope of this hearing, we consider that the testimony objected to was not prejudicial to the Mills, and we do not rely on this evidence except for its corroborative value. The rulings of the Trial Examiner with respect to the admissibility of such evidence are therefore sustained by the Board.

(b) The Secretary-Treasurer further testified that in September, 1934, 201 employees of the Mills were members of the Union. The Union therefore is not new to the employees.

(c) Meetings of the Union have been held regularly twice a week, in a hall rented by the Union for the purpose. It appears that the average attendance at the meetings is about 40, although the precise average cannot be ascertained. However, a sufficiently large regular attendance is shown to justify the conclusion that there is a substantial interest in the affairs of the Union. The Mills contends that the employees are "satisfied", and that the petition for certification is based on the desire of one or two disgruntled persons to agitate and cause trouble to the Mills. In addition to the fact that no evidence was produced at the hearing to show the truth of this contention, it is clear that a sufficient interest in the Union exists among a substantial number of employees to impel them regularly to attend Union meetings and participate in Union affairs.

(d) At a meeting of the Union on September 7, 1935, a committee was elected to confer with the management concerning working conditions (Exhibit B-12). Approximately 50 employees of the Mills attended this meeting.

On the basis of the above evidence, we conclude that a substantial number of employees of the Mills are members of and interested in the Union.

2. The second point tending to show that a substantial question concerning representation for collective bargaining has arisen lies in the existence of a state of unrest and uncertainty among the employees of the Mills.

(a) Many employees of the Mills have complained to Union officials concerning stretching out of the work load, long and irregular hours and, in certain instances, low wages. The testimony on this point was corroborated by two employees who testified at the hearing.

(b) Considerable confusion has arisen among the employees by reason of several documents or petitions which have from time to time circulated among them. A paper was circulated by the Union asking the employees to list instances of stretch-out, increases in hours, and decreases in wages. Subsequently, a paper was circulated and signed by a number of employees authorizing the Union to represent them. Thereafter, a paper, prepared by the attorney for the Mills, was circulated among the employees stating that the signers did not wish to be represented by anybody for collective bargaining.

The attendant confusion is exemplified by the testimony of a witness for the Mills, who characterized the statement authorizing representation, which she had signed, as "some kind of labor trouble papers" and as "something on a complaint of a stretch-out system". The flood of statements and counter-statements has not only confused the employees but has led to unrest among them. This is clearly shown by the fact that the Executive Vice President of the Mills testified that many employees did not know what they had signed. In fact, the Mills itself subsequently circulated a statement repudiating the Union, which was signed by a number of employees who had previously authorized the Union to represent them. It should be noted that this statement was passed around among the employees during working hours, in the presence of a foreman.

The advantages and fairness of the secret ballot could not be more clearly illustrated than by this testimony concerning the welter of confusion and uncertainty. The Mills contended that the authorization signed by a number of employees was obtained through misrepresentation and mistake. The employees at the hearing contended that the repudiation statement was obtained by coercion or intimidation in that it was circulated either by a foreman or in his presence. Another implication of the dissatisfaction and confusion among the employees is the danger of strife so long as the live question of representation remains unanswered. The device of investigation and election established by Section 9 (c) is designed to eliminate one of the most potential causes of strife and labor disputes, typified by the situation existing among the employees of the Mills.

3. The third point tending to show that a question concerning representation has arisen is based upon the evidence that the Union has endeavored to confer with the management on behalf of a number of employees asserted to be a majority, and the management has

refused to meet with them, apparently on the ground that the Union does not represent a substantial number of employees.

The Union negotiation committee was selected by approximately 50 employees at a meeting held on September 7, 1935. The committee on September 14 requested a meeting with the management to confer regarding a proposed agreement submitted to the management on the same date (Exhibit B-9). The Mills, through its Executive Vice President, replied on September 17, advising the committee that "on a very recent occasion practically all employees of the respondent voluntarily expressed in writing, signed by themselves, their appreciation of the attitude of the Mills toward them \* \* \*." The management refused to meet with the committee (Exhibit B-10).

If the above quoted excerpt has any significance whatever, it is that the management intended to deny that the committee actually represented a substantial number of employees. The signed statement referred to in the Mills' letter was in fact merely a letter from the employees to the management requesting that if possible the Mills be kept running and promising "to do our part to try and improve our work and get better production" (Exhibit R-5). This letter was a response to a statement made by the superintendent to the employees that the Mill was operating at a loss and that it might prove necessary to shut it down.

The Mills appears to rely heavily upon this statement, signed by some 124 employees, as showing that they were "satisfied", which in turn, is taken to indicate that they did not desire to be represented for collective bargaining. Neither of these deductions appears to be warranted, in view of the surrounding circumstances.

It is clear, therefore, that the only reasonable inference from the argument of the Mills on this point is that the management does not believe that a substantial number of employees are in fact represented by the Union. Thus a question concerning representation is squarely presented.

### III. WHETHER THE QUESTION CONCERNING THE REPRESENTATION OF EMPLOYEES WHICH HAS ARISEN IS A QUESTION AFFECTING COMMERCE

The Mills manufactures yarn for use by hosiery and underwear knitting mills. The yarn is manufactured from cotton, substantially all of which is grown in the State of Georgia, although the kind of cotton used by the respondent, "North Georgia growth", is also grown in Alabama and purchases have been made by the Mills of cotton grown in that state. The processed yarn is sold direct to knitting mills situated in Georgia, Tennessee, Alabama, Mississippi, Minnesota, and New York. Approximately 620,000 pounds of yarn

produced by the Mills in the period from September 1, 1934 through October 31, 1935 were shipped to knitting mills outside the State of Georgia, this amount representing 44% of the production during that period. The Mills had on its payrolls about 246 employees on November 2, 1935, and was operating approximately one shift and **a half.**

The Mills has no exclusive selling contracts, and its customers buy yarn from cotton mills situated in Georgia and other states.

A stoppage of work in the Mills would necessarily curtail or shut off the flow of the manufactured product to knitting mills in other states. The previous labor history of the Mills shows this to be true. A strike took place in the Mills in September, 1934, involving stoppage of work and a resulting diminution in the flow of processed cotton to other states.

We conclude that the question concerning representation which has arisen is a question affecting commerce.

#### IV. THE APPROPRIATE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING AND EMPLOYEES ELIGIBLE TO PARTICIPATE IN ELECTION

Pursuant to Section 9(b) of the Act, we have the duty to decide what, in this case, constitutes the unit appropriate for the purposes of collective bargaining. The Union is open to all employees, except the supervisory and clerical force, of the Mills. The Mills has raised no question concerning the appropriate bargaining unit, and it is clear that in this case all employees of the Mills, except the supervisory and clerical force, constitute the appropriate bargaining unit.

It appears that prior to August 15, 1935 the Mills was operating on one shift and employed approximately 160 to 170 employees. After that date, the force was increased, and on November 2, 1935, two days before the hearing, 246 employees were on the company payroll (Exhibit B-14). The Executive Vice President of the Mills testified that most of the employees added to the payrolls after August 15 were persons who had previously worked for the company.

No objection was raised by the Mills or by the Union to taking a secret ballot of the employees on the payroll of November 2, 1935, and we perceive no reason for depriving all such employees, except the supervisory and clerical force, of the right to vote in the election.

#### CONCLUSION

In view of all the above evidence, we are of the opinion that there has arisen a question affecting commerce concerning the representation of the employees of the Mills. We believe this to be a situa-

tion in which the device of an election is admirably designed to give to the employees a free and clear choice, without the possibility of confusion or intimidation. No more democratic method can be conceived, by us, nor one more suited to the modes of thought and the habits of our society. It is all the more desirable when, as here, there is a state of unrest and confusion existing among the employees which, if allowed to proceed unchecked, gravely threatens to result in strife. The Committee on Labor of the House of Representatives, in reporting the National Labor Relations Act said, apropos of Section 9(c):

“Obviously the Board should not be required to wait until there is a strike or immediate threat of strike. Where there are contending factions of doubtful or unknown strength, or the representation claims of the only organized group in the bargaining unit are challenged, there exists that potentiality of strife which the bill is designed to eliminate by the establishment of this machinery for prompt, governmentally supervised elections” (Report No. 1147, 74th Congress, at pp. 22-23).

We are of the opinion that the petition for certification filed by the Union presents a question which falls squarely within the limits and purposes of Section 9(c).

#### FINDINGS OF FACT

1. The Gate City Cotton Mills is and has been since April 20, 1900, a corporation organized and existing under the laws of the State of Georgia, and is, and at all times since said date, has been engaged in the manufacture of cotton yarn which it sells direct to knitting mills. The Gate City Cotton Mills has its general offices in Atlanta, Georgia, and its mill site in East Point, Georgia. As of November 12, 1935, it employed 246 persons engaged in manufacturing operations (Exhibit B-14).

2. The Gate City Cotton Mills sells and ships 44% of its output to states other than Georgia (Exhibit B-16). The Gate City Cotton Mills purchases raw cotton from growers and merchants, processes the cotton into yarn, and sells the yarn to knitting mills located in Georgia, Tennessee, Alabama, Mississippi, Minnesota, and New York. These knitting mills also purchase yarn from competitors of the Gate City Cotton Mills located in states other than Georgia.

3. The United Textile Workers of America, Local No. 1938 is a labor organization which obtained a charter on September 22, 1933, as a local labor union affiliated with the United Textile Workers of America. The employees, except the supervisory and clerical force, of four plants, including the Gate City Cotton Mills, are eligible for membership in United Textile Workers of America, Local 1938.

4. The employees on the payroll of the Gate City Cotton Mills on November 2, 1935, except the supervisory and clerical force, constitute the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The United Textile Workers of America, Local No. 1938 has been selected by a substantial number of employees of the Gate City Cotton Mills.

6. By letter dated September 14, 1935, the United Textile Workers of America, Local No. 1938, through a special committee designated for the purpose at a union meeting held on September 7, 1935, requested the Gate City Cotton Mills to grant a conference for the purpose of negotiating an agreement, a draft of which was enclosed in said letter (Exhibit B-9). The committee stated that it represented a majority of the employees of the Gate City Cotton Mills.

7. The Executive Vice President of the Gate City Cotton Mills replied by letter dated September 17, 1935, that the employees of the Gate City Cotton Mills were content with their treatment, and that in no event would the Gate City Cotton Mills enter into an agreement with any group of employees "in respect to the conduct of" the business of the Gate City Cotton Mills (Exhibit B-10).

8. Numerous petitions and statements have been circulated among the employees by the management of the Gate City Cotton Mills as well as by the United Textile Workers of America, Local No. 1938, and confusion exists in the minds of the employees as to the documents which they have signed and the effects thereof. The employees have at no time had an opportunity to vote on acceptance or rejection of the United Textile Workers of America, Local No. 1938 as their representative for the purposes of collective bargaining (Exhibit R-4, p. 11).

9. The Gate City Cotton Mills denies that the Union represents a substantial number of employees; the United Textile Workers of America, Local No. 1938 claims representation of a majority. These conflicting assertions have given rise to a question concerning the representation of employees, which question is rendered the more difficult to resolve by reason of the confusion existing among the employees, arising from petitions and counter-petitions, authorizations signed and repudiated.

10. A question concerning representation has arisen among the employees of the Gate City Cotton Mills within the meaning of Section 9 (c) of the Act.

11. The question concerning representation which has arisen is a question affecting commerce in that continuance of the present uncertain situation among the employees of the Gate City Cotton Mills is conducive to discord, and tends to lead to labor disputes, industrial strife and unrest. This in turn would have the necessary effect of

burdening or obstructing commerce and the free flow of commerce by materially affecting, restraining or controlling the free flow of cotton to the Gate City Cotton Mills and of the free flow of yarn from the Gate City Cotton Mills.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 of the National Labor Relations Act, approved July 5, 1935, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations, Series 1, it is

DIRECTED that, as part of the investigation authorized by the Board in the above case to ascertain representatives for collective bargaining with the Gate City Cotton Mills, East Point, Georgia, an election by secret ballot shall be conducted within a period of one week from the date of this decision under the direction and supervision of the Regional Director, Tenth Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations, among the employees, except the clerical and supervisory force, on the payroll of the Gate City Cotton Mills, on November 2, 1935, and those employed between that date and the date of this decision, excepting supervisory and clerical employees and those who quit or have been discharged for cause during such period, to determine whether or not they desire to be represented by Local No. 1938 of the United Textile Workers of America.