

In the Matter of DWIGHT MANUFACTURING COMPANY and LOCAL
No. 1878, UNITED TEXTILE WORKERS OF AMERICA

Case No. R-9—Decided March 9, 1936

Cotton Textile Industry—Interference, Restraint or Coercion: expressed opposition to labor organization, threats of retaliatory action; surveillance of union meetings and activities—*Discrimination: discharge—Company-Dominated Union:* domination and control of administration; discrimination in favor of; financial or other support—*Unit Appropriate for Collective Bargaining:* production employees—*Election Ordered:* question affecting commerce: confusion and unrest among employees—controversy concerning representation of employees: request by substantial number in appropriate unit; rival organizations; substantial doubt as to majority status.

Mr. Thomas I. Emerson and Mr. Walter G. Cooper, Jr., for the Board.

Goodhue & Lusk, of Gadsden, Ala., for the Company.

Mr. W. G. Rains, of Gadsden, Ala., for Local No. 1878.

Mr. Borden Burr, of Birmingham, Ala., for Dwight Employees Association, and for certain individual employees, intervenors.

DECISION

STATEMENT OF CASE

On November 4, 1935, Local No. 1878, United Textile Workers of America (hereinafter called Local No. 1878), filed with the Regional Director for the Tenth Region a petition for an investigation and certification of representatives pursuant to Section 9, subdivision (c) of the National Labor Relations Act, approved July 5, 1935. The petition stated that Local No. 1878 represented 1600 out of 1800 production employees of the Dwight Manufacturing Company (hereinafter called the Company); that the "Dwight Mutual Aid Association" (the correct name is Dwight Employees Association) also claimed to represent such employees; that the Company disputed the claim of Local No. 1878 to a majority; and that a question affecting commerce concerning representation had arisen.

On November 14, 1935, the Board, acting pursuant to Section 9, subdivision (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing upon due notice. Pursuant to such

authorization, the Regional Director on December 5, 1935, issued and duly served upon the parties a notice setting a hearing at Gadsden, Alabama, for December 19, 1935. By an amended notice of hearing issued December 18, 1935, the hearing was postponed to January 2, 1936, at the same place.

The hearing was held on January 2, 3, 4, 6 and 7, 1936, before Charles W. Bergman, Trial Examiner duly designated by order of the Board. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties.

Local No. 1878 appeared by counsel and participated in the hearing. The Company appeared specially and filed a motion to dismiss the proceedings, based upon constitutional and other objections to the jurisdiction of the Board. The Trial Examiner overruled this motion. Thereupon the Company filed an answer, including allegations in the nature of a plea to the jurisdiction, but took no further active part in the proceedings. The plea to the jurisdiction, after the introduction of evidence by counsel for the Board, was overruled by the Trial Examiner.

The Dwight Employees Association (hereinafter called the Association) likewise appeared specially. Counsel for the Association also filed a motion to intervene on behalf of eight individual employees, which motion was granted. Counsel for the Association and the eight individual employees filed a joint answer and motion to dismiss the proceedings based upon constitutional grounds. The motion was denied. Thereafter counsel for the Association and the eight intervenors participated in the hearing on the merits.

On January 23, 1936, counsel for the Company and counsel for the Association and the eight individual employees appeared and argued orally before the Board in Washington.

The various rulings of the Trial Examiner upon the foregoing motions and the plea are hereby affirmed.

Upon the record in the case, the stenographic transcript of the hearing, and all the evidence including oral testimony, documents and other evidence offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT

1. The Dwight Manufacturing Company is incorporated in Massachusetts, with its principal office in Boston, Massachusetts, and owns and operates a textile mill at Gadsden, Alabama. It employs at this mill approximately 2,190 employees, operating upon three shifts.

2. The Company manufactures khakis, drills, sheetings, satteens, osnaburgs and other textile products.

3. In manufacturing the aforesaid products the Company consumes approximately 1400 to 1500 bales of cotton a week. This cotton is bought on a delivered basis, mostly from the local offices of merchants who have branch offices throughout the cotton producing states, and in smaller amounts from local merchants in Gadsden. Approximately 15 to 17 per cent. is shipped to Gadsden from outside the State of Alabama.

4. In addition to cotton, the Company uses raw materials obtained from different sources, as follows:

(a) Cotton strip, consumed at the rate of 150 bales a week, is obtained half from sources outside of Alabama and half from Alabama.

(b) All the coal used is obtained from Alabama.

(c) Starches, of which about 20 carloads a year are used, are obtained from Illinois.

(d) Tallow, used at the rate of 120 barrels a year, is obtained from Illinois.

(e) Burlap, to the extent of 5 or 6 carloads a year, is all imported from places outside the United States.

(f) Paper, of which the mill consumes about 6 carloads a year, is obtained half from Alabama and half from outside of Alabama.

(g) Machinery and machine supplies are obtained mostly from Massachusetts.

(h) Oil, of which about 150 barrels a year are consumed, is all obtained from outside of Alabama.

5. Cotton shipped to the mill is unloaded and placed in the warehouse. From there it is sent to the opening room and put through the operations of carding, spinning, weaving and intermediate processes. It normally requires about three weeks for a bale of cotton entering the opening room to emerge in the form of woven fabric.

6. The mill produces about one and a quarter million yards of cloth per week, having an average value of twelve cents a yard.

7. All sales of the products of the mill are made through Minot, Hooper & Co., a commission house located in New York City, with branch offices in Boston, Massachusetts, Chicago, Illinois, on the Pacific Coast and all over the world. When Minot, Hooper & Co. makes a sale it notifies the Company, which ships f. o. b. mill to the buyer or to the destination directed by the buyer.

8. Ninety per cent. of all products sold by the Company are shipped to points outside the State of Alabama. Shipments are made to virtually every state in the United States, the principal ones being New York, Ohio, Massachusetts, Missouri and Illinois. Six to seven per cent. of the products are exported to points in foreign countries.

9. The principal products of the mill are disposed of as follows:

(a) Khaki and drills are shipped mainly to points in New York and Ohio and to the cities of Baltimore, Philadelphia, St. Louis and Chicago. At these points the fabric is manufactured into uniforms, clothing, overalls and similar articles, which are in turn distributed all over the country.

(b) Drills to be used as shoe linings are shipped to the shoe manufacturing centers of the country, principally St. Louis and Boston.

(c) Sheeting, produced in the gray at the mill, is shipped to New England, New York, Missouri and North Carolina for finishing.

(d) Auto tire fabric is shipped mainly to Akron, Ohio. Twelve to fifteen per cent. of this product is delivered to a plant located in Gadsden, Alabama.

(e) Osnaburgs, used mostly in the manufacture of bags, are shipped mainly to New Orleans, Chicago and points in the Middle West.

10. Sixty per cent. of the goods produced are manufactured upon special order; the remainder for stock. Under normal conditions there is a continuous flow of shipments from the mill to points in states other than Alabama.

11. Minot, Hooper & Co. advertise the products of the Dwight Manufacturing Company in trade journals which circulate throughout the cotton producing and cotton consuming states.

12. The market for the products of the mill embraces the whole of the textile field that uses the type of goods which the mill produces. The mill competes for markets with virtually every textile mill in the United States which produces the same type of fabric. It competes with more than a hundred such mills located in the Southern states.

13. The wages, hours and working conditions of employees in competing mills affect the business of the Company.

14. A strike occurred in the mill in 1934 which lasted from July 12 to the end of September. In its later stages this strike was merged with the general textile strike of September, 1934. During the period of the strike the mill was closed; there were no operations and no shipments were made; nor did the mill make any sales or receive any orders for goods.

15. The aforesaid operations of the Company constitute a continuous flow of trade, traffic and commerce among the several States, and between the State of Alabama and foreign countries.

16. Local No. 1878 is a labor organization formed among the employees of the mill in the spring of 1933. It is a regularly constituted Local of the United Textile Workers of America, affiliated with the American Federation of Labor.

17. In September, 1934 about 1300 employees, out of some 1500 then working in the mill, were members of Local No. 1878.

18. From September, 1934 until the date of the hearing before the Trial Examiner, the Company, through its representatives and agents, has actively discouraged membership in Local No. 1878 by discharging employees for membership or activity in Local No. 1878, by warning and threatening employees against joining or remaining members of Local No. 1878, by watching meetings of Local No. 1878, and by other means. No charge that the Company has engaged or is engaging in unfair labor practices with respect to the foregoing matters has been filed with the Board.

19. At the time of the hearing, Local No. 1878 was not functioning openly among the employees then working in the mill, but carried on all its activities with respect to such employees in secret. It still carried approximately 1300 employees on its books as members in good standing but few of these had paid dues to date and none attended meetings of the Local.

20. Witnesses testified at the hearing that shortly after the passage of the National Labor Relations Act the Local authorized its president to appoint a secret committee to make a survey of the sentiment among the employees in the plant with regard to holding an election for the selection of representatives under Section 9 (c) of the Act; that a committee of nine members was appointed and did make such a secret survey; that out of 1500 to 1600 employees who were approached, an overwhelming number desired that such an election be held and expressed their wish that they be represented in collective bargaining by Local No. 1878. Although some of this testimony is not entirely credible or convincing, it is sufficient to show that a substantial number of employees desire an opportunity to select representatives under Section 9 (c) of the Act.

21. The Dwight Employees Association was formed among the production employees of the mill in the fall of 1934.

22. At the time of the hearing about 2,122 employees presently employed in the mill were carried as members of the Association. During the progress of the hearing somewhat over 2000 employees signed a petition stating that they wished the Association to represent them in dealings with the Company, that they did not wish Local No. 1878 to represent them, and that they did not wish an election.

23. The Association is dominated and controlled by the Company through the second-hands employed by the Company, who hold the important offices in the Association, solicit membership, collect dues and payments for the sick benefit fund, and otherwise actively participate in its affairs. The Company has consistently favored the Association by furnishing and equipping a meeting place, providing athletic facilities, permitting solicitation of membership and collection of dues in the mill during working hours, and the like. The

Company through its agents and representatives has threatened employees with discharge or other discrimination for failure to join the Association and has otherwise exerted pressure to encourage membership in the Association. No charge that the Company has engaged in or is engaging in unfair labor practices with respect to the foregoing matters has been filed with the Board.

24. The employees have not had the opportunity to make a free choice of representatives for collective bargaining with the Company and the present active membership in Local No. 1878 and the Association does not represent the actual sentiment of the employees in the mill.

25. A question has arisen concerning the representation of employees in the mill. This question tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

26. No question has been raised with respect to the appropriate bargaining unit. The production employees in the mill, that is, all the employees except the clerical and supervisory force (second-hands being included as supervisory), constitute a unit appropriate for the purposes of collective bargaining.

27. The question affecting commerce concerning the representation of the employees of the Company can be settled by a secret ballot conducted by the Board in accordance with Section 9 (c) of the National Labor Relations Act.

CONCLUSIONS OF LAW

Upon the basis of the above findings, the following conclusions of law are made by the Board:

1. The production employees of the Dwight Manufacturing Company—that is, all the employees except the clerical and supervisory force (second-hands being included as supervisory)—constitute an appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

2. A question affecting commerce has arisen concerning the representation of the production employees of the Dwight Manufacturing Company, within the meaning of Section 9 (c) of the 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, 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 this case, an election by secret ballot shall be conducted

under the direction and supervision of Charles N. Feidelson, Regional Director for the 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 production employees in the Gadsden mill of the Dwight Manufacturing Company, except the clerical and supervisory force (second-hands being included as supervisory), on the payroll of the Company on the date of the last payment of wages immediately preceding the date of this Direction, to determine whether they desire to be represented for the purposes of collective bargaining by the Dwight Employees Association or Local No. 1878, United Textile Workers of America, said election to be held within ten (10) days after the production by the Dwight Manufacturing Company of its payroll lists in accordance with the subpoena issued by the Board on March 9th, 1936.

[SAME TITLE]

AMENDED DIRECTION OF ELECTION

March 16, 1936

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, 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 this case, an election by secret ballot shall be conducted under the direction and supervision of Charles N. Feidelson, Regional Director for the 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 production employees in the Gadsden mill of the Dwight Manufacturing Company, except the clerical and supervisory force (second-hands being included as supervisory), on the payroll of the Company on the date of the last payment of wages immediately preceding the date of this Direction, to determine whether they desire to be represented for the purposes of collective bargaining by the Dwight Employees Association or Local No. 1878, United Textile Workers of America, said election to be held within ten (10) days after the production by the Dwight Manufacturing Company of its payroll lists in accordance with the subpoena issued by the Board on March 14, 1936.

MR. SMITH took no part in the consideration of the above Amended Direction of Election.