

In the Matter of THE AXTON-FISHER TOBACCO COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 681, and TOBACCO WORKERS' INTERNATIONAL UNION, LOCAL No. 16

Case No. R-5

In the Matter of BROWN AND WILLIAMSON TOBACCO CORPORATION *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 681, and TOBACCO WORKERS' INTERNATIONAL UNION, LOCAL No. 185

Case No. R-6

Decided April 23, 1936

Tobacco Products Industry—Labor Organization: Board will not intervene in internal affairs of—*American Federation of Labor—Jurisdictional Dispute—Unit Appropriate for Collective Bargaining:* Board will not determine where only question involved is one of internal affairs of labor organization—*Petition for Investigation and Certification of Representatives:* denied.

Mr. Ralph A. Lind for the Board.

Mr. Ernest Woodward, of Louisville, Ky., for the Axton-Fisher Tobacco Co.

Mr. H. M. Robertson, of Louisville, Ky., for Brown and Williamson Tobacco Corp.

Mr. O. R. Strackbein, of Washington, D. C., and *Mr. E. Lewis Evans*, of Louisville, Ky., for Tobacco Workers' International Union, Locals No. 16 and No. 185.

Mr. Stanley S. Surrey, of counsel to the Board.

DECISION

STATEMENT OF CASE

A stipulation was entered into between the above-named parties in Case No. R-5 whereby all agreed that a question affecting commerce within the meaning of Section 9 (c) of the National Labor Relations Act had arisen concerning the representation of the machinists employed by the Axton-Fisher Tobacco Company. All of the parties further consented to the jurisdiction of the National Labor Relations Board to conduct a hearing for the purpose of determining the appropriate bargaining unit under the circumstances of the case and of certifying the representatives of said machinists pur-

suant to Section 9 (a), (b) and (c) of said Act. A similar stipulation was entered into in Case No. R-6, which involves the machinists employed by the Brown and Williamson Tobacco Corporation. Pursuant to these stipulations, the National Labor Relations Board on January 13, 1936 ordered that an investigation be conducted and an appropriate hearing be held in each case in accordance with Section 9 (c) of the Act and Article III, Section 11 of National Labor Relations Board Rules and Regulations—Series 1. In consequence of such orders notices of hearings to be held on February 3 and 4, 1936 were duly served upon the respective parties. Said hearings were thereafter postponed until February 10 and 11, 1936. On said dates, hearings were held at Louisville, Kentucky by Edwin S. Smith, the Trial Examiner duly designated by the Board, and testimony was taken. Full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties.

While the two cases have not been consolidated, in view of the identity of the problems involved it is appropriate that they be considered together in one decision. Upon the respective records in the cases, the stenographic transcript of the hearings, and all the evidence, including oral testimony, documents and other evidence offered and received at the hearings, the Board makes the following respective findings of fact:

FINDINGS OF FACT

A. CASE NO. R-5

The Axton-Fisher Tobacco Company, hereinafter referred to as the Axton-Fisher Company, is a corporation engaged in the manufacture of cigarettes and other tobacco products at a plant in Louisville, Kentucky. As of January 28, 1936, 706 workers were employed at that plant. The preponderant majority of these workers, 640 in number, consisted of groups of employees performing various tasks involved in the manufacture of tobacco products and known as "tobacco workers." The remainder consisted of skilled and semi-skilled craftsmen—machinists, carpenters, electricians, plumbers, painters, teamsters, tanners, cooks and waitresses and firemen. Classified by the Axton-Fisher Company among the "tobacco workers" are 16 machine fixers, 8 oilers and greasers, 2 knife grinders and 130 tobacco machine operators. The machine fixers are employees who, with only a few exceptions, have graduated from the ranks of the machine operators and whose duties consist of supervising the performance of the machines to ensure their continuous and effective operation. They are qualified to make running repairs on these machines, to remove broken

parts and to replace them with new parts. However, they do not work in the machine shop and are not qualified to repair broken parts that are removed. Their training does not qualify them to be machinists and they do not receive promotion in that direction.

The Tobacco Workers' International Union, Local No. 16, as its name implies is a local of a labor organization that is organized as an international union upon a semi-industrial basis, admitting tobacco workers to membership. Local No. 16, hereinafter referred to as the Tobacco Workers' Union, is affiliated through the parent body with the American Federation of Labor.

The International Association of Machinists, Local No. 681, hereinafter referred to as the Machinists Union, is a labor organization. It is a local of the international union of that name affiliated with the American Federation of Labor. The Union is organized on a craft basis and admits machinists from all industries and trades.

Out of the 706 employees, 650 are members of the Tobacco Workers' Union. The Axton-Fisher Company has operated on a closed shop basis since 1899 and requires each employee to have a membership card in some recognized union. Prior to 1932 all of the employees were members of the Tobacco Workers' Union and the Axton-Fisher Company dealt with that Union, agreements being regularly concluded between the two parties. In 1932 the Tobacco Workers' Union recognized the jurisdiction of the various American Federation of Labor craft unions and many of the craft employees left the Tobacco Workers' Union to join their respective craft unions. In 1933 the machinists took similar action, leaving the Tobacco Workers' Union and joining the Machinists Union. The Axton-Fisher Company continued to bargain collectively with the Tobacco Workers' Union and to enter into written agreements with it, but in addition entered into verbal agreements with the representatives of those craft unions that desired such agreements. However, the only written wage contract entered into by the Axton-Fisher Company was with the Tobacco Workers' Union. Since 1933 the Machinists Union has attempted to obtain a separate written agreement with the Axton-Fisher Company applicable to the machinists and the machine fixers. The Axton-Fisher Company has refused to enter into such a contract for reasons that will be stated later. In December, 1935, the Axton-Fisher Company again entered into a written contract with the Tobacco Workers' Union to run for two years. The wages of the machine fixers are fixed in this contract.

The Tobacco Workers' Union, as stated above, recognized the jurisdiction of the Machinists Union over the machinists employed by the Axton-Fisher Company. However, both Unions claim exclusive jurisdiction over the "machine fixers" and their conflicting

claims constitute one of the issues in this case. At present, some of the machine fixers belong to the Tobacco Workers' Union, some to the Machinists Union and some to both Unions.¹ The constitution of each Union supports the respective claim.

Briefly, and solely to point the problem, the contentions of each Union regarding the machine fixers are as follows: The Machinists Union states that the machine fixers perform duties that are related to the work of machinists—the adjustment and repair of machines. The Tobacco Workers' Union states: (1) That as machine fixers graduate from the ranks of the tobacco machine operators their prior membership will have been in the Tobacco Workers' Union, so that if the claim of the Machinists Union were upheld these fixers would upon their promotion from operators be compelled to resign their membership in the former Union, forego sick benefits and seniority accrued during such membership and join a new union as new members. If a tobacco machine fixer is laid off or discharged by one company, he can gain somewhat equivalent employment in the trade elsewhere only as a fixer or an operator. Accordingly, accrued seniority as a tobacco worker is important to him; (2) The work of the machine fixers is not of a skilled type and does not qualify them to be machinists so that they cannot ever hope to gain such skilled employment. Consequently, there is no reason for them to join a union which represents a craft to which they can never attain; (3) With the exception of one other tobacco plant, union machine fixers elsewhere belong to the Tobacco Workers' Union; (4) In other industries, such as the textile industry, machine fixers belong to the union having jurisdiction over the basic occupations rather than to the Machinists Union. The claim of the Tobacco Workers' Union is supported by the Axton-Fisher Company. There has been no ruling on the question by the American Federation of Labor.

The apparent issue between the Machinists Union and the Axton-Fisher Company is whether the machinists (whether the term includes only the machinists proper or both the machinists proper and the machine fixers) constitute an appropriate unit for collective bargaining with the Axton-Fisher Company. The Machinists Union contends that they do on the basis of both labor history and present occupational differences. The Axton-Fisher Company asserts that the entire plant should be declared the unit here appropriate for collective bargaining in view of the preponderant membership in the Tobacco Workers' Union—over 90%—and the history of collective bargaining in the plant. However, in November, 1935, the

¹ In addition to the machine fixers, the two knife grinders, now members of the Tobacco Workers' Union, are claimed by both Unions. Since the problems are essentially the same, reference hereafter will be made only to the machine fixers.

Axton-Fisher Company offered to enter into a written agreement with the Machinists Union provided that the agreement did not cover the fixers, but the Machinists Union refused. Moreover, it does deal with a shop committee representing the machinists. The Tobacco Workers' Union does not dispute either the jurisdiction of the Machinists Union over the machinists proper or its claim to bargain collectively with the Axton-Fisher Company for that group.

B. CASE NO. R-6

The Brown and Williamson Tobacco Corporation, hereinafter referred to as the Brown and Williamson Corporation, is a corporation engaged in the manufacture of cigarettes and other tobacco products at various plants. The plant located at Louisville, Kentucky, is the one involved in this case. At the time of the hearing, 2,684 employees were employed at this plant. Of these 2,451 were employees of the type described above as "tobacco workers" and belonged to the Tobacco Workers' Union. The remainder of the employees consisted of craftsmen of various types—machinists, carpenters, painters, pressmen, bookbinders, electricians, etc.

The Louisville plant was organized in the fall of 1933 by the Tobacco Workers' Union. However, as that body did not claim jurisdiction over the crafts, it encouraged the various craft unions to enroll the respective craftsmen. A contract was executed between the Tobacco Workers' Union and the Brown and Williamson Corporation in December, 1933. In December, 1935 a new contract was negotiated between the same parties to run for a two-year period. The Brown and Williamson Corporation is operated on a closed shop basis; i. e., it does not employ any person not a member of a local of the Tobacco Workers' International Union unless such person is a member of some other union affiliated with the American Federation of Labor.

The machinists proper employed by the Brown and Williamson Corporation are members of Local No. 681 of the International Association of Machinists, hereinafter referred to as the Machinists Union. In addition practically all of the machine fixers (including the knife grinders) are also members of that Union, since Local No. 185 of the Tobacco Workers' International Union, the Local at the Louisville plant and hereinafter referred to as the Tobacco Workers' Union, at the outset conceded the claim of the Machinists Union to jurisdiction over that group. However, the parent body, the Tobacco Workers' International Union, never officially relinquished its claim to jurisdiction over the machine fixers and it asserted that claim for its local at the hearing. The conflicting claims of the Tobacco Workers' Union and the Machinists Union to jurisdiction over these machine

fixers constitutes the issue between the two Unions. The contentions of each are the same as outlined under Case No. R-5.

Likewise, as in the other case, the apparent issue between the Brown and Williamson Corporation and the Machinists Union is whether the machinists constitute an appropriate unit for collective bargaining with the Corporation. The Machinists Union proposed a contract covering both the machinists and the machine fixers, but the Brown and Williamson Corporation did not accept it. The jurisdiction of the Machinists Union over the machinists proper and its claim to represent them are not contested by the Tobacco Workers' Union.

CONCLUSION

The main issue in these cases is the jurisdictional contest between the International Association of Machinists and the Tobacco Workers' International Union, both represented by local unions in each plant. Each Union claims that it has "jurisdiction" over the machine fixers, the claims being based upon the respective charters issued by the American Federation of Labor and the pattern of labor organization in this country.

A brief description of certain aspects of the structure of the American Federation of Labor will make clear the nature of such a contest.² That organization is a federation of national and international labor unions. The member unions possess complete autonomy as regards their internal affairs. However, a significant portion of their relationships to one another are regulated by the Federation. These unions represent organizations of various types, roughly divided as follows: organizations of craftsmen of identical skill and training working in different trades and industries—the pure craft unions; organizations of workers in interrelated crafts and processes or in closely allied trades that are competitive in character (e. g., building, metal and machine trades)—the compound craft unions; organizations of workers engaged in the basic occupations of an entire industry or a major branch thereof, but in which craft lines are maintained among the various groups of members—the amalgamated or semi-industrial unions; and, finally, organizations of workers on the basis of product made or materials used, regardless of craft or skill—the pure industrial unions.³ Since each organization claims that it alone represents the group of workers from which its members are

² In general, see Lorwin, *The American Federation of Labor* (1933); Ware, *Labor in Modern Industrial Society* (1935) Ch. XII; Hoxie, *Trade Unionism in the United States* (1923) Ch. V; Bureau of Labor Statistics, *Handbook of American Trade-Unions* (November, 1929).

³ Lorwin, *op. cit. supra*, at 305-6. For a somewhat different terminology applied, to the same general classifications, see Twentieth Century Fund, *Labor and the Government* (1935) 33-38.

drawn, the likelihood of jurisdictional disputes is obvious and their importance undeniable.

The desire to maintain stability of relationships and to adjudicate peacefully those jurisdictional disputes that do arise is one of the factors that holds the member unions together in the Federation.⁴ That body issues a charter to each of the unions affiliated with it in which the "jurisdiction" of that union is defined. The Constitution of the Federation provides in Section 11 of Article IX that:

"No charter shall be granted by the American Federation of Labor to any National, International, Trade, or Federal Labor Union without a positive and clear definition of the trade jurisdiction claimed by the applicant, and the charter shall not be granted if the jurisdiction claimed is a trespass on the jurisdiction of existing affiliated unions, without the written consent of such unions; no affiliated International, National, or Local Union shall be permitted to change its title or name, if any trespass is made thereby on the jurisdiction of an affiliated organization, without having first obtained the consent and approval of a Convention of the American Federation of Labor; and it is further provided, that should any of the members of such National, International, Trade or Federal Labor Union work at any other vocation, trade, or profession, they shall join the union of such vocation, trade, or profession, provided such are organized and affiliated with the American Federation of Labor."

Such charters are sufficient to regularize to a large extent the basic jurisdictional questions. However, boundary line questions continue to arise as a result of ambiguous or overlapping charters and changes in industrial techniques and trends. Since the charters are issued by it, the Federation possesses authority to decide such questions, acting through its annual conventions or its Executive Council in the periods between such conventions.

Jurisdictional disputes are thus no new phenomenon and many have been presented to the Federation for settlement. Between 1917 and 1925 the Executive Council and the Conventions of the Federation handled about 150 jurisdictional cases. Fifty-two more were considered between 1925 and 1931. Many were disputes of long standing.⁵ Some of these jurisdictional disputes are settled by inter-union agreements, some by amalgamations of the contesting parties;⁶ some by the creation of "departments" within the Federation, such as the

⁴ Lorwin, *op. cit. supra*, at 324; Twentieth Century Fund, *op. cit. supra*, at 32.

⁵ Lorwin, *op. cit. supra*, at 340, 342.

⁶ *Ibid.*, at 489-491, 342-3.

Building Trades Department or the Metal Trades Department.⁷ Many disputes have never been settled, but are permitted to continue through innumerable conferences in the hope of possible settlement.⁸

Thus the National Labor Relations Act did not give rise to these problems. They occurred before,⁹ they will doubtless occur again, and they have prompted the majority of labor organizations in this country to establish a procedure of their own creation and management for their solution. While the Act provides a new vocabulary in which such jurisdictional disputes may be described, it does not alter their nature. The instant case affords an apt illustration. The Machinists Union claims that the machinists proper and the machine fixers constitute together a "unit appropriate for the purposes of collective bargaining" in the terminology of Section 9 (b). The Tobacco Workers' Union contends that the tobacco workers and the machine fixers belong together and as such constitute an appropriate unit, as do the machinists alone. But such use of the Act's terminology does not disguise the real issue. Since both employers operate on a closed shop basis, each employee in the plants must join some union. Obviously, a craftsman will join the union to which other members of his craft belong and which is recognized by the American Federation of Labor as having jurisdiction over that craft. As long as the Machinists Union has recognized jurisdiction over machinists in the tobacco industry, a machinist will belong to that Union. Similarly, a decision by the American Federation of Labor on the jurisdictional question involving the machine fixers would determine to which organization they will choose to belong, unless for some reason the parent body is defied. Consequently, the issue remains as simply a jurisdictional dispute between two labor organizations. Each recognizes the jurisdictional character of the other—tobacco workers and machinists; the question involves only the drawing of a precise boundary line.

In *In the Matter of Aluminum Company of America*, decided April 10, 1936, the Board was concerned with a petition for certification in which the principal question was whether the local officers or the officials of the American Federation of Labor should represent a Federal labor union in its dealings with the employer. We refused to act upon such a petition and dismissed it, saying:

"The real question is therefore who represents and speaks for the Alcoa Union and not whether that Union represents a majority of the employees at Alcoa. The Board feels that the question is not for it to decide. Such a question, involving solely

⁷ Handbook of American Trade-Union, op. cit. *supra*, at 8-13; Lorwin, op. cit. *supra*, Ch. XIV; Hoxie, op. cit. *supra*, at 122.

⁸ Lorwin, op. cit. *supra*, at 341, 345; Ware, op. cit. *supra*, at 496

⁹ For examples, see Lorwin, op. cit. *supra*, at 341, 508 et seq., 516, 525, 536.

and in a peculiar fashion the internal affairs of the American Federation of Labor and its chartered bodies, can best be decided by the parties themselves. The availability of the Board as a convenient forum for the airing of such problems would induce the parties to present them to the Board without first having made any real attempt to compose their differences among themselves. The consequent accumulation of cases on its docket would considerably hamper the work of the Board. Nor do we feel that the petitioner itself after a full consideration of the implications of its request would desire the Board to pass judgment upon such matters.

"It is preferable that the Board should not interfere with the internal affairs of labor organizations. Self-organization of employees implies a policy of self-management. The role that organizations of employees eventually must play in the structure established by Congress through that Act is a large and vital one. They will best be able to perform that role if they are permitted freely to work out the solutions to their own internal problems. In its permanent operation the Act envisages cohesive organizations, well-constructed and intelligently guided. Such organizations will not develop if they are led to look elsewhere for the solutions to such problems. In fine, the policy of the National Labor Relations Act is to encourage the procedure of collective bargaining and to protect employees in the exercise of the rights guaranteed to them from the denial and interference of employers. That policy can be best advanced by the Board's devoting its attention to controversies that concern such fundamental matters."¹⁰

That decision is fully applicable here. Both of the labor organizations involved in the instant cases are affiliated with the American Federation of Labor and possess charters from that body. In view of the structure of that body, the instant controversy is simply a dispute involving the internal affairs of a labor organization, here the American Federation of Labor. That dispute resembles the hundreds of other jurisdictional questions handled by the Federation and is clearly of a type which it has power to decide. There thus exists a

¹⁰ See also *In the Matter of Rabhor Company, Inc.*, decided April 7, 1936, in which the Board held that testimony offered to prove that employees were induced to strike by false statements and promises of union organizers was irrelevant, since the contention of the employer that such conduct relieved him of the duty to bargain collectively was erroneous. It said: "Where groups are to be organized and moved into action it is not unusual for the leaders to promise more than can be secured or to indulge in some exaggeration. Indeed, it is one of the functions of collective bargaining to eliminate the misunderstandings that are bound to arise in these struggles and to resolve demands into what can be achieved. The Act does not give to us the mandate to examine the speeches and the conduct of those whom the employees choose to follow, and to determine whether, in our opinion, they are worthy to lead. That is for the workers alone to decide."

body to which these two organizations belong and which has the authority to render a binding decision on the dispute between them. Under such circumstances, the Board is of the opinion that it should not intervene in the dispute for the reasons stated in the *Aluminum Company* case.

It is perhaps unnecessary to point out that the internal dispute presented in these cases is merely one of many now existing within the American Federation of Labor and other organizations of labor. Some of these disputes, obviously difficult of solution, are far-reaching and fundamental to the labor movement; others are small by comparison. But in either case, it is preferable that in the light of the declared policy of Congress—"the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing"—the Board should leave organizations of labor free to work out their own solutions through the procedure they themselves have established for that purpose.

The subsidiary issue in this case concerns the question of whether the "machinists" are an appropriate bargaining unit separate from the other employees in these plants. The two employers apparently are of the opinion that they do not constitute such a unit; the Machinists Union in its attempts to bargain with these employers asserts the contrary proposition. But in both cases the attempted bargaining between the respective employers and the Machinists Union has floundered on the preliminary question of what is a "machinist"—the Machinists Union contending that the term includes machine fixers and the employers restricting it to machinists proper. If the Tobacco Workers' Union and the Machinists Union were to settle their controversy on that point it is possible that the latter Union could then reach an understanding with the employers. The record contains evidence indicating that such a belief is more than mere speculation. Consequently, in view of the determination not to interfere in the dispute between the two Unions, the Board is of the opinion that it should refrain at this time from passing on the subsidiary issue. Accordingly, the Board will not certify any representatives in these two cases nor determine the appropriate bargaining unit.