

In the Matter of FITZGERALD COTTON MILLS and TEXTILE WORKERS
ORGANIZING COMMITTEE

Case No. R-482.—Decided January 21, 1938

Cotton Textile Industry—Investigation of Representatives: controversy concerning representation of employees; substantial doubt as to majority status created by failure to introduce union membership cards—*Unit Appropriate for Collective Bargaining:* production employees, exclusive of clerical and supervisory employees; no controversy as to—*Election Ordered*

Mr. M. A. Prowell, for the Board.

Mr. J. C. McDonald, of Fitzgerald, Ga., for the Company.

Mr. Alton Lawrence, of Columbus, Ga., for the T. W. O. C.

Mr. S. G. Lippman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 24, 1937, Textile Workers Organizing Committee, herein called the T. W. O. C., 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 Fitzgerald Cotton Mills, Fitzgerald, Georgia, 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 November 8, 1937, 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.

On December 3, 1937, the Regional Director issued a notice of hearing and an amended notice of hearing on December 8, 1937, copies of which were duly served upon the Company and the T. W. O. C. Pursuant to the notice, as amended, a hearing was held on December 10, 1937, at Fitzgerald, Georgia, before D. Lacy McBryde, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel and the Union

was represented by the Regional Director for the T. W. O. C. All participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the hearing, the Company filed a special appearance asking a dismissal of the petition on the ground that the Board was without jurisdiction and on the ground that any proceeding under the petition would be in violation of the first amendment of the Constitution. The Board has reviewed the special appearance and finds it to be without merit. The request for dismissal of the petition is hereby denied. The Company also filed an answer which denied that the T. W. O. C. represented a majority of the employees of the Company or that the T. W. O. C. had requested the Company to recognize it as the bargaining representative of the employees.

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

The Fitzgerald Cotton Mills, a Georgia corporation, is engaged in the manufacture, sale, and distribution of cotton cloth. The Company's principal office and plant are located at Fitzgerald, Georgia. On July 24, 1937, the Company employed 376 people.

The principal raw material used in the Company's business is cotton. All of the cotton used by the Company is produced within a radius of fifty miles of Fitzgerald, Georgia. The Company, however, obtains 25 per cent of its machinery parts from points outside of Georgia. The Company also uses mill supplies valued at approximately \$52,000, and approximately 50 per cent of such supplies are secured from sources outside of Georgia.

The Company produces annually 2,600,000 pounds of cotton cloth valued at \$900,000. The entire amount of this cloth is sold through a New York commission house, and 90 per cent of the cloth is shipped to points outside of Georgia.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

On July 22, 1937, Alton Lawrence, T. W. O. C. representative, and two employees of the Company conferred with J. H. Mayes, vice president and superintendent of the Company. According to Lawrence's testimony, Mayes was informed that the T. W. O. C. represented a majority of the Company's employees and that it desired recognition as the bargaining representative of such employees. Mayes denied that Lawrence requested recognition of the T. W. O. C. as the bargaining representative of the Company's employees. The T. W. O. C. claims that approximately 341 employees of the Company are included within its membership.

We find that a question has arisen concerning 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 operation 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 T. W. O. C. alleges in its petition that all the mill production employees of the Company, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. Testimony at the hearing showed that the T. W. O. C. seeks to include within the bargaining unit all production and maintenance employees of the Company. The Company raised no objection to the unit claimed by the T. W. O. C. as appropriate.

We find that the production and maintenance employees of the Company, excluding 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-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The record shows that the Company employs approximately 350 employees within the appropriate unit. The T. W. O. C. claims to have within its membership 341 employees of the Company. Lawrence, the T. W. O. C. representative, testified that he saw 100 employees sign T. W. O. C. membership cards, and that he received

signed cards from 50 to 100 additional employees. No membership cards were, however, introduced into evidence.

We find that the question which has arisen concerning representation can best be resolved by the holding of an election by secret ballot. Those eligible to vote shall be the production and maintenance employees who were on the Company pay roll as of July 24, 1937, the date of the filing of the petition, excluding clerical and supervisory employees, and excluding those employees who have since quit or been discharged for cause.

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Fitzgerald Cotton Mills, Fitzgerald, Georgia, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.
2. The production and maintenance employees of the Company, excluding clerical and supervisory 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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Fitzgerald Cotton Mills, Fitzgerald, Georgia, 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 the 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 employed by the Company on July 24, 1937, excluding clerical and supervisory employees, and those employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Textile Workers Organizing Committee for the purposes of collective bargaining.