

DECISIONS AND ORDERS OF THE NATIONAL LABOR RELATIONS BOARD

In the Matter of SCOTSDALE MILLS *and* TEXTILE WORKERS ORGANIZING COMMITTEE

Case No. R-244.—Decided November 1, 1937

Cotton Textile Industry—Investigation of Representatives: controversy concerning representation of employees: substantial doubt as to majority status; refusal by employer to recognize petitioning union as exclusive representative—Unit Appropriate for Collective Bargaining: production and maintenance employees; eligibility for membership in union—Election Ordered—Certification of Representatives.

DECISION AND CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On July 9, 1937, Textile Workers Organizing Committee, herein called the Union, 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 Scottdale Mills,¹ Scottdale, 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 July 31, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3 of the National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to notice of hearing duly served upon the Company, the Union, and the Southern Representative of the American Federation of Labor, a hearing was held in Atlanta, Georgia, on August 10, 1937, before William H. Griffin, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing, but the American Federation of Labor did not appear and took no part in the hearing. Full

¹ The petition designated the Company as Scottdale Mill.

opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. It was stipulated by all parties that the Board should consider all the evidence and exhibits submitted in *Matter of Whittier Mills Company* and *Textile Workers Organizing Committee*, Case No. R-238,² both upon the subject of interstate commerce and upon the merits of the case, as equally applicable to this case. All objections to evidence and testimony adduced in the above cited case will be considered to have been made in this case.

Objections to the introduction of evidence were made during the course of this hearing, by counsel for the respective parties. The Board has reviewed the rulings of the Trial Examiner on motions and objections in these cases, and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After examining the record in this matter, the Board concluded that a question affecting commerce had arisen concerning the representation of the production and maintenance employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a Direction of Election³ on August 27, 1937, in which it found that the production and maintenance employees of the Company, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. For the purpose of expediting the election and thus to insure to the employees of the Company the full benefit of their right to collective bargaining as soon as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law. The Board also designated the Regional Director for the Tenth Region as its agent to conduct the election among the employees in the appropriate unit on the pay roll of the Company for the week ending on July 17, 1937. Thereafter the Board was advised that the Company had temporarily ceased production, but that it would resume normal operations on September 7, 1937. All parties agreed to a postponement of the election until such resumption of normal operations, and also stipulated that all employees working at any time during the month of July 1937, with the exception of Sallie Ballard, were to be eligible to vote in said election. On September 2, 1937, the Board issued an Amendment to Direction of Election,⁴ which ordered that the election be postponed and that those eligible to vote should be the employees within the appropriate unit who had worked for Scottdale Mills at any time during the month of July 1937, ex-

² 3 N L R B 389

³ 3 N L R B 441.

⁴ 3 N L R B 442

clusive of those whose employment had permanently terminated since July 31, 1937.

On September 4, 1937, the Company filed exceptions and petition for review of the Direction of Election on the ground that it had been issued without a fact-finding report on the hearing, and that no statement of facts had been issued upon which the conclusion that a question affecting commerce had arisen could be based. On September 8, 1937, the Board issued an order denying the petition for review.

Pursuant to the Board's Direction of Election, and the Amendment to Direction of Election, an election by secret ballot was conducted by the Regional Director on September 10, 1937, among the employees of the Company constituting the bargaining unit found appropriate by the Board. Thereafter, the Regional Director issued and duly served upon the parties to the proceeding the Intermediate Report upon the secret ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot, the Regional Director reported the following:

Total number eligible.....	558
Total ballots cast.....	524
Total votes for the Textile Workers Organizing Committee.....	263
Total votes against the Textile Workers Organizing Committee.....	256
Total votes challenged.....	3
Total votes miscast.....	2

Even though all the votes challenged and miscast were added to the votes cast against the Textile Workers Organizing Committee, the result would not be affected.

Upon the entire record in the case the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Scottdale Mills is a Georgia corporation, chartered in DeKalb County, Georgia, and situated in Scottdale, in the same State. As of July 27, 1937, it employed 558 employees, exclusive of the supervisory and clerical forces.

J. J. Scott is general manager of the Company, and is also general manager and treasurer of Whittier Mills Company, herein called Whittier, and Silver Lake Company, herein called Silver Lake.

The Company uses cotton, cotton waste, and woolen yarn as raw materials. The total quantity of these raw materials used annually amounts to approximately 6,200,000 pounds. The Company manufactures sheeting, drills, tubes, osnaburgs, and cloth that is half wool and half cotton.

The parties in the case stipulated that: the sources of the cotton, cotton waste, and wool are substantially the same in this case as in

the case of Whittier, and that the percentage of these materials obtained from sources outside the State are also approximately the same; that the Board may consider all the evidence in the Whittier case, on the subject of sources of material, as being equally applicable to the Company; that the operations of the Company and that of Whittier are substantially similar, as are the methods of sale and shipment; that the destinations of the shipments of finished products from the Company are essentially similar to those in the case of Whittier, except that in the case of the Company, between ten and fifteen per cent more of the finished products are shipped to destinations outside the State; and that the competition in connection with the product marketed by the Company is nation-wide and similar to that in the Whittier case.

In the latter case, the Board made, in part, the following findings of fact which are applicable here:⁵

The principal raw materials used by Whittier are cotton and waste materials. The waste materials are composed of card strips and combers. Whittier also uses wool in the form of yarn, dyes, and bleaching materials.

For the year ending June 30, 1937, Whittier used 6,030,000 pounds of cotton, and 2,520,000 pounds of waste materials. Cotton is purchased from dealers in Georgia and North Carolina. In certain cases, Whittier definitely specifies its desire for western cotton. Over ten per cent of the cotton is ordered from dealers doing business in states other than Georgia, and delivered by them by means of rail and truck, from outside the State. Most of the cotton used by Whittier is purchased from Georgia dealers, but some of this cotton comes from other states. This is illustrated by the testimony of C. S. Ruff, manager of the Atlanta office of Anderson-Clayton Company, from whom Whittier buys ten per cent of its cotton. Ruff testified that his firm sold Whittier 324 square bales during the period mentioned above. Of this amount 200 bales had been shipped directly to Whittier from Houston, Texas, by rail, and the remaining 124 bales had come to Whittier from Anderson-Clayton's warehouse in Atlanta. Four bales of the 124 contained eastern-grown cotton, and the remainder contained cotton grown in Texas or Oklahoma. When these bales had been shipped from Texas or Oklahoma, some had been designated for Whittier, and some had not; as a general rule, they had been designated for Whittier.

At least 22 per cent of the waste materials come by shipment from dealers outside of Georgia. All of the wool yarn used by Whittier comes from Massachusetts.

⁵ In the quoted portions of the decision in *Matter of Whittier Mills Company and Textile Workers Organizing Committee*, 3 N L R B 389, the word, "Companies" refers to Whittier and Silver Lake, and not to Scottdale Mills.

Most of the products of Whittier are manufactured on order. For the year ending June 30, 1937, Whittier shipped 5,600,000 pounds, as follows: approximately 16 per cent to Silver Lake Company; 11 per cent to a local mill (Scottdale Mills); 16 per cent to wrapping and twine jobbers; 46 per cent (hose cord and duck) to rubber manufacturers. The remaining ten per cent of the products consisted of three per cent as cotton worsted goods, and seven per cent as mop yarn and single yarn.

The proportion of the products shipped outside the State is as follows: all of the hose cord and duck produced; three-fourths of the cotton-worsted goods; 90 per cent of the mop yarn and single yarn; and 90 per cent of the twine.

A majority of the stock of both Whittier and Silver Lake is owned by the same persons; and a majority of the stockholders live in Massachusetts. The three directors of Silver Lake, James J. Scott, Butler Ames, and Ames Stevens, are also included among the directors of Whittier. James J. Scott is the manager and treasurer of the Companies as well as being the general manager of Scottdale Mills, and the president of Georgia Duck & Cordage Mill. Miriam Duncan is the secretary of the Companies, and has charge of their records.

Up to two and a half years ago, the Companies maintained sales offices in Boston and elsewhere. These offices have now been abandoned, and the Boston office has been taken over by J. P. Stevens Company, commission merchants, of New York. The present selling arrangements with this firm are the same for both Companies. While there is no written agreement, the New York firm sells all of the products of the Companies, except those portions sold to Silver Lake and Scottdale Mills. J. P. Stevens Company secures orders for the Companies, submits the specifications, and arranges for payment. Bills of lading show Whittier as the consignor in some cases, and J. P. Stevens Company in the remainder.

II. THE ORGANIZATION INVOLVED

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all production and maintenance workers in the employ of the Company, but excludes supervisory and clerical employees.

III. THE QUESTION CONCERNING REPRESENTATION

It was stipulated between the parties that the negotiations between the Company and the Union were the same in the instant case as in the case of Whittier, and that they had the same results.

In the Whittier case, the Board made the following findings of fact in regard to the organization involved and as to the question concerning representation which are applicable here:

Chattahoochee Local Union No. 1886, United Textile Workers of America, herein called Local 1886, was organized in 1933. In April 1937, pursuant to the action of its international organization, Local 1886 became affiliated with Textile Workers Organizing Committee, the Union, and the Committee for Industrial Organization. . . .

Local 1886 first negotiated with the management of the Companies early in 1934. In September 1934 a strike occurred, during which neither of the Companies operated. Eventually Local 1886 filed a complaint with the Textile Labor Relations Board.

In November 1935 there was a change of management and a change in labor policies as well. Several men discharged by the former management, presumably for union activity, were taken back. Local 1886 was recognized and dealt with as the representatives of its own members.

During May 1937 the Textile Workers Organizing Committee began negotiations with the Companies, and presented a tentative agreement to J. J. Scott, the general manager. Scott informed the Union that he desired to make sure that it represented a majority. The Union thereupon furnished him with a list of its members. Negotiations were proceeding when Scott called the attention of the Union's representatives to the fact that the American Federation of Labor had served notice upon him claiming that they represented a majority of the employees. The Union thereupon agreed to an election to demonstrate its majority.

A consent election was arranged with the names of both unions on the ballot. A few days before the date upon which this election was scheduled to be held, the American Federation of Labor withdrew its name from the ballot, over the protest of the Union. Subsequently, the management declined to participate in a consent election. The parties stipulated that a controversy had arisen over the question of whether the Union represents a majority of the employees.

IV. THE APPROPRIATE UNIT

The Union claims as constituting the appropriate unit, all the production and maintenance employees, excluding supervisory employees. The Union also excludes clerical employees, and we will follow our usual rule in excluding such workers from the appropriate

unit when none of the unions involved wish to bargain for them. We find that in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the National Labor Relations Act, all of the production and maintenance workers of Scottdale Mills, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining.

V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of Scottdale Mills 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.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of employees of Scottdale Mills, Scottdale, 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 Scottdale Mills, exclusive of 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.

CERTIFICATION OF REPRESENTATIVES

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 CERTIFIED that Textile Workers Organizing Committee has been designated by a majority of the production and maintenance employees of Scottdale Mills, Scottdale, Georgia, exclusive of clerical and supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of 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.