

In the Matter of BURLINGTON MILLS CORPORATION, MAYFAIR PLANT
and TEXTILE WORKERS UNION OF AMERICA

Case No. 5-R-1397.—Decided October 30, 1943

Mr. Anthony E. Molina, for the Board.

Mr. D. E. Hudgins, of Greensboro, N. C., for the Company.

Mr. Benjamin Wyle, of New York City, and *Mr. E. W. Witt*, of
Burlington, N. C., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Textile Workers Union of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Burlington Mills Corporation, Mayfair Plant, Burlington, North Carolina, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Henry J. Kent, Trial Examiner. Said hearing was held at Burlington, North Carolina, on October 5, 1943. The Board, the Company, and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, counsel for the Company moved to dismiss the petition. The Trial Examiner reserved ruling. The motion is hereby denied for the reasons stated in Section III, *infra*. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Burlington Mills Corporation is a Delaware corporation with its executive offices at Greensboro, North Carolina. We are here

concerned with its plant at Burlington, North Carolina, known as the Mayfair plant. The Company purchases raw materials for use at its Mayfair plant valued in excess of \$500,000 annually, at least 75 percent of which is shipped to it from points outside the State of North Carolina. The Company produces finished products at its Mayfair plant valued in excess of \$1,000,000 annually, at least 75 percent of which is shipped to points outside the State of North Carolina. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Textile Workers Union of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of the employees at the Mayfair plant until such time as the majority status of the Union is legally determined.

The Company contends that no action should be taken in the instant proceeding by the Board because it contemplates discontinuing its activities at the Mayfair plant. The Company states in support of its position that the Mayfair plant is unsuited for the Company's operations and that the labor supply in Burlington, North Carolina, is unfavorable. On October 4, 1943, the Company announced that it was removing 24 of its 198 looms at the Mayfair plant to another plant operated by it. Since the length of time which the liquidation of the Mayfair plant will take, if undertaken, is extremely indefinite, we shall not deprive the Company's employees of their right to bargain collectively merely because of the possibility that the Company may cease operating its Mayfair plant.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union urges that all production and maintenance employees at the Mayfair plant of the Company, excluding clerical and supervisory

¹ The Regional Director reported that the Union presented 136 authorization cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll for the period ending September 18, 1943, which contains 293 names in the appropriate unit.

employees and watchmen, constitute an appropriate unit. The only controversy with respect to the unit concerns ticket girls and the shipping clerk.

The Company employs three persons classified by it as ticket girls. The Union requests that they be excluded from the unit. The ticket girls prepare ticket forms on ditto machines which are thereafter placed by them on the looms for the purpose of keeping production records. Inasmuch as their duties are clerical in nature, we shall exclude them.

The Union requests that the shipping clerk be excluded from the unit on the ground that he is a clerical employee. The shipper engages in manual work in connection with preparing goods for shipment and, in addition, keeps a clerical record of all outgoing shipments. His clerical duties consume from 30 to 35 percent of his working time. Inasmuch as the shipping clerk spends a majority of his time performing manual labor, we shall include him in the unit.

The Union desires to exclude the two watchmen employed by the Company from the unit. The watchmen are stationed at the gate and police the ingress and egress of employees and visitors. The watchmen are not militarized. We shall include watchmen in the unit since their duties appear to be those customarily performed by watchmen, rather than those of a specialized plant-protection force.²

We find that all production and maintenance employees at the Mayfair plant of the Company, including the shipping clerk and watchmen, but excluding clerical employees, ticket girls, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot. The Union urges that the pay roll of September 20, 1943, the date of its petition, be used to determine eligibility to vote. Inasmuch as no persuasive reason appears as to why we should depart from our usual practice, we shall direct that the employees eligible to vote shall be those within the appropriate unit who were employed during the pay roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

² See *Matter of Mac Andrews & Forbes Company*, 39 N. L. R. B. 690

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 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Burlington Mills Corporation, Mayfair Plant, Burlington, North Carolina, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining: