

In the Matter of BOTANY WORSTED MILLS and TEXTILE WORKERS UNION
OF AMERICA, C. I. O.

Case No. 2-R-4256.—Decided November 25, 1943

Putney, Twombly & Hall, by Messrs. Thomas W. Kerrigan and Frederic R. Sanborn, of New York City, appearing specially for the Company.

Mr. Benjamin Wyle, of New York City, for the Union.

Mr. Robert Silagi, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Textile Workers Union of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Botany Worsted Mills, Passaic, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Richard J. Hickey, Trial Examiner. Said hearing was held at New York City, on October 26, 1943. The Company and the Union appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.² 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. A request by the Company for oral argument is hereby denied.

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

¹ The Company denies that it is engaged in interstate commerce and for that reason its counsel appeared "specially." However, its counsel participated throughout the entire hearing.

² By letter dated October 19, 1943, and introduced in evidence at the hearing, the Union waived its pending charges of unfair practices against the Company insofar as they affect this proceeding.

Following the hearing, the parties entered into a stipulation to correct certain testimony. Said stipulation is hereby approved and the stipulated correction is hereby ordered to be incorporated in the official transcript.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Botany Worsted Mills is a New Jersey corporation maintaining its principal office and plant in Passaic, New Jersey. The Company is engaged in the processing, manufacture, sale, and distribution of woolen and worsted fabrics and related products. The principal raw materials purchased by the Company are raw wool and tops. During the year ending September 30, 1943, the Company purchased approximately 5,000,000 pounds of said raw materials, about 90 percent of which was purchased and shipped to its Passaic plant from points outside the State of New Jersey. During the same period of time the Company sold more than 1,500,000 pounds of finished products. Approximately 95 percent of these sales were made to purchasers located outside the State of New Jersey. The Company has some war contracts.

On these facts we find, contrary to the contention of the Company, that its operations affect commerce within the meaning of the National Labor Relations Act.³

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

On September 10, 1943, the Union advised the Company that it represented a majority of its employees and requested recognition as their collective bargaining representative. On September 17, 1943, the Company refused the Union's request and suggested that the matter be adjudicated by the Board.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a number of employees in the unit hereinafter found appropriate.⁴

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.

³ See *Matter of Botany Worsted Mills*, 41 N. L. R. B. 218; *N. L. R. B. v. Botany Worsted Mills*, 133 F. (2d) 876 (C. C. A. 3); cert denied, 319 U. S. 751.

⁴ The Regional Director reported that the Union submitted 1,211 application cards, 1,203 of which bore apparently genuine original signatures and 8 bore printed signatures. The cards were variously dated between October 1942 and October 1943. Inasmuch as the Company did not submit a pay roll until the day of the hearing, no check of the union cards was made against the pay roll.

IV. THE APPROPRIATE UNIT

The Union's amended petition seeks a unit comprised of all production and maintenance employees, including wool sorters, trappers, and overlookers, but excluding supervisors, office and clerical workers, part-time employees,⁵ plant guards who are members of the Auxiliary Military police, truck drivers and helpers. The Company agrees to the propriety of the unit sought, with the exception of the classifications discussed hereinafter.

The Company employs timekeepers and time checkers of two varieties, (a) clerical employees who work out the pay-roll department, and (b) production employees who check the actual time employees spend working. The parties agree to the exclusion of the former but are at slight variance as to the latter. The Company states that the amount of time spent by the second group in timekeeping is negligible compared to their ordinary duties as production workers. Accordingly, the Company would include the entire second group. The Union seeks to exclude only those employees who actually spend the greater part of their time in keeping of such records. We shall exclude all timekeepers and time checkers who work out of the pay-roll department and also exclude all production employees who devote a majority of their time to keeping clerical records.

With respect to the following fringe groups, the parties are in disagreement, the Company seeking to include and the Union to exclude all classifications of employees from the appropriate unit. Although, by its constitution, the Union asserts blanket jurisdiction over all workers in the textile industry, it nevertheless contends that the classifications listed below are not eligible for membership in its organization, nor have they been solicited to join.

Color blender or matcher. There are several employees in this department who work in a room adjoining the dye house. The foreman in charge of the dye house is responsible for the actual process of mixing the dyes and dyeing the wool. After a batch of wool has been dyed samples are examined by the color matchers or blenders to determine whether the shade has been accurately blended or matched. Since the Union agrees to the inclusion of examiners whose duties are somewhat similar in nature, we see no reason for differentiating between the two types of employees. We shall, therefore, include the color blenders, or matchers in the unit.

Music System employees. Two such employees take care of the music system by means of which the Company provides entertainment to its various departments. The Union would exclude these em-

⁵ Part-time employees are defined as those employees who work a maximum of 6 hours per day or 30 hours per week. As of the date of hearing, the Company employed 67 part-time employees, all of whom the parties agreed to exclude.

ployees on the ground that they are neither production nor maintenance employees. The same argument applies to cafeteria employees, yet the Union seeks to represent the latter group. Accordingly, we shall include them in the unit.

Follow-up man. The duties of this employee are to follow up deliveries of yarn in its various stages of manufacture until it has reached the weaving department. He has no authority to correct any errors or shortcomings that he may discover but reports them to the manager of the products division or his assistants. The Union seeks his exclusion on the ground that he is a supervisor. In view of the fact that the follow-up man functions as an expediter responsible only to the Company's manager, we are of the opinion that he is neither a production nor a maintenance employee and shall therefore exclude him from the unit.

Nurses. There are three registered nurses who are in charge of the first-aid department of the mills. The Union seeks their exclusion as professional employees. We shall exclude them from the unit.

Draftsmen. Two draftsmen work in conjunction with the maintenance department. They draw plans for any relocation of machines or shift in production. Since they are technical or professional rather than production or maintenance employees, we shall exclude them from the unit.

Designers and assistant designers. The Company employs two necktie designers who create the patterns and types of materials used in neckties. After putting their ideas down on paper, they make up diagrams which show the loom fixers how to set up the looms in order to achieve the desired result. After samples of cloth are woven, the designers check the weave to see that the pattern is being followed. If there is any deviation from the pattern, they so advise the loom fixers who make the necessary corrections. There are four assistant designers who work on women's wear and one assistant designer on men's wear. They perform the same functions as the designers, although in different departments. We are of the opinion that the designers and assistant designers are artist technicians, and, accordingly, we shall exclude them from the unit.

We find that all production and maintenance employees of the Company, including wool sorters, trappers, overlookers, color blenders or matchers, and music system employees, but excluding all office and clerical employees, part-time employees, plant guards, truck drivers and helpers, timekeepers and time checkers, nurses, follow-up man, designers, assistant designers, 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 shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the unit who were employed during the pay-roll period immediately preceding the date of the Direction herein, subject to the limitations and additions set forth in the Direction.⁶

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 Botany Worsted Mills, Passaic, New Jersey, 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 Second 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 those employees 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.

⁶The Company requests that its employees who are in the armed services of the United States be permitted to vote in the election by mail ballots. For the reasons stated in *Matter of Wilson & Co., Inc.*, 37 N. L. R. B. 944, we shall adhere to our normal procedure and hereby deny the Company's request. See also *Matter of R. C. Mahon Company*, 49 N. L. R. B. 142; *Matter of Terrytoons, Inc.*, 50 N. L. R. B. 684.