

In the Matter of TEXAS TEXTILE MILLS and TEXTILE WORKERS UNION
OF AMERICA (C. I. O.)

Case No. 16-R-709.—Decided December 8, 1943

Mr. Arthur J. Riggs, of Dallas, Tex., for the Company.

Messrs. J. E. Crossland and *Lee J. Metker*, of Dallas, Tex., 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, (C. I. O.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Texas Textile Mills, Dallas, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer P. Davis, Trial Examiner. Said hearing was held at Dallas, Texas, on November 4, 1943. 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.¹ At the commencement of the hearing the Company moved to dismiss the petition on the ground that the representatives of the Union had not complied with a statute of the State of Texas relative to the registration of union business agents. The Trial Examiner reserved ruling. The motion is hereby denied.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. On Novem-

¹ On November 3, 1943, a letter was received from the Company requesting that attached telegrams relative to the non-compliance of the Union's representatives with a statute of the State of Texas requiring registration of business agents of labor organizations, be admitted into the record. The request is hereby granted and the telegrams are hereby made a part of the record.

² Compliance or non-compliance with the statute referred to is wholly irrelevant to the issues involved in this proceeding, since it is the labor organization, rather than the business agents thereof, that is here seeking designation as collective bargaining representative.

ber 22, 1943, the Company filed a motion requesting that the record be reopened for the purpose of taking testimony with respect to the non-compliance of the Union's representatives with a statute of the State of Texas relevant to the registration of union business agents. On November 27, 1943, the Board denied the motion.³

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Texas Textile Mills is a Texas corporation operating plants in Dallas, McKinney, and Waco, Texas, where it is engaged in the manufacture, sale, and distribution of cotton cloth. The Dallas plant is the only plant involved in this proceeding. During a 6-month period, the Company purchased approximately \$95,000 worth of dye materials, all of which was shipped to its plants from points outside the State of Texas. During the same period, the Company manufactured at its three plants 4,777,107 pounds of finished cloth, approximately 65 percent of which was shipped to points outside the State of Texas. 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

In August 1943, the Union requested the Company to recognize it as the exclusive bargaining representative of the employees at the Dallas plant. The Company refused this request.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees within the unit hereinafter found to be 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 footnote 2, *supra*.

⁴ The report of the Field Examiner shows that the Union submitted 256 authorization cards bearing apparently genuine signatures. No check was made of the cards against a pay roll because of the Company's refusal to submit its pay roll. There are approximately 295 employees in the appropriate unit.

IV. THE APPROPRIATE UNIT

The Union urges that all production and maintenance employees at the Dallas plant of the Company, excluding technical, clerical, and supervisory employees, constitute an appropriate unit. There appears to be some question with respect to the disposition to be made of the following groups of employees.

The Company employs persons classified by it as second hands. The second hands act as assistant overseers and effectively recommend changes in the status of employees. We find that second hands are supervisory employees, and as such, we shall exclude them from the unit.

The Company employs three watchmen. They are not militarized. We shall include them in the unit since their duties appear to be those customarily performed by watchmen, rather than those of a specialized plant-protection force.

The Company employs about eight truck drivers who are engaged in hauling products between the Company's three plants in Texas and to various distribution points. The Union urges that they be excluded from the unit, and the Company that they be included. Although the truck drivers are carried on the pay roll of the Dallas plant they work out of all three plants. Inasmuch as their duties are dissimilar to those of the other employees at the Dallas plant, we shall exclude them from the unit.

The timekeepers employed by the Company work throughout the plant and are paid at an hourly rate. The Company does not oppose their inclusion in the unit. Inasmuch as their duties are an integral part of the Company's production processes, we shall include them in the unit.

The Company employs one shipping clerk. In addition to his shipping duties, which consume approximately one-third of his time, he spends the remainder of his time as an ordinary production employee in the cloth department. Accordingly, we shall include him in the unit.

We find that all production and maintenance employees at the Dallas plant of the Company, including watchmen, timekeepers, and the shipping clerk, but excluding clerical and technical employees, truck drivers, second hands, and any other 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 means of an election by secret ballot among the employees in 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.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Texas Textile Mills, Dallas, Texas, 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 Sixteenth 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 persons who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of election, to determine whether or not they desire to be represented by Textile Workers Union of America, (C. I. O.), for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.