

In the Matter of CHARLES H. BACON COMPANY and AMERICAN FEDERATION OF HOSIERY WORKERS, BRANCH #89

Case No. 10-R-1060.—Decided January 20, 1944

*Frantz, McConnell & Seymour*, by *Mr. Thomas G. McConnell*, of Knoxville, Tenn., and *Mr. J. C. Greer*, of Lenoir City, Tenn., for the Company.

*Mr. H. G. B. King* and *Miss Virginia Lee Roberts*, both of Chattanooga, Tenn., and *Mr. John W. Seltzer*, of Knoxville, Tenn., for the Union.

*Mr. A. Sumner Lawrence*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by American Federation of Hosiery Workers, Branch #89, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Charles H. Bacon Company, Lenoir City, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Dan M. Byrd, Jr., Trial Examiner. Said hearing was held at Knoxville, Tennessee, on December 9, 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

Charles H. Bacon Company, a Delaware corporation, has its principal place of business at Loudon, Tennessee, where it is engaged in

the manufacture of hosiery. In addition to its hosiery mills at Loudon, the Company also operates a hosiery and spinning mill, respectively, at Lenoir City, Tennessee. During the year 1942, the Company used at its Tennessee plants cotton yarn valued at \$392,225, rayon valued at \$815,133, and dyes and chemicals valued at \$69,688. Of these materials approximately 50 percent of the cotton yarn, all of the rayon, and 50 percent of the dyes and chemicals, were obtained from sources outside the State of Tennessee. The Company's annual sales of finished products amount to approximately \$5,000,000, of which 90 percent is sold and shipped to points in States other than the State of Tennessee.

## II. THE ORGANIZATION INVOLVED

American Federation of Hosiery Workers, Branch #89, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On November 8, 1943, the Union requested that the Company recognize it as exclusive bargaining representative of the Company's employees in its hosiery and spinning mills at Lenoir City, Tennessee. The Company declined to recognize the Union until certified by the Board.

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

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 National Labor Relations Act.

## IV. THE APPROPRIATE UNIT

The Union urges that the appropriate unit should consist of all production and maintenance employees of the Company's spinning and hosiery mills at Lenoir City, Tennessee, including watchmen, but excluding clerical employees wherever located, foremen, overseers, second hands, and the nurse. The Company, on the other hand, while agreeing to the exclusions requested by the Union, contends

<sup>1</sup> The Field Examiner reported that the Union had submitted 384 designations dated between March and November 1943 with 19 undated; that of the 384 designations, 319 bore the apparently genuine original signatures of persons whose names are on the Company's pay roll for November 8, 1943, containing 735 names within the claimed appropriate unit.

that the unit should be company-wide and include the employees of the hosiery mills at Loudon, Tennessee.

In a previous decision involving the same parties as in the present instance,<sup>2</sup> the Board found upon evidence, the record of which was incorporated in the present proceeding, that the employees of the spinning mill at Lenoir City had substantial interests in common with the employees of the hosiery mill adjacent thereto.<sup>3</sup> The only question to be determined in the present proceeding is whether the spinning and hosiery mill employees at Lenoir City may constitute a separate appropriate unit apart from the employees of the remaining mills of the Company located in a different community 6 miles distant therefrom.

While the record reveals that the Company's operations are to a large extent integrated and functionally coherent,<sup>4</sup> the employees of the two mills for whom separate representation is sought do, nevertheless, occupy a semi-autonomous position with respect to the remainder of the Company's operations, as indicated by the fact that the Company has a separate warehouse and a separate maintenance department for its mills at Lenoir City, and by the fact that the employees in the latter community are paid on a date different from that used for pay-roll purposes at the other mills of the Company. Furthermore, although there is some interchange of employees between Loudon and Lenoir City,<sup>5</sup> it appears that such interchange among the Company's employees, the majority of whom live in the vicinity of their respective places of employment,<sup>6</sup> is for the most part infrequent.

Notwithstanding these facts, the Company contends that the extent of organization on the part of the Union precludes the finding of an appropriate unit limited to the Company's employees at Lenoir

<sup>2</sup> 53 N. L. R. B. 296.

<sup>3</sup> The Board dismissed the petition in the previous proceeding upon the ground that the spinning mill unit sought by the Union was inappropriate for purposes of collective bargaining.

<sup>4</sup> Although the Company's operations are interdependent to a considerable degree and have a common overall supervision, those at Loudon involve, at least in part, a different type of work in the manufacture of full fashion hosiery, the only mill for which is located at Loudon.

<sup>5</sup> The Company occasionally transfers employees from one mill to the other upon the request of the employee or when the foreman is of the opinion that a transfer is necessary for the sake of increased production. Generally transfers are made from the spinning mill in Lenoir City to the hosiery mill in Lenoir City, and from the hosiery mill in Lenoir City to the hosiery mills in Loudon. There have been no transfers from the spinning mill in Lenoir City to the hosiery mills in Loudon. It was estimated that approximately 15 transfers during a year's time would be made between the hosiery mill in Lenoir City and that in Loudon, and that this type of transfer exceeded in number the transfers from the spinning mill in Lenoir City to the hosiery mill adjacent thereto.

<sup>6</sup> The Company's vice president estimated that of the approximately 800 employees who work in Loudon, only about 50 live in Lenoir City and commute to and from work by bus and automobile. He also estimated that of the nearly equal number of employees at Lenoir City, only 20 to 25 live at Loudon and travel to and from work at Lenoir City.

City. The evidence discloses that while the Union made some unsuccessful attempts to organize the Loudon employees about the year 1936, and in April 1943, following a strike among the fixers, received into membership the fixers at the Loudon mills,<sup>7</sup> the Union has no other members among the Loudon employees and has for the present abandoned all further attempts to organize such employees.

Under the circumstances, particularly in view of the lack of a bargaining history on a broader basis,<sup>8</sup> the substantially autonomous character of the Lenoir City operations, the absence of any appreciable interchange of employees between Loudon and Lenoir City, the local interests of Lenoir City employees,<sup>9</sup> and the limited extent of self-organization among the employees of the Company, we are of the opinion that the unit here sought is appropriate for the purposes of collective bargaining at the present time.<sup>10</sup> Our finding that a unit confined to two of the Company's plants will not, however, preclude a finding at some later date that a larger, more inclusive unit is then appropriate.

We find that all production<sup>11</sup> and maintenance employees in the Company's Lenoir City spinning and hosiery mills, including watchmen,<sup>12</sup> but excluding clerical employees wherever located, foremen, overseers, second hands, the nurse, 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 appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

<sup>7</sup> The fixers at the Loudon mills number between 17 and 19 employees.

<sup>8</sup> Aside from the fixers for whom the Company and the Union have recently sought wage increases from the National War Labor Board, there is no history of collective bargaining upon a company-wide basis.

<sup>9</sup> The development of social relations between the employees of the two communities has been impeded by the inconvenience of bus schedules, the rationing of gasoline for private automobiles, and the necessity of paying toll or ferry charges in order to travel by highway between Loudon and Lenoir City.

<sup>10</sup> See *Matter of Standard Overall Company (Jobbers Pants Co.)*, 53 N. L. R. B. 960, and cases cited therein. See also *Matter of Abraham Brothers Packing Co.*, 47 N. L. R. B. 1338.

<sup>11</sup> The term production employees is intended to include the warehouse employees who service the production departments of both spinning and hosiery mills in Lenoir City.

<sup>12</sup> The watchmen perform the duties of ordinary watchmen and are not militarized.

## 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 Charles H. Bacon Company, Lenoir City, Tennessee, 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 Tenth 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 who have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by American Federation of Hosiery Workers, Branch #89, for purposes of collective bargaining.

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