

In the Matter of JOHNSON & JOHNSON *and* TEXTILE WORKERS UNION
OF AMERICA, C. I. O.

Case No. 4-R-1284.—Decided January 24, 1944

Mr. Robert J. Dixon, of New Brunswick, N. J., for the Company.

Mr. Benjamin Wyle, of New York City, for the C. I. O.

Mr. George W. Bucko, Jr., of New Brunswick, N. J., for the Association.

Mr. Seymour J. Spelman, 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 C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Johnson & Johnson, New Brunswick, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at New Brunswick, New Jersey, on December 6, 1943. The Company, the C. I. O., and Employees' Independent Association of Johnson & Johnson, herein called the Association, 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 the 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

Johnson & Johnson, a New Jersey corporation maintaining its principal office and plants in New Brunswick, New Jersey, and a branch office and plant in Chicago, Illinois, is engaged in the manufacture and

sale of surgical dressings and allied products. We are concerned herein only with the New Brunswick plants. Over 90 percent of the raw materials used by the Company at its New Brunswick plants is transported from points outside the State of New Jersey, and more than 90 percent of the finished products, valued in excess of 1 million dollars, is shipped to points outside the State of New Jersey. The Company concedes, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

Employees' Independent Association of Johnson & Johnson is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that a question concerning representation has arisen in that the C. I. O. claims to represent a majority of certain of the Company's employees within an alleged appropriate unit, and the Company has declined to recognize the C. I. O. on the ground that the Company recognizes the Association as exclusive bargaining agent of said employees as a result of a consent election conducted by the National Labor Relations Board on September 11, 1941,¹ whereby the Association was designated by a majority of the employees as their exclusive bargaining agent.

Shortly after the consent election of September 11, 1941, the Association and the Company entered into a collective bargaining agreement providing for a term of one year to November 19, 1942, and automatic renewal from year to year thereafter in the absence of a termination notice more than 60 days prior to the end of any yearly period. On November 19, 1942, in the absence of any 60-day notice, the contract was automatically renewed, but more than 60 days before November 19, 1943, the Association notified the Company that it desired to renegotiate the contract. In a letter dated September 29, 1943, the C. I. O. informed the Company that it claimed to represent a majority of the employees at the New Brunswick plants. In December 1943, the Association and the Company entered into a new agreement providing for a term of one year to November 19, 1944.

The Association contends that its new agreement of December 1943 constitutes a bar to this proceeding. We find this contention to be

¹ Case No. 2-R-2225.

without merit, for the contract was entered into with notice of the C. I. O.'s claim.

A statement of a Field Examiner of the Board, introduced in evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.²

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 parties are agreed that the appropriate bargaining unit should include all non-supervisory employees of the Company employed on hourly, piecework or incentive basis at the Main Plant in New Brunswick, New Jersey, the Ligature Plant in North Brunswick, New Jersey, and the Miscellaneous Mill, in Milltown, New Jersey,³ excluding office employees and office clerks, technical employees (including chemists and time-study men), salaried engineers, and supervisory employees down to and including inspectors.⁴ However, the Association and the Company contend that the unit should also include non-supervisory employees employed on a salary basis, notwithstanding the C. I. O.'s contrary claim.

The Company employs approximately 2800 employees, of whom 48 are non-supervisory salaried employees in the following classifications: plant or factory clerks, draftsmen, editors of the plant newspaper, a lock tender, employees in the methods and engineering department, and employees in the production control department. All of these employees have been included in the bargaining unit of non-supervisory employees established in the Association's contracts with the Company.⁵

The salaried plant or factory clerks, approximately 24 in number, work in the various departments of the plants where their duties, in the main, consist of timekeeping and the preparation of pay roll, production, and requisition records and schedules. Their work is identical with the work of other plant clerks who are paid on an

² The Field Examiner stated that the C. I. O. submitted 913 authorization cards, all bearing apparently genuine, original signatures, and 819 bearing dates from July to November 1943. Of these 913 cards, 842 bore the names of employees on the Company's pay roll of October 29, 1943, which contained the names of 2843 employees in the alleged appropriate unit. The Association relied upon its contract with the Company to establish its interest in this proceeding.

³ The 3 named plants are located in and about the city of New Brunswick, New Jersey and constitute the Company's New Brunswick plants.

⁴ The parties stipulated, and we find, that inspectors are supervisory employees.

⁵ In these agreements the Company recognized the Association as the exclusive bargaining agent of all non-supervisory employees at the Company's New Brunswick plants, employed on an hourly, piece-work and salary basis.

hourly basis, and the only reason for the distinction in the basis of their compensation is historical.

The draftsmen, approximately 7 in number, work in the mechanical department under the direction and supervision of the engineers and the chief draftsmen. According to the uncontroverted testimony of a Company official, these employees are not draftsmen in a technical sense, since, for the most part, they are recruited from the ranks of production workers and have received no formal training. Their training is acquired through experience in the mechanical department where, as distinguished from the engineers, they copy, but do not originate, designs. They are paid a salary for a basic workweek and receive time and one-half for overtime.

The editor and associate editor of the plant newspaper devote full time to duties customarily required in the publication of a small newspaper.

The lock tender perform duties incident to the drawing of water from a canal which the Company utilizes in its production.

The personnel of the production control department consists of approximately 10 salaried clerks who work on pay roll, requisition, and production records and, from time to time, act as messengers. Their duties are similar to those of the other plant clerks, many of whom work on an hourly basis, and they are paid time and one-half for overtime.

The methods and engineering department is comprised of the following employees: 7 engineers (excluded by agreement of the parties as technical employees); 4 clerks who devote full time to routine tasks related to the employees-suggestion system; 2 employees in the methods laboratory who assist in training old employees for new jobs; 1 employee who divides his time between routine work in the suggestion system and photography, and 1 secretary to the director of the department.

The C. I. O. contends that all of these non-supervisory employees should be excluded from the bargaining unit because they are paid on a salary basis, as distinguished from the other employees in the proposed unit who are paid on an hourly, piece-work or incentive basis. We find no merit in this contention. While a difference in the basis of wage payment frequently coincides with, and often indicates differences with respect to the duties, interests, and attitudes of the employees and may therefore be employed as a yardstick in establishing an appropriate bargaining unit, such is not true in the instant case. With respect to at least half of the non-supervisory salaried employees, namely the salaried plant clerks, it appears that the only reason for the distinction in wage payment is historical, and the record discloses that the duties of all plant clerks are substantially similar.

In addition, the C. I. O. offered no convincing evidence to justify the exclusion of the remaining salaried employees, but relied almost entirely on the fact of a difference in the basis of pay. Since it is uncontroverted that all these salaried non-supervisory employees have been bargained for since 1941 as part of a broad production and maintenance unit, including all hourly paid non-supervisory employees, many of whose duties are also clerical, and since it does not appear in this case that the difference in the basis of wage payment, is material, we are of the opinion that the salaried non-supervisory employees, except as noted below, should be included in the bargaining unit.

The two employees who devote their time to the preparation and publication of the plant newspaper are clearly editorial workers and do not have a sufficient community of interest with the other employees to warrant their inclusion in the unit. We shall, therefore, exclude them from the bargaining unit.

In accordance with the agreement of the parties and in view of the foregoing facts, we find that all non-supervisory employees at the Company's Main Plant in New Brunswick, New Jersey, Ligature Plant in North Brunswick, New Jersey, and Miscellaneous Mill in Milltown, New Jersey, employed on an hourly, piece-work, incentive, and salary basis, excluding the editor and associate editor of the plant newspaper, office employees and office clerks, technical employees (including chemists and time-study men), salaried engineers, and all supervisory employees (including inspectors) 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.⁶

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The Company stated that during the past month it has laid off approximately 100 employees, and expects to lay off at least 50 more within the next 30 days. It urges that these laid-off employees be declared ineligible to vote on the ground that there is little likelihood of their being available to this Company for reemployment. In accordance with our customary practice, the eligibility to vote of laid-off or discharged employees will be defined in the Direction of Election, hereinafter. If, at the election, there is disagreement with respect to the eligibility

⁶ This is substantially the same unit provided for since 1941 in the contracts between the Company and the Association.

to vote of any of such employees, the parties are free to challenge the ballots of such employees. We shall, therefore, direct that the employees of the Company eligible to vote in the election shall be those in the appropriate unit who were employed during the pay-roll period immediately preceding 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 Johnson & Johnson, New Brunswick, 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 Fourth 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 they desire to be represented by Textile Workers Union of America, C. I. O., or by Employees' Independent Association of Johnson & Johnson, for the purposes of collective bargaining, or by neither.