

In the Matter of JOHN OUGHTON, CHARLES T. OUGHTON, BERTRAM E. OUGHTON AND ROBERT B. OUGHTON, INDIVIDUALLY AND AS CO-PARTNERS, D/B/A WINDSOR MANUFACTURING COMPANY and WINDSOR EMPLOYEES UNION

Case No. 4-R-1321.—Decided February 19, 1944

Mr. Charles A. Wolfe, of Philadelphia, Pa., for the Company.

Mr. Leonard Michael Propper, of Philadelphia, Pa., for the Employees Union.

Mr. Gilbert J. Kraus, of Philadelphia, Pa., for the Textile Workers.

Miss S. Catherine Wilson, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Windsor Employees Union, herein called Employees Union, alleging that a question affecting commerce had arisen concerning the representation of employees of John Oughton, Charles T. Oughton, Bertram E. Oughton and Robert B. Oughton, individually and as co-partners, doing business as Windsor Manufacturing Company, Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Geoffrey J. Cunniff, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on December 30, 1943. At the hearing the Trial Examiner granted a motion of the Textile Workers Union of America, C. I. O., herein called the Textile Workers, to intervene. The Company, the Employees Union, and the Textile Workers, appeared and participated. All parties 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.

54 N. L. R. B., No. 241.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

John Oughton, Charles T. Oughton, Bertram E. Oughton and Robert B. Oughton, individually and as co-partners, doing business as Windsor Manufacturing Company, with their principal place of business at Philadelphia, Pennsylvania, are engaged in the manufacture, sale, and distribution of worsted materials. The Company purchases raw materials of an annual value in excess of \$1,000,000, of which amount approximately 50 percent is purchased outside Pennsylvania. It manufactures finished products with a value in excess of \$1,000,000, of which amount approximately 51 percent is shipped outside Pennsylvania.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Windsor Employees Union is an unaffiliated organization admitting to membership employees of the Company.

Textile Workers Union of America, C. I. O., is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 20, 1943, the Company entered into an exclusive bargaining contract with the Textile Workers. This contract was for a period of 1 year and provided for automatic renewal thereof from year to year unless either party should give written notice of termination at least 30 days prior to the expiration of a yearly term. In November 1943, the Employees Union requested and was refused recognition. Thereafter, prior to the 30-day period preceding the expiration of the first term of the contract, the Employees Union filed its petition in this proceeding. The parties do not urge the contract as a bar to a present determination of representatives.

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

¹The Regional Director reported that the Employees Union submitted 75 designation cards, bearing apparently genuine original signatures; that the names of 72 persons appearing on the cards were listed on the Company's pay-roll ending December 3, 1943, which contained the names of 120 employees in the appropriate unit; that the cards, with the exception of 2 which were undated, were dated December 6, 7, 8, 1943.

The Textile Workers presented no proof of designation, relying upon its contract as evidence of its interest in the proceeding.

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 in general agreement that the appropriate unit should consist of all production employees, excluding carpenters, watchmen, powerhouse employees, janitors, office and clerical employees, supervisors, and executives. There is disagreement, however, as to the assistant receiver and shipper in the shipping department.

The Company's shipping department employs two workers, classified, respectively, as receiver and shipper and assistant receiver and shipper. These employees receive all incoming materials and ship all finished products. The parties are agreed that the receiver and shipper should be excluded because of his supervisory status. The Textile Workers would also exclude the assistant receiver and shipper. The Employees Union, however, requests his inclusion. The Company takes no position. Since it appears that the shipping department employees have interests and working conditions differing from those of the ordinary production workers, we shall exclude both the receiver and shipper and the assistant receiver and shipper from the unit.

We find that all production employees of the Company, excluding carpenters, watchmen, powerhouse employees, janitors, shipping department employees, office and clerical employees, executives, and all 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 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.

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 John Oughton, Charles T. Oughton, Bertram E. Oughton and Robert B. Oughton, individually and as co-partners, doing business as Windsor Manufacturing Company, Philadelphia, Pennsylvania, 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 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 they desire to be represented by Windsor Employees Union, or by Textile Workers Union of America, C. I. O., for the purposes of collective bargaining, or by neither.