

In the Matter of BURTON-DIXIE CORPORATION *and* BEDDING LOCAL 140,
OF THE UNITED FURNITURE WORKERS OF AMERICA, CIO

Case No. 2-R-4414.—Decided March 23, 1944

Fyffe & Clarke, by *Mr. Albert J. Smith* of Chicago, Ill., and *Mr. George S. Knott*, of Brooklyn, N. Y., for the Company.

Mr. Harry Weinstock, of New York City, for the Union.

Mr. William Strong, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Bedding Local 140 of the United Furniture Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Burton-Dixie Corporation,¹ Brooklyn, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David H. Werther, Trial Examiner. Said hearing was held at Brooklyn, New York, on February 21, 1944. The Company and the Union 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Burton-Dixie Corporation, a Delaware corporation, has its principal office in Chicago, Illinois, and plants in Chicago, Illinois, Brooklyn,

¹ The name of the Company, incorrectly shown at times in the record, was corrected by amendment at the hearing.

New York, and in several other States where it is engaged in the manufacture of bedding products, cotton felt and sisal padding for upholstery. This proceeding is concerned only with the Brooklyn, New York, plant. During the last 12 months the Company purchased for its Brooklyn plant raw materials valued in excess of \$500,000, approximately 90 percent of which was shipped from points outside the State of New York, and shipped from its Brooklyn plant finished products valued in excess of \$1,000,000, approximately 66 percent of which was shipped to points outside that State.

II. THE ORGANIZATION INVOLVED

Bedding Local 140 of the United Furniture Workers 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

The Company has failed to reply to the Union's request for recognition as the bargaining representative of certain of the Company's employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union 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 Union seeks a unit composed of all employees of the Company at its Brooklyn plant, excluding all foremen, clerical employees, chauffeurs, watchmen, porters, maintenance and supervisory employees.³ This is in effect a production unit. The Company agrees with the Union except that the Company would also include in the unit watchmen, porters, maintenance employees, laborers, and one Willie Kuhn. We see no reason for departing from the unit insofar as the parties are in agreement. We shall now consider the disputed categories.⁴ However, since in considering unit problems we deal

² The Field Examiner reported that the Union submitted 36 application and authorization cards, and that there are about 90 employees in the alleged appropriate unit.

At the hearing the Company submitted its pay roll bearing 93 names and the Trial Examiner reported that of the Union's cards, 29 bore apparently genuine original signatures of persons appearing on the aforesaid pay roll.

³ The Company employs no chauffeurs.

⁴ In a prior Decision and Direction of Election involving the parties herein (*Matter of Burton-Dixie Corporation*, 23 N. L. R. B. 958), we found that a unit appropriate for purposes of collective bargaining among the Company's employees consists of all employees of the Company at its Brooklyn plant, including the porter and porters, but excluding super-

only with classifications and categories of work rather than individuals, we shall discuss the status of Kuhn below.⁵

Maintenance employees, whom the Company also designates as machinists, spend most of their time repairing machinery.⁶ Temporarily, until the Company acquires additional production workers, these maintenance employees also spend some time on production work. The Union does not admit this category of employees to membership and they are excluded from coverage under numerous contracts between the Union and employers in this industry. As stated, we have heretofore excluded maintenance employees from the production employees' unit at this plant. We see no reason for including them at present. We shall exclude them from the unit.

Watchmen at the plant perform the regular duties of watchmen, and on occasion assist with some other work. While the record is not clear as to whether the watchmen are members of the auxiliary military police, it is probable that they are. The Union does not admit watchmen to membership, and in the prior proceeding all parties agreed to their exclusion. We shall exclude the watchmen from the unit.

Porter or laborer and porterness. The Company employs a general worker who acts as a porter and performs general maintenance and other work, and employs a porterness who performs general cleaning work. Pursuant to a stipulation between the parties, we heretofore included the porter at this plant in the unit, and since there were but insubstantial differences between the functions of the porter and the porterness, we also included the latter in the unit.⁷ The Union does not now admit to membership any maintenance employees in this industry, limiting its membership to production employees, although in the past the Union did admit porters. It has been the Union's experience that the inclusion in a production unit of some but not all maintenance employees in a plant produced unsatisfactory results from the standpoint of the Union, the employees, and the employers involved. The Union has, consequently, excluded all maintenance employees from its membership. Although we heretofore included the porter and porterness in the unit,⁸ in the light of all the circumstances now before us, we shall exclude the porter and the porterness.⁹

visory employees, working and non-working foremen, clerical employees, chauffeurs, watchmen, an engineer or fireman, and maintenance employees. In that proceeding an issue also arose as to maintenance employees and the porterness, among others with the Company urging their inclusion and the Union seeking their exclusion, and it also was agreed by the parties that watchmen should be excluded from the unit.

⁵ See Section V, *infra*.

⁶ The Company has several thousand machines at its plant in Brooklyn.

⁷ *Matter of Burton-Dixie Corporation*, 23 N. L. R. B. 958.

⁸ *Burton-Dixie* case, *supra*.

⁹ The Union would include any employees who perform general work about the plant all of the time. The porter or laborer, however, spends about half of his time acting as a porter and the other half at various laborer jobs.

We find that all employees of the Company at its Brooklyn plant, excluding all clerical employees, watchmen, porter and porterness, all maintenance employees, foremen 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 had arisen be resolved by 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.

The parties are in disagreement as to the eligibility of Willie Kuhn. The record is somewhat ambiguous as to Kuhn's duties. While there is testimony that he has been "in charge of the tool crib" and "in charge of supplies" for years, is a machinist and "supervises," the Company terms Kuhn as a "general supply man, carrying stuff around the place," and asserts that he supervises no one, is classified as a general laborer, and receives an hourly rate about equal to that paid lowest skilled production employees. The Union does not admit to membership employees performing functions similar to Kuhn's. We conclude that Kuhn is not a production employee within the appropriate unit and is therefore ineligible to participate in the election.

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 Burton-Dixie Corporation, Brooklyn, New York, 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 Bedding Local 140 of the United Furniture Workers of America, affiliated with the Congress of Industrial Organizations, for the purpose of collective bargaining.