

In the Matter of THE FLINTKOTE COMPANY and TEXTILE WORKERS  
UNION OF AMERICA, CIO

*Case No. 2-R-4329.—Decided April 20, 1944*

*Mr. George K. McKenzie*, of New York City, for the Company.  
*Mr. Charles Serraino*, of Passaic, N. J., for the Textile Workers.  
*Mr. Guy W. Calissi*, of Woodridge, N. J., for the Independent.  
*Mr. Max M. Goldman*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, herein called the Textile Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of The Flintkote Company, East Rutherford, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William F. Guffey, Trial Examiner. Said hearing was held at East Rutherford, New Jersey, on February 14, 1944. The Company, the Textile Workers, and Independent Workers Association of Flintkote Employees, Inc., herein called the Independent, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. At the hearing the Independent and the Company each moved to dismiss the petition, and the Trial Examiner referred the motions to the Board. For reasons set forth hereinafter the motions are hereby denied. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Flintkote Company, a Massachusetts corporation, is engaged in the manufacture and sale of asphalt and asbestos building material, 55 N. L. R. B., No. 263.

asphalt emulsions, wallboard, and paper products. Seven subsidiaries are wholly owned by it. The Company maintains several factories and warehouses throughout the United States, including offices and a factory at East Rutherford, New Jersey, the only plant involved in this proceeding.

The principal raw materials used by the Company are asphalt, mica, talc, stone, and pulpwood. In 1943 the value of such materials purchased by the Company for use at its East Rutherford plant exceeded one million dollars, approximately 50 percent of which was shipped to this plant from points outside the State of New Jersey. During the same period the finished products of the East Rutherford plant exceeded one million dollars in value, of which 90 percent was shipped from this plant to points outside the State of New Jersey.

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

## II. THE ORGANIZATIONS INVOLVED

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

Independent Workers Association of Flintkote Employees, Inc., is an unaffiliated labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On October 5, 1943, the Company refused to recognize the Textile Workers as the exclusive bargaining representative of certain of its employees on the ground that it was under contract with the Independent. In 1943 the Company and the Independent entered into a collective bargaining agreement effective until June 17, 1944, "and thereafter until cancelled by either party upon 30 days written notice to the other." Since the contract will expire by its terms less than 2 months from the present time, unless renewed by the failure of either party to give 30 days notice of cancellation to the other, we find the contract is not a bar to a present determination of representatives. However, any certification which we may issue as a result of an election shall be for the purpose of designating a representative to negotiate an agreement to succeed the contract expiring June 17, 1944, now in effect.<sup>1</sup>

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<sup>1</sup> See *Matter of Chrysler Motors Parts Corporation*, 38 N. L. R. B. 1379; *Matter of Houde Engineering Corporation*, 36 N. L. R. B. 587.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Textile Workers represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</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 Act.

#### IV. THE APPROPRIATE UNIT

The Textile Workers contends that all production employees of the Company's East Rutherford plant, including watchmen, but excluding maintenance, plant clerical, general office, and supervisory employees, and leadmen, comprise an appropriate unit. The Independent, however, would include maintenance and plant clerical employees, as well as leadmen, and the Company is in accord with the Independent's position, although it takes no affirmative stand respecting watchmen.<sup>3</sup> Thus, the classifications of employees in dispute are maintenance, plant clerical employees, and leadmen.

Since 1939 the Company and the Independent have been bound by a series of collective bargaining contracts. The contract now in existence covers employees in the unit the Independent urges as appropriate. From the evidence it appears that all prior agreements embraced substantially the same employees.

The maintenance department is located in a building separate from the Company's other buildings. The maintenance employees, however, spend the larger part of their time at work among the production employees. They punch the same time clock as do the production employees, and are subject to the same general working conditions. On occasion some maintenance men have been temporarily transferred to production work.

The Textile Workers seeks to exclude leadmen solely on the ground that they are supervisory employees. Leadmen are employed in the maintenance and in the various production departments. They are more experienced than the average employee, and each works with a group of about six production and maintenance employees. Most of

<sup>2</sup> The Field Examiner reported that the Textile Workers submitted 193 signed authorization cards, that the names of 137 persons appearing on the cards were listed on the Company's pay roll of October 29, 1943, which contained the names of 518 employees in the appropriate unit, and that the cards were dated between September 1943 and February 1944, and 5 were undated. In addition, at the hearing the Textile Workers submitted 44 authorization cards which bore apparently genuine original signatures. The names of 23 persons appearing on the cards were contained in the aforesaid pay roll. All the cards were dated between January and February 1944, except 2, which were undated. The Field Examiner also reported that the Independent submitted 328 signed authorization cards that the names of 235 persons appearing on the cards were listed on the aforesaid pay roll, and that the cards were dated as follows: 39 between July and December 1943, 167 between 1938 and June 1943, and 29 were undated.

<sup>3</sup> The watchmen are not militarized.

the leadmen's time is spent on manual work, but they have the duty to indicate to their fellow employees in a general way the work to be done. Leadmen, like the employees with whom they work, are paid on an hourly basis but at a slightly higher rate. Unlike their foremen, who are paid on a salary basis, they have no authority to hire, discharge, transfer or promote employees, or effectively recommend such action. Although leadmen are obligated to report to their respective foremen violations of plant rules committed by their fellow employees, the foremen themselves are usually sufficiently acquainted with the facts, or undertake to make their own inquiries, so as to be able to exercise independent judgment in taking disciplinary action. We find that leadmen are not supervisory employees.

Plant clerical employees are attached to various production and maintenance departments of the East Rutherford plant. These employees are on the pay roll of the department in which they work and are subject to the supervision of the departmental head. Unlike the general office clerical employees, the plant clerical employees are paid on an hourly basis. They spend their time performing the usual functions of a plant clerk such as distributing time cards, assembling and turning over certain information to the accounting department, and maintaining records for the department to which they are attached. There is nothing in the record to indicate that the nature of their work is confidential.

Consideration of all the foregoing facts, including the history of collective bargaining, leads us to the conclusion that maintenance employees, leadmen, and plant clerical employees should be a part of the appropriate unit.

We find that the production and maintenance employees of the Company's East Rutherford plant, including watchmen, plant clerical employees, and leadmen, but excluding the general office employees, 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 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 stipulated on the record that part-time employees should be permitted to participate in the election. We are of the opinion that part-time employees have sufficient interests to entitle them to vote, and the stipulation is accordingly approved.

### 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 the Flintkote Company, East Rutherford, 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 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 they desire to be represented by Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, or by Independent Workers Association of Flintkote Employees, Inc., for the purposes of collective bargaining, or by neither.