

In the Matter of PROXIMITY MANUFACTURING COMPANY and TEXTILE  
WORKERS UNION OF AMERICA (CIO)

Case No. 5-R-1532.—Decided May 4, 1944

*Brooks, McLendon, Brim & Holderness*, by *Mr. Kenneth M. Brim*, of Greensboro, N. C.; and *Mr. Sydney M. Cone*, of Greensboro, N. C., for the Company.

*Messrs. J. D. Pedigo and E. W. Witt*, of Concord, N. C., for the Union.

*Mr. Robert E. Tillman*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Textile Workers Union of America (CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Proximity Manufacturing Company,<sup>1</sup> Greensboro, North Carolina, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Sidney J. Barban, Trial Examiner. Said hearing was held at Greensboro, North Carolina, on March 29, 1944. 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 rulings of the Trial Examiner 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

Proximity Manufacturing Company, a North Carolina corporation, is engaged in the manufacturing and processing of cotton goods. The

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<sup>1</sup>In the formal papers of this proceeding the Company is designated as "Proximity Print Works." Its name appears in the caption and body of this Decision as it was corrected at the hearing.

Company operates three plants in Greensboro, North Carolina, and a fourth at Haw River, North Carolina. At its Proximity Print Works in Greensboro, which is the only plant having employees whom the Union seeks to represent herein, the Company produced in 1943 finished products having a value of approximately \$15,000,000, of which over 90 percent represents the value of products shipped to points outside the State of North Carolina. Annually, a substantial portion of the raw materials used at the plant originates outside the State of North Carolina.

The Company admits that in the operation of its Proximity Print Works it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

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

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the Union as the exclusive collective bargaining representative of the employees in its Proximity Print Works, unless and until the Union is certified by the Board.

The Company contends that a previous Board election conducted among its Proximity Print Works employees, in which the Union participated, is a bar to this proceeding. The election to which reference is made was held on June 25, 1943, and resulted in a majority vote against the Union. Since no collective bargaining representative was designated as a result of the election, and because a statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union, subsequent to the election, obtained designations from a substantial number of employees in the unit hereinafter found to be appropriate,<sup>2</sup> we find that the previous election, though held less than a year ago, is no bar.<sup>3</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 Union seeks a unit of all production and maintenance employees at the Proximity Print Works of the Company, excluding all

<sup>2</sup> The Field Examiner stated that the Union submitted to him 304 membership cards, all except 9 of which were undated, bearing dates subsequent to the prior election, and that there are 438 employees in the unit alleged to be appropriate.

<sup>3</sup> See *Matter of Shawnee Milling Company*, 51 N L R B. 147, 148, and cases cited therein.

machine printers (journeymen and apprentices) employed in the Printing Department, all clerical employees, watchmen and armed guards, the laboratory assistant, and overseers, second hands, section men, and all other supervisors with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

The Company, with the reservation that the employees of its three Greensboro plants should all be in one unit, agrees that the unit sought by the Union is appropriate. The Company and the Union are not in agreement as to the disposition of certain classifications of employees alleged to be factory clericals and a delivery truck driver. They also differ as to the supervisory status of three employees.

On June 9, 1938, the Board issued a decision in which it found an appropriate unit of "the piece rate and hourly production employees of the [Company] at the [Proximity] Print Works, exclusive of watchmen and clerical and supervisory employees."<sup>4</sup> The Company had contended that a unit confined to employees of only one of its three Greensboro plants was inappropriate, but the Board found otherwise on the ground that the Company had introduced no evidence to sustain its contention. In the election which followed the decision, the Union received a majority of the votes cast and was certified by the Board.<sup>5</sup> No collective bargaining contract was entered into between the Company and the Union.

On June 3, 1943, pursuant to a petition of the Union, the Board directed another election among the employees of the Proximity Print Works in a stipulated unit.<sup>6</sup> As previously indicated in Section III, *supra*, a majority of the votes were cast against the Union.

On February 9, 1944, pursuant to a petition of the Machine Printers Beneficial Association, the Board found an appropriate unit of "all machine printers, including journeymen and apprentices, foremen and assistant foreman, employed in the printing department of the Proximity Printing Works \* \* \*."<sup>7</sup> The Association won the election and was certified by the Board. The unit which the Union is seeking expressly excludes the employees in the Association's unit.

The record in the present case contains no evidence tending to indicate that a unit confined to the Proximity Print Works of the Company is not appropriate on the basis of the present extent of organization. We see no reason, therefore, to depart from the findings in our prior decisions that a bargaining unit limited to the Proximity Print Works of the Company is appropriate. There remains for

<sup>4</sup> *Matter of Proximity Print Works*, 7 N. L. R. B. 803.

<sup>5</sup> *Matter of Proximity Print Works*, 8 N. L. R. B. 574.

<sup>6</sup> *Matter of Proximity Manufacturing Company*, 50 N. L. R. B. 90.

<sup>7</sup> *Matter of Proximity Manufacturing Company*, 54 N. L. R. B. 1179.

determination the disposition of those employees concerning whom the parties are in dispute.

The Union contends that the employees in the following classifications are engaged solely in factory clerical work and for that reason should be excluded from the unit: ticket girls, shipping marker and checker, yardage listers, yard listers, and yardage tag girls. The Company contends that the employees in all the above classifications should be included in the unit, but that should the Board decide to exclude them as factory clerical employees, then the following should also be excluded: yardage callers, yard callers, incentive worker, and wash test girl. The Union objects to excluding these latter employees. Inasmuch as the basis for the Union's position on the disputed factory clerical employees is substantially the same in each case, we deem it unnecessary to treat each classification in detail but shall consider the issue as one involving factory clerical employees as a whole.

*Factory clerical employees:* The employees in the classifications designated by the Union are engaged exclusively in clerical work involving no manual handling of cloth. Some use adding machines and record the yardage, color, pattern and weight of cloth. Others write out tickets and tags which are attached to the cloth, and one marks cloth for shipment. In every instance, the employees concerned are listed on the production, not the office, pay roll and are under the supervision of the production supervisory employees in their respective departments. In most instances they have no contact with office employees, but, on the contrary, perform their work in the midst of production employees. They are hourly paid, at lower rates than production employees.

The employees in the classifications designated by the Company, except the incentive worker, are barely distinguishable from the above-discussed employees, by the fact that the performance of their clerical duties requires some very minor manual labor.<sup>8</sup> On the other hand, some of them form working teams with factory clerical employees sought to be excluded by the Union. To exclude one member of such a team and not the other appears to us to be arbitrary. We are persuaded by the above facts that the interest of all the Company's factory clerical employees are more intimately related to those of production employees than to those of office employees. We shall, therefore, include the factory clerical employees in the production and maintenance unit.

*Delivery truck driver:* The Company has several truck drivers whom the parties agree to include in the unit. It also has a driver of a light truck whom the Union would exclude from and the Company include

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<sup>8</sup> The wash-test girl is engaged almost entirely in manual labor, but her labor has no direct relation to the production process.

in the unit. This driver picks up packages at the local post office, express office, and freight office, hauls supplies for the mill from other plants or firms in the city, and delivers mail between the Company's three Greensboro plants. He is responsible to the yard boss who is in charge of all trucking operations, and is carried on the production pay roll. We do not regard his duties to be such as to warrant his exclusion from a unit in which other truck drivers are included. We shall include him in the unit.

*Malcolm Brady, Clifton Crutchfield, and Martin Donnell*: The supervisory status of these three employees is in dispute, the Union contending that they are supervisory employees who should be excluded from the unit, and the Company protesting their exclusion.

*Malcolm Brady* is the only inspector in the Printing Department. His task involves the visual inspection of cloth as it emerges from a row of printing machines. He does not reject cloth or mark defects, but simply reports to the printer concerned or to an overseer whenever a particular machine is turning out defective printing. He may operate one of the machines 2 or 3 percent of his working time. He is responsible to the overseer and to the second hand, and receives a lower rate of pay than they do. He does not recommend discipline, or hiring and discharging. We shall include him in the unit as one of the production and maintenance employees.

*Clifton Crutchfield* is a general spare man in the Bleaching Department. He devotes approximately one-third of his working time to testing chemicals. The remainder of the time he operates various machines as his services are needed. He has also instructed new employees. On Sundays he has charge of the storeroom and supplies. There is some evidence that Crutchfield assigns employees to work on Sunday. On the other hand, the superintendent of the plant testified that Crutchfield has no supervisory authority and may not assign workers, or recommend their discharge, promotion or discipline. He is responsible to the supervisory employees in his department and receives a lower rate of pay than they do. We shall include him in the unit as one of the production and maintenance employees.

*Martin Donnell* works chiefly in the Grey-goods Warehouse. He is considered a gang leader by the Company because of his long service and trustworthiness. In this capacity he directs the work of five to eight men who unload trucks and store goods in the warehouse. If he is absent, any other man in the group may take his place. Donnell works with the men and, like them, is responsible to the yard foreman and assistant yard foreman who lay out the work for all the employees. Donnell has no authority to hire, discharge, discipline, or effectively recommend such action. His pay is 1 or 2¢ more per hour than the men working with him. We do not consider his status to be such as to

warrant his exclusion from the unit as a supervisory employee. We shall include him in the unit as one of the production and maintenance employees.

We find that all production and maintenance employees of the Company's Proximity Print Works, including factory clerical employees, and truck drivers, but excluding all machine printers, (journeymen and apprentices) in the Printing Department,<sup>9</sup> office clerical employees, watchmen and armed guards, the laboratory assistant, and overseers, second hands, section men, 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 pay-roll period immediately preceding the date of our Direction of Election herein, subject to the limitations and additions set forth therein.<sup>10</sup>

#### 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 Proximity Manufacturing Company, Greensboro, North Carolina, at its Proximity Print Works, 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 Fifth 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,

<sup>9</sup> The parties agree that machine printers temporarily assigned to other work are to be excluded from the unit, and we so find.

<sup>10</sup> The Union urges that eligibility to vote be determined on the basis of the pay roll nearest the date of the hearing. We find that there is no persuasive evidence justifying a departure from our customary practice of determining eligibility on the basis of the pay-roll period immediately preceding the date of the Direction of Election.

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 or not they desire to be represented by Textile Workers Union of America (CIO), for the purposes of collective bargaining.