

In the Matter of INDUSTRIAL RAYON CORPORATION and TEXTILE WORKERS  
UNION OF AMERICA, LOCAL 202, C. I. O.

*Case No. 5-R-1319.—Decided May 15, 1944*

*Mr. H. I. Lodish*, of Cleveland, Ohio, for the Company.

*Mr. Benjamin Wyle*, of New York City, for the Union.

*Miss Irene R. Shriber*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Textile Workers Union of America, Local 202, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Industrial Rayon Corporation, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert A. Levett, Trial Examiner. Said hearing was held at Covington, Virginia, on March 2, 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

Industrial Rayon Corporation, a Delaware corporation, with its principal office and place of business in Cleveland, Ohio, is engaged in the manufacture of rayon yarn and in the manufacture, sale, and distribution of tubular knitted rayon fabric. It owns and operates three plants which are located at Cleveland, Ohio, Painesville, Ohio, and Covington, Virginia. The instant proceeding relates solely to the

Company's operations in Covington, Virginia, where approximately 1,000 workers are employed. The Covington plant uses over \$2,000,000 worth of raw material annually, practically all of which is purchased at points outside the State of Virginia. About 99 percent of the products finished at this plant, which exceed the annual value of \$3,000,000, is shipped to points outside the State of Virginia.

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

## II. THE ORGANIZATION INVOLVED

Textile Workers Union of America, Local 202, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On June 11, 1943, the Union notified the Company that it represented a majority of the Company's section inspectors at the Covington plant and requested a collective bargaining conference. The Company refused the request on June 15, 1943, contending that the inspectors are essentially representatives of management and therefore may not properly be represented by the Union for the purposes of collective bargaining.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of the employees affected by this proceeding.<sup>1</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; DETERMINATION OF REPRESENTATIVES

On June 14, 1938, in Case No. R-156, the Board certified the Union's predecessor, Textile Workers Organizing Committee (CIO), as the exclusive bargaining representative of all the employees of the Company's predecessor, excepting supervisory, clerical, and salaried employees. Thereafter, the Union and the Company executed several collective bargaining agreements, the last having been entered into on January 1, 1943. All these contracts, in addition to excluding the above-mentioned categories of employees from the unit covered by

<sup>1</sup> The Field Examiner reported that the Union submitted 18 dues payment ledger cards, 1 of which was dated in 1941, 2 in 1942, and the remaining 15 in 1943. The Trial Examiner further reported that the Union submitted 7 authorization cards to him at the hearing, all of which were dated March 4, 1944, and bore apparently genuine signatures. That the names of persons appearing on the cards were listed on the Company's pay roll of March 2, 1944, which contained the names of 19 employees in the classification involved.

their terms specifically excluded the "section inspectors" and the "head fixer in [the] coning department."<sup>2</sup> While the Union has from the first objected to the exclusion of these latter employees from the coverage of the contracts, it has heretofore deferred to the Company's demands in this respect in order to expedite bargaining on behalf of the other employees.

The Union contends that the appropriate unit consists of the production and maintenance employees as established by our prior decision, including the section inspectors and the head inspector in the cone packing department.<sup>3</sup> The Company contends that the inspectors, as a class, should not be included in any unit for the purposes of collective bargaining because they are supervisory employees and because they have hitherto been excluded from the past bargaining contracts entered into by the parties.

The 19 section inspectors, including the head inspector of the cone packing department, now in the employ of the Company have essentially the same functions and authority notwithstanding the fact that they work in 5 different departments. The principal duty of these employees, as their name implies, is to inspect the products and machines within their various departments for the purpose of detecting defects and flaws. They work under the same general conditions as the employees whose work they inspect, with regard to overtime allowances, hours of work, rest periods, and holidays. Like the production employees, they are paid on an hourly basis. The record shows that no new employees are ever hired for this work but that only persons who have been in the Company's employ for many years and who are thoroughly conversant with the technical aspects of the operations of the departments in which they work are ever assigned these jobs. While they are responsible for the quality of the work produced, they do not supervise production employees in the sense that they have the power to hire, discharge, lay-off, discipline or otherwise effect changes in their status. Rejection by them of the work of the production employees does not have any direct or significant effect upon the earnings of those employees; they have no voice in determining or shaping the labor policy of the Company. It is clear, therefore, that in the area of labor relations and policy, these employees do not constitute management in the eyes of the rank and file as do truly supervisory employees. Consequently, the considerations which have impelled a majority of the Board to hold that supervisory employees may not

<sup>2</sup> Notwithstanding their exclusion from the coverage of the contracts the records shows that several of the inspectors retained their membership in the Union.

<sup>3</sup> At the hearing in the instant case, the parties stipulated that since the Board's certification of the Union's predecessor, there has been no change in the general methods of the Company's operations and that except for the recently installed operation of manufacturing rayon cloth, the employee classifications in all operations have remained unchanged.

constitute appropriate bargaining units are here inapplicable.<sup>4</sup> For these reasons we are of the opinion and find that the section inspectors as a class may, if they so desire, form a part of the bargaining unit presently represented by the Union. In view of the absence of any question concerning representation among the employees in the present contract we shall direct that a separate election be held only among the section inspectors, including the head inspector in the cone packing department, concerning whom a question concerning representation has arisen. If a majority of the employees involved select the Union as their bargaining representative, they will thereby have indicated their desire to and will be included in the more comprehensive unit presently represented by the Union.<sup>5</sup>

We shall accordingly direct that the question concerning representation which has arisen be resolved by means of an election by secret ballot among all the section inspectors, including the head inspector in the cone packing department, who were employed by the Company 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.

#### 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 Industrial Rayon Corporation, Covington, Virginia, 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 section inspectors, including the head inspector of the cone packing department, who were employed during the pay-roll period immediately preceding the date of this Direction, including any such employees who did not work during the said pay-roll period because they were ill or on vacation or temporarily laid off, and further including employees in the armed forces of the United States who present themselves in

<sup>4</sup> Cf. *Matter of Maryland Drydock Company*, and *Local No. 31 of the Industrial Union of Marine & Shipbuilding Workers of America*, 49 N. L. R. B. 733

<sup>5</sup> We have frequently held that inspectors may be included in the same unit with the employees whose work they inspect. See *Matter of Gardner-Denver Company*, 44 N. L. R. B. 1192; *Matter of North American Aviation, Inc., of Kansas*, 44 N. L. R. B. 1372; *Matter of Pierson Machine*, 43 N. L. R. B. 1169.

person at the polls, but excluding any supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, who were employed by the Company during the pay-roll period immediately preceding the date of the Direction of Election herein, and excluding any 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 Textile Workers Union of America, Local 202, affiliated with the Congress of Industrial Organizations for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.

[See *infra*, 56 N. L. R. B. 1679 for Supplemental Decision and Amended Direction of Election.]