

In the Matter of MARTINSVILLE COTTON MILL COMPANY, INC.¹ and
TEXTILE WORKERS UNION OF AMERICA, C. I. O.

Case No. 5-R-1599.—Decided August 3, 1944

Messrs. Guthrie, Pierce, and Blakeney, by Mr. W. S. Blakeney, of
Charlotte, N. C., for the Company.

Mr. Harold Griffiths, of Spray, N. C., for the Union.

Mr. David V. Easton, 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, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Martinsville Cotton Mill Company, Inc., Martinsville, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman Goldberg, Trial Examiner. Said hearing was held at Martinsville, Virginia, on June 23, 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. At the hearing, the Company moved to dismiss the petition. The Trial Examiner referred this motion to the Board. For reasons set forth in Section III, *infra*, the motion is 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

Martinsville Cotton Mill Company, Inc., a Virginia Corporation, is a subsidiary of Chadwick-Hoskins Company, a North Carolina

¹The name of the Company is amended to read as written above in view of evidence disclosed at the hearing.

corporation, and is principally engaged in the manufacture of print cloths. It operates a single plant located in Martinsville, Virginia, with which we are concerned herein. During the year 1943, the Company purchased for use at its plant raw materials, consisting primarily of coal, cotton, cotton yarn, and other items of supplies, valued at approximately \$500,000, almost all of which were obtained from points outside the State of Virginia. During the same period, the Company manufactured finished products valued between \$800,000 and \$900,000, almost all of which were sold outside the State of Virginia.

We find that the Company 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 refuses to recognize the Union as the collective bargaining representative of its employees, and urges the dismissal of the present petition.

The Company bases its position upon the following facts: On February 15, 1944, the Union filed a Petition for Investigation and Certification of Representatives of the Company's employees.² On March 1, the Company and the Union entered into a Stipulation for Certification Upon Consent Election and, pursuant thereto, an election was held on March 17 in which the Union was defeated. On March 29 the Union filed Objections to the election, and on April 19 the Regional Director issued his Report on Objections, recommending that the Objections be sustained and the election voided. Thereafter, on April 24, 1944, the Company filed Exceptions to the Regional Director's Report and requested that a hearing be held upon the Objections. On May 26, 1944, the Union requested that the Board permit it to withdraw its petition and the Objections to the election "in the hopes that [the Union] may be able within the near future to hold another election" On May 29, 1944, the Board issued an Order Permitting Withdrawal of Petition.

The Company contends, in substance, that no election should be held at the present time because (1) it has not been given an opportunity to present evidence with respect to the Objections filed by the Union, and (2) a recent valid and decisive election had been held. We do not agree with these contentions. We are of the opinion that the subject matter

² Case No. 5-R-1511.

of objections to an election conducted in a prior proceeding is not germane to issues raised in a new representation proceeding. Furthermore, the Union submitted, as hereinafter indicated, a substantial number of designations signed by employees of the Company subsequent to the date of the election held in the previous proceeding.³

A report of a Field Examiner for the Board, introduced into evidence at the hearing, as supplemented by a statement made on the record by the Trial Examiner, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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

In the consent election agreement previously referred to, the Company and the Union agreed that "all production employees [of the Company], including watchmen, maintenance men, truck drivers, excluding overseers, . . . second hands, office help and supervisory staff, 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" constituted an appropriate unit. In the instant proceeding, the Union seeks a unit comprised of all production employees, except for overseers, second hands, office help, supervisory staff, watchmen, maintenance men, and truck drivers. The Company urges that the only appropriate unit is that set forth in the consent election agreement.⁵

We are of the opinion that the watchmen (who are non-militarized), maintenance men, and truck drivers of the Company,⁶ may properly

³ See *Matter of Wagner Electric Corporation*, 53 N. L. R. B. 543.

⁴ The Field Examiner reported that the Union submitted 87 designations bearing apparently genuine original signatures, that 84 of these cards were signed subsequent to March 17, 1944, and 2 bore no date; and that there are 171 employees in the appropriate unit. The Trial Examiner stated that the Union submitted 5 additional designations at the hearing, bearing apparently genuine original signatures, and that 1 of these, dated June 20, contained the name of a person appearing upon the Company's pay roll of February 20, 1944, the only pay roll available to him at the time he made his check. He further stated that, since the other 4 designations were alleged to be signed by employees of the Company who were engaged subsequent to February 20, 1944, he was unable to state whether or not these persons are engaged by the Company.

⁵ The proposed unit, as contained in the petition filed in this proceeding, is similar to that in the consent election agreement. At the hearing, however, the Union indicated for the first time that it desired to exclude watchmen, maintenance men, and truck drivers.

⁶ The watchmen and the maintenance employees are both under the supervision of the overseer of the repair shop. The truck driver, who performs miscellaneous duties in and about the plant in addition to driving the truck, also appears to be under the supervision of this overseer.

be included within the same unit as production employees.⁷ Moreover, the Union stated at the hearing that it would be willing to participate in an election directed among employees in the unit described in the prior consent election agreement.

Accordingly, we find that all production employees of the Company, including watchmen, maintenance men, and truck drivers, but excluding office help, overseers, second hands, 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 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Martinsville Cotton Mill Company, Inc., Martinsville, 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 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

⁷ For substantially similar units, see *Matter of American Woolen Company*, 52 N. L. R. B. 415; *Matter of Fickett-Brown Manufacturing Company, Inc.*, 53 N. L. R. B. 106; *Matter of P. H. Hanes Knitting Company*, 52 N. L. R. B. 746; and *Matter of Illinois Knitting Company*, 53 N. L. R. B. 1216.

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 Textile Workers Union of America, C. I. O., for the purposes of collective bargaining.

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