

In the Matter of LUTHER MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, C. I. O.

In the Matter of PEPPERELL MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, C. I. O.

Cases Nos. 1-R-2014 and 1-R-2015, respectively.—Decided October 24, 1944

Mr. William J. Kelleher, of Boston, Mass., for Luther and Pepperell.

Mr. Isidore Katz, of New York City, for the C. I. O.

Messrs. Frank Sgambato and George H. Cottell, both of Providence, R. I., for the A. F. L.

Mr. Jacob Minkin, of New Bedford, Mass., for the Loom Fixers, Knot-tiers, and Slasher Tenders.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by Textile Workers Union of America, C. I. O., herein called the C. I. O., alleging that questions affecting commerce had arisen concerning the representation of employees of Luther Manufacturing Company and Pepperell Manufacturing Company, Fall River, Massachusetts, herein called Luther and Pepperell, respectively, the National Labor Relations Board provided for appropriate hearings upon due notice before Leo J. Halloran, Trial Examiner. Said hearings were held at Fall River, Massachusetts, on September 21 and 22, 1944. The C. I. O., United Textile Workers Union of America, A. F. of L., herein called the A. F. L., Fall River Loom Fixers' Union, Fall River Knot-tiers' Union, and Fall River Slasher Tenders' Union, herein called respectively, the Loom Fixers, the Knot-tiers, and the Slasher Tenders, together with the company involved, i. e. Luther or Pepperell, appeared and participated at each hearing.¹ All parties were afforded full opportunity to be heard, to

¹ Mr. Kelleher appeared in Case No. 1-R-2014 as counsel for Luther and in Case No. 1-R-2015 as counsel for Pepperell.

examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearings are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

The Board hereby consolidates the foregoing cases for the purposes of decision, and, upon the consolidated record, makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Both Luther Manufacturing Company and Pepperell Manufacturing Company are Massachusetts corporations engaged in the manufacture of textile goods at mills located in Fall River, Massachusetts. The principal raw material used by Luther in its Fall River mill is cotton, and its principal finished product is cotton cloth. During the year 1943, Luther purchased raw materials valued at approximately \$750,000, all of which were purchased from points outside the Commonwealth of Massachusetts. During the same period, Luther manufactured finished products valued at approximately \$1,500,000, of which about 95 percent was shipped to points outside the Commonwealth.

The principal raw materials used by Pepperell at its Fall River mill are cotton and rayon, and its principal finished products are cotton cloth and rayon cloth. During the year 1943, Pepperell purchased raw materials valued at approximately \$2,500,000, all of which were purchased from points outside the Commonwealth of Massachusetts. During the same period, Pepperell manufactured finished products valued at approximately \$6,500,000, of which about 90 percent was shipped to points outside the Commonwealth.

Luther and Pepperell each 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, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

United Textile Workers Union of America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Fall River Loom Fixers' Union, Fall River Knot-tiers' Union, and Fall River Slasher Tenders' Union are unaffiliated labor organizations, admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

Both Luther and Pepperell have refused to grant recognition to the C. I. O. as the exclusive bargaining representative of certain of their employees on the ground that the A. F. L. was certified as the bargaining representative of such employees.²

Statements of a Field Examiner for the Board, introduced into evidence at the hearing, indicate that the C. I. O., the Loom Fixers, the Knot-tiers, and the Slasher Tenders each represents a substantial number of employees in the units proposed by each as appropriate.³

We find that questions affecting commerce have arisen concerning the representation of employees of Luther and Pepperell, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The C. I. O. seeks separate units composed of all production and maintenance employees engaged by Luther and Pepperell at their Fall River mills, excluding executives, supervisory,⁴ office and clerical employees.⁵ The Loom Fixers, the Knot-tiers, and the Slasher Tenders

² See *Matter of Howard Arthur Mills, et al*, 43 N. L. R. B. 692.

³ The showing of designations submitted to the Field Examiner by the above-named labor organizations, is indicated by the following charts

CASE NO 1-R-2014

	Number in respective units	C I O	Designations submitted by—		
			Loom Fixers	Knot Tiers	Slasher Tenders
C I O.....	376	128			
Loom Fixers.....	20		20		
Knot Tiers.....	2			2	
Slasher Tenders.....	6				6

CASE NO 1-R-2015

	Number in respective units	C I O	Loom Fixers	Knot Tiers	Slasher Tenders
C I O.....	759	167			
Loom Fixers.....	57		57		
Knot Tiers.....	18			18	
Slasher Tenders.....	12				12

On August 26, 1942, the A. F. L. was certified by the Board as the collective bargaining representative of employees in separate units of production and maintenance employees engaged at Luther and Pepperell (see footnote 2, *supra*). Thereafter, it executed separate collective bargaining agreements with each of these companies, containing, *inter alia*, maintenance of membership and automatic renewal provisions. These contracts, by their terms, were to terminate in September 1944, unless the parties permitted the automatic renewal provisions contained therein to become operative. On August 15, 1944, the A. F. L. duly notified each of the companies that it desired changes in the existing agreements, thus preventing the automatic renewal provision in each agreement from becoming operative. The Board's certification of the A. F. L. and that organization's collective bargaining history with each of the companies are sufficient to establish its interest in this consolidated proceeding.

⁴ All parties agree that the term "supervisory employees" shall include employees of the rank of second hands and over.

⁵ In addition, the A. F. L., the C. I. O., and Pepperell agree that uniformed guards engaged at Pepperell should be excluded. These proposed units, except with respect to uniformed guards at Pepperell, correspond to those previously found appropriate by the Board. See *Matter of Howard Arthur Mills*, 42 N. L. R. B. 518.

ers⁶ seek separate units of employees at both Luther and Pepperell comprised of (a) loom fixers and changers-over (spare fixers), (b) knot-tiers and helpers, drawing-in machine operators, and warp twisters, and (c) slasher tenders and helpers, respectively. Both the Company and the A. F. L. are neutral, although the A. F. L. does not concede the appropriateness of the units proposed by the Locals.

On July 26, 1942, the Board, after careful consideration of the contentions of the Locals identical to those advanced by these organizations herein, issued a Decision and Direction of Election, in which it found the units proposed by them inappropriate.⁷ Subsequent to the hearing in that proceeding, but prior to the issuance of the Decision, the Loom Fixers, the Knot-tiers, and the Slasher Tenders each executed Agreements of Affiliation with the A. F. L., which provided, *inter alia*, that each of these organizations "reserves to itself the right to . . . complete local autonomy with the right to bargain with employers concerning terms and conditions of employment and to enter into contracts concerning the same either as an individual local or in combination with other locals [similarly affiliated]."

As previously indicated, the A. F. L. was certified on August 26, 1942, as the representative of the production and maintenance employees at the Luther and Pepperell mills. Shortly thereafter, it executed collective bargaining agreements with each of these companies.

At some time antecedent to the execution of these agreements, the affiliation of the Locals with the A. F. L. was abrogated, and on November 12, 1943, the Loom Fixers filed representation petitions with the Board, seeking units of loom fixers at both Luther and Pepperell.⁸ On December 3, the Regional Director dismissed these petitions administratively. An appeal from these dismissals was taken by the Loom Fixers to the Board, and on December 24, the Board sustained the action of the Regional Director. Thereafter, a work stoppage took place among the employees in the groups sought by the Loom Fixers in an effort to secure separate recognition, resulting in the shutting down of both mills.⁹ On January 17, 1944, while the work stoppage was still in effect, the International president of the A. F. L. sent a wire to the companies stating, "I am hereby releasing the bargaining rights in the Luther and Pepperell mills to the Loom Fixers, Slasher Tenders and Helpers, and the Drawing-in, Knot-tiers, and Warp Twisters Locals

⁶ Whenever the Loom Fixers, the Knot-tiers, and the Slasher Tenders are referred to collectively in this Decision, we shall designate them as the Locals.

⁷ See Footnote 5, *supra*. The decision in that proceeding was based, in part, upon findings previously made in *Matter of Border City Manufacturing Company, et al.*, 36 N. L. R. B. 678, *Matter of Arkwright Corporation*, 36 N. L. R. B. 687, and *Matter of Sagamore Manufacturing Co.*, 39 N. L. R. B. 909. Each of these proceedings involved employees of textile mills engaged in Fall River, Massachusetts, and in each, the Board found mill-wide units appropriate.

⁸ Cases Nos. 1-R-1679 and 1-R-1678.

⁹ A similar work stoppage took place about this time in other Fall River Textile mills, and for the same reason.

for their membership." Whether or not this official was properly authorized to release such rights, there is no dispute that the A. F. L. from this date, no longer bargained collectively for the employees in the groups claimed by the Locals. On the contrary, the two companies, on January 18, sent letters to each of the three organizations stating, in effect, that they were willing to bargain collectively with the Locals. Since that time, both companies have dealt with the Locals as the exclusive representatives of the employees in their respective groups, although no written collective bargaining agreement has been consummated between the companies and the Locals.

By letters dated July 24, 1944, the Locals requested conferences with both Luther and Pepperell for the purposes of negotiating written collective bargaining agreements. On July 26, the C. I. O. filed the petitions in this consolidated proceeding. On July 31, the companies replied to the requests of the Locals, stating, in effect, that, because of "recent developments," a conference for the purpose suggested in the letters of July 24 should not be held "at the present time."

The manufacturing operations of both Luther and Pepperell are substantially similar. These operations are divided among the carding, spinning, warp preparation, and weaving departments. The raw cotton is cleansed and treated in various ways in the carding room. After these processes have been completed, the cotton is transformed into yarn in the spinning room, where it is made into warp and filling. The warp is thereafter sent to the warp preparation department, where it is subjected to further treatments. It is then slashed (or stretched), and is thereafter drawn through needs and harnesses, which determine the pattern of the cloth. The warp and the harness are then transferred to the weaving room, where the filling and the warp are interwoven to produce cloth. When rayon cloth is being manufactured, the rayon is woven into the cloth at this point.

The slasher tenders and drawing-in machine operators perform their duties in the warp preparation department, together with other classifications of employees performing various operations essential to the preparation of warp. The loom fixers and changers-over install cylinders of warp in the loom, repair the loom, and keep it in operation, and the knot-tiers and warp twisters tie the yarn into the weave. Both these latter groups are engaged in the weaving department. In the event of a cessation of work among any of these groups, the manufacturing of cloth ceases. These classifications of employees are highly skilled and are in the higher paid brackets of a textile mill. They have, over a long period of time, indicated their desire to be represented for the purposes of collective bargaining separate from the remaining employees and by organizations presently affiliated with neither the American Federation of Labor nor the Congress of Industrial Organ-

izations. Each of the three organizations desiring to represent these employees has had a substantial history of collective bargaining in the textile industry.¹⁰

In view of the foregoing, and particularly the fact that, since January 18, 1944, both Luther and Pepperell have recognized the Locals as the collective bargaining representatives of their respective groups, we are of the opinion that the groups sought by the Locals may properly form either separate units or parts of more comprehensive units. We shall, therefore, make no final determination at this time with respect to the appropriate units, but shall reserve such determination pending the outcome of elections hereinafter directed. We shall direct that separate elections by secret ballot be held among the employees in each of the voting groups set forth below, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction:

1. The following classifications of employees of Luther engaged at its Fall River mill, excluding office and clerical employees, executives, and all supervisory employees (including second hands) with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

(a) All loom fixers and changers-over (spare fixers) to determine whether they desire to be represented by the Loom Fixers, the C. I. O., the A. F. L., or by none of these labor organizations;

(b) All slasher tenders and helpers to determine whether they desire to be represented by the Slasher Tenders, the C. I. O., the A. F. L., or by none of these labor organizations; and

(c) All remaining production and maintenance employees, excluding knot-tiers and helpers, drawing-in machine operators, and warp twisters,¹¹ to determine whether they desire to be represented by the C. I. O., the A. F. L., or by neither of these labor organizations.

2. The following classifications of employees of Pepperell engaged at its Fall River mill, excluding uniformed guards, office and clerical employees, executives, and all supervisory employees (including second hands) with authority to hire, promote, discharge, discipline, or other-

¹⁰ The record indicates that the Slasher Tenders has been in existence for over 50 years, and we have previously found that loom fixers constitute an appropriate unit separate from other production and maintenance employees. See *Matter of Pacific Mills, Cocheco Division*, 10 N. L. R. B. 26. The record contains evidence indicating that the Loom Fixers represents approximately 90 percent of the loom fixers in the Fall River textile mills and that the Knot-tiers and Slasher Tenders represent almost 100 percent of the employees in the Fall River mills engaged in the classifications which each seeks to represent herein.

¹¹ The record discloses that Luther presently employs only one employee in the group claimed by the Knot-tiers. We shall not place this employee within any voting group, but, in the event Luther employs additional employees engaged as knot-tiers and helpers, drawing-in machine operators, or warp twisters, we shall entertain a new representation petition with respect to such employees.

wise effect changes in the status of employees, or effectively recommend such action:

(a) All loom fixers and changers-over (spare fixers) to determine whether they desire to be represented by the Loom Fixers, the C. I. O., the A. F. L., or by none of these labor organizations;

(b) All slasher tenders and helpers to determine whether they desire to be represented by the Slasher Tenders, the C. I. O., the A. F. L., or by none of these labor organizations;

(c) All knot-tiers and helpers, drawing-in machine operators, and warp twisters, to determine whether they desire to be represented by the Knot-tiers, the C. I. O., the A. F. L., or by none of these labor organizations; and

(d) All remaining production and maintenance employees to determine whether they desire to be represented by the C. I. O., the A. F. L., or by neither of these labor organizations.

Upon the results of these elections will depend, in part, our determination of the appropriate units.¹²

DIRECTION OF ELECTIONS

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 Luther Manufacturing Company and Pepperell Manufacturing Company, Fall River, Massachusetts, seven separate elections 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 First 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 following groups of employees, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during the 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 elections:

¹² The C. I. O. requested that it be designated upon the ballot as "Textile Workers Union of America (C. I. O.)"; the A. F. L. requested that it be designated thereon as "United Textile Workers Union of America (A. F. of L.)"; and the Locals that they be designated thereon as "Fall River Loom Fixers' Union," "Fall River Slasher Tenders' Union," and "Fall River Knot-tiers' Union," respectively. These requests are hereby granted

1. The following classifications of employees of Luther Manufacturing Company engaged at its Fall River mill, excluding office and clerical employees, executives, and all supervisory employees (including second hands) with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(a) All loom fixers and changers-over (spare fixers) to determine whether they desire to be represented by the Fall River Loom Fixers' Union, the Textile Workers Union of America (C. I. O.), the United Textile Workers Union of America (A. F. of L.), for the purposes of collective bargaining, or by none of these labor organizations;

(b) All slasher tenders and helpers to determine whether they desire to be represented by the Fall River Slasher Tenders' Union, the Textile Workers Union of America (C. I. O.), the United Textile Workers Union of America (A. F. of L.), for the purposes of collective bargaining, or by none of these labor organizations; and

(c) All remaining production and maintenance employees, excluding knot-tiers and helpers, drawing-in machine operators, and warp twisters, to determine whether they desire to be represented by the Textile Workers Union of America (C. I. O.), the United Textile Workers Union of America (A. F. of L.), for the purposes of collective bargaining, or by neither of these labor organizations.

2. The following classifications of employees of Pepperell Manufacturing Company at its Fall River mill, excluding uniformed guards, office and clerical employees, executives, and all supervisory employees (including second hands) with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees; or effectively recommend such action:

(a) All loom fixers and changers-over (spare fixers) to determine whether they desire to be represented by the Fall River Loom Fixers' Union, the Textile Workers Union of America (C. I. O.), the United Textile Workers Union of America (A. F. of L.), for the purposes of collective bargaining, or by none of these labor organizations;

(b) All slasher tenders and helpers to determine whether they desire to be represented by the Fall River Slasher Tenders' Union, the Textile Workers Union of America (C. I. O.), the United Textile Workers Union of America (A. F. of L.), for the purposes of collective bargaining, or by none of these labor organizations;

(c) All knot-tiers and helpers, drawing-in machine operators, and warp twisters to determine whether they desire to be represented by the Fall River Knot-tiers' Union, the Textile Workers Union of America (C. I. O.), the United Textile Workers Union of America (A. F. of L.), for the purposes of collective bargaining or by none of these labor organizations; and

(d) All remaining production and maintenance employees to determine whether they desire to be represented by the Textile Workers Union of America (C. I. O.), the United Textile Workers Union of America (A. F. of L.), for the purposes of collective bargaining, or by neither of these labor organizations.

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