

In the Matter of CHARLOTTESVILLE WOOLEN MILLS and UNITED TEXTILE
WORKERS OF AMERICA, A. F. OF L., LOCAL 86

Case No. 5-R-1722.—Decided December 19, 1944

Mr. Jacob Blum, of Baltimore, Md., for the Company.
Mr. C. C. Collins, of Elizabethton, Tenn., and *Mr. Henry Bragg*, of
Charlottesville, Va., for the Union.
Mr. Philip Licari, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Textile Workers of America, A. F. of L., Local 86, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Charlottesville Woolen Mills, Charlottesville, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earle K. Shawe, Trial Examiner. Said hearing was held at Baltimore, Maryland, on October 20, 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. At the hearing, the Company moved to dismiss the petition. For reasons stated 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 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

Charlottesville Woolen Mills, a Virginia corporation, is engaged at Charlottesville, Virginia, in the manufacture, sale, and distribution of woolen cloth. During the first 9 months of 1944, the Company

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purchased raw materials valued in excess of \$250,000, of which approximately 75 percent was shipped from points outside the State of Virginia. During the same period, the Company manufactured finished products valued in excess of \$250,000, of which approximately 75 percent was shipped to points outside the State of Virginia.

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

II. THE ORGANIZATION INVOLVED

United Textile Workers of America, Local 86, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about September 1944, the Union advised the Company that it represented a majority of certain of the Company's employees and requested recognition as their exclusive bargaining representative. The Company declined to recognize the Union until it was certified by the Board in an appropriate unit.

The Company, relying upon our decision in *Matter of Toledo Stamping and Manufacturing Company*,¹ argues that the petition should be dismissed on the grounds that an alleged supervisory employee, Henry Bragg, was instrumental in organizing the Union and later was elected president thereof, and that C. A. Armstrong, another alleged supervisory employee, is now occupying the position of secretary-treasurer in the Union.

Although the record reveals that Bragg did take an active part in the formation of the Union, as hereinafter found, he is not a supervisory employee within the meaning of our customary definition.

With respect to Armstrong, whom we do regard as a supervisory employee, the evidence shows that he attended the Union's two initial general meetings, at the second of which he was elected secretary-treasurer. Despite his election to office, it does not appear that he played an active part in the Union's organizational campaign. Furthermore, the testimony of C. C. Collins, the Union's organizer, discloses that, at the time of the Union's first meetings, so much uncertainty existed as to whether certain prospective members were supervisory employees within the meaning of the Board's definition, that it was necessary for Collins to inform the employees gathered at one of these meetings that, if any member were later found by the Board to be a supervisory employee, he would be "excluded" from the Union.

¹ 55 N L R. B 865.

While we do not sanction Armstrong's holding of office, we perceive no reason to dismiss the petition, since we assume that the Union will carry out its assurance that it will "exclude" from membership any employee found by the Board to be supervisory and consequently deprive him of his office. Should the Union fail to do so, the matter may be reviewed by the Board upon appropriate motion.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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 the Company's hourly paid, non-supervisory employees, including plant watchmen, assistant foremen, section supervisors, and night supervisors, but excluding foremen. The Company agrees upon the composition of the unit, except that it wishes to exclude section supervisors and night supervisors, taking no affirmative position with respect to assistant foremen and plant watchmen.

Assistant foremen (or "second hands"): The Company employs, among others, six employees classified as assistant foremen who are generally known as "second hands." The Company's superintendent testified that these workers are hourly paid production employees receiving from 8 to 15 cents an hour more than the highest paid worker in their respective departments. Their function is, while doing regular production work, to assist the foremen in expediting the work. On rare occasions, when the foreman is absent because of illness or vacation periods, the assistant foreman assumes the duties of the foreman, for which he receives no additional compensation. The record reveals that assistant foremen have no authority to hire, discharge, discipline, or recommend such action. We shall include them.

With respect to Henry Bragg, classified as one of the assistant foremen above described, the Company states that, in addition to his regular duties performed during the first 5 days of the week, on Saturdays he is in charge of a painting crew, composed of regular production workers, who engaged in painting the Company's premises. This assignment is purely voluntary and is not part of his regular job. While, in connection with his painting activities, Bragg can recommend that certain individuals be included in or excluded from the

² The Field Examiner reported that the Union submitted 146 applications for membership. He also reported that there are 150 employees in the unit alleged to be appropriate.

painting crew, it is clear that he has no authority to hire, discharge, or discipline the employees assigned to assist him. It is also clear that the major portion of Bragg's painting day is spent in working along with the other men. In view of the foregoing facts, particularly the fact that Bragg's painting activities are subordinate and incidental to his primary functions, we shall include him.

Section supervisors: The Company operates as part of its plant a weaving department which is divided into two sections, namely, "yarn preparation" and "burling," each in charge of a supervisor.³ Testimony shows that these supervisors can recommend the hiring, discharging, or disciplining of employees under their supervision and that their recommendations are followed by management. We shall exclude them.

Night supervisors: The Company employs three night supervisors who are in charge of various departments during the second work shift. Although these employees receive slightly less pay than the assistant foremen, they have authority effectively to recommend the discharge and disciplining of employees under their supervision. We shall exclude them.

Plant watchmen: The Company employs three plant watchmen whose primary duties, it appears, are to keep under surveillance the Company's plant when it is not in operation.⁴ Although they are deputized and armed, they apparently perform no monitorial functions with respect to the other employees in the plant. Since they merely perform the usual duties of watchmen, as contradistinguished from the monitorial functions of "guards," a classification formerly in the Company's employ, we shall include them in the unit.

We find that all hourly paid employees of the Company, including assistant foremen and plant watchmen, but excluding section supervisors, night supervisors, foremen, and all other 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 payroll period immediately preceding the date of the Direction of Elec-

³ S. M. Haggard occupies the position of supervisor of the "burling" section, and C. A. Armstrong occupies the position of supervisor of the "yarn preparation" section.

⁴ The watchmen are also on duty all day Saturday and Sunday whether or not the plant is in operation.

tion 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 Charlottesville Woolen Mills, Charlottesville, 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 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 United Textile Workers of America, A. F. of L., Local 86, for the purposes of collective bargaining.