

In the Matter of PACIFIC MILLS and DEPARTMENT OF WOOLEN AND  
WORSTED WORKERS OF AMERICA OF THE U. T. W. A.—AFL

*Case No. 1-R-2198.—Decided February 6, 1945*

*Miss Mary Taccone*, of Lawrence, Mass., for the AFL.

*Messrs. John T. Noonan* and *Henry L. Mason, Jr.*, of Boston, Mass.;  
for the Company.

*Mr. Gaston LeBlanc*, of Lawrence, Mass., for the CIO.

*Mr. Paul R. Foisy*, of Lowell, Mass., for the Association.

*Mr. Bernard Goldberg*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by the Department of Woollen and Worsted Workers of America of the U. T. W. A.—AFL, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Pacific Mills, Lawrence, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert E. Greene, Trial Examiner. Said hearing was held at Lawrence, Massachusetts, on January 2, 1945. The Company, the AFL, the Textile Workers Union of America (CIO), herein called the CIO, and the Pacific Mills Worsted Division Employees' Association, herein called the Association, 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

Pacific Mills, a Massachusetts corporation, is engaged in the manufacture of cotton, woolen, and worsted goods. In addition to cotton  
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mills in Columbia and Lyman, South Carolina, the Company operates a woolen and worsted, manufactory in Lawrence, Massachusetts, with which this proceeding is concerned. The Company maintains branch selling offices in the principal cities of the United States. During the year 1942, which is considered representative of operations in 1944, the Company used at its Lawrence plant raw materials valued in excess of \$3,000,000, over 95 percent of which was shipped to the plant from points outside the Commonwealth of Massachusetts. During the same period, the Company produced at the same plant finished goods valued in excess of \$20,000,000, more than 95 percent of which was shipped to points outside the Commonwealth.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

Department of Wollen and Worsted Workers of America of the U. T. W. A., affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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

Pacific Mills Worsted Division Employees' Association, unaffiliated, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company contends that a request for recognition by the petitioner and a refusal to bargain by the Company is a condition precedent to a question concerning representation, and since, allegedly, neither a formal request for recognition nor a refusal to bargain occurred prior to the filing of the petition, the said petition should be dismissed. We find no merit in this contention. It is sufficient, in a proceeding of this kind that, as of the date of the hearing, the petitioner's status as bargaining representative is disputed by the Company and that recognition depends upon certification by the Board.<sup>1</sup>

A statement of the Trial Examiner at the hearing indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

<sup>1</sup> *Matter of Jeffrey Manufacturing Company*, 58 N. L. R. B. 1129; *Matter of Columbus Iron Works Company*, 47 N. L. R. B. 430; *Matter of Gilbert & Bennett Manufacturing Company*, 45 N. L. R. B. 1223.

<sup>2</sup> The Trial Examiner reported that the AFL submitted 1,396 application for membership cards; that there are approximately 4,350 employees in the appropriate unit; that a spot check of the names on 297 of the cards against a list of the Company's employees as of December 30, 1944, showed 293 of the names on the aforesaid list. The Trial Examiner further reported that the CIO submitted 400 application for membership cards; that the

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 AFL seeks a unit of all production and maintenance employees, including hourly paid clerks in the overseers' offices, watchmen, tool makers, and employees of the steam and hydro-electric generating plants, but excluding salaried clerical employees, hourly paid clerks in the superintendents' offices, messengers, expeditors, dispatchers, executives, superintendents, overseers, second hands, yardmen, warehousemen (including truckers and laborers engaged at all five storage depots), truck drivers, and truck drivers' helpers. The area of disagreement among the parties is indicated in the discussion below of the disputed categories of employees.

*Yardmen, warehousemen (including truckers and laborers engaged at all five storage depots), truck drivers, and truck-drivers' helpers:* The AFL urges the exclusion of all of these employees; the Company and the Association contend that they ought to be included; while the CIO desires the inclusion of all except the truck drivers and their helpers. In a prior proceeding involving the same plant of the Company, the Board found that a unit of the employees under discussion was appropriate for the purposes of collective bargaining.<sup>3</sup> Following an election, the Board certified the International Brotherhood of Teamsters as the bargaining representative for the unit.<sup>4</sup> No sufficient reason has been advanced for reversing our previous determination. Accordingly, we shall exclude yardmen, warehousemen (including truckers and laborers engaged at all five storage depots), truck drivers, and truck drivers' helpers from the unit.

*Clerks:* All the unions would include the hourly paid clerks in the overseers' offices, whereas the Company would exclude them. The duties of the hourly paid clerks in the overseers' offices are analogous to those of similar clerks in the superintendents' offices, and to salaried clerks generally, whom all parties agreed to exclude from the unit. The weekly earnings of these hourly paid clerks are approximately the same as those of the clerks paid on a salary basis. We shall exclude these employees from the unit. However, the evidence indicates that scattered throughout the plant are checkers and ticketers who perform clerical work in connection with the production processes; we shall include them in the unit.<sup>5</sup>

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names on 84 of the cards were checked against the afore-mentioned employees' list; and that the names on 39 of the 84 cards also appeared on the said list. The Association did not submit any evidence of representation but relies upon its recent contracts with the Company to establish its interest.

<sup>3</sup> *Matter of Pacific Mills*, 48 N. L. R. B. 844.

<sup>4</sup> *Matter of Pacific Mills*, 51 N. L. R. B. 168.

<sup>5</sup> *Matter of Chicago Rawhide Manufacturing Company*, 59 N. L. R. B. 1234.

*Watchmen:* The plant employs some uniformed, unmilitarized, unarmed, and non-deputized watchmen whom the Company would exclude and the unions include in the unit. Some of the watchmen act as fire watchers, while others are stationed at the main gate of the plant checking incoming and outgoing employees and motor vehicles. We shall, in accordance with our usual practice, include the watchmen in the unit.<sup>6</sup>

*Messengers:* All of the parties except the Association agree to the exclusion of the messengers who work out of the main office and carry messages and mail to executives and high-ranking supervisory personnel throughout the numerous buildings comprising the plant. The messengers have no interests in common with production and maintenance employees and we shall, therefore, exclude them from the unit.<sup>7</sup>

*Tool makers:* The Company employs four or five tool makers whom it is desirous of excluding from the unit, whereas all of the unions seek to include them. The tool makers are highly skilled mechanics who divide their time between repairing plant machinery, and making machinery for experimental purposes under the direction of the research director. The fact that some of the tool makers' work is in aid of research being carried on by the Company and that by virtue of their close association with research workers they may acquire knowledge of business secrets, is not, as the Company contends, sufficient to deprive them of the protection accorded by the Act; it is only where an employee's duties afford him the opportunity to acquire knowledge of confidential information respecting labor relations matters, as a part of his normal work, that such employee is properly excluded from the unit. We shall include the tool makers in the unit.

*Expediteurs:* All parties, except the Association, would exclude these employees; they expedite orders through the mills to prevent lagging and side-tracking. They are hourly paid and work under the supervision of the overseers of their respective departments. Inside expediteurs, such as those involved herein, are not, as contended by the Company, representatives of management. They may, therefore, properly be included in a unit with production and maintenance employees; we shall include them.<sup>8</sup>

*Steam and hydro-electric generating plant employees:* All the unions would include, while the Company would exclude, the employees in the steam and hydro-electric generating plants operated by the Company to furnish the power and light needed in the mill. Since no other

<sup>6</sup> *Matter of Chicago Rawhide Manufacturing Company, supra.*

<sup>7</sup> *Matter of Chicago Rawhide Manufacturing Company, supra.*

<sup>8</sup> *Matter of Consolidated Vultee Aircraft Corporation*, 58 N. L. R. B. 300; *Matter of Edward G. Budd Manufacturing Co.*, 57 N. L. R. B. 1577; *Matter of Worthington Pump and Machinery Corporation*, 44 N. L. R. B. 779.

union is seeking to organize the powerhouse employees as a group, we are of the opinion that such employees have interests sufficiently akin to those of production and maintenance employees to be properly included with the latter in a single unit. We shall include them.<sup>9</sup> We shall, however, exclude shift engineers and assistant shift engineers in the steam plants since they enjoy a supervisory status.

*Foremen, assistant foremen, working foremen, foreladies, shift supervisors, and dispatchers:* The Company seeks to exclude these employees as supervisors, whereas the unions would include them. It appears from the uncontradicted evidence that all of these employees have the power to make effective recommendations respecting the status of their subordinates. We find them to be supervisory employees within the Board's customary definition and we shall exclude them from the unit.

We find that all production and maintenance employees of the Company's Lawrence, Massachusetts, plant, including checkers, ticketers, watchmen, tool makers, expeditors, and employees of the steam and hydro-electric generating plants, but excluding salaried clerical employees, hourly paid clerical employees in the offices of the superintendents and overseers, messengers, yardmen, warehousemen (including truckers and laborers engaged at all five storage depots),<sup>10</sup> truck drivers, truck drivers' helpers, executives, superintendents, overseers, second hands, shift supervisors, foremen, assistant foremen, working foremen, foreladies, dispatchers, shift engineers and assistant shift engineers in steam generating plants, 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

<sup>9</sup> *Matter of Cramp Shipbuilding Company*, 37 N. L. R. B. 146; *Matter of Pullman-Standard Car Manufacturing Company*, 29 N. L. R. B. 600.

<sup>10</sup> Only one of the five buildings used for storage purposes at the time of the previous hearing is so used today. The other four buildings are used as receiving depots exclusively. Nevertheless, there are still truckers employed at these depots who remain within this exclusion.

## 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 Pacific Mills, Lawrence, Massachusetts, 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 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 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 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 they desire to be represented by Department of Woolen and Worsted Workers of America of the U. T. W. A.—AFL, or by Textile Workers Union of America (CIO), or by Pacific Mills Worsted Division Employees' Association, for the purposes of collective bargaining, or by none.