

In the Matter of JOSEPH BANCROFT & SONS COMPANY and TEXTILE
WORKERS UNION OF AMERICA, C. I. O.

Case No. 4-R-1582.—Decided March 2, 1945

Richards, Layton & Finger, Mr. Robert H. Richards, Jr., of Wilmington, Del., of counsel, and Hodge & Balderston, Mr. Eugene P. Balderston, Jr., of Chester, Pa., of counsel, for the Company.

Mr. Benjamin Wyle, of New York City, and Mr. Joseph Opilla, of Wilmington, Del., 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 of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Joseph Bancroft & Sons Company, Wilmington, Delaware, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earl S. Bellman, Trial Examiner. Said hearing was held at Wilmington, Delaware, on January 4, 5, and 6, 1945. 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 filed a formal motion to Dismiss Petition for Investigation and Certification of Representatives. The Trial Examiner referred this motion to the Board. The motion is hereby 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. On January 24, 1945, the Company filed with the Board two separate additional motions to dismiss the Union's petition. These motions, having been duly considered, are denied *in toto*.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Joseph Bancroft & Sons Company, a Delaware corporation with plant and offices located in the vicinity of Wilmington, Delaware,¹ is engaged in the bleaching, dyeing, finishing, and cutting of cotton fabrics. During the past year the sales of the Company approximated \$16,000,000 in value, derived from the processing of about 132,000,000 yards of cloth. A large percentage of this yardage was received by the Company in its "gray" state from points outside the State of Delaware, and a substantial portion of the finished materials was shipped to points outside the State.

The Company concedes that it 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

On April 13, 1944, the Union filed a representation petition seeking to represent certain employees of the Company.² Thereafter, on May 11, the parties entered into a consent election agreement providing for an election to take place on June 8 among those employees of the Company comprising the unit set forth in the agreement.³ The result of this election indicated that the majority of the employees rejected the Union as their collective bargaining representative,⁴ and the proceeding was closed on June 13.

¹ The Company's plant is approximately 1 mile long and is roughly divided into a central section and two wings, the latter being known and referred to herein as the Rockford and Kentmere Divisions, respectively.

² Case No 4-R-1406.

³ This unit consisted of "all production and maintenance employees [of the Company], including typographical department employees, laboratory assistants and helpers, janitors and office janitors, cafeteria employees, filter plant employees, truck drivers, chauffeurs, expeditors, receiving and shipping employees, powerhouse and boiler house employees, watchmen and guards, shop clerical employees, and working supervisors, but excluding executives, main office employees, [secretaries], switchboard operators, Rockford Hall employees, safety engineers, nurses, research laboratory employees (except laboratory assistants and helpers), engineering office employees, superintendents, foremen, assistant foremen, and supervisors [within the meaning of the Board's customary definition]."

⁴ The Tally of Ballots furnished the parties subsequent to the consent election indicated that of 1,179 valid votes counted, 570 were cast for the Union, and 609 were cast against that organization.

Thereafter, on October 28, 1944, the Union filed the petition herein. Informal conferences were held between the parties in an effort to reach an agreement, particularly with respect to the appropriate unit. However, no agreement could be reached, and the Company is unwilling to recognize the Union as the representative of its employees in the unit which that organization now proposes as appropriate. Furthermore, in its brief and in certain of its motions, the Company asserted, *inter alia*, that no election should be directed at this time in view of the employees' previous rejection of the Union. We find this contention to be without merit.⁵

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 it alleges to be appropriate.⁶

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 Company and the Union agree, in principle, that the unit appropriate for the purposes of collective bargaining should consist of all the Company's production and maintenance employees at its plant located in the vicinity of Wilmington, Delaware. They are agreed upon the inclusions within this unit of all employees classified as janitors (except office janitors), receiving, loading and packing departments employees (except shop or plant clerks, checkers and callers), cafeteria employees (except the dietitian), filter plant employees, shop stores employees, truck drivers, mixers, chemical mixers, the plumber in the real estate department, the burlap and roll checker, the roll engraver, and garage mechanics. They are further agreed upon the exclusion of executives, superintendents, foremen, assistant foremen, supervisors, main office employees, secretaries, telephone or switch-

⁵ See *Matter of Wagner Electric Corporation*, 53 N. L. R. B. 543.

⁶ The Field Examiner reported that the Union submitted 703 designations, of which 697 were dated subsequent to June 8, 1944, (the date of the consent election), and 6 were undated. He further reported that the Union's proposed unit contains approximately 1,200 employees.

The Company, in its original motion to dismiss the petition herein, contended that no election should be ordered unless it appears "from an actual check . . . that a clear majority [of the employees] had designated" the Union as their bargaining representative. We find no merit in this contention. See *Matter of Bakelite Corporation*, 60 N. L. R. B. 318. In addition, the Company objected to the reception into evidence of the Field Examiner's Report on the ground that the Union's designations were not checked against a pay roll of the Company. The Trial Examiner correctly overruled this objection. See *Matter of Buffalo Arms Corporation*, 57 N. L. R. B. 1560; *Matter of Bakelite Corporation*, *supra*.

Toward the close of the hearing the Company requested that the Union produce its designations for the purpose of having them checked against a pay roll of the Company. The Trial Examiner correctly sustained the Union's objection to this request.

board operators, Rockford Hall employees, safety engineers, nurses, first-aid attendants, research laboratory employees (except the designer, helpers, mixers and chemical mixers), engineering office employees, chief dye cost clerk, and dietitian therefrom. The following employees are in dispute:

Working supervisors: The Union desires the exclusion of all working supervisors, whereas the Company desires their inclusion. The record indicates that these employees are, for the most part, more experienced personnel who instruct new operators in their duties, and who otherwise perform the functions of non-supervisory employees. They are all hourly paid workers, receiving approximately 12.5 per cent more compensation than regular employees. They make no reports to their superiors concerning the work of the employees whom they instruct, nor do they possess authority or have the duty to make recommendations which would affect the status of such employees. All working supervisors receive overtime pay. We shall include them.⁷

Guards, watchmen, and fire marshals: The Union desires to exclude these employees, whereas the Company contends that they should be accorded the same treatment as powerhouse and boiler room employees, hereinafter discussed, since it considers both groups as constituting its plant-protection staff. The record indicates that watchmen, guards, and fire marshals are uniformed, unarmed, non-militarized and non-deputized personnel who are engaged in patrolling the plant for the purposes of eliminating safety hazards. All are under the supervision of the chief guard. Some are salaried employees, whereas others are hourly paid. The watchmen and guards also check all persons entering or leaving the plant, and have authority to refuse admittance to intoxicated workers. Other than this, these employees may take no direct action against a worker, but are confined to reporting infractions of the Company's rules to the employees' supervisors. Since the employees in these three classifications are neither militarized nor deputized, we shall include them.

Matrons: The Union desires the exclusion of these employees, whereas the Company desires their inclusion. The Company employs

⁷ Cf. Discussion of "key men" in *Matter of Palmer Scott & Company, Inc.*, 52 N. L. R. B. 468. The Company contends that Schreiber (supervisor of Kentmere receiving department), Amalfitano (night foreman), Corradin (head trucker), Cunningham (head carpenter in the boiler house), Young (chief stock clerk), and Galloway and Heller (who are classified as supervisors), are working supervisors and should therefore be included. From the record, the non-supervisory status of the employees is questionable, and for this reason we shall make no determination with respect to their inclusion at this time. If these employees possess supervisory powers within the meaning of our usual definition, they are to be excluded from the unit; otherwise they are to be included.

The record indicates that Rittenhouse and Romaniak, although classified as working supervisors, are actually supervisory employees. Accordingly, they are excluded.

two persons in this classification who "police the plant, see that nothing happens to the young girls." They go from department to department in the performance of their duties. We have included guards, watchmen, and fire marshals, and we shall include the matrons.

Powerhouse and boiler room employees: The Union desires the inclusion of these employees, whereas, as hereinabove noted, the Company contends that they should be treated as guards, watchmen, and fire marshals. Powerhouse and boiler room employees are maintenance workers. We shall include them.

Real estate department employees: The Union seeks the exclusion of all employees in this department, except the plumber, whereas the Company desires their inclusion. These employees are classified as plumbers, carpenters, painters, paperhangers, and helpers, and are concerned with the maintenance of company-owned residences which are leased to the Company's employees. All, with the exception of the plumber, perform their duties, for the most part, outside the plant, although they are subject to call in emergencies for work within the plant. The plumber, who is licensed, spends approximately 90 percent of his time working within the plant and the balance outside. He is listed as a real estate department employee only because the State law requires that a licensed plumber be engaged in the maintenance of residences. Since the employees in this department other than the plumber are not plant maintenance employees, we shall exclude them.⁸

Office janitors: The Union desires the exclusion of office janitors, whereas the Company desires their inclusion. As hereinbefore indicated, both parties agree upon the inclusion of all other janitors. The record indicates that all janitors are under the same supervisor, receive the same rate of pay, and perform the customary duties of this classification, although in different locales. The record contains some evidence to the effect that, if an office janitor is absent, a plant janitor will perform his duties, although it contains no evidence indicating that an office janitor may be called upon to work in the plant. In view of their common supervision, same rate of pay, and similarity of work, we shall include⁹ all janitors.

Chauffeurs: The Company employs two chauffeurs (one woman), whom the Union would exclude, whereas the Company desires their inclusion. One of these chauffeurs drives a regular passenger car and the other a station wagon. Both call for and deliver mail and run errands. We are of the opinion that their interests are similar to those of the production and maintenance employees, and we shall include them.

⁸ As above noted, the parties agree to include the plumber. He will be included.

⁹ See *Matter of Imperial Paper & Color Corporation*, 59 N L R B. 734.

Laboratory helpers and designer: As previously indicated, both parties agree upon the exclusion of research laboratory employees and upon the inclusion of miners and clerical mixers assigned to the laboratory. However, a disagreement exists between them with respect to the laboratory helpers and the designer, whom the Union would exclude and the Company would include. The helpers are hourly paid employees who run errands, wash beakers, and perform miscellaneous nonscientific tasks about the laboratory. The designer inspects the plant elevators, acts as general handyman throughout the plant, and performs some drawing for the laboratory. We shall include the laboratory helpers and the designer, the former because they are unskilled workers whose interests are more allied with those of production and maintenance employees than with those of the professional and technical workers under whose direction they perform their duties, and the latter because he is actually a maintenance employee.

Expeditors: The Union desires the expeditors to be excluded from the unit, whereas the Company asserts that they should be included. The expeditors are salaried employees attached to the promise department which has headquarters in the Rockford folding room (a production department) and in the Kentmere office. All expeditors are under the supervision of the chief expeditor. Their function is to see that the various production processes are performed on schedule, and, if not, to inform the head expeditor, who, in turn, communicates with the production supervisors. The nature of their duties requires that they be in constant touch with production employees and on the production floor. Although responsible for the preparation of reports to customers on the progress of their orders, expeditors do not correspond with them, such correspondence being conducted by the chief expeditor. We are of the opinion that the functions of expeditors warrant their inclusion.¹⁰

Sample room employees (typo department): The typo department or sample room prints tags, labels, invoice sheets, and other forms used by the Company in the course of its business, and prepares the various types of sample books used in the production processes or in furtherance of the sale of the Company's merchandise. The employees in this department are classified as addressograph operators, press feeders, sample makers, bookbinders, and printers. The Union desires the exclusion of these employees, whereas the Company desires their inclusion. We are of the opinion that such classifications of employees are not properly part of the production and maintenance unit, and we shall exclude them.

Miscellaneous plant clerical employees: The Union desires the exclusion of all plant clerical employees, contending that another labor

¹⁰ See *Matter of Sharp & Dohme, Inc.*, 58 N. L. R. B. 1579 (production control clericals).

organization affiliated with the same parent body intends to file a representation petition in the near future concerning them. The Company desires their inclusion. The record indicates that no labor organization has, at the present time, filed a petition seeking a unit of clerical employees of the Company.

1. *Receiving, packing (and loose stock), and loading departments:* These departments engage various employees who perform the duties of packers, nailers, truckers, checkers, and callers. Many of these employees are merely designated upon the Company's pay roll as plant clerks, shop clerks, or clerk shop, terms which are used interchangeably. There is no dispute between the parties with respect to the inclusion of employees engaged solely in performing packing, nailing, or trucking operations. However, the Union desires the exclusion of checkers, callers, and persons designated as plant clerks on the ground that they are clerical employees.

The receiving department checkers receive, check in, and deliver merchandise and other items to their destinations in the plant. In the course of performing their duties, these employees perform clerical work as well as the physical work of trucking the merchandise. In addition, certain employees designated as plant clerks are stationed for most of their working time in a small cage in the receiving department, and are primarily engaged in checking invoices and other papers used in connection with the work of the department, as well as notifying the proper persons as to the receipt of merchandise.

The plant clerks in the packing department prepare invoices and make the final check of invoices before the merchandise is finally packed. In addition, they also act as callers, together with several other employees who are so classified. Callers check the yardage being packed, total it on adding machines, and perform the physical work of packing light merchandise into containers. Upon the completion of the duties of the foregoing employees, the lot is packed and sent to the loading department for shipment.

The loose stock department is actually part of the packing department. Here merchandise is put into stock "loose" or in unpacked form and held there until the customer issues shipping instructions. The plant clerks and callers assigned to this department perform the same duties as other packing department employees similarly designated.

The loading department, as hereinbefore indicated, receives the merchandise after it has been packed and is responsible for its delivery to the common carrier. Plant clerks and checkers pack the invoices attached to the merchandise and perform some trucking

operations.¹¹ In addition, the plant clerks in this department also act as callers in the packing department.

The records in these departments are accumulated by plant clerks who forward them to the standards department. However, no tabulation work is required of the plant clerks in the receiving, loading, or packing departments. The majority of the employees discussed in this section are hourly paid, although some, who are generally persons in the employ of the Company for a considerable period of time, receive salaries. All are responsible to production supervisors. Under these circumstances we shall include them.¹²

2. *Gray room, gray office, and folding department*: The plant clerks in the gray room cut sample swatches from the gray goods which are received and finished and file them for reference. There are two salaried plant clerks in the gray office who perform similar duties. In addition to the foregoing employees there is one plant clerk who spends part of her time keeping gray work records in the gray room and performs similar duties in the gray storage department.

The folding room is a production department under a production supervisor where the finished product is inspected and made up into final bolts. The plant clerks in the folding department cut samples from finished merchandise either for filing purposes or for submission to the customer for approval. In addition, other folding department plant clerks stamp the tickets on which these samples are placed for identification. Roll checkers assigned to this department ascertain that the proper number of rolls accompany the lot that is delivered to the folding room for inspection. In addition to these employees, there is a plant clerk in the folding department who writes up in longhand the reports of the Government inspector who is permanently assigned to this plant. Another employee, designated as a lot caller and checker follows up goods which, for one reason or another, must be refinished or reprocessed.

The work of all the employees discussed in this section appears to be an integral part of the production process. Accordingly, we shall include them.

3. *Rockford color dye department, Kentmere color mill, and Kentmere Arrestox department*: Attached to the Rockford color dye department are a dye cost clerk and two salaried plant clerks. The dye cost clerk, who performs his duties in the dye house office, copies the

¹¹ The record indicates that a large percentage of a checker's working time is spent in trucking.

¹² See *Matter of The General Fireproofing Company*, 58 N. L. R. B. 1609, and cases cited therein; *Matter of Chicago Rawhide Company*, 59 N. L. R. B. 1234, and cases cited therein.

standard formula for an ordered dye shade on the order bill which accompanies the lot that is being dyed. The bill and the lot are then passed on to the operators for dyeing in accordance with the formula on the dye bill. The two plant clerks, who are also located in the dye house office, assist in writing up dye bills and check to see that the shade that is going to be dyed is the shade called for by the invoice. The salaried plant clerk in the Kentmere color mill and the hourly paid plant clerk in the Kentmere Arrestox department have similar duties. We are of the opinion that the work of these employees is an integral part of the production process and, for this reason, we shall include them.

4. *Lawn departments*: In these departments the goods are sized or stiffened, after they have been dyed, by a process of running them through mangles and tempering machines. The plant clerks engaged in these departments assemble samples from the materials after they have been treated, match them with the invoices and the standard shade, and thereafter send them to the folding department for final inspection. In addition, these employees accumulate production records and forward them to the standards department. Since the lawn departments are regular production departments and the work of these employees are an integral part of the production process, we shall include them.

5. *Bleach house and basco department*: The plant clerk in the bleach house is responsible for informing the drawing departments that a lot is ready for drawing and for attaching the lot to the preceding one, so that it can be drawn in a continuous process. In addition, this clerk accumulates bleach house records and forwards them to the standards department. Since approximately 90 percent of the working time of this clerk is spent in the actual manual labor of attaching the lot, and since she works in a production department, we shall include her.

Assigned to the basco department is a person designated as control chemist. This employee works under the supervision of the superintendent of the bleachery and shares an office with the foreman and the assistant foreman. Her duties consist of testing sample swatches for alkalinity and reporting her findings to the bleaching foreman. Her duties require no scientific training, and the test which she performs is similar to the litmus paper test used in elementary chemistry. Since the work of this employee is performed under a production supervisor in a production area and is essential to the production process, we shall include her.¹³

¹³ See *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 531.

6. *Sanforize departments*: The plant clerks in these departments are actually testers who make shrinkage tests. They measure the cloth, wash, dry and press it, determine shrinkage, and record their findings as a guidance for the Sanforizer in the adjustment of his machine. We are of the opinion that these employees are actually production workers, and we shall include them.

7. *Paper stock departments*: This department is the storage place for the paper, boards, rolls, nails, tubes, and labels used by the Company in the course of its business. The plant clerks assigned to this department paste labels, use cutting machines to cut the paper into desired lengths for packing purposes, and prepare the board, tubes, nails, and rolls for use. We are of the opinion that these employees perform duties essential to the production process, and we shall include them.

8. *Kentmere starch department*: This department is concerned with the drawing out of goods for finishing or for printing after they have been bleached. The salaried plant clerks attached to the department ascertain whether the proper number of rolls of material has been drawn out, tagged, and is ready for delivery to the next process. In addition, they accumulate production sheets and forward them to the standards department. The work of these employees is performed both in an office and on the production floor, and they are under a production supervisor. We shall include them.¹⁴

9. *Kentmere rolling department*: The function of this department which contains approximately 12 to 14 employees, is to roll material on tubes of a certain size or length in accordance with the desires of a customer. The plant clerk attached to this department obtains information for the foreman with respect to customers' orders. Since this is a production department, and this plant clerical performs her duties in a production area under the orders of a production supervisor, we shall include her.¹⁵

10. *Promise department*: The record indicates that there are two salaried plant clerks attached to this department. One has her office in the grayroom together with other plant clerks previously described, and performs the same functions in the bleachery as do the expediters in other departments throughout the plant. The other plant clerk is stationed in the Kentmere office and actually performs the same duties as the folding department plant clerks previously described, i. e., cutting out samples of finished products and sending them to the customers for approval. Listed as expeditor in the promise department is a salaried employee, also stationed in the Kentmere office who, the record indicates, is actually a plant clerk. He assists the expediters by preparing their work sheets.

¹⁴ *Matter of Goodman Manufacturing Company, supra*

¹⁵ *Matter of Goodman Manufacturing Company, supra*.

We are of the opinion that the duties and interests of each of the employees discussed in this section are such as to warrant their inclusion.

11. *Kentmere and Rockford offices:* As hereinbefore indicated, the Company's plant is approximately 1 mile long and divided into a central section and the Kentmere and Rockford divisions. In each of these divisions are offices which contain the desks of such employees as superintendents, other supervisory employees, expeditors, and certain plant clericals. There are two salaried plant clericals attached to the Rockford office and one attached to the Kentmere office.

In the course of producing the finished product, samples are sent to the customer for approval or disapproval. These samples are returned by the customer to the Company and are received by the afore-mentioned plant clerks. These employees notify the proper department of the customer's approval or disapproval. The time of these plant clerks is spent entirely in typing memoranda to the various departments containing this information, and they do not work on the production floor or have direct contact with production employees. Under these circumstances, we are of the opinion that they are purely office clerical employees, and we shall exclude them.

In accordance with the foregoing, we find that all production and maintenance employees of the Company engaged at its plant located in the vicinity of Wilmington, Delaware, including janitors and office janitors, receiving, loading and packing departments employees, cafeteria employees (except the dietitian), filter plant employees, shop stores employees, truck drivers, chauffers, mixers, chemical mixers, laboratory helpers, the designer, the plumber in the real estate department, the burlap and roll packer, the roll engraver, garage mechanics, powerhouse and boiler room employees, watchmen, guards, and fire marshals, matrons, expeditors, all plant clericals (including the control chemist), except those attached to the Rockford and Kentmere offices, and working supervisors, but excluding main office employees, secretaries, telephone and switchboard operators, Rockford Hall employees, safety engineers, nurses, first-aid attendants, research laboratory employees (except mixers, chemical mixers, laboratory helpers, and the designer), engineering office employees, chief dye cost clerk, the dietitian, real estate department employees (except the plumber), sample room or typo department employees, plant clericals attached to the Rockford or Kentmere offices, executives, superintendents, foremen, assistant foremen, supervisors, 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.¹⁶

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 Joseph Bancroft & Sons Company, Wilmington, Delaware, 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 Fourth 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 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 any who have since quit or been discharged for cause, and who 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.

¹⁶ The Union requests that it be designated upon the ballot as "Textile Workers Union of America, C. I. O." This request is hereby granted.