

In the Matter of FORT SCHUYLER KNITTING COMPANY and TEXTILE
WORKERS ORGANIZING COMMITTEE OF THE C. I. O.

Case No. R-973.—Decided September 29, 1938

Textile Industry—Investigation of Representatives: controversy concerning representation of employees—*Unit Appropriate for Collective Bargaining:* all employees at Utica, New York, plant, exclusive of supervisory employees, office employees, watchmen, and engineers: stipulation as to, by all parties: interpretation of, by Board—*Election Ordered*

Mr. Edward D. Flaherty, for the Board.

Mr. Angus W. Clarke, of Utica, N. Y., for the Company.

Mr. Alfred Udoff, of New York City, for the T. W. O. C.

Ribyat, Walsh & Myers, of Utica, N. Y., by *Mr. John J. Walsh*, for the A. F. of L.

Mr. Bernard W. Freund, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 14, 1938, Textile Workers Organizing Committee, C. I. O., herein called the T. W. O. C., filed with the Regional Director for the Third Region (Buffalo, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Fort Schuyler Knitting Company,¹ Utica, New York, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 6, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On July 15, 1938, the Regional Director issued a notice of hearing, copies of which, together with copies of the peti-

¹ Designated in the petition as Ft. Schuyler Knitting Company.

tion, were duly served upon the Company, the T. W. O. C., and the American Federation of Labor, herein called the A. F. of L., a labor organization claiming to represent employees directly affected by the investigation.

Pursuant to the notice, a hearing was held on July 28, 1938, at Utica, New York, before Charles E. Persons, the Trial Examiner duly designated by the Board. The Board, the T. W. O. C., and the A. F. of L. were represented by counsel, the Company by its secretary-treasurer, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed. Pursuant to leave granted by the Trial Examiner at the close of the hearing, a memorandum was submitted by counsel for the T. W. O. C., and a brief was submitted by counsel for the A. F. of L., both of which the Board has considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Fort Schuyler Knitting Company is a New York corporation engaged in the manufacture of men's, women's and children's knitted underwear and outerwear. Its plant and principal place of business are situated in Utica, New York. The Company also maintains a sales office at New York City, and employs salesmen who canvass the States of the Northeast and Middle West. In other States, except in the South, the Company has commission agents for the sale of its products.

In 1937, the Company expended approximately \$374,465, for raw materials, of which over 90 per cent were shipped to the Utica plant from points outside the State of New York. In the same period over 50 per cent of the Company's finished products, which had a total value of approximately \$639,000 were shipped from the Utica plant to points outside the State of New York.

II. THE ORGANIZATIONS INVOLVED

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership productive workers in the textile industry. Local

No. 42 of the T. W. O. C. admits to its membership employees of the Company at its Utica plant.

The American Federation of Labor is a labor organization. Textile Workers Union No. 21601, a labor organization affiliated with the A. F. of L. and in behalf of which the A. F. of L. appears to have participated in these proceedings, admits to its membership employees of the Company at its Utica plant.

III. THE QUESTION CONCERNING REPRESENTATION

On May 25, 1937, the Company and the T. W. O. C. entered into an agreement by which the Company recognized the T. W. O. C. as the sole collective bargaining agency in respect to wages, hours, and other conditions of employment, for all of its employees except office help and employees in a supervisory capacity. By its terms, the agreement was to remain in effect until June 1, 1938, and to be continued from year to year thereafter, subject to written notice by either party, 60 days prior to June 1 of each year, of desire to change, alter, or amend the agreement.

Beginning on March 18, 1938, and continuing through April 1938, an organizing campaign in behalf of the A. F. of L. and an unspecified federal labor union of the A. F. of L. was conducted among the approximately 170 employees of the Company, during the course of which about 80 applications for membership were secured. On April 20, 1938, the A. F. of L. granted a charter to Textile Workers Union No. 21601, with jurisdiction over employees of the Company at its Utica plant.

On May 15, 1938, a representative of the A. F. of L. notified the Company that in the very near future Textile Workers Union No. 21601 would submit a proposed contract to the Company as the basis for negotiations. Within a few days thereafter, the Company advised the T. W. O. C. that it would not continue negotiations then pending between them for the execution of a new agreement until it was determined which union represented the employees.

Beginning about May 20, 1938, the T. W. O. C. circulated petitions among the employees of the Company, providing for the designation of the T. W. O. C. as sole collective bargaining agency in respect to wages, hours, and other conditions of employment. By June 6, 1938, these petitions had been signed by about 85 employees of the Company, of whom 25 had applied for membership in the A. F. of L. in March or April 1938.

On June 21, 1938, following the filing of the petition herein, a conference of representatives of the Board, the Company, and the two unions was held for the purpose of arranging for an election upon the consent of the parties. However, the parties were unable

to agree on whether provision should be made on the ballots for a space to indicate preference for neither union.

We find that a question concerning representation has arisen concerning the representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

At the hearing all the parties stipulated that the appropriate unit should consist of the employees whose names appear on the Company's combined pay rolls for the weeks ending May 28, June 11, and July 23, 1938,² except employees shown under the heading "Salaried," with the proviso that the Board determine whether Steve Warzala,³ Olga O'Brien,⁴ and J. Creamer,⁵ should be excluded from the unit because of the nature of their duties.

The employees listed on the combined pay rolls were identified as employees in the Company's knitting, cutting, bleachery, shipping, folding and pressing, and finishing departments, which, according to the testimony of Angus W. Clarke, secretary-treasurer of the Company, constitute "all the departments." Clarke testified that many of the employees devote part of their time to maintenance work, but that "no one person . . . is entirely maintenance." The employees shown under the heading "Salaried" were identified as foremen, assistant foremen, engineers, watchmen, and office employees. Warzala was identified as an assistant dyer, O'Brien as a head instructor in the finishing department, directing the work of the inspectors and trimmers, and Creamer as a knitting machine fixer.

We have stated that the T. W. O. C. heretofore has been recognized by the Company as the exclusive representative of all of the employees, exclusive of office and supervisory employees. Michael Walsh, an organizer for the A. F. of L., testified that, during the course of the negotiations conducted for the purpose of arranging for an election upon the consent of the parties, it was agreed that the

² Board Exhibit No. 2

³ Appearing as S. F. Warzala in Board Exhibit No 2

⁴ Appearing as O. O'Brien in Board Exhibit No 2

⁵ Appearing as J. F. Creamer in Board Exhibit No 2

appropriate unit should consist of all the production employees, excluding office employees, foremen, assistant foremen, watchmen, and engineers. Anthony Janiec, a representative of the T. W. O. C., who also participated in the negotiations, testified that he thought that it was agreed to exclude machine fixers also. In its brief submitted subsequent to the hearing, the A. F. of L. maintained that the unit should consist of "production workers including 'fixers' but exclusive of officers of the Company, clerical and office force, foremen, assistant foremen, and maintenance men including engineers, firemen, and watchmen." There is no indication in the record that any firemen are employed by the Company.

Upon the entire record in the case, we are of the opinion that the parties intended, by their stipulation at the hearing, to define the appropriate unit as including all the employees of the Company at its Utica plant except supervisory employees, office employees, watchmen, and engineers. We see no reason to depart from the unit agreed upon by the parties.

Warzala, O'Brien, and Creamer perform supervisory functions to a limited extent, but none of them had been elevated, at the time of the hearing, to the "Salaried" classification on the Company's pay rolls, in which foremen and assistant foremen are listed. The A. F. of L. has accepted applications for membership from both Warzala and Creamer. While the positions of the parties on the question of whether or not the three employees should be included in the appropriate unit were not in all respects clearly defined in the record, it appears that the T. W. O. C. desires these three employees to be excluded from the unit, and that both the A. F. of L. and the Company desire their inclusion in the unit. Although not free from doubt, we conclude, on the basis of the present record, that Warzala and Creamer should be included in the appropriate unit, and that O'Brien should be excluded from the unit.

We find that all the employees of the Company at its Utica, New York, plant, exclusive of supervisory employees, office employees, watchmen, and engineers, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

In Section III above, we have noted that, beginning on March 18, 1938, and continuing through April 1938, an organizing campaign was conducted among the employees of the Company in behalf of the A. F. of L. and that, beginning about May 20, 1938, a similar

campaign was conducted by the T. W. O. C. At the hearing, the signed application cards and petitions which were secured as a result of these activities were identified and introduced into evidence. During the noon recess of the hearing, the parties checked the names appearing on these cards and petitions against the list of names appearing on the Company's combined pay rolls for the weeks ending May 28, June 11, and July 23, 1938. We have examined the combined pay rolls of the Company, the A. F. of L. application cards, the T. W. O. C. petitions, and the check of these documents made by the parties, and find that the combined pay rolls contain the names of 163 employees in the appropriate unit, and that 54 of these employees signed A. F. of L. application cards only, 62 signed T. W. O. C. petitions only, and 25 signed both A. F. of L. application cards and T. W. O. C. petitions. One employee in the latter group testified at the hearing that he desired to be represented by the T. W. O. C.; the other 24 in this group did not testify.

The T. W. O. C. contended that, since all the signatures to its petitions were secured subsequent to the signing of the A. F. of L. application cards, it has proved that a majority of 87 of the 163 employees in the appropriate unit whose names appear on the combined pay rolls desire to be represented by the T. W. O. C., and that the Board should, therefore, certify the T. W. O. C. as exclusive representative of all the employees in the appropriate unit. We find, however, that the question concerning representation can best be resolved by a secret ballot, and will so direct.

At the hearing, both unions used the Company's combined pay rolls for the weeks ending May 28, June 11, and July 23, 1938, as the basis for proving a majority; and the Company indicated at the hearing that it considered the combined pay rolls to be a fair basis for determining eligibility of employees to vote in an election. Accordingly, eligibility to vote in the election shall be governed by the combined pay rolls.

The A. F. of L. has requested the Board to make no provision for the casting of ballots for neither union. Upon the authority of the *Interlake Iron* case⁶ and following cases, the request is hereby denied.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Fort Schuyler Knitting Company, Utica,

⁶ *Matter of Interlake Iron Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local No. 1657*, 4 N L R. B 55, 58.

New York, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the employees of Fort Schuyler Knitting Company at its Utica, New York, plant, exclusive of supervisory employees, office employees, watchmen, and engineers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Fort Schuyler Knitting Company, Utica, New York, an election by secret ballot shall be conducted within fifteen (15) days, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all the employees of Fort Schuyler Knitting Company who were employed at its Utica, New York, plant during one or more of the weeks ending May 28, June 11, and July 23, 1938, exclusive of supervisory employees, office employees, watchmen, and engineers, and excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented, for the purposes of collective bargaining, by the Textile Workers Organizing Committee, affiliated with the Committee for Industrial Organization, or by the American Federation of Labor, or by neither.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Decision and Direction of Election.