

In the Matter of OREGON WORSTED COMPANY and UNITED TEXTILE  
WORKERS OF AMERICA, LOCAL 2435

*Case No. R-111.—Decided December 9, 1936*

*Wool Yarn and Textile Industry—Election Ordered*: controversy concerning representation of employees—refusal by employer to recognize union as bargaining agency; request by substantial number in appropriate unit—question affecting commerce: current strike caused by employer's refusal to recognize union—*Unit Appropriate for Collective Bargaining*: established labor organization in plant; production and maintenance employees—*Petition for Investigation and Certification of Representatives*: withdrawn with consent of Board.

*Mr. E. J. Eagen* for the Board.

*Mr. Abe Eugene Rosenberg*, of Portland, Ore., for respondent.

*Mr. K. C. Tanner*, of Portland, Ore., for the Union.

*Mr. I. S. Dorfman*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On August 25, 1936, Local 2435 of United Textile Workers of America, hereinafter called the Union, filed with the Regional Director for the Nineteenth Region a petition alleging that a question affecting commerce had arisen concerning the representation of all employees of Oregon Worsted Company, Portland, Oregon, hereinafter called the Company, except clerical and supervisory personnel, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. On October 1, 1936, the National Labor Relations Board, hereinafter called the Board, authorized the Regional Director for the Nineteenth Region to conduct an investigation and to provide for an appropriate hearing upon due notice. Pursuant to notice, duly served upon the parties, a hearing was held in Portland, Oregon, on November 9, 1936, before George O. Pratt, Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties. Counsel for the Company moved to dismiss the petition on the grounds stated in a special appearance and motion to dismiss, theretofore filed by the Company on November 6, 1936: (1) that the

Board lacked jurisdiction of the subject matter and the parties; (2) that the Act, and especially Section 9 thereof, if construed to apply to the Company, was unconstitutional; (3) that the Act was unconstitutional *in toto*; and (4) that the Company was not served with notice of hearing in this matter as provided by National Labor Relations Board Rules and Regulations—Series 1, as amended. Counsel for the Company further alleged in support of the motion that on November 5, 1936, the production employees of the Company went out on strike; that since that date the operations of the Company have terminated and the plant closed down; that the Company's present plan is to liquidate its accounts receivable, inventory and equipment; and that therefore the issues in this proceeding have become moot. At the conclusion of this statement, counsel for the Company withdrew from further participation in the hearing, which continued *ex parte*. The Trial Examiner denied the motion to dismiss, which ruling is hereby affirmed.<sup>1</sup>

Upon the entire record in the case, the stenographic report of the hearing and all the evidence, including oral testimony and other evidence offered and received, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE COMPANY AND ITS BUSINESS<sup>2</sup>

The Company is a corporation organized and existing under the laws of the State of Oregon. Its principal office and place of business is in Portland, Oregon; where it is engaged in the business of converting wool into yarn, and selling and distributing the yarn. It is the only mill of its kind west of the Mississippi River. There are approximately 100 such mills in the United States, most of them located along the Atlantic Coast. Its mill, which is valued at approximately \$200,000, normally employs about 500 workers.

Wool, the principal raw material used in the manufacture of yarn, is purchased by the Company mainly from dealers in Portland, Oregon, although the points of origin of about 60 per cent of all the wool utilized by it are in States other than Oregon. Part

<sup>1</sup>An affidavit of service, introduced in evidence, indicates that the Company was served with notice of the hearing on November 2, 1936, in accordance with National Labor Relations Board Rules and Regulations, Series 1, as amended. Since counsel for the Company did not specify wherein the service was bad, we have no alternative but to affirm the ruling of the Trial Examiner.

<sup>2</sup>This finding is taken *verbatim*, with some modifications, from a decision of the Board, dated June 11, 1936 (Case No. C-65, 1 N L R B 915), the parties in that proceeding being the same as in the instant matter. A certified transcript of the testimony given by Roy T. Bishop, president and manager of the Company, in the previous proceeding describing the business of the Company was admitted in evidence. The testimony in the matter before us regarding the business of the Company substantially paralleled that of Bishop's in the previous proceeding.

of its wool purchases is made by a buyer who travels in and through the States of Oregon, Washington, and Idaho. On occasions, Roy T. Bishop, president of the Company and manager of its mill, purchases wool while in States other than Oregon. The demand for yarn, indicated through orders and anticipated orders, determines the amount and quality of wool purchased. The greater proportion of supplies, including dyes, emulsion of oil, salt, soap, cartons and labels, are obtained by the Company in States other than Oregon, while boxes and motor oil are purchased locally. Railroads, trucks, and, infrequently, boats are the instrumentalities for delivery of wool and supplies to the mill. Fifteen per cent of the Company's wool purchases from States other than Oregon are consigned to the Company, the remainder to dealers, banks, and brokers.

Upon delivery to the receiving department of the mill the raw wool is sorted and cleaned by a series of processes; the fibres are combed, straightened and sorted, and then rolled into balls or tops, some of which are dyed. The tops are stored for use in the manufacture of yarn as needed. Depending on the desired yarn, tops are blended, the fibres are further refined, wound on spools, doubled and redoubled, depending on the desired consistency, drawn fine, and spun into yarn. The single fibres of yarn are twisted and made into two, three and four "ply", reeled into skeins, inspected, bundled, and placed in a stock room preparatory to shipment or dyeing and shipment. The three general types of yarn so produced are hand yarn for sale to retailers, and machine and weaving yarn for the manufacture of fabrics. The total annual production of the mill is valued at about \$1,500,000. There are two shipping departments in the mill, one for general shipments and another for hand yarn shipments, the latter being in the hand yarn department. A total of 10 to 13 employees are engaged in the two shipping departments, where the yarn is baled, bundled, labeled, and prepared for shipment.

The destination of a portion of the finished yarn is known to the Company in some instances throughout, and in others during only a part of the above described process. The dyeing of wool tops and yarn in colors other than standard is done only upon order. Yarn destined for shipment to the Jantzen Knitting Mills<sup>3</sup> is

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<sup>3</sup> The Application for Permanent Registration under Section 12 (b) of the Securities Exchange Act of 1934 of Securities Temporarily Registered, filed with the Securities Exchange Commission by Jantzen Knitting Mills on March 30, 1935, although not introduced in evidence, is a public document, and we take notice of the following facts stated therein that Jantzen Knitting Mills and its French subsidiary, Societe Anonyme "Jantzen", manufacture and sell swimming suits to retailers; that a subsidiary of Jantzen Knitting Mills, Jantzen (Australia) Limited, manufactures and sells swimming suits and sports wear; and that Jantzen Knitting Mills and its subsidiaries sell their products in the principal countries of the world, either directly or through licenses

marked "Jantzen", "New York". Ninety-three per cent of the Company's sales are made through its sales agencies operating on a commission or salary basis in New York City and Los Angeles and San Francisco, California. In San Francisco its sales agency is the Maypole Dye Works, a corporation of which Bishop is president and whose stock is substantially owned by the Company. In the conveyance of yarn to the three sales agencies, and to others, all forms of transportation are used. The Company owns and operates a truck, and also engages an independent trucking agency, to deliver the finished goods to railroad freight sheds, shipping docks and other means of transportation. The Company is consignee on 75 per cent of all such shipments, and pays the freight charges. About 98 per cent of the hand yarn, constituting 20 per cent of the Company's total production, is sold to large merchandising concerns such as Woolworth's, Kresge's and Penney's. Its machine and weaving yarn is sold principally to weaving mills and knitting mills in the North Atlantic States.

In the purchase of wool, the conversion of wool into yarn, and the sale and distribution of yarn, the Company's operations thus extend across the country from coast to coast in a closely integrated economic enterprise for the purposes of trade. The Company is vitally dependent upon interstate transportation facilities and the continuous flow of commerce among the States. In turn, the weaving and knitting industries are in part dependent upon it, approximately 80 per cent of its finished products being utilized by those industries. Certain of the Company's employees are directly engaged in the receipt, preparation for shipment, and transportation of wool, supplies and yarn.

We find that the operations of the Company constitute a continuous flow of trade, traffic and commerce among the several States.

## II. QUESTION CONCERNING REPRESENTATION AND ITS EFFECT ON COMMERCE

The Company has consistently refused to bargain collectively with the Union, a labor organization, which at the date of the hearing claimed to represent 318 of the approximately 400 production and maintenance workers employed by the Company. On September 16 and 25, and on October 29 and 30, 1936, the Union requested that the Company bargain with it relative to wages, hours and working conditions of the production, maintenance and shipping department employees. Bishop was adamant in his position that he "will have nothing to do with the Union . . . ; that the company's past treatment of their employees should be a guarantee that we are fair . . ."; that he "will do as I have always done in the past, settle any grievances

or anything on its individual merits". This attitude was maintained by the Company in the face of an informal report submitted on September 21, 1936, at the request of the Company, by Maurice Howard, an examiner of the Board, to the effect that on that date 263 employees of the Company were members of the Union. Howard arrived at this figure by checking a list of members submitted by the Union against signatures on applications for membership in the Union and against the payroll of the Company.

In a letter dated November 3, 1936, the Union warned the Company that persistence in its attitude would result in a strike on November 5, 1936. The letter was not answered. The strike took place as scheduled, bringing with it a complete shut-down of the mill. Pickets were placed around the grounds of the Company, and all movement of goods to and from the mill ceased. Approximately 40,000 to 50,000 pounds of finished yarn, 5,000 to 10,000 pounds of which were boxed, labeled and ready to be shipped, and which otherwise would have been transported to various parts of the United States, have as a result of the strike been forced to remain in the shipping departments of the inactive mill. Once before, in September and October, 1934, a strike led by the Union seriously affected the stream of goods flowing to and from the mill. It is obvious, therefore, that a controversy exists concerning the representation of the employees of the Company so serious in nature and in attendant consequences as to directly affect the flow of commerce to and from the mill. The controversy may not be resolved on the basis of Howard's report since his investigation was informal in nature and did not examine into the authenticity of the signatures on the applications for membership in the Union. The only feasible method is an election by secret ballot.

We find that a question concerning the representation of employees of the Company has arisen. This question has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### III. THE APPROPRIATE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING, AND EMPLOYEES ELIGIBLE TO PARTICIPATE IN THE ELECTION

The Union suggests that all employees engaged in the following departments of the Company, excepting clerical and supervisory personnel, should be considered a single unit for purposes of collective bargaining: wool, scouring, carding, drawing, dandy, spinning, twisting, dyeing and bleaching, hand knit, puppet or novelty, maintenance, and shipping. The employees have themselves organized along these lines, and we believe such a unit in this case will insure

to them the full benefit of their right to self-organization and to collective bargaining.

We, therefore, find that all employees engaged in the above enumerated departments of the Company, except clerical and supervisory personnel, constitute a unit appropriate for the purposes of collective bargaining.

#### IV. WHETHER THE ISSUES IN THIS MATTER HAVE BECOME MOOT

The contention of the Company that the issues in this proceeding have become moot for the reasons that the mill is now closed down, and that the intention of the Company is to liquidate its accounts receivable, inventory and equipment, does not rise to the dignity of an argument. The operations at the mill ceased as a result of the strike, and intentions in such industrial situations are notoriously mercurial.

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The employees engaged in the following departments of the Oregon Worsted Company, except clerical and supervisory personnel, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the National Labor Relations Act: wool, scouring, carding, drawing, dandy, spinning, twisting, dyeing and bleaching, hand knit, puppet or novelty, maintenance, and shipping.

#### 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 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, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction of Election under the direction and supervision of Charles W. Hope, Regional Director for the Nineteenth Region, acting in the matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of the said Rules and Regulations—Series 1, as amended, among the employees on the payroll next preceding the date of the strike,

November 5, 1936, engaged in the following departments of the Oregon Worsted Company, except clerical and supervisory personnel: wool, scouring, carding, drawing, dandy, spinning, twisting, dyeing and bleaching, hand knit, puppet or novelty, maintenance, and shipping; to determine whether or not they desire to be represented by United Textile Workers of America, Local 2435.

[SAME TITLE]

## ORDER PERMITTING WITHDRAWAL OF PETITION

*December 22, 1936*

A petition having been duly filed by the United Textile Workers of America, Local 2435, on August 24, 1936, requesting an investigation and certification of representatives of the production employees of the Oregon Worsted Company, a corporation, and a hearing having been held, and a decision having been issued by the National Labor Relations Board, and a request for permission to withdraw said petition having been made by the United Textile Workers of America, Local 2435, and due consideration having been given thereto,

IT IS HEREBY ORDERED that the request of the United Textile Workers of America, Local 2435, for permission to withdraw its petition be and hereby is granted and the aforesaid case be and hereby is closed.