

In the Matter of AMERICAN FINISHING COMPANY and TEXTILE WORKERS
UNION OF AMERICA, CIO

Case No. 15-R-1032.—Decided February 1, 1944

Mr. J. E. McCadden, of Memphis, Tenn., for the Company.

Mr. Benjamin Wyle, of New York City, for the CIO.

Mr. Joseph Jacobs, of Atlanta, Ga.

Messrs. H. A. Gereg and Cornelius Maiden, of Memphis, Tenn., *Mr. R. O. Ross*, of Knoxville, Tenn., and *Mr. Elmer Estes*, of Elizabethtown, Tenn., for the AFL.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Textile Workers Union of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of American Finishing Company, Memphis, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Horace A. Ruckel, Trial Examiner. Said hearing was held at Memphis, Tennessee, on December 16, 1943. The Company, the CIO, and United Textile Workers of America, AFL, herein called the AFL, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner reserved ruling on several motions made at the hearing by the AFL. For reasons stated hereinafter, said motions are, hereby denied. On December 31, 1943, the AFL filed a request for oral argument before the Board. Said request is hereby denied. On January 1, 1944, the AFL filed a motion to dismiss the petition on the ground that no question concerning representation has arisen, and a motion to reopen the record in order to take evidence regarding the eligibility of certain employees to vote. For reasons hereinafter set forth, said motions are hereby denied. The Trial Examiner's rulings made at the hearing

are free from prejudicial error and are hereby affirmed. All parties were afforded 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

American Finishing Company is a Tennessee corporation. The Company is engaged in processing and finishing cotton piece goods owned by others at its plant in Memphis, Tennessee. Practically all such piece goods owned by others are brought to the Company's plant in Memphis, Tennessee, from points outside the State of Tennessee by interstate commerce carriers. Practically all of the cotton piece goods processed by the Company are shipped to points outside the State of Tennessee by interstate commerce carriers. Practically all of the raw materials used by the Company in processing cotton piece goods are shipped to its plant in Memphis, Tennessee, from points outside the State of Tennessee. The Company concedes, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

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

III. THE QUESTION CONCERNING REPRESENTATION

In a letter to the Company dated October 19, 1943, the CIO, enclosing a copy of the petition filed in the instant case, claimed to represent a majority of the production and maintenance employees and requested the Company to refrain from entering into a contract with the AFL prior to a certification by the Board of the exclusive bargaining agent of said employees. The Company made no reply.

The AFL has been representing employees of the Company, under written collective bargaining agreements, uninterruptedly since 1937. The most recent agreement was executed on March 7, 1942, and provided for a term expiring January 1, 1944, with automatic renewal from year to year thereafter in the absence of a notice of intention to terminate at least six (6) months prior to the end of any term. On April 6, 1943, the AFL, exercising its privilege under the automatic renewal clause, served notice on the Company that it was terminating

the current contract on December 31, 1943.¹ The AFL and the Company reached no new agreement prior to October 19, 1943, when the CIO, having filed the petition herein, made known to the Company its claim to represent a majority of the production and maintenance employees.

It appears that the AFL and the Company have been unable to reach a new agreement and that, in December 1943, a dispute over a wage raise was certified to the National War Labor Board. At the present date, no decision in this matter has been issued by the National War Labor Board.

The AFL moved for a dismissal of the petition herein, contending that this Board is without jurisdiction because of the pendency of the wage dispute before the National War Labor Board. We have heretofore denied said motion, for we find no merit in this contention. The mere pendency of a dispute before the National War Labor Board does not operate to divest this Board of jurisdiction in a representation proceeding. In those cases where the Board has declined to order an election in the presence of a dispute before the National War Labor Board, other facts were present which do not exist in the instant case.² Since, on April 6, 1943, the AFL exercised the option to terminate its contract on December 31, 1943, and since the CIO acting in accordance with our finding in the previous representation proceeding involving the same parties,³ filed the petition herein on October 19, 1943, a reasonable time before the expiration of the March 1942 agreement, we find that the pendency of the wage dispute before the National War Labor Board constitutes no bar to an election at this time.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.⁴

¹ A finding to this effect was made by the Board in *Matter of American Finishing Company*, 50 N. L. R. B. 313, decided on June 9, 1943, involving the same parties now before the Board in the instant proceeding. In dismissing the petition in that case, the Board found that the AFL's contract of March 1942 "constitutes a bar to a determination of representatives at this time." It stated, however, that the dismissal "should not prejudice the right of the CIO, upon proper showing, to file a new petition at a reasonable time before the present expiration date of the contract."

² See *Matter of Allis Chalmers Mfg. Co.*, 50 N. L. R. B. 306 and *Matter of Kennecott Copper Corp., Nevada Mines Division*, 51 N. L. R. B. 1140. In these cases, the Board was faced with a recognized or certified representative which had had no real opportunity to enjoy the benefits of exclusive representation, inasmuch as the initial bargaining efforts, following recognition or certification, had resulted in resort to the processes of the National War Labor Board. See also *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268; *Matter of Ft. Dodge Creamery Company*, 53 N. L. R. B. 928; *Matter of Columbia Protokosite Co., Inc.*, 53 N. L. R. B. 560; *Matter of Americus C. Leonard, et al.*, 51 N. L. R. B. 1424

³ See footnote 1.

⁴ The Regional Director stated that the CIO submitted 1096 membership cards, of which 511 bore the apparently genuine, original signatures of employees whose names appeared on the Company's pay roll of November 10, 1943, which bore the names of 1450 employees

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 National Labor Relations Act.

IV. THE APPROPRIATE UNIT

We find, in accordance with the agreement of the CIO and the Company, to which the AFL offered no objection, that all employees of the Company, excluding watchmen, main office clerical and office workers, persons in executive positions with final authority to hire or discharge, and, in accordance with our usual policy, excluding also 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.⁵

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot.

The AFL moved to reopen the hearing in order to take evidence regarding the eligibility to vote of certain employees alleged to have been recently laid off or discharged. We have heretofore denied said motion, since in the Direction of Election hereinafter, the eligibility to vote of laid-off and discharged employees is defined. If, at the election, there is any disagreement with respect to the eligibility to vote of any of such employees, the parties are free to challenge the ballots.

in the unit hereinafter found appropriate. Of the 511 cards, 196 were dated in March 1943; 45 in April 1943; 19 in May 1943; 4 in June 1943; 17 in August 1943; 19 in September 1943; 66 in October 1943; 143 in November 1943; and 2 were undated. At the hearing, the CIO submitted 147 additional cards, of which 2 were dated in October 1943; 113 in November 1943, and 27 in December 1943.

The AFL moved for dismissal of the petition on the ground that the CIO failed to make a showing of present substantial representation, and that therefore no question exists concerning the representation of employees of the Company. In support of this motion, the AFL contends that the cards are too few in number, do not bear recent dates and were not made available for examination by the AFL. We find no merit in this contention. As we have frequently stated, authorization or membership cards are required, not as proof of the number of employees who desire to be represented by a labor organization, or as a basis for determining the appropriate representative, but simply to provide a reasonable safeguard against the indiscriminate institution of representation proceedings by labor organizations which might have little or no membership in the alleged appropriate unit. The examination and evaluation of these cards is an administrative matter, wholly within the discretion of the Board, and for this reason is not subject to attack by parties to the proceeding. For these reasons, we have heretofore denied said motion. See *Matter of Frigidaire Division, General Motors Corp.*, 54 N. L. R. B. 55; *Matter of H. G. Hill Stores, Inc., Warehouse*, 39 N. L. R. B. 874

⁵ This is substantially the same unit provided for in the AFL contract with the Company. At the hearing, the CIO was permitted to amend its petition with respect to unit to conform to the language of said contract.

Accordingly, we shall direct that those eligible to vote in the election shall be all employees of the Company in the unit found appropriate in Section IV, above, 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.

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, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with American Finishing Company, Memphis, Tennessee, 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 Fifteenth 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 Textile Workers Union of America, CIO, or by United Textile Workers of America, AFL, for the purposes of collective bargaining, or by neither.