

In the Matter of GREENFIELD'S COMPANY and AMALGAMATED CLOTHING
WORKERS OF AMERICA, LOCAL 11, C. I. O.

Case No. 14-R-827.—Decided February 14, 1944

Mr. Charles J. Hackler, for the Board.

Lewis, Rice, Tucker, Allen & Chubb, by *Mr. Robert T. Burch*, of St. Louis, Mo., for the Company.

Messrs. Richard Brazier and Henry Scherer, of St. Louis, Mo., for the Union.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Amalgamated Clothing Workers of America, Local 11, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Greenfield's Company, St. Louis, Missouri, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before William F. Guffey, Trial Examiner. Said hearing was held in St. Louis, Missouri, on January 5, 1944. 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. The Trial Examiner's rulings made at the hearings are free from prejudicial error and are hereby affirmed. The Company's motion to dismiss for lack of jurisdiction is overruled for reasons hereinafter stated. All parties were afforded opportunity to file briefs with the Board.

¹ Incorrectly described in the petition and other formal papers as "Greenfield Clothing" and corrected by motion at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Greenfield's Company, a Missouri corporation, has its principal office and place of business in St. Louis, Missouri, where it operates a single store engaged in the retail sale and distribution of men's clothing and furnishings. During the first 9 months of the Company's fiscal year beginning February 1, 1943, the Company purchased for resale at its St. Louis store clothing and furnishings amounting in value to \$201,724.65, of which approximately 91 percent was obtained from points outside the State of Missouri. During the same period the Company's total sales amounted to \$393,252.44, of which \$35,149.33 represents sales of merchandise delivered to points outside the State of Missouri or delivered to a carrier or to the United States mails for transportation to points outside the State of Missouri. It is estimated that the Company's total sales for the fiscal year ending January 31, 1944, will approximate \$550,000. While it appears that for the month of November 1943, the Company's out-of-State sales amounted to approximately 7 percent of the total sales for that month as compared with 11 percent for the same month in 1942, the record reveals that the Company's out-of-State sales in 1943 have increased materially over those of 1942.²

The Company contends that the substantial purchases from out-of-State sources together with the other factors hereinabove referred to, do not confer jurisdiction upon the Board in the present proceeding. This contention has, however, been raised in previous cases upon facts substantially similar to those shown by the present record and decided adversely to the position taken by the Company.³ We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Amalgamated Clothing Workers of America, Local 11, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 20, 1943, the Union requested in writing that the Company recognize it as exclusive bargaining representative of the

² During the month of November 1943, the Company's out-of-State sales amounted to \$5,517 as compared with \$3,933 for the corresponding month in 1942. The Company's contention that its future out-of-State sales will diminish because of governmental restrictions effective as of October 11, 1943, upon the delivery of packages below a certain size and weight is not supported by the evidence, particularly in view of the fact that such restrictions do not affect deliveries by parcel post or of garments which have been altered

³ See *Matter of Lane Bryant, Inc.*, 52 N. L. R. B. 1536, and cases cited therein.

Company's busheling (alteration) department employees and to arrange a conference for the purposes of collective bargaining. The Company did not reply to the Union's request but subsequently declined to recognize the Union upon the ground that its operations were not within the jurisdiction of the Act and upon the further ground that the unit proposed by the Union was inappropriate.

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

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 Union contends that the employees engaged in the busheling (alteration) department in the Company's St. Louis store, excluding supervisors with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, and all other employees, constitute an appropriate unit. The Company urges that a store-wide unit of all employees of the Company is the only appropriate unit or in the alternative that a unit of alteration employees should include the alteration department employees of Goldering Women's Apparel, a corporation which leases space in the Company's store for the purpose of selling women's clothing.

In support of its contention for a store-wide unit the Company points to the fact that the employees in the alteration department constitute a group of 14 or 15 employees out of a total of only 85 employees in the store, and that all employees of the Company are subject to the same conditions of employment. On the other hand, there is no interchange between employees of the alteration department and the sales employees.⁵ The former are paid on an hourly rate while the sales employees are paid a salary, commission, or a combination of both salary and commission. Moreover, we take notice of the fact that the employees involved, namely tailors, pressers, pants-machine operators, and finishers, are generally considered as belonging to a skilled trade having interests separate from those of sales and other store employees. In harmony with this distinction, the

⁴ The Regional Director reported that the Union had submitted 13 designations dated since August 19, 1943, all of which bore the apparently genuine original signatures of persons whose names appear on the Company's pay roll of November 15, 1943, containing 14 names within the claimed appropriate unit.

⁵ The alteration department employees are located in separate sections of the store apart from the sales employees.

Union limits its membership to skilled alteration hands and apprentices and has made no attempt to organize the remaining employees of the Company. While the Company has no collective bargaining agreements, the Union has bargaining agreements with other concerns covering similar employees, including contracts with three other stores in St. Louis, Missouri. There is, moreover, nothing in the record to indicate that any other labor organization has succeeded in organizing the other departments of the Company. From the foregoing facts and upon the basis of the entire record, we are of the opinion that a unit confined to alteration department employees is appropriate for the purposes of collective bargaining.⁶

The further contention of the Company that such unit should include the alteration employees of a lessee of the Company is equally without merit. While the alteration department employees of the aforesaid lessee are subject to the rules and regulations governing the operation of the Company's store, they are, nevertheless, the employees of the lessee and not those of the Company which has no direct control or supervision over the activities of such employees. In addition thereto, the alteration department employees of the lessee are engaged solely in the alteration of women's garments and have not been organized by the Union which has confined its membership to employees who work exclusively on men's clothing. Under the circumstances, we find that the alteration department employees of the lessee Goldering Women's Apparel have interests not sufficiently in common with those of employees of the Company to warrant their inclusion in a unit of the latter employees. We accordingly exclude them from such unit.⁷

We find that all employees in the busheling (alteration) department of the Company, excluding supervisory employees⁸ who have the 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

⁶ See *Matter of J. L. Brandeis & Sons*, 47 N. L. R. B. 614.

⁷ See *Matter of J. L. Brandeis & Sons*, 50 N. L. R. B. 325.

⁸ Among the supervisory employees to be excluded under this provision is an employee referred to as the fitter, who, the record reveals, has supervision over the other employees in the alteration department with the power to hire and discharge such employees.

herein, subject to the limitations and additions set forth in the Direction.

The Union requested at the hearing that it appear on the ballot as "Local 11, Amalgamated Clothing Workers of America." The request is hereby granted.

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 Greenfield's Company, St. Louis, Missouri, 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 Fourteenth 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 or not they desire to be represented by Local 11, Amalgamated Clothing Workers of America, for the purposes of collective bargaining.