

In the Matter of LUMMUS COTTON GIN COMPANY and INTERNATIONAL
ASSOCIATION OF MACHINISTS, A. F. L.

Case No. 10-R-1132.—Decided May 9, 1944

Swift, Pease, Davidson, Swinson & Chapman, by Messrs. J. Q. Davidson and W. E. Swinson, of Columbus, Ga., for the Company.

Messrs. Paul Chipman and W. F. Stephens, of Atlanta, Ga., and Mr. Howard Anthony, of Columbus, Ga., for the Union.

Mrs. Catherine W. Goldman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, affiliated with the American Federation of Labor, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Lummus Cotton Gin Company, Columbus, Georgia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Columbus, Georgia, on March 21, 1944. The Company and the Union appeared and participated. At the hearing the Company moved that the petition be dismissed. For reasons hereinafter stated, the motion is denied. All parties 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 hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

Lummus Cotton Gin Company, a Georgia corporation with its principal office and place of business in Columbia, Georgia, is engaged in

the manufacture of textile machinery, cotton gin machinery, and ordnance materiel. It also operates sales and repair offices at Memphis, Tennessee, and Dallas, Texas. During the calendar year ending December 31, 1943, the Company purchased for use at its manufacturing operations in Columbus, raw materials amounting in value to over \$400,000, approximately 70 percent of which was purchased outside the State of Georgia. During the same period the Company manufactured and sold products, valued in excess of \$750,000, approximately 90 percent of which was shipped outside the State of Georgia. At present about 30 percent of the Company's business is with agencies of the United States Government.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees because it doubts the Union's majority status.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 are generally agreed that the unit should cover all production and maintenance employees, excluding

¹ The Field Examiner reported that the Union submitted 183 authorization cards; that there are 300 employees in the unit petitioned for; and that the cards were dated as follows: 126—January 1944; 10—February 1944; 4—March 1944; 43 undated. The record shows that the Union submitted 6 additional authorization cards dated during March 1944.

The Company contends that in determining the Union's representative showing, the Board should consider the 127 employees of the Company in the armed services. However, since the eligibility of such employees is dependent upon their presenting themselves in person at the polls (see *Matter of Mine Safety Appliances Co.*, 55 N. L. R. B. 1190), there is no method of ascertaining at this time the number of such employees eligible to vote. Moreover, as the Board has repeatedly pointed out, proof of authorization is required merely to show that holding an election would not be a vain proceeding, and therefore a substantial showing among the employees now engaged in active work for the Company is sufficient to indicate the practicality of a present election to determine representatives. Furthermore, in the instant case, even if the Company's contention should be adopted, the Union's showing of representation would remain substantial.

armed guards and supervisory, executive, technical,² and clerical employees. They are in disagreement, however, concerning assistant foremen, the Union contending that they should be included, and the Company that they should be excluded as supervisory employees.

At the head of the Company's supervisory staff is the plant superintendent. Under him and in charge of the various departments of the plant are foremen. Because of the large number of workmen in some of the departments, the Company employs assistant foremen to aid the foremen in the discharge of their duties. It employs four men in this classification, two of whom engage in no manual labor. The assistant foremen are paid at a higher rate than the employees under them, and they are in line for promotion to the position of foremen. In addition to assigning duties, inspecting work, and requisitioning materials, they are authorized to make disciplinary recommendations to the foremen who in turn make recommendations to the plant superintendent. The plant superintendent testified without contradiction that in taking action pursuant to these recommendations, he usually follows the recommendations of the assistant foremen since they are in direct contact with the men and are charged with maintaining production. Under these circumstances, we are of the opinion that assistant foremen fall within our customary definition of supervisory employees, and accordingly we shall exclude them from the unit.

We find that all production and maintenance employees of the Company, excluding armed guards, technical employees, clerical employees, executive employees, assistant foremen, and 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.

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 payroll 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,

² The parties stipulated that the term technical employees refers to engineers and draftsmen

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 Lummus Cotton Gin Company, Columbus, Georgia, 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 Tenth 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 those employees 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 International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining.