

In the Matter of A. N. CHAPPELL AND S. M. CHAPPELL, d/b/a THE BAMA COMPANY and UNITED WHOLESALE & WAREHOUSE EMPLOYEES, LOCAL 261, C. I. O.

Case No. 10-R-1314.—Decided October 28, 1944

Lange, Simpson, Brantley & Robinson, by Mr. Ormond Somerville, of Birmingham, Ala., for the Company.

Mr. C. B. St. John, of Birmingham, Ala., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Wholesale & Warehouse Employees, Local 261, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of A. N. Chappell and S. M. Chappell, d/b/a The Bama Company, Birmingham, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis Plost, Trial Examiner. Said hearing was held at Birmingham, Alabama, on October 7, 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 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

A. N. Chappell and S. M. Chappell, d/b/a The Bama Company, is a partnership operating a plant at Birmingham, Alabama, where it is engaged in the processing and canning of food products. During 1943

the Company purchased goods valued between \$500,000 and \$750,000, over 70 percent of which was shipped to it from points outside the State of Alabama. During the same period the Company sold products valued between \$750,000 and \$1,000,000, 60 percent of which was shipped to points outside the State of Alabama.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Wholesale & Warehouse Employees, Local 261, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of its employees until such time as the Union is certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be 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 Union urges that all production, maintenance, and shipping employees of the Company, including truck drivers, but excluding office and clerical employees, the shipping clerk, and supervisory employees, constitute an appropriate unit. The only controversy with respect to the unit concerns "over the road" truck drivers. The Company would exclude them from the unit while the Union would include them.

The Company employs three truck drivers, two of whom are engaged in hauling goods to and from points outside Birmingham to the Company's plant. They are paid on a mileage basis. The remaining truck driver works only in Birmingham and around the plant. The parties agree, and we find, that he should be included in the unit. However, we shall exclude the two "over the road" truck drivers.

We find that all production, maintenance, and shipping employees of the Company, including the city truck driver, but excluding office

¹ The Field Examiner reported that the Union presented 46 authorization cards. There are approximately 48 persons in the appropriate unit.

and clerical employees, the shipping clerk, "over the road" truck drivers, and all 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 means of 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 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with A. N. Chappell and S. M. Chappell, d/b/a The Bama Company, Birmingham, Alabama, 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 the 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 United Wholesale & Warehouse Employees, Local 261, C. I. O., for the purposes of collective bargaining.