

In the Matter of N. R. ELLIOTT and Mrs. N. R. ELLIOTT, DOING BUSINESS  
AS ELLIOTT GROCERY COMPANY and UNITED WHOLESALE & WAREHOUSE  
EMPLOYEES, LOCAL 261, CIO

*Case No. 10-R-1311.—Decided November 11, 1944*

*Mr. J. A. Simpson*, of Birmingham, Ala., for the Company.

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

*Mr. Sidney Grossman*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Wholesale & Warehouse Employees, Local 261, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of N. R. Elliott and Mrs. N. R. Elliott, doing business as Elliott Grocery Company, Bessemer, Alabama, herein called the Company,<sup>1</sup> 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 and participated. 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

The Company, under the proprietorship of N. R. Elliott and Mrs. N. R. Elliott, doing business as Elliott Grocery Company, at Bessemer,

<sup>1</sup>At the hearing, the petition and all other formal papers in this proceeding were amended so that the name of the Company would read "N. R. Elliott and Mrs. N. R. Elliott, doing business as Elliott Grocery Company."

Alabama, is a wholesale enterprise engaged in selling grocery products to retail merchants within the State of Alabama. The annual sales of the Company aggregate in excess of \$1,000,000. Its annual purchases of grocery products are approximately \$1,000,000, of which from 10 to 25 percent is secured from sources outside the State of Alabama. The balance of the Company's purchases are secured in carload or case lots through brokers in Alabama, a major portion of which originate outside the State of Alabama, and approximately 25 percent thereof is shipped directly to the Company from points outside the State of Alabama.

We find, contrary to the Company's contention, 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, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that on September 5, 1944, a representative of the Union informed the Company by telephone that the Union represented a majority of its employees and requested that a conference be held. The Company refused to grant recognition to the Union.

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.<sup>2</sup>

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

In substantial accordance with a stipulation of the parties, we find that all production and maintenance employees of the Company, at Bessemer, Alabama, including shipping, cleaning, and delivering employees, truck drivers and helpers, but excluding office employees, clerical workers, shipping clerks, 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.

<sup>2</sup> The Field Examiner reported that the Union submitted 27 authorization cards, of which 23 were dated in August 1944, and 4 in September 1944, and that there are 25 employees in the alleged appropriate unit. No pay roll was submitted by the Company.

## 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<sup>3</sup> 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 N. R. Elliott and Mrs. N. R. Elliott, doing business as Elliott Grocery Company, Bessemer, 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 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 United Wholesale & Warehouse Employees, Local 261, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

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<sup>3</sup> In accordance with an agreement of the parties, employees who devote more than 50 percent of their time to clerical work, shall be excluded from the group of eligible employees referred to in Section IV, above.