

In the Matter of HERMAN GREENFELD, D/B/A LEBANON SHIRT COMPANY and UNITED GARMENT WORKERS OF AMERICA, A. F. L.

Case No. 15-R-1308.—Decided March 17, 1945

Messrs. H. V. Watkins & Ralph B. Avery, by Mr. H. V. Watkins, of Jackson, Miss., for the Company.

Mr. M. G. Sparks, of Meridian, Miss., for the AFL.

Mr. Sidney Grossman, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Garment Workers of America, affiliated with the American Federation of Labor, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Herman Greenfeld, d/b/a Lebanon Shirt Company, Union, Mississippi, herein called the Company,<sup>1</sup> the National Labor Relations Board provided for an appropriate hearing upon due notice before LeRoy Marceau, Trial Examiner. Said hearing was held at Meridian, Mississippi, on February 23, 1945. 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. At the hearing, the Company moved to dismiss the petition for want of proper notice of hearing, insufficiency of the AFL's demand for recognition, and defect in parties. Ruling was reserved for the Board. In part, for the reasons stated in Sections I and III, *infra*, the motions are denied.<sup>2</sup> The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby af-

<sup>1</sup> At the hearing, the name of the Company was amended as designated above.

<sup>2</sup> Notwithstanding the fact that the Company received Notice of Hearing 3 days prior thereto, the evidence does not disclose that it was prejudiced thereby, particularly in view of its failure to avail itself of the opportunity afforded by the Trial Examiner to request a continuance. Moreover, the Company's letter to the Regional Director, dated February 7, 1945, indicated that it had been apprised of the filing of the petition and evinced an intent to cooperate in the holding of an election. Cf. *Matter of South Carolina Granite Company*, 52 N L R B 453

firmed. All parties were afforded an opportunity to file briefs with the Board. The Company's request for oral argument is hereby denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Herman Greenfeld, d/b/a Lebanon Shirt Company, is the sole proprietor of the Company herein which has its principal office at 222 Fifth Avenue, New York City, and operates plants at Lebanon, Pennsylvania, and at Union, Mississippi. This proceeding is concerned with the Company's Union plant where it is engaged in the manufacture of twill shirts for the Government and sport shirts for civilian use. During a 12-month period, the Company purchases raw materials in excess of \$2,000,000 in value, of which approximately 100 percent is secured from sources outside the State of Mississippi. Over 90 percent of the Company's finished products is shipped to points outside the State of Mississippi.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.<sup>3</sup>

#### II. THE ORGANIZATION INVOLVED

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

#### III. THE QUESTION CONCERNING REPRESENTATION

On January 31, 1945, the AFL telephoned the Company at the plant here involved, advising the manager thereof that it had been designated as the bargaining representative of a majority of the Company's employees and requesting recognition as their bargaining agent. The plant manager responded that it was incumbent upon him to communicate with the New York office, and, although an attempt to do so did not succeed, he thereafter took no further action. The following day, the AFL filed its petition in the Regional Office. Although the Company contends that it had not refused to grant recognition to the

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<sup>3</sup> The Company contends that the municipality of Union, in which its plant is located, has an interest in the Company's employees and therefore should have been made a party to this proceeding. There is no merit to this contention. The municipality is merely the lessor of the premises occupied by the Company. The fact that the Company, under the terms of its contract with Union, is required to accord employment preference to citizens of the municipality, does not, in our opinion, alter or enhance the lessor-lessee relationship.

AFL, at the hearing, it would not accord such recognition. For a proceeding of this kind, it is sufficient that, as of the date of the hearing, the petitioning union's status as a bargaining representative is disputed and that recognition depends upon certification by the Board.<sup>4</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</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

The AFL seeks a unit comprised of all employees at the Company's Union, Mississippi, plant, excluding clerical employees and all supervisory employees. Although the Company is in agreement with the general composition of the unit, it contends that effect be given in the Board's unit finding to employment preferences for citizens of the municipality of Union, Mississippi, as provided in its current contract with that municipality. We perceive no validity in such contention; the purpose of this proceeding is merely to determine whether the AFL may be accorded the status of bargaining representative of the Company's employees. The Board, therefore, is not here concerned with matters more properly the subject of collective bargaining between the Company and the bargaining representative of its employees.

The AFL would include, and the Company would exclude, Herman Bell and W. E. McNeely, as non-supervisory employees. The record discloses that Bell, as head of the shipping department, and McNeely, as head of the maintenance department, receive a substantially higher rate of pay than employees whose work they direct in their respective departments, and that they have authority to recommend the discipline or discharge of such employees. Although McNeely, unlike Bell, is required to submit his recommendations to the Company's New York office for consideration, there is no showing that his authority is less effective than that of other supervisory employees who submit recommendations to the plant manager. We shall, therefore, exclude both Herman Bell and W. E. McNeely from the unit hereinafter found appropriate.

We find that all employees at the Company's Union, Mississippi, plant, excluding clerical employees, the heads of the shipping and maintenance departments, and all other supervisory employees with

<sup>4</sup> *Matter of R. E. Donnelley and Sons Company*, 59 N. L. R. B. 122.

<sup>5</sup> The Field Examiner reported that the AFL submitted 254 membership applications, all of which bore dates in January 1945. There are approximately 435 employees in the alleged appropriate unit.

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 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 Herman Greenfeld, d/b/a Lebanon Shirt Company, Union, Mississippi, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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 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 Garment Workers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining.