

to have indicated their desire to be bargained for as part of the production and maintenance unit represented by the Petitioner.⁸

[Text of Direction of Election omitted from publication in this volume.]

⁸ *Great Lakes Pipe Line Company*, 92 NLRB 583.

FEDERAL COMPRESS & WAREHOUSE COMPANY *and* UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 32-RC-325. July 31, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John E. Cienki, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer, engaged in the business of compressing and warehousing cotton, is a Delaware corporation with its main office at Memphis, Tennessee, and with plants in the States of Arkansas, Louisiana, Mississippi, Missouri, Tennessee, and Texas. The Employer's two plants at Pine Bluff, Arkansas, are alone involved in this case. All of the Employer's plants operate under the direction of the Employer's Memphis office, which determines the Employer's policies and controls its labor relations. Many of the plants are served by interstate rail carriers. The Employer does not purchase or sell any cotton but receives it from the owner for processing, storage, and transshipment. A substantial proportion of the cotton is moved interstate on leaving the Employer's plants.

The Employer contends that it is not engaged in commerce and is therefore not subject to the Act. In support of this contention the Employer cites *Federal Compress Co. v. McLean*,¹ in which the Supreme Court held that a license tax imposed by the State of Mississippi on the instant Employer for the privilege of operating a cotton compress and warehouse within the State did not violate constitutional

¹ 291 U. S. 17 (1933).

95 NLRB No. 88.

limitations on State taxation of interstate commerce. However, this case did not involve the question of the power of the Federal Government to regulate the Employer's business, which is the question here presented. It is clear from the decisions of the Supreme Court that the fact that a business may properly be taxed by a State does not necessarily imply that it is exempt from Federal regulation.² Consequently, we do not regard the *Federal Compress* case as determinative of the jurisdictional question involved in this proceeding.

The test uniformly applied by the courts in determining whether an employer is subject to the Act is whether the stoppage of the employer's business by reason of labor strike would interrupt the flow of interstate commerce.³ It is clear that a strike at the Employer's Pine Bluff plants would interfere with the movement in commerce of the cotton there processed in preparation for delivery to interstate carriers. The fact that the Employer does not own the cotton which moves through its plants into interstate commerce is immaterial insofar as the applicability of the Act to the Employer is concerned.⁴ We conclude, consequently, that the Employer's operations affect commerce within the meaning of the Act, and are subject to the Board's jurisdiction. Moreover, in view of the multistate nature of the Employer's operations, we find that it will effectuate the policies of the Act to assert jurisdiction in this case.⁵

2. The labor organization involved claims to represent certain employees of the Employer.

3. On January 23, 1950, the Employer executed a collective bargaining agreement with Local 254 of the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, AFL, which was to continue in effect until February 28, 1951, and from year to year thereafter, absent 60 days' notice of a desire to modify or terminate. As the petition in this case was not filed until March 21, 1951, the Employer contends that it is barred by the existing contract.

The Employer's agreement with Local 254 is signed by the officers of Local 254 and by a representative of the International. Though

² *Interstate Pipe Line Co. v. Stone*, 337 U. S. 662, 666-667 (1949); *Central Greyhound Lines v. Mealey*, 334 U. S. 653, 656 (1948); *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U. S. 33 (1940); *Lehigh Valley Railroad Co. v. Pennsylvania*, 145 U. S. 192 (1892); *Maine v. Grand Truck R. Co.*, 142 U. S. 217 (1891).

³ *Polish Alliance v. N. L. R. B.*, 322 U. S. 643, 645-646 (1944); *Consolidated Edison Co. of N. Y. v. N. L. R. B.*, 305 U. S. 197, 221 (1938); *Santa Cruz Fruit Packing Co. v. N. L. R. B.*, 303 U. S. 453 (1937); *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 40-41 (1937); *J. L. Brandeis & Sons v. N. L. R. B.*, 142 F. 2d 977, 980 (1944).

⁴ See *N. L. R. B. v. Fainblatt*, *supra*, at 608; *N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318, 326 (1940).

⁵ *Bell's Department Store of Savannah, Ga., Inc.*, 93 NLRB 729; *Holm Tractor & Equipment Company*, 93 NLRB 222; *The Borden Company, Southern Division*, 91 NLRB 628.

both the Local and the International were duly notified of the hearing in the instant case, neither appeared at the hearing. The record discloses that for over a year Local 254 has had no dues-paying members, contributed no money to the International, held no meetings, entered into no collective bargaining, nor processed any grievances. The International has likewise been inactive at the Employer's Pine Bluff plants. Like the Local it has not for well over a year entered into any collective bargaining with the Employer, processed any grievances, or performed any other service for the employees. It did, in January 1951, send a letter to the Employer attempting to open up the existing contract with the Employer. However, upon being informed by the Employer that its request for bargaining had not been timely made, the International did not renew its request.

It is clear that to treat the present contract as a bar to this proceeding would not promote stability in labor relations at the Employer's plants. In view of the inactivity of the Local and International in these plants, the dismissal of the instant petition would leave the employees without any effective representation for an indeterminate period. Accordingly, we find that the 1950 agreement is not a bar to this proceeding,⁶ and that a question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Petitioner and the Employer agree in general that the appropriate unit should include all regular production and maintenance employees. There was, however, some question as to whether the unit should be single-plant or should include both of the Employer's Pine Bluff plants.⁷

The Petitioner indicated a preference for a two-plant unit; the Employer, although not opposing such a unit, stated it wished to reserve the right to negotiate separate contracts for each plant.

These plants are 5 miles apart. They are both under the direct control of a plants manager, whose office is in a building separate from either of the plants. At this office are kept financial, payroll, and other records affecting both plants. Hiring, though done at each plant by a superintendent, is subject to the approval of the plants manager. There is frequent interchange of employees between the two plants. Since 1944, collective bargaining has been conducted on a two-plant basis, and the same wages and working conditions prevail in both plants. In view of the foregoing, we find that only a

⁶ *Southern Union Gas Company*, 93 NLRB 736; *American Radiator and Standard Sanitary Corporation*, 93 NLRB 7; *Brown & Williamson Tobacco Company*, 92 NLRB 207.

⁷ Following the practice at the hearing, we refer to only two plants—Nos. 1 and 2—as we include the two warehouses listed as Plants Nos. 3 and 4 in Plant No. 1.

two-plant unit is appropriate for collective bargaining purposes within the meaning of Section 9 (b) of the Act.

We find, therefore, that the following employees of the Employer constitute a unit appropriate for collective bargaining purposes within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's two Pine Bluff, Arkansas, plants, excluding temporary employees,⁸ office and clerical employees, engineers, watchmen and guards or police, temporary construction workers, and supervisors.

5. The determination of representatives:

At the time of the hearing the Employer had a complement of about 40 employees at the plants involved. It was expected, however, that during the peak season, culminating on November 1, about 100 more employees would be added for seasonal work. The same employees are hired each year for this work. The parties agreed that they should be deemed eligible to vote in the election, if employed at the time of the election.

In view of the extreme seasonal fluctuation in the size of the employee complement at the plants involved, we shall, in accordance with our usual practice in such cases, direct that the election herein be held at or about the seasonal peak, on a date to be determined by the Regional Director, among the employees in the appropriate unit who are employed during the payroll period immediately preceding the date of the issuance by the Regional Director of the notice of election.

[Text of Direction of Election omitted from publication in this volume.]

⁸ The parties agreed to exclude as temporary employees all persons who had less than 30 days' continuous employment at the Pine Bluff plants.

GREYHOUND GARAGE OF JACKSONVILLE, INC., PETITIONER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, GREYHOUND LODGE No. 759, A. F. OF L.; AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES, DIVISION 1238, A. F. OF L.; TRUCK DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL UNION, No. 512, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, A. F. OF L. *Case No. 10-RM-69.*
July 31, 1951

Decision and Direction of Election

Upon a petition duly filed by the Employer, a hearing was held before Paul L. Harper, hearing officer of the National Labor Relations