

In the Matter of VICKSBURG GARMENT COMPANY and UNITED
GARMENT WORKERS OF AMERICA

Case No. R-539.—Decided February 14, 1938

Shirt Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: refusal of employer to recognize petitioning union until certified by Board—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; established labor organization in plant; no controversy as to—*Representatives:* proof of choice: signed authorizations; comparison of membership cards with current pay roll—*Certification of Representatives:* upon proof of majority representation.

Mr. Samuel Lang, for the Board.

Brunini & Hirsch, by *Mr. E. L. Brunini*, of Vicksburg, Miss., for the Company.

Mr. Jack W. Adams, of New Orleans, La., for the United.

Mr. Howard S. Friedman, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On November 1, 1937, United Garment Workers of America, Local No. 209, herein called the United, filed with the Regional Director for the Fifteenth Region (New Orleans, Louisiana) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Vicksburg Garment Company, Vicksburg, Mississippi, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.¹ On November 29, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and

¹ On December 2, 1937, the United filed an amended petition to include the name of M Fine & Sons Manufacturing Co, Inc, as a party, on the ground that the Amalgamated Clothing Workers of America claimed to have a contract with M Fine & Sons Manufacturing Co, Inc, covering all of their plants, including that of the Vicksburg Garment Company. Thereafter the Amalgamated advised the Regional Office of the Board of its intention to intervene and present a contract made by it with M. Fine & Sons Manufacturing Co, Inc, the owners of the Vicksburg Garment Company, which it claimed applied to Vicksburg Garment Company. The Amalgamated never formally intervened in this proceeding, nor was the alleged contract ever produced. At the trial on motion of the Board the name of M. Fine & Sons Manufacturing Co., Inc., was stricken.

authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On December 3, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United and upon the Amalgamated Clothing Workers of America, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to a request by Mr. Frank Constangy, attorney for the Amalgamated, the hearing was postponed from December 16, 1937 to December 23, 1937. Notice of Postponement was duly served upon the Company, the United, and the Amalgamated. Pursuant to the Notice of Postponement, a hearing was held on December 23, 1937, at Vicksburg, Mississippi, before Eugene P. Lacy, the Trial Examiner duly designated by the Board. The Board, the Company, and the United were represented by counsel and participated in the hearing. Although the record was kept open from 10 o'clock in the forenoon until 9:35 in the evening, neither Mr. Constangy nor any other representative of the Amalgamated appeared at the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Vicksburg Garment Company, incorporated in Mississippi in 1936, has its sole office and plant at Vicksburg, Mississippi. It is a wholly owned subsidiary of M. Fine & Sons Manufacturing Company, Inc., a New York corporation.

The Company makes, sells, and distributes men's and boys' work shirts. The principal materials purchased by the Company are cotton cloth, cotton fabric, cardboard, paper, sewing machines, and cutting machines, more than 50 percent of which come from States other than Mississippi. The total value of these materials exceeded \$75,000 for eleven months ending December 1, 1937. More than 75 per cent of the products manufactured during the same period have been sold and transported to customers outside of the State of Mississippi.

II. THE ORGANIZATION INVOLVED

United Garment Workers of America, Local No. 209, is a labor organization affiliated with the American Federation of Labor, ad-

mitting to its membership all production employees of the Company, excluding the superintendent, foremen, floorwalkers, floorladies, watchmen, the office force, and instructors.

III. THE QUESTION CONCERNING REPRESENTATION

The United wishes to be certified before it commences collective bargaining. It is stipulated that the Company neither affirms nor denies that the United represents a substantial number of production employees; that it has no definite knowledge whether the United represents a majority of production employees; and that it is unwilling to recognize any labor organization as the exclusive agent of its employees for purposes of collective bargaining until such organization is so certified by the Board.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

At the hearing the United stated that it considered the appropriate unit to be "the production workers, exclusive of the superintendent, foremen, floorwalkers, floorladies, watchmen, the office force and the instructors." The United has been organized since March 1937 with its membership comprising such a unit. There was no objection by anyone to this designation, nor was there any testimony to show that any other unit was the appropriate one.

We find that the production employees of the Company, excluding the superintendent, foremen, floorwalkers, floorladies, watchmen, the office force, and instructors, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

All of the parties agreed that the proper pay roll of the Company for determination of representatives was that of December 3, 1937.

The pay roll was introduced in evidence as part of a stipulation by the parties. It contains the names of 203 employees in the appropriate unit.

At the hearing a list of 125 United members was introduced by the recording secretary of the United, and was not questioned. In addition, there were introduced cards of two individuals authorizing the United to bargain for them.

A comparison of the two lists reveals that at least 119 of the members on the United list were employees of the Company on December 3, 1937. This constitutes a majority in the appropriate unit.

Produced at the trial for examination, but not introduced into evidence, were a total of 123 cards authorizing the United to act as collective bargaining agent for the employees signing thereon. No objection was made to their authenticity. The cards submitted would constitute a majority in the appropriate unit.

We find that the United has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Vicksburg Garment Company, Vicksburg, Mississippi, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company, excluding the superintendent, foremen, floorwalkers, floorladies, watchmen, the office force, and instructors, constitute a unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

3. United Garment Workers of America, Local No. 209, is the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Garment Workers of America, Local No. 209, has been designated and selected by a majority of the production employees of Vicksburg Garment Company, Vicksburg, Mississippi, excluding the superintendent, foremen, floorwalkers, floor-ladies, watchmen, the office force, and instructors, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, United Garment Workers of America, Local No. 209, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.