

In the Matter of THE HAGERSTOWN RUBBER COMPANY and FEDERAL LABOR UNION No. 23470, A. F. of L.

In the Matter of THE HAGERSTOWN RUBBER COMPANY and LOCAL 461, U. A. W.-C. I. O.

Cases Nos. 5-R-1331 and 5-R-1347 respectively.—Decided September 28, 1943

Mr. Lacy I. Rice, of Martinsburg, W. Va., for the Company.

Mr. Joseph Gillis, of Baltimore, Md., for Local 23470.

Mr. Paul A. Wagner, of Baltimore, Md., and *Mr. Jim Gift*, of Williamsport, Md., for the U. A. W.-C. I. O.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon separate petitions duly filed by Federal Labor Union No. 23470, A. F. of L., herein called Local 23470, and Local 461, U. A. W.-C. I. O., herein called the U. A. W.-C. I. O., alleging that questions affecting commerce had arisen concerning the representation of employees of The Hagerstown Rubber Company, Hagerstown, Maryland, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Robert A. Levett, Trial Examiner. Said hearing was held at Hagerstown, Maryland, on September 10, 1943. The Company, Local 23470, and the U. A. W.-C. I. O. appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the hearing counsel for the Company moved to dismiss the petition. The Trial Examiner reserved ruling. The motion is hereby denied. 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

The Hagerstown Rubber Company is a Maryland corporation engaged in the manufacture of rubber soles and heels at Hagerstown, Maryland. During the first 6 months of 1943 the Company used raw materials valued at about \$80,000, all of which was shipped to it from points outside the State of Maryland. During the same period the Company sold finished products valued at about \$280,000, approximately \$240,000 worth of which was shipped to points outside the State of Maryland. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Federal Labor Union No. 23470 is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Local 461, U. A. W.-C. I. O., is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company refuses to recognize Local 23470 or the U. A. W.-C. I. O. as the exclusive collective bargaining representative of its employees until they are certified by the Board.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that Local 23470 and the U. A. W.-C. I. O. each represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

We find that questions affecting commerce have 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

Local 23470 contends that all production and maintenance employees of the Company, including the guard, but excluding foremen, supervisory employees having authority to hire and discharge, and clerical employees, constitute an appropriate unit. The U. A. W.-C. I. O., in

¹ The Regional Director reported that Local 23470 presented 82 membership application cards bearing apparently genuine signatures of persons whose names appear on the August 1, 1943, pay roll of the Company. He further reported that the U. A. W.-C. I. O. presented 81 authorization cards bearing apparently genuine signatures of persons on that pay roll. There are approximately 172 employees in the appropriate unit.

addition, would include assistant foremen, the forelady, and the shipping clerk in the unit. The Company would exclude assistant foremen, the forelady, the shipping clerk, and the guard.

The Company employs five assistant foremen. They assign work, transmit orders, make out production tickets and daily time sheets and are held responsible for the proper curing of heels and soles. The assistant foremen have the authority to recommend the hire and discharge of their subordinates. We find that assistant foremen are supervisory employees, and as such, they shall be excluded from the unit.

The Company employs one forelady who transmits orders, checks heel tickets, and keeps time in the trimming department. The forelady has the authority to recommend the hire and discharge of her subordinates. Accordingly, we shall exclude her from the unit.

The Company has in its employ one guard. The guard is not uniformed, armed, or a member of any police or military reserve organization. Under the circumstances, we shall include him in the unit.

The shipping clerk receives certain materials, assembles orders, makes out packing lists and bills of lading, and supervises the loading of freight cars. In connection with the loading of freight cars, he requisitions laborers from the various foremen. The shipping clerk has the authority to reject any employees sent to him and he makes recommendations concerning the work of such employees. The record discloses that he spends about 70 percent of his time performing clerical functions. Inasmuch as the duties of the shipping clerk are clerical and supervisory in nature, we shall exclude him from the unit.

We find that all production and maintenance employees of the Company, including the guard, but excluding clerical employees, foremen, assistant foremen, the forelady, the shipping clerk, and any other 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 questions concerning representation which have 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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Hagerstown Rubber Company, Hagerstown, Maryland, 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 Fifth Region, acting in this matter as agent of 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 any who have since quit or been discharged for cause, to determine whether they desire to be represented by Federal Labor Union No. 23470, affiliated with the American Federation of Labor or by Local 461, U. A. W.-C. I. O., affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.