

In the Matter of GENERAL TIRE AND RUBBER COMPANY *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, A. F. L., LOCAL 759

Case No. 13-R-2213.—Decided March 4, 1944

Mr. A. J. Teusch, of Wabash, Ind., for the Company.

Mr. O. B. Chambers, of Kokomo, Ind., for the Union.

Mr. Armin Uhler, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. L., Local 759, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of General Tire and Rubber Company, Wabash, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before R. N. Denham, Trial Examiner. Said hearing was held at Wabash, Indiana, on January 19, 1944. The Company and the Union appeared and participated.¹ 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

General Tire and Rubber Company is an Ohio corporation which operates plants at Akron, Ohio, and Wabash, Indiana. At the latter

¹ Federal Labor Union No 22408, A. F. of L., which heretofore represented the employees involved and was served with Notice of Hearing did not participate, having waived all interest in these proceedings.

plant, the only one here involved, the Company manufactures mechanical rubber goods and airplane, tank, and gun parts, exclusively for war purposes.

During the year 1943, the Company purchased raw materials, consisting chiefly of rubber and its various compounds, which exceeded 1 million dollars in value. More than 90 percent of these materials was shipped to the Company's Wabash plant from points outside the State of Indiana. During the same period the Company manufactured products valued at more than 1 million dollars, at least 90 percent of which was shipped to destinations outside the State of Indiana.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 759, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about November 22, 1943, the Union communicated with the Company for the purpose of entering upon negotiations for a contract covering the Company's shipping and receiving employees, truck drivers and helpers, whom it claimed to represent. The Company did not reply to the Union's written request because of the alleged existence of a contract with Federal Labor Union No. 22408 covering all production and maintenance employees as well as employees claimed by the Union.² Since then Federal Labor Union No. 22408 has ceded jurisdiction over the employees here concerned, but the Company challenges the appropriateness of including them in a separate unit as requested in the Union's petition.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

² On August 9, 1941, the Company and Local No. 22408 of the American Federation of Labor (referred to in the record as Federal Labor Union No. 22408) entered into a collective agreement in behalf of "all employees of the Company's Wabash Indiana, plant, exclusive of foremen, supervisors, inspectors, timekeepers, watchmen, laboratory employees, clerks and salaried employees." Prior to the expiration of this agreement on December 31, 1942, the parties concluded a new contract similar in terms, to run from October 11, 1942, until October 11, 1943. Negotiations for certain modifications of the latter agreement were pending at the time of the commencement of this proceeding.

³ The Field Examiner reported that the Union submitted 22 membership application cards, that the names of 16 persons appearing on the cards were listed on the Company's pay roll of January 7, 1944; that there were 25 employees in the appropriate unit; and that 19 of the cards were dated between October and December 1943, 3 cards being undated.

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 Union asks for a unit of the Company's shipping and receiving employees, including dockmen, truck drivers, and helpers, but excluding foremen and supervisors. The Company is opposed to the inclusion of these employees in a unit separate from that of the production group.

The record shows that the Company has three so-called departments under the general supervision of the purchasing agent in which the employees sought to be represented by the Union are listed. The shipping department⁴ is located in the shipping room and contains employees whose duties consist entirely in preparing finished products for shipment and assisting in loading the merchandise so prepared on trucks backed up against the building which houses the shipping room. At times they collect completed orders in the production department in order to accelerate the shipping process. The shipping department is in the immediate charge of the traffic manager and a supervisory shipping clerk.⁵

The receiving department⁶ embraces the employees who unload and store the materials delivered to the Company's plant by railroad and truck. They also distribute the materials with the aid of small hand trucks, as and when requested by the several production departments. The receiving department is in charge of a foreman and an assistant foreman. The former performs strictly supervisory duties and he has power to discipline and to recommend effectively the hiring and dismissal of employees in his department. The latter, although he receives his daily instructions from the foreman and spends some 40 percent of his time in assisting in the work assigned to his subordinates, has full charge of separate groups of receiving employees who operate in different parts of the plant. In the performance of his duties the assistant foreman may make disciplinary reports direct to

⁴ At the time of the hearing there were nine non-supervisory employees in this department which is referred to in the records of the Company as Department 26.

⁵ The record is not clear as to whether or not the Union desires the exclusion of the supervisory shipping clerk from the unit. This employee receives the daily working schedules and is responsible for the assignment of the work and its proper performance by the employees in his department. He has disciplinary powers; he makes requests for and accepts or rejects additional help furnished by the employment department, and he can effectively recommend the hiring or dismissal of employees in his department. We shall therefore exclude the supervisory shipping clerk from the unit.

⁶ This department is listed by the Company as Department 1, and contained 16 non-supervisory employees at the time of hearing.

the personnel department and without the approval of the foreman. Likewise, he can independently recommend discharge or employment of men in his department. We find that the assistant foreman is a supervisory employee and we shall exclude him from the unit.

The third department here involved contains a single truck driver whose varying duties subject him to the partial supervision of both the office manager and the traffic manager. This employee operates a small panel truck for the carrying of incoming and outgoing mail, parcel post, and air express shipments, and the performance of miscellaneous errands.

The record thus clearly shows that the employees in the foregoing classifications are not directly concerned with the production of goods and that the unit requested by the Union⁷ is well defined and readily distinguishable from the production and maintenance group.⁸ We must also take into consideration that Federal Labor Union No. 22408, which heretofore represented the employees involved, has relinquished jurisdiction over them. Insofar as the record is concerned, it must be assumed that that union is neither willing nor constitutionally able to bargain for these employees in the future, so that dismissal of the present petition would deprive them of an opportunity to designate a new bargaining representative. Under all the circumstances we find that all shipping and receiving employees, and truck drivers of the Company, excluding foremen, assistant foremen, the supervisory shipping clerk, and all 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 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.

⁷ The Company has no employees in the other categories mentioned in the petition, such as dockmen and helpers.

⁸ Cf. *Matter of Medo Photo Supply Corporation*, 43 N. L. R. B. 989; *Matter of Prentice-Hall, Inc.*, 39 N. L. R. B. 92.

There is evidence that permanent transfers of employees from the Company's shipping and receiving departments to the production departments are made with some frequency. However, there is no indication of interchange of employees in these groups which would present an obstacle to their separation.

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, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with General Tire and Rubber Company, Wabash, Indiana, 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 Thirteenth 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 International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 759, affiliated with the American Federation of Labor, for the purposes of collective bargaining.