

In the Matter of THE KELLY-SPRINGFIELD TIRE COMPANY and UNITED  
RUBBER WORKERS OF AMERICA, LOCAL No. 26, C. I. O.

*Case No. 5-R-1445.—Decided May 8, 1944*

*Messrs. Matthew J. Mullaney and R. M. Hudak, of Cumberland, Md., for the Company.*

*Messrs. John Marchiando, of Akron, Ohio, and Roy Davy of Cumberland, Md., for the Union.*

*Mr. William Whitsett, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Rubber Workers of America, Local #26, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Kelly-Springfield Tire Company, Cumberland, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George L. Weasler, Trial Examiner. Said hearing was held at Cumberland, Maryland, on April 6, 1944. 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. 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

The Company, a Maryland corporation, is engaged at its plant in Cumberland, Maryland, in the manufacture, sale, and distribution of tires and tubes, and in the machining of shells under contracts with the United States. The Company also owns and maintains at Cum-

berland, Maryland, a retail store, or outlet for its products, where it is engaged in the sale of tires, tubes, automobile accessories, gasoline and motor oil, in the servicing of motor vehicles, and in the recapping and retreading of tires. During 1943 the Company purchased raw materials for its plant valued in excess of \$10,000, a substantial amount of which originated outside the State. During the same period, its finished products were valued in excess of \$10,000, approximately 60 percent of which was sold and shipped to points outside the State. For the 6-month period ending June 30, 1943, the Company purchased for its retail store raw materials valued at \$27,994, of which approximately \$628 represented the value of materials purchased outside the State. During the said period raw materials consisting of gum and cement, valued at approximately \$7,233, were sent from the manufacturing plant to the retail store for use in the recap and repair department involved in this proceeding. The sales of the retail store during this period amounted to approximately \$57,000, of which approximately \$3,000 represented sales made outside the State.

We find that the Company, both at its plant and at its retail store, is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

United Rubber Workers of America, Local #26, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of employees in the repair and recap department of the retail store until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</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 employees whom the Union seeks to represent work in the recap and repair division of the retail store known as Department 196-B.

<sup>1</sup> The Field Examiner reported that the Union submitted four cards which bore apparently genuine original signatures; that two cards were dated April 1941 and two December 1942; and that there were eight employees in the appropriate unit.

The Union currently represents the production and maintenance employees at the manufacturing plant. The Union contends that the employees of Department 196-B should either constitute a separate unit or should be included in the unit of production and maintenance employees at the manufacturing plant. The Company is contending for a separate unit. The record shows that the employees of Department 196-B repair and recap tires under the direction of two supervisors.<sup>2</sup> They work in a separate room in the retail store; they are all engaged in duties relating to the repair and recapping of tires; and they are all paid on an hourly basis. The two supervisors of the department report to the manager of the retail store who, in turn, is responsible to the sales manager at the plant. The work in this department is not related to the operations at the plant or to the work of the other employees at the store. The supervisory and hiring personnel of the factory and the store is separate and distinct. For these reasons, we shall not include them in the production and maintenance unit at the plant.

We find that all repair and recap employees of Department 196-B, but excluding all 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 payroll 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, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Kelly-Springfield Tire Company, Cumberland, 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 su-

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<sup>2</sup> The parties agree that these two supervisors should be excluded from the bargaining unit.

pervision of the Regional Director for the Fifth 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 United Rubber Workers of America, Local #26, C. I. O., for the purposes of collective bargaining.