

In the Matter of MANHATTAN RUBBER MANUFACTURING DIVISION OF
RAYBESTOS-MANHATTAN, INC. and UNITED RUBBER WORKERS OF
AMERICA, AFFILIATED WITH CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 4-R-1342.—Decided May 9, 1944

Bailey and Schenck of Newark, N. J., by *Mr. George B. Bailey*, for the Company.

Mr. Samuel L. Rothbard, of Newark, N. J., for the C. I. O.

Mr. Irving L. Werksman, of Passaic, N. J., for the Independent.

Mr. Stanley Lentz, of Philadelphia, Pa., and *Mr. John Wisnew*, of Paterson, N. J., for the I. A. M.

Messrs. Frank Truatt and *John McEntee*, of Clifton, N. J., for the F. L. U.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Rubber Workers of America, affiliated with Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc.,¹ Passaic, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Passaic, New Jersey, on March 6, 1944, and on March 20 and 21, 1944. The Company, the C. I. O., Manhattan Rubber Workers Independent Union, herein called the Independent, International Association of Machinists, A. F. of L., herein called the I. A. M., and Federal Labor Union,

¹ At the hearing the Trial Examiner, without objection, corrected the name of the Company to read as set forth above.

56 N. L. R. B., No. 79.

Local 23132, A. F. of L., herein called the F. L. U., appeared² and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Subsequent to the hearing the C. I. O. filed with the Board a petition requesting that, in the event the Board finds that it has not made a sufficient showing of representation to raise a question concerning representation among the employees within the unit it alleges to be appropriate, the record be reopened for the purpose of permitting it to submit additional evidence of its showing. The Company interposed objections to the granting of the petition. In view of our findings in Section III, *infra*, we find it unnecessary to rule on the C. I. O.'s petition. Also subsequent to the hearing the F. L. U. submitted to the Board a number of authorization cards allegedly signed by employees of the Company and requested that the Board consider them as evidence of its interest in this proceeding. In view of the position asserted by the F. L. U. at the hearing,³ we shall accept the cards as evidence of its interest in the instant case.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc., a New Jersey corporation, has its main office at Passaic, New Jersey, and operates plants at Passaic and Whippany, New Jersey, at which it is engaged in the manufacture and sale of mechanical rubber products. Over 90 percent of the raw materials, consisting chiefly of crude, synthetic, reclaimed, and used rubber, purchased by the Company is shipped to its plants from points outside the State of New Jersey. Annually, the Company manufactures over \$25,000,000 worth of finished products, of which approximately 80 percent is shipped from the Company's Passaic and Whippany plants to points outside the State of New Jersey.

The Company admits and we find that at its Passaic and Whippany plants it is engaged in commerce within the meaning of the National Labor Relations Act.

² On March 20, 1944, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L. appeared at the hearing and moved to intervene. The Trial Examiner reserved ruling upon the motion until the hearing reconvened on March 21, 1944, at which time he denied the application since the Teamsters was unable to submit any evidence to substantiate its claim of interest.

³ The F. L. U. stated at the hearing that its evidence of representation of the Company's employees was unavailable and it requested time within which to produce such evidence.

II. THE ORGANIZATIONS INVOLVED

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

Manhattan Rubber Workers Independent Union is an unaffiliated labor organization, admitting to membership employees of the Company.

International Association of Machinists is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Federal Labor Union, Local 23132, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the C. I. O. as the exclusive bargaining representative of those of its employees within a unit alleged to be appropriate by the C. I. O. The Company and the Independent contend that their current collective bargaining contract constitutes a bar to this proceeding.

Pursuant to the results of consent elections held among two separate groups of employees in the Company's Passaic plant, the Company on May 11, 1943, entered into a collective bargaining contract with the Independent, and on May 22, 1943, executed a similar bargaining agreement with the I. A. M. These contracts collectively cover all production and maintenance employees of the Company's Passaic plant, exclusive of supervisory and clerical employees and guards. As hereinafter noted in Section IV, the employees covered by the I. A. M.'s contract are not involved in this proceeding. By its terms the Independent's contract is to remain in effect until June 1, 1944, and thereafter from year to year unless either party shall notify the other at least 30 days prior to any anniversary date of its desire to terminate or amend the agreement. The Company and the Independent argue that inasmuch as the initial term of their contract will not expire until June 1, 1944, a determination of representatives at this time would be premature. However, since June 1 is less than 1 month from the present time and the Company was apprised of the C. I. O.'s claim to representation prior to the date when the automatic renewal clause of the contract would take effect, we find that an immediate determination of representatives is not precluded.⁴

⁴ See *Matter of Chrysler Motor Parts Corporation*, 38 N. L. R. B. 1379; *Matter of Houde Engineering Corporation*, 36 N. L. R. B. 587.

The Independent's contract with the Company also contains the following maintenance of membership clause:

All employees, who, fifteen days after the signing of this contract, are members of the Union in good standing, in accordance with the constitution and by-laws of the Union, and those employees who may thereafter become members, shall remain members of the Union in good standing during the life of the agreement.

A statement prepared by the Trial Examiner and read into the record shows that the C. I. O. submitted 708 authorization cards bearing the names of persons whose names appear on the Company's pay roll of March 21, 1944, which lists 3,234 persons in the unit alleged to be appropriate by the C. I. O. The statement further shows that the Independent relies on its contract with the Company to substantiate its claim of interest, and that the I. A. M. submitted 50 authorization cards bearing the names of persons whose names appear on the aforesaid pay roll which lists 78 persons in the unit which the I. A. M. alleges to be appropriate. The F. L. U. submitted to the Board approximately 361 authorization cards allegedly bearing the names of employees of the Company within the unit which it contends is appropriate. This proposed unit is substantially identical to the unit sought by the C. I. O.

The Independent contends that the showing of representation made by the C. I. O. is not sufficient to raise a question concerning representation among the employees of the Company and urges the Board to dismiss the petition. We are of the opinion, however, and find that the C. I. O. has made a sufficient showing of representation among the Company's employees in the unit hereinafter found to be appropriate to warrant a determination of representatives in view of the fact that the Company and the Independent are parties to a maintenance of membership contract which covers the employees herein involved.⁵

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 Company's main plant located in Passaic, New Jersey, employs approximately 3,400 employees. The plant at Whippany, New Jersey, appears to be merely an adjunct to or department of the main plant. It employs above 70 persons. The record clearly reveals the functional interdependence of these two plants. In view of these undisputed

⁵ See *Matter of Craddock-Terry Shoe Corp.*, 55 N. L. R. B. 1406.

facts, we find, in accordance with the agreement of the parties, that the Passaic and Whippany, New Jersey, plants of the Company comprise a single manufacturing unit and that employees of both plants constitute a unit appropriate for the purposes of collective bargaining.

All parties agree that the appropriate unit should consist of all production workers, shipping and receiving clerks, and shop clerks employed in the Passaic and Whippany plants of the Company, excluding all machinists, machinist helpers working in the machine shops or assigned to other departments, blacksmiths, welders, stock and tool room employees working in the machine shops,⁶ foremen, assistant foremen, supervisors, superintendents, department heads, executives, office workers, and guards.

Employees whose inclusion in the unit is disputed by one or more of the parties

Maintenance workers: The C. I. O., the Independent, and the Company desire to include all maintenance workers not covered by the I. A. M.'s contract. The I. A. M. contends that the maintenance workers should properly be a part of its contract unit and accordingly should be merged with those employees whom it currently represents to form a separate appropriate unit.⁷ The F. L. U. is in accord with the position taken by the I. A. M.

The maintenance workers involved in this proceeding comprise tin-smiths, carpenters, millwrights, pipe fitters, riggers, masons, electricians, painters, and their helpers and apprentices, all of whom are covered by the contract between the Independent and the Company encompassing a unit of production and maintenance workers. They work throughout the plants performing duties customarily associated with their particular crafts. The I. A. M.'s contract unit appears to be comprised of employees engaged in the machinist trade or related trades. Inasmuch as the maintenance workers are members of numerous crafts entirely unrelated to the machinist trade and since they are a part of the Independent's contract unit, we shall include them in a more comprehensive unit embracing production and maintenance employees.

Truckmen: The Company, the C. I. O., and the Independent agree that all truckmen employed by the Company should be included in the appropriate unit. The F. L. U. desires the exclusion of those employees who operate power driven vehicles.

⁶ The employees falling within the first six excluded classifications listed above comprise the unit described in the current bargaining contract between the I. A. M. and the Company.

⁷ It appears that the I. A. M. is solely interested in representing the maintenance workers, in addition to those covered by its contract with the Company.

The Company employs three types of truckmen, namely, automotive truck drivers, electric truck operators, and employees who operate hand trucks. The employees who operate electric trucks and hand trucks work within the confines of the plants. The automotive truck drivers operate trucks on public thoroughfares and are licensed as operators by the State. All truckmen are covered by the bargaining contract between the Company and the Independent. We shall include all truckmen in the appropriate unit.

Laboratory helpers: The Independent desires laboratory helpers included in the appropriate unit. The Company, the C. I. O., and the F. L. U. would exclude them. These employees perform miscellaneous functions in the laboratory under the direction of the supervisory employee in charge. Their duties include the mixing of small experimental batches and the producing of samples which are used in checking raw materials and finished products. The Company considers these employees as part of the office force and therefore desires their exclusion from the appropriate unit. Although not mentioned specifically in the Independent's contract, laboratory helpers appear to have been bargained for by the Independent as if they were included under the terms of the contract. Since their interests appear to be aligned with those of the production and maintenance employees, we shall include laboratory helpers within the appropriate unit.

Group leaders: Although all parties agree that all supervisory employees should be excluded from the appropriate unit, there is some question as to which category of employees constitutes the lowest supervisory classification. The Company contends that assistant foremen are the lowest group in the supervisory hierarchy clothed with authority effectively to recommend changes in the status of other employees. Group leaders are one step removed from the assistant foremen. They are employees who may be designated to assist in carrying out the orders of acknowledged supervisory employees. Apparently, their chief function is to assist their immediate supervisor and report to him any derelictions on the part of employees whose work they direct. Their immediate supervisor alone has the authority to decide what action, if any, shall be taken against these employees. Since it appears that group leaders do not possess any of the indicia of authority customarily vested in supervisory employees, we shall include them in the appropriate unit.

Concluding findings

We find that all production workers, shipping and receiving clerks, shop clerks, maintenance workers, truckmen, laboratory helpers, and group leaders employed at the Passaic and Whippany, New Jersey, plants of the Company, excluding machinists, machinist helpers work-

ing in the machine shops or assigned to other departments, blacksmiths, welders, stock and tool room employees working in the machine shops, guards, office workers, executives, superintendents, department heads, supervisors, foremen, assistant foremen, 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 question concerning representation which has arisen be resolved by an election by secret ballot. Since the F. L. U. produced a number of authorization cards which appear to be genuine, it has demonstrated sufficient interest to warrant placing it on the ballot in the election. Accordingly, we shall accord it a place on the ballot.

Although none of the parties expressed a preference as to the pay-roll date to be used in determining eligibility to vote in the election, the record reveals that only one-half of the employees in the Passaic and Whippany plants are paid each week for a 2-week period of employment. Consequently, it will be necessary to use two consecutive pay-roll periods in order to obtain a full pay-roll list of the employees eligible to vote. In view of this fact, we shall direct that the employees eligible to vote in the election shall be those in the unit found appropriate in Section IV, *supra*, who were employed during the last two pay-roll periods 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 Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc., Passaic, New Jersey, 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 Fourth 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 last two pay-roll periods immediately preceding the date of this Direction, including employees who did not work during said pay-roll periods 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, and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by United Rubber Workers of America, affiliated with the Congress of Industrial Organizations, or by Manhattan Rubber Workers Independent Union, or by Federal Labor Union, Local 23132, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by none.