

In the Matter of UNITED STATES RUBBER COMPANY, SYNTHETIC RUBBER DIVISION and FEDERATION OF ARCHITECTS, ENGINEERS, CHEMISTS, AND TECHNICIANS, CIO

Case No. 21-R-2280.—Decided June 9, 1944

Messrs. W. H. Young and A. E. Jury, of Los Angeles, Calif., for the Company.

Messrs. Will Carroll and Paul G. Pinsky, of Los Angeles, Calif., for the C. I. O.

Mr. Cecil O. Johnson, of San Pedro, Calif., for the A. F. L.¹

Mr. Robert E. Tillman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Federation of Architects, Engineers, Chemists, and Technicians, CIO, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of United States Rubber Company, Synthetic Rubber Division, Los Angeles, California, herein called the Company; the National Labor Relations Board provided for an appropriate hearing upon due notice before William B. Esterman, Trial Examiner. Said hearing was held at Los Angeles, California, on April 28, 1944. The Company, the C. I. O., and San Pedro-Wilmington Central Labor Council, herein called the A. F. L., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

¹ The following persons entered appearances on behalf of other bodies affiliated with the American Federation of Labor: Irvan Cary, for the American Federation of Labor; E. D. Boyd, for the Los Angeles Building Construction Trades Council; and Bruce Worley, for the International Brotherhood of Electrical Workers.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

United States Rubber Company, a New Jersey corporation, operates numerous plants throughout the United States, where it is engaged in the manufacture and sale of rubber products. The only plant involved in this proceeding is the Torrance plant located in Los Angeles, California, owned by the Defense Plant Corporation and leased to the Company, which operates it as agent for the Rubber Reserve Company. At this plant, the Company is engaged in the manufacture of synthetic rubber. Between 60 and 75 percent of the plant's monthly output of 2,500 tons of rubber is delivered to another of the Company's plants located in Los Angeles. The remaining output is sold principally to other tire manufacturers in Los Angeles. All the rubber is used for military purposes.

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

II. THE ORGANIZATIONS INVOLVED

Federation of Architects, Engineers, Chemists, and Technicians is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

San Pedro-Wilmington Central Labor Council comprises several craft labor organizations affiliated with the American Federation of Labor, which admit to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company contends that the unit sought by the C. I. O. is inappropriate and, for that reason, refuses to recognize the C. I. O. as the collective bargaining representative of employees in such unit in the absence of certification by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit alleged to be appropriate.²

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.

² The Field Examiner stated that the C. I. O. submitted to him 23 authorization cards, of which 21 bore names of persons whose names appeared on the Company's pay roll for January 31, 1944, which listed 40 employees in the unit alleged to be appropriate. He stated further that the A. F. L. submitted 7 authorization cards, 3 of which bore names of persons whose names appeared on the above-mentioned pay roll.

IV. THE APPROPRIATE UNIT

The C. I. O. and the A. F. L. agree that the following constitutes an appropriate unit: all employees in the Company's Technical Department, including, in the laboratory section, all chemists supervisors, chemists assistants, material analysts, laboratory technicians, and the laboratory utensil washer, and, in the Process Control section, all chemical engineers supervisors, chemical engineers assistants, field laboratory technicians, and samplers, but excluding the technical superintendent, the chief plant chemist, the chief chemical engineer, secretaries, and the statistician.

The Company contends that such a unit is inappropriate because it includes supervisory employees and confidential employees, and, in general, comprises employees who, from a management standpoint, should not be subject to union restraints. In the event that the Board finds an appropriate unit, the Company contends that the chemists supervisors, the chemists assistants, the chemical engineers supervisors, and the chemical engineers assistants should be excluded as supervisory employees, and the laboratory utensil washer and the samplers should be excluded as hourly paid employees, having different interests. The plant, being of recent origin, has no history of collective bargaining.

The employees in the unit sought by the C. I. O. comprise the Company's Technical Department, which consists of two sections, the heads of which report to the Technical Superintendent. One section is Process Control, headed by the Chief Chemical Engineer; the other is the Laboratory, headed by the Chief Plant Chemist. The Process Control employees are located in a room in the Reactor Building, a production building; the Laboratory employees have a separate building to themselves.

The primary function of the Technical Department is to test and approve or reject raw materials and finished products, and to test materials in process at various stages to determine whether operating units are functioning properly. The skills of the various classifications of employees in the department range from that of graduate chemists or chemical engineers to that of the unskilled samplers who for the most part gather up samples to be tested by trained employees. In spite of this divergence in skills, we find that the Technical Department employees are engaged in functions which set them off from the rest of the plant employees. This factor has been recognized by the Company, which is at present negotiating with certain craft unions of the American Federation of Labor which won consent elections conducted on January 4, 1944, for a master contract to cover all its production and maintenance employees, but excluding the employees involved in the instant proceeding. The Board has previously found that units of laboratory employees are appropriate for purposes of collective bar-

gaining.³ The fact that such employees may be engaged in work of a confidential nature from the standpoint of production is not sufficient reason to deprive them of the rights of employees under the Act. We find no merit, therefore, to the objection of the Company that the proposed unit is inappropriate because it embraces confidential employees. There remains for determination the composition of the unit.

Supervisory employees

As indicated above, the Company maintains that four classifications of employees sought to be included in the unit have supervisory status.

Chemists supervisors and chemical engineers supervisors occupy similar positions in their respective locations in the Laboratory and the Process Control sections. Under the Chief Plant Chemist or the Chief Chemical Engineer, as the case may be, each employee in the two classifications is the head of a shift. There are three chemists supervisors and four chemical engineers supervisors. The former, as part of their functions, assign tests and generally supervise the work in the Laboratory by seeing that samples are properly tested and test results are reported. They have a desk where they spend some time making out reports, reading test methods, approving test cards, and scrutinizing results. On occasion they perform tests and assist other employees. They keep no personnel records other than noting absences, and have no authority to hire or discharge employees. Although as yet, there has been no occasion to discharge a Laboratory employee, the Company insists that the chemists supervisors' recommendation in such regard might be influential. At times, one of them may be requested by the Personnel Department to interview an applicant for a position as to his technical qualifications.

The chemical engineers supervisors supervise solids testing and plant solutions testing; direct the operations of the plant insofar as loading and unloading reactors is involved; supervise the technical aspects of plant operation; and advise the production department of changes that should be made to insure proper operation. They keep no personnel records and have no power to hire or to discharge employees. On the other hand, they have desks, and their recommendations respecting the status of employees appear to be effective. Thus, there is evidence that their recommendations have been instrumental in two or three cases where employees were discharged for excessive absenteeism and poor work.

Although the supervisory power of the chemists supervisors and the chemical engineers supervisors may not be extensive, since they are the immediate superiors of the other employees in their sections on their

³ See *Matter of The Permanente Metals Corporation*, 45 N. L. R. B. 931; cf. *National Aniline Division, Allied Chemical & Dye Corporation*, 41 N. L. R. B. 1191.

shifts, we are of the opinion that their duties and responsibilities are such as to require their exclusion from the appropriate unit.⁴

Chemists assistants and chemical engineers assistants likewise occupy similar positions in their respective sections, holding a rank immediately below that of the employees we have just excluded. There are four chemists assistants and six chemical engineers assistants. These employees are divided among three shifts. The chemists assistants are preferably graduate chemists or chemical engineers, or persons having 2 or 3 years of college chemistry and experience. They perform the more detailed and difficult technical work requiring a high degree of skill and knowledge of laboratory equipment, instruments, and chemical processes and reactions.

The chemical engineers assistants preferably have a degree in chemical engineering or the equivalent. They assist the chemical engineers' supervisors, make tests in the plant in the finishing area, and supervise the taking of samples in that area.

The record is clear that neither of these classifications of employees possesses authority to hire or to discharge or effectively to make recommendations affecting the status of other employees. Nor do they have the duties and responsibilities of their superiors. We find, therefore, that they are not supervisory employees, and we shall include them in the unit.

Hourly paid employees

The Company seeks the exclusion of samplers and the laboratory utensil washer because they are hourly paid employees and unskilled. In spite of the unskilled nature of their work, it appears that the interests of the samplers and the utensil washer are so much more closely related to those of the skilled employees in the Technical Department than to those of any other group of employees that they may be represented in the same unit for collective bargaining purposes. Under the circumstances, the fact that they are hourly paid, whereas the other employees included in the unit are salaried, is of little consequence. We shall include samplers and the laboratory utensil washer in the unit.

We find that all employees of the Company in the Technical Department of its Torrance Plant, including, in the Laboratory section, chemists assistants, material analysts, laboratory technicians, and the laboratory utensil washer, and, in the Process Control section, chemical engineers' assistants, field laboratory technicians, and samplers, but excluding secretaries, the statistician, the technical superintendent, the chief plant chemist, the chief chemical engineer, chemists supervisors, chemical engineers supervisors, and all other supervisory employees

⁴ Cf. *Matter of Shell Petroleum Corporation (Now Shell Oil Company, Incorporated)*, 56 N. L. R. B. 318; and *Matter of Blackwell Zinc Company, Inc.*, 56 N. L. R. B. 924.

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 our Direction of Election herein, subject to the limitations and additions set forth therein.

The C. I. O. contends that the name of the A. F. L. should not appear on the ballot because it did not make a showing of sufficient interest. Although the showing of the A. F. L. is not substantial, as indicated in footnote 2, *supra*, we consider it sufficient to entitle the A. F. L. to a place on the ballot.

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 United States Rubber Company, Synthetic Rubber Division, Los Angeles California, 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 Twenty-first 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 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 Federation of Architects, Engineers, Chemists, and Technicians, CIO, or by the American Federation of Labor,⁵ for the purposes of collective bargaining, or by neither.

⁵ The A. F. L. expressed a preference at the hearing that its name appear on the ballot as it is set forth in the Direction of Election.