

In the Matter of THE DAYTON RUBBER MANUFACTURING COMPANY and
UNITED RUBBER WORKERS OF AMERICA

Case No. 5-R-1563.—Decided July 17, 1944

Harkins, Van Winkle & Walton, by *Mr. Kester Walton*, of Asheville, N. C., and *Morgan & Ward*, by *Mr. A. T. Ward*, of Waynesville, N. C., for the Company.

Mr. Ray Nixon, of Charlotte, N. C., and *Mr. Miles W. Lynch*, of Waynesville, N. C.; for the Union.

Mr. Bernard Goldberg, 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, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Dayton Rubber Manufacturing Company, Waynesville, North Carolina, 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 Waynesville, North Carolina, on May 26, 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 Dayton Rubber Manufacturing Company is an Ohio corporation with its principal office and place of business in Dayton,

Ohio. The Company operates a branch factory in Waynesville, North Carolina, known as the Thorobred Textile Division, with which this proceeding is concerned. The Thorobred Textile Division is engaged in the manufacture of life rafts, pontoons, V belts and some textile products, principally for the Armed Forces. During the 12-month period ending April 30, 1944, it purchased raw materials valued at approximately \$400,000, 80 percent of which came from outside the State of North Carolina. During the same period it sold finished products valued at approximately \$600,000, 85 percent of which was shipped to points outside the State.

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

II. THE ORGANIZATION INVOLVED

United Rubber Workers of America, 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 its production and maintenance employees 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.¹

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 urges a unit composed of all production and maintenance employees including calendar operators, compounders, inspectors, testing and packing employees, receiving and shipping employees, and firemen, but excluding cafeteria workers, laboratory employees, watchmen, office and clerical employees, foremen and all supervisory employees. The Company contends that calendar operators, compounders, inspectors, testing employees, firemen, and receiving and shipping employees should be excluded, otherwise it agrees with the composition of the unit sought by the Union.

¹ The Field Examiner reported that the Union had submitted 503 application cards dated as follows: 2 in March 1944; 472 in April 1944; 22 in May 1944; 2 in 1944; and 5 undated; he also reported that there were 630 employees in the unit petitioned for.

Calender operators. These employees operate calender machines with crews of three or four men. Their rate of pay is only slightly above that of other production employees. They spend all of their time either in actual operation of the machine or in readying it for the next operation. The Company contends that the calender operators have supervisory authority with respect to their crew members. However, the record fails to show that these employees have sufficient authority to bring them within our customary definition of supervisory employees. We shall include them within the unit.

Inspectors. These employees inspect material for quality and report defects to the foremen under whose supervision they operate. They are not expected to know the employee responsible for defective workmanship and make no recommendations in respect thereto. Their rate of pay is only slightly above that of production employees. The Company, while admitting that inspectors have no supervisory duties, nevertheless contends that quality control inspection is a confidential matter closely connected with management, and that the employees performing such duties should not be included in a unit of production employees. We have considered the Company's contention and, as in other cases involving similar employees, find it to be without merit.² We shall include these employees in the unit.

Testing employees. These employees test rafts and pontoons for air losses and repair any defects which they discover. They function exactly as do the inspectors except that, in addition, they make repairs themselves. The considerations that have induced us to include inspectors in the unit are equally applicable to these employees. We shall include them in the unit.

Firemen. These men stoke the boilers in the powerhouse and fall within the general category of maintenance employees. We shall include them in the unit.

Receiving and shipping employees. These employees spend approximately one-half of their time in the actual handling of incoming and outgoing material and the other half keeping records with respect thereto. In connection with this record-keeping, the plant manager testified that considerable "leg work" is required. The employees are also available for production work. Since it appears that the interests of these employees are closely aligned with those of the production workers, we shall include them in the unit.³

We find that all production and maintenance employees including calender operators, inspectors,⁴ testing and packing employees, re-

² *Matter of McDonnell Aircraft Corporation*, 49 N. L. R. B. 897, and cases cited therein; *Matter of Howard Aircraft Corporation*, 51 N. L. R. B. 386

³ *Matter of New Indiana Chair Company*, 43 N. L. R. B. 318; *Matter of Buffalo Arms Corporation*, 46 N. L. R. B. 1176

⁴ This category includes burling fabric employees who, while listed under the laboratory department, perform routine inspectional work examining fabric for defective material

ceiving and shipping employees, and firemen, but excluding cafeteria workers, laboratory employees,⁵ watchmen, office and clerical employees, foremen and all or 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 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.⁶

The Company contends that employees hired on a temporary basis to do a specific job of collecting salvaged material and moving obsolete and unused machinery should not be permitted to vote. There is no evidence in the record as to how long this type of work will last. However, the factory manager testified that the completion of the job would not necessarily result in the discharge of these temporary employees, and that they might be absorbed by other departments. In view of the Company's high labor turnover, 10 percent per month, and its difficulty in recruiting and holding new employees, it is a reasonable inference that any of these so-called temporary employees who may desire to continue working for the Company after the completion of their present job will have the opportunity to do so. In view of the fact that these employees have a good chance of acquiring permanent status, we shall permit them to vote.⁷

The Union's request to appear on the ballot as "United Rubber Workers of America" is granted.

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

⁵ This category includes compounders whose work is substantially like that of the laboratory employees whom the parties agreed to exclude.

⁶ The Union requests that the voting eligibility date be determined by the payroll period ending during the week set for the hearing, which was May 14, 1944. It contends that a substantial number of employees have been added by the Company since that date, and that it has been unable to organize such employees. There is no claim that the additions to the payroll are anything more than normal. The reason adduced by the Union is not sufficient to justify a departure from our usual practice in fixing the date of eligibility. *Matter of Clinton Garment Company*, 8 N. L. R. B. 90; *Matter of Vilter Manufacturing Company*, 44 N. L. R. B. 232.

⁷ *Matter of Bridgeport Brass Ordnance Plant*, 45 N. L. R. B. 84.

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 Dayton Rubber Manufacturing Company, Waynesville, North Carolina, 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 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 the 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, for the purposes of collective bargaining.