

IN the Matter of THE FIRESTONE TIRE AND RUBBER COMPANY and
UNITED RUBBER WORKERS INDUSTRIAL UNION No. 1404, AFFILIATED
WITH THE C. I. O.

Case No. 19-R-1402.—Decided November 28, 1944

Mr. J. A. Moore, of Los Angeles, Calif., and Mr. G. J. Curtis, of
Ferndale, Wash., for the Company.

Messrs. Virgil Burts and H. I. Tucker, of Seattle, Wash., for the
Rubber Workers.

Mr. L. Presley Gill, of Seattle, Wash., for the Engineers.

Miss Ruth E. Bliefeld, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Rubber Workers Industrial Union No. 1404, affiliated with the C. I. O.,¹ herein called the Rubber Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of The Firestone Tire and Rubber Company,² Ferndale, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Seattle, Washington, on October 18, 1944. The Company, the Rubber Workers and Stationary Engineers Union, Local 843, herein called the Engineers, 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 Engineers moved to dismiss the petition, which motion was renewed several times during the proceeding, on the grounds that there is no showing that the Rubber Workers has any representation in the plant, and the Company is not now operating at its normal capacity. For the reasons discussed *infra*, this motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from

¹ The name of the Rubber Workers appears as it was amended upon the Rubber Workers' motion. The Engineers objected to the change in designation, see Section II, *infra*. This objection is overruled.

² The name of the Company appears as it was amended at the hearing.

prejudicial error and are hereby affirmed. All parties were afforded 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 Firestone Tire and Rubber Company is incorporated in the State of Ohio, and is engaged, in its plant at Ferndale, Washington, in the manufacture of self sealing gasoline tanks for military aircraft. The plant was constructed in June and July 1944, and began operations on August 1, 1944. The Company does not anticipate full production until January 1945, but stated that it now had in its employ over 50 percent of its expected full complement of employees.³ The production of the Company to date has amounted to several thousands of dollars. Ninety percent of the raw materials used at the Ferndale plant originates outside the State of Washington. The finished product is shipped to Seattle, Washington, and from there it is reshipped for use in military planes.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Rubber Workers Industrial Union, No. 1404, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.⁴

Stationary Engineers Union, Local 843, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.⁵

³ At the hearing the Engineers moved to dismiss the petition contending that since the Company is not in full operation a designation of a bargaining agent would be premature. Since the Company now has in its employ over 50 percent of the expected full complement of employees we do not believe that the employees who are now working at the plant should be deprived, at the present time, of their right to bargain collectively. The motion is therefore denied. See *Matter of Hughes Tool Co.*, 45 N. L. R. B. 825; *Matter of Pullman Standard Car Manufacturing Co.*, 49 N. L. R. B. 542; and *Matter of Hicks-Hayward Co.*, 58 N. L. R. B. 1557.

⁴ The Engineers objected to the designation of the Rubber Workers as a labor organization, and stated further that there is no showing that the Rubber Workers has the authorization of any of the employees in the plant to represent them. The objection is hereby overruled. It appears from the record that the Rubber Workers began its organizational activities in the plant, and filed the petition, prior to receiving its charter from the C. I. O. However, the employees, in signing the authorization cards evidently understood that the Rubber Workers was to be chartered by the C. I. O., and the union appearing herein is the organization that filed the petition.

⁵ The Rubber Workers contended that it had no proof that the Engineers is a labor organization, and also objected to the Engineers' motion to intervene. The Engineers is patently a labor organization and has shown sufficient interest to support its motion for intervention. The overruling of the objection to the motion to intervene by the Trial Examiner is hereby upheld, and the objection that there is no proof that the Engineers is a labor organization is overruled.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Rubber Workers as the exclusive bargaining representative of its employees until it 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 Rubber Workers represents a substantial number of employees in the unit it claims to be appropriate.⁶

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 DETERMINATION OF REPRESENTATIVES

The Rubber Workers claims as appropriate for collective bargaining a unit composed of all production and maintenance employees at the Company's Ferndale plant, excluding all clerical workers and all supervisory employees with power to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. The Engineers desires a unit composed of the stationary engineers in the powerhouse. The Company takes no position as to the unit requested by either party, but would exclude from any unit, in addition to the exclusions named by the Rubber Workers, all plant-protection employees, and the employees in the hospital.⁷

Engineers: The engineers are employed in the powerhouse of the plant. Their hours, working conditions, and other conditions of employment appear to be substantially the same as those of the other production and maintenance employees. However, these employees are stationary engineers and constitute a distinct homogeneous craft group. Their wage scale is different from that of the other production and maintenance employees. There has been no collective bar-

⁶The Field Examiner reported that the Rubber Workers submitted 125 authorization cards, 115 of which bore the names of persons listed on the Company's pay roll of September 22, 1944, which contained the names of 216 employees in the unit proposed by the Rubber Workers, and that 1 card was dated July 1944, 60 were dated August 1944, and 65 September 1944. At the hearing the Rubber Workers presented 110 additional cards which, pursuant to the stipulation of the parties, were checked against the same pay roll by the Trial Examiner. It was stated in the record that many names might not appear on the pay roll of September 22, 1944, because of the hiring of additional employees by the Company since the pay-roll date. Twenty-six of the additional cards submitted bore the names of persons appearing on the pay-roll list of September 22, 1944, and 66 of these cards were dated October 1944, 39 were dated September 15 to 30, 1944, 1 was dated August 1944, and 4 were undated.

The Engineers submitted four dues records and application cards, all of which bore the names of persons appearing on the aforesaid pay roll. one card was dated July 1944, two were dated August 1944, and one was dated September 1944. There are four employees in the unit requested by the Engineers.

⁷The hospital employs only one nurse at the present time. It was stated, however, that additional personnel will be added as the number of employees in the plant increases.

gaining history at the plant, since it has been in operation only a short time. It appears, however, that the Engineers represents all four of the engineers in the group.

In our opinion the engineers constitute a sufficiently well-defined occupational group so that they many properly comprise a separate bargaining unit or function with equal effectiveness as part of a production and maintenance unit. In this situation we shall direct that a separate election be held to ascertain the desires of the powerhouse engineers as to the unit.

Production and maintenance unit: There remains for consideration the composition of the production and maintenance unit. With the exception of the plant-protection employees, and the employees in the hospital, the unit is generally agreed on by the Company and the Rubber Workers.

The Company, at present, employs five plant-protection employees. These employees are not required to carry firearms, do not wear uniforms, and are under the same supervision and subject to the same rules of the Company as the other production and maintenance employees. Their duties involve protection of company property, fire protection, first aid, hourly patrols of the company property, and the checking of all persons and vehicles entering or leaving the Company's premises. The Company bases its request for their exclusion on the ground that plant-protection employees have been excluded from units such as the one herein requested, in the other plants of the Company, and states further that the reason for their exclusion will become more apparent as the personnel in the plant increases. However, since, from the summation of the duties of the plant-protection employees, *supra*, it appears that these employees perform the duties customarily performed by watchmen, are not a militarized or specialized plant-protection force, and have substantial interests in common with the production and maintenance employees, we shall include the plant-protection employees.⁸

The Company also requests the exclusion of the employees in the hospital, which is classified as a part of the personnel department. Since the nurse presently employed, and any additional nurses which may be hired in the future are professional employees, it does not appear that the interests of such employees are sufficiently allied with those of the production and maintenance employees to require their inclusion in a unit composed of such employees. We shall exclude the nurses from the unit.⁹

⁸ See *Matter of Dortch Stove Works, Inc.*, 52 N. L. R. B. 1450; *Matter of Ash Grove Lime & Portland Cement Co.*, 55 N. L. R. B. 1007, *Matter of Norwalk Tire & Rubber Co.*, 57 N. L. R. B. 1520

⁹ See *Matter of Humble Oil and Refining Co.*, 44 N. L. R. B. 518.

The development department of the Company is composed of 25 employees, including the supervisor and the chemist. It appears from the record that the chemist is a college graduate and has had 18 years of experience as a chemist. His work involves the supervision of the preparation of cements, nylon preparations, checking materials coming into the plant, and development work for the development manager, as required on certain products. We shall exclude the chemist from the residual voting group, since he is a professional employee. The other employees in the department, with the exception of the supervisor, shall be included, in accordance with the agreement of the parties.

The employees in the methods engineering department are engaged in administrative work. They make time studies, job analyses, and work on the improvement of job methods in the plant. All the employees in the department are college graduates. We shall exclude all employees in the methods engineering department since it appears that they are engaged in clerical work, professional in character, which may also be confidential.

With respect to the stationary engineers in the powerhouse and the production and maintenance employees, we shall make no final determination of the unit or units at this time. In accordance with our finding that the stationary engineers employed in the powerhouse may function either as a separate unit or as part of a single plant-wide unit, we shall direct that the question concerning representation which has arisen be resolved by separate elections by secret ballot among the employees in the voting groups described below who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

Group 1. All stationary engineers employed in the powerhouse of the Company at its Ferndale, Washington, plant, 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, to determine whether they desire to be represented by the Engineers or the Rubber Workers for the purposes of collective bargaining, or by neither.

Group 2. All other production and maintenance employees of the Company at its Ferndale, Washington, plant, including plant guards, but excluding the chemist in the development department, the employees in the methods engineering department, all clerical employees, the general foremen, shift foremen, departmental supervisor, 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, to determine whether or

not they desire to be represented by the Rubber Workers for the purposes of collective bargaining.

Upon the results of these elections will depend in part our determination of the appropriate unit, or units. If a majority of the stationary engineers employed in the powerhouse select the Engineers as their representative, they will constitute a separate unit. If a majority of the employees in both the stationary engineers in the powerhouse and production and maintenance groups select the Rubber Workers as their representative, the groups will together constitute a single unit.

DIRECTION OF ELECTIONS

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Firestone Tire and Rubber Company, Ferndale, Washington, separate elections 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 Nineteenth 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 following groups of employees of the Company, 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:

1. All employees described in Group 1, of Section IV, above, to determine whether they desire to be represented by Stationary Engineers Union, Local 843, or by United Rubber Workers Industrial Union No. 1404, affiliated with the C. I. O., for the purposes of collective bargaining, or by neither.
2. All employees described in Group 2, of Section IV, above, to determine whether or not they desire to be represented by United Rubber Workers Industrial Union No. 1404, affiliated with the C. I. O., for the purposes of collective bargaining.