In the Matter of THE GOODYEAR TIRE AND RUBBER COMPANY, EMPLOYER *and* A. P. KERNS, PETITIONER *and* UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, C. I. O., LOCAL 2, UNION

Case No. 8–RD–8.—Decided July 30, 1948

DECISION

AND

DIRECTION OF ELECTION

Upon a petition for decertification duly filed, a hearing in this case was held at Akron, Ohio, on April 27, 1948, before Charles A. Fleming, hearing officer. At the hearing the Union moved to dismiss the petition because (1) it was prematurely filed, (2) the unit sought is inappropriate, and (3) the petition was filed by an individual who had been a supervisor for the Employer a short time before. The hearing officer referred the motions to the Board. For the reasons set forth below the motions to dismiss are denied. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Goodyear Tire and Rubber Company is an Ohio corporation engaged in the manufacture of tires and other rubber and chemical products at Akron, Ohio. Its annual production exceeds $1,000,000 of which 50 percent is shipped outside the State. The annual consumption of raw materials is valued in excess of $1,000,000 of which 50 percent is received by the Employer from outside the State.

The Employer admits, and we find, that it is engaged in commerce within the meaning of the Act.

*Chairman Herzog and Members Reynolds and Murdock.

II. THE PARTIES INVOLVED

The Petitioner, representing individuals employed as firemen in the Employer's fire department, asserts that the Union is no longer their bargaining representative as defined in Section 9 (a) of the amended Act.

The Union, a labor organization affiliated with the Congress of Industrial Organizations, was certified on November 8, 1946, in Case No. 8–R–2379, as exclusive bargaining representative of the Employer's fire department as a result of a consent election conducted pursuant to a stipulation for certification upon consent election.

III. THE QUESTION CONCERNING REPRESENTATION

On November 8, 1946, as noted above, the Union became bargaining representative for the Employer's fire department employees. On June 2, 1947, the Employer executed a contract with the Union for these employees for the term of 1 year, with provision for renewal from year to year unless notice to terminate or modify was given by either party at least 30 days prior to the terminal date of the contract. The Union contends that this contract is a bar to this proceeding inasmuch as the petition was prematurely filed.

We have previously decided that the same rules of "contract-bar" as are applied to petitions for certification of representatives should also apply to decertification cases.[1] Inasmuch as the petition in this proceeding was filed on February 24, 1948, before the operative date of the automatic renewal clause and approximately 3 months before the terminal date of the contract, we find that it was timely filed and that the contract does not constitute a bar to this proceeding.[2]

The Union further contends that, inasmuch as the individual Petitioner had been a supervisor up to January 1, 1948, approximately 8 weeks before the filing of this petition for decertification, the petition was "colored" and should be dismissed. The Board has held that a supervisor may not file a decertification petition, either in his capacity as a management representative or as an "individual" acting on behalf of the employees within the designation in Section 9 (c) (1) (A) of the Act.[3] In this case, however, the individual petitioner was not actually a supervisor at the time of the filing. Moreover, there is no evidence of collusion between the Petitioner and the Employer, or that the Petitioner's status was changed in contemplation of a petition being brought. In fact, during oral argument at the hearing the union

[1] *Matter of Snow & Nealley Company*, 76 N. L. R B. 390.

[2] *Matter of Snow & Nealley Company, supra;* see also *Matter of Bush Woolen Mills, Inc.*, 76 N. L. R. B. 618.

[3] *Matter of Clyde J. Merris*, 77 N. L. R. B. 1375.

representative disclaimed any intent even to imply any such collusion. Under the circumstances, we find that the Petitioner was a proper party to file the petition in this proceeding.

We find that a question affecting commerce exists concerning the representative disclaimed any intent even to imply any such collu- of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Petitioner has requested the decertification of the Union as representative of "all plant protection employees in the Fire Department." The Union urges that the unit described is inappropriate because the firemen have been included in a more comprehensive unit by contract. The Employer asserts that the unit is not inappropriate inasmuch as those employees have been covered by a separate contract.

As stated above, the Union was certified on November 8, 1946, by the Board, pursuant to a Stipulation for Certification Upon Consent Election. On February 11, 1947, a company-wide contract was entered into by the Employer and the Union, together with locals affiliated with the Union representing employees of the Employer at plants located in eight other cities. By this contract the Employer recognized "the Union as the exclusive bargaining agent for the employees of the Company in the above named plants, subject to the inclusions and exclusions as set forth in the certifications of representatives by the National Labor Relations Board following elections or as mutually agreed between the Local Plant and the Local Union."

On May 5, 1947, the Employer and the Union entered into an agreement by its terms "supplemental to and subject to the terms and provisions of the company-wide agreement entered into on February 11, 1947," and "In order to supplement said company-wide agreement and to make said company-wide agreement effective. . . ." The coverage of this supplemental agreement "includes the hourly rated and piece-work production, engineering and maintenance employees at the Company's Plants 1, 2, and 3, Akron, Ohio, except those employees working in the capacity of . . . plant protection employees exclusive of fire department employees."

On June 2, 1947, an agreement covering the fire department employees was entered into by the Employer and the Union. This agreement was a complete contract in itself and referred to no other document.

A supplemental agreement covering the Employer's Plant C was executed on November 20, 1947. This agreement by its terms made the contract of February 11, 1947, and the supplemental agreement of May 5, 1947, applicable to Plant C with certain modifications.

The Union urges, in effect, that the bargaining history shows that the unit of fire department employees was integrated into the more comprehensive unit by the supplemental agreement of May 5, 1947. The Employer contends that the agreement of June 2, 1947, was a separate contract covering the firemen and thus evidences the fact that those employees were not included in the larger unit. Furthermore, the Employer alleges that the omission of fire department employees from the exclusion of plant-protection employees in the May 5, 1947, agreement was not intended to bring the firemen within the coverage of that agreement, but was intended to make certain that a separate contract for the firemen would not be foreclosed. Testimony at the hearing shows that the Employer did not intend to integrate the unit of firemen into a more comprehensive unit. Moreover, the Union stated at the hearing that the agreement of June 2, 1947, was executed because the firemen desired a separate agreement. We do not believe that the record supports the contention that the unit of firemen has been consolidated into a more comprehensive unit.

Accordingly, we find that all firemen in the Employer's fire department at Akron, Ohio, excluding supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.[4]

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, 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 of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by United Rubber, Cork, Linoleum & Plastic Workers of America, C. I. O., Local 2.

[4] See *Matter of Monsanto Chemical Company, Clinton Laboratories, Oak Ridge, Tennessee*, 76 N. L. R. B. 767, wherein the Board concluded that the firemen were not "guards" within the meaning of Section 9 (b) (3) of the Act.