

In the Matter of YALE RUBBER MANUFACTURING COMPANY, EMPLOYER
AND PETITIONER *and* UNITED RUBBER, CORK, LINOLEUM AND PLASTIC
WORKERS OF AMERICA, C. I. O.

Case No. 7-RM-17.—Decided July 11, 1949

DECISION

AND

ORDER

Upon a petition duly filed a hearing in this matter was held at Sandusky, Michigan, on April 13, 1949, before Francis E. Berger, hearing officer. The hearing officer referred to the Board a motion of the Union to dismiss the petition. Since we are dismissing the petition for reasons other than those asserted by the Union in its motion, we find it unnecessary to rule upon the motion in the posture presented by the Union. 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Reynolds, Murdock, and Gray].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. United Rubber, Cork, Linoleum and Plastic Workers of America, C. I. O., herein called the Union, is a labor organization claiming to represent employees of the Employer.
3. The alleged question concerning representation:

Approximately 5 years ago the Employer opened an office and warehouse in Detroit, Michigan. The primary operations performed at the Detroit installation were the purchasing and resale of rubber products. No manufacturing was engaged in there. About 3½ years ago, the Employer acquired a plant at Yale, Michigan, for the purpose of manufacturing dense rubber. Shortly thereafter, the Employer recognized the Union as the exclusive bargaining agent for the production and maintenance employees at this plant. In November 1946, the Employer and the Union executed a 1-year collective bargaining contract

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covering these employees, and excluding the employees at the Detroit office and warehouse. At the expiration of this contract, a similar contract was negotiated and signed in November 1947, for a 2-year term ending December 1, 1949.

During the summer of 1947, increased orders warranted an expansion of the Employer's manufacturing operations. A survey of the Employer's facilities at Yale and of the resources of the town of Yale indicated that the limited supply of water available to the Employer would make expansion of the Yale plant financially unwise. The Employer therefore decided to look elsewhere for another plant and, in March 1948, purchased a plant at Sandusky, Michigan, 22 miles from Yale. From the date of purchase until October 1948, maintenance and construction employees readied the Sandusky plant for the production of dense rubber, the same product as was being turned out at Yale. Production commenced at Sandusky on a small scale in October 1948 and increased gradually until March 1949, when production had achieved capacity. In the meantime production at the Yale plant was being curtailed, until in February 1949 the last employees at the Yale plant were discharged and the plant shut down.¹

Shortly after the close of the Yale plant, at a time when the Union sought to enforce the 1947 contract to cover the employees at Sandusky, the Employer filed the petition herein for an election among the employees at Sandusky. The Union claims that the current 1947 contract is a bar to such an election.

When the 1947 contract was executed, the Employer recognized the Union as the majority representative in a production and maintenance unit at the Employer's operation at Yale and continued to recognize the Union as such until the Yale plant closed. The Employer now refuses to recognize the Union as the majority representative of the employees at its Sandusky plant alleging that all of the 150 employees at Sandusky are new employees. However, the record shows that included in this classification as new employees are 70 employees who were formerly employed by the Employer, and represented by the Union, at the Yale plant. These 70 employees were offered employment at Sandusky and, upon acceptance of the offer, reported directly from the Yale to the Sandusky plant. Thus despite the formality of signing "quit" slips at Yale as required by the Em-

¹ The Employer states that the Yale plant is only temporarily shut down and that it will reopen when converted for the production of a new rubber product. The eventual reopening however is conditioned upon acquisition by the Employer of sufficient investment capital and customers' orders to warrant the step. It appears therefore that these plans for the Yale plant are highly conjectural and not at all certain of eventual ascertainment. Under these circumstances we cannot consider the Yale plant in existence for purposes of this proceeding.

ployer and of being rehired at Sandusky, these 70 employees were in effect transferred from Yale to the Sandusky plant.²

The record also shows that much of the machinery formerly used in the Yale plant is now used in the Sandusky plant. Although this machinery has been supplemented by new and improved machinery, the production techniques and processes utilized at Yale have not been altered in any substantial manner. The supervisory and management personnel in charge of production at Yale is now similarly employed at Sandusky.

Under the foregoing circumstances we are impelled to the conclusion that the Sandusky operation of the Employer is essentially nothing more than the Yale operation transferred to a new location. It follows therefore that the 1947 contract between the Employer and the Union covers employees at the new location and constitutes a bar to an election at this time.³

In addition to the contention of the Employer discussed above, the Employer contends that the Union's majority status should at this time be tested because the number of employees in the unit has increased due to an expansion of the Employer's operation since the 1947 contract was executed. We do not agree. The record indicates that there has been a 50 percent expansion in the Employer's operations by virtue of the transfer from Yale to Sandusky. Although this represents a substantial increase in the size of the unit, the record discloses, as hereinbefore pointed out, that there has been no material change in the scope and character of the unit. Moreover, it appears that the employees within the unit at the time the 1947 contract was signed were representative of the employees now constituting the Employer's working force. Accordingly, as the 1947 contract is currently in effect, we do not believe that the expansion warrants an election at this time.⁴

Nor do we find persuasive the Employer's further contention that the use of the words "Yale plant" in the 1947 contract⁵ means that the

² The Employer technically rehired these employees ostensibly to extinguish any seniority rights acquired by them at the Yale plant. In addition, 26 other former Yale employees who had left the Employer's employ at Yale of their own volition had been reemployed at Sandusky at the date of the hearing.

³ Cf. *Matter of St. Regis Paper Company (Multi-Wall Bag Plant)*, 84 N. L. R. B. 454; and *Matter of General Electric Company (Medford Plant)*, 85 N. L. R. B. 150. In the *General Electric* case cited we found no contract bar where a portion of a preexisting unit was transferred and set up as a new operation with a new managerial hierarchy.

⁴ *Matter of Decker Clothes Inc.*, 83 N. L. R. B. 484. See *Matter of Liggett & Myers Tobacco Co.*, 73 N. L. R. B. 207, 210.

⁵ The Employer refers specifically to the introductory paragraph of the contract, which is as follows: "THIS AGREEMENT, Made and entered into this 1st day of December 1947, by and between the YALE RUBBER MANUFACTURING CO., Yale Plant, Yale, Michigan (hereinafter referred to as the "Company") and LOCAL UNION NO. 324, of the United

terms of the contract can be applied only to such operations as may be conducted at the Yale plant. We believe that this interpretation is out of context and unnecessarily restrictive. Read in conjunction with those words immediately preceding and following, the words "Yale plant" are clearly descriptive of one of the parties to the contract, rather than of the operation or the unit covered by the contract.⁶

Upon the basis of all the foregoing and the entire record in this case, we find that no question concerning the representation of the Employer's employees at its Sandusky, Michigan, plant exists. We shall therefore dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

Rubber, Cork, Linoleum and Plastic Workers of America, CIO (hereinafter referred to as the "Union"), covering all production and maintenance employees but excluding supervisory employees"

⁶ Cf. *Matter of George F. Brasfield and Company, Incorporated*, 72 N. L. R. B. 944, 945.