In the Matter of GOODYEAR RUBBER SUNDRIES, INC. *and* UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, CIO

Case No. 1–CA–656.—Decided January 17, 1951

DECISION AND ORDER

On October 19, 1950, Trial Examiner C. W. Whittemore, issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.[1]

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 [Chairman Herzog and Members Reynolds and Murdock].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[2]

We find that the Respondent has refused to bargain with the Union as exclusive bargaining representative of its employees in violation of

[1] In its brief the Respondent contends that the Board is without jurisdiction to entertain the complaint because the CIO was not in compliance with the filing requirements of the Act at the time of the issuance of the complaint. For the reasons stated in *J. H. Rutter-Rex Manufacturing Co., Inc.*, 90 NLRB 130, this contention is rejected. Nor is the compliance status of the CIO available to the Respondent as a defense to an allegation of a refusal to bargain under Section 8 (a) (5) of the Act. It is sufficient that we have administratively determined that at all times material herein the Union has been in compliance. *J. H. Rutter-Rex Manufacturing Co., Inc., supra; Rubin Brothers Footwear, Inc., et al.*, 91 NLRB 10.

[2] The Trial Examiner's Intermediate Report contains a minor inaccuracy which does not affect our ultimate findings. The Trial Examiner erroneously stated that "no new evidence was offered at the hearing" with respect to the Respondent's contention regarding the eligibility status of certain employees whom it claims were not supervisors. The record shows, and we find, that the Respondent proffered evidence regarding the status of these employees, and that the Trial Examiner properly rejected the same as their status had been considered previously in Case No. 1–RC–913, Supplemental Decision and Direction (unpublished), issued February 15, 1950. Under the settled rule that unless there is evidence which was newly discovered or unavailable to the Respondent at the time of the representation proceeding, which was not the case here, it cannot be permitted to relitigate in the instant proceeding the question of the Union's majority or the appropriate unit. See *Clark Shoe Company*, 88 NLRB 989.

Contrary to the Respondent's contention, we find nothing in the record or Intermediate Report reflecting bias or prejudice by the Trial Examiner in either the conduct of the hearing or in his findings, conclusions, and recommendations. Accordingly, we deny the Respondent's motion to dismiss the complaint on this ground.

Section 8 (a) (5) and 8 (a) (1) of the Act, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Goodyear Rubber Sundries, Inc., New Haven, Connecticut, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, as the exclusive representative of all production and maintenance employees at its New Haven, Connecticut, plant, excluding guards, foremen and foreladies, and all other supervisors as defined in the Act;

(b) In any other manner interfering with the efforts of said union to negotiate for or represent the employees in the aforesaid unit as exclusive bargaining agent.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, as the exclusive representative of all its employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant at New Haven, Connecticut, copies of the notice attached to the Intermediate Report marked Appendix A.[3] Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

[3] This notice, however, shall be and it hereby is amended by striking from the first paragraph thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted in the notice before the words: "A Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing."

(c) Notify the Regional Director for the First Region, in writing, within ten (10) days from the date of this Order what steps Respondent has taken to comply herewith.

INTERMEDIATE REPORT

Mr. Torbert H. MacDonald, for the General Counsel.

Messrs. W. F. Bradley, of Waterbury, Conn., and *John F. Sullivan*, of New York, N. Y., for the Respondent.

Messrs. Daniel Baker, of Bridgeport, Conn., and *Edward Collins*, of Seymour, Conn., for the Union.

STATEMENT OF THE CASE

Upon charges duly filed by United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board[1] by the Regional Director for the First Region (Boston, Massachusetts), issued a complaint dated September 7, 1950, against Goodyear Rubber Sundries, Inc., New Haven, Conn., herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

With respect to the unfair labor practices, the complaint alleges, in substance, that: (1) In June 1949, at a Board election, a majority of employees in an appropriate unit designated and selected the Union as their representative for the purposes of collective bargaining; (2) that since June 1949, the Union is and has been at all times the exclusive representative of all the employees in the appropriate unit; (3) that since February 1950, the Respondent has refused to bargain collectively with the Union; and (4) that by such refusal the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act.

Pursuant to notice, a hearing was held at New Haven, Connecticut, on October 3, 1950, before the undersigned duly designated Trial Examiner. The General Counsel, the Respondent, and the Union were represented by counsel, all participated in the hearing, full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties.

Prior to the hearing no answer was filed by the Respondent. At the opening of the hearing, counsel for the Respondent orally admitted certain allegations of the complaint, but denied the commission of any unfair labor practices.

All counsel waived opportunity to argue orally before the Trial Examiner. Briefs were received from the Respondent and the General Counsel.

Upon the entire record in the case, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Goodyear Rubber Sundries, Inc., is a Connecticut corporation, having its principal office and place of business in New Haven, Connecticut, where it is engaged

[1] The General Counsel and his representative at the hearing are herein referred to as the General Counsel; the National Labor Relations Board as the Board.

in the manufacture, sale, and distribution of rubber and plastic sundries and related products.

In the course and conduct of its business the Respondent causes large quantities of rubber, starch, threads, resins, and elastics used by it to be purchased and transported in interstate commerce from and through various States of the United States other than Connecticut, and causes substantial quantities of rubber and plastic sundries to be sold and transported from its plant in interstate commerce to States of the United States other than Connecticut and to foreign countries.

At the hearing the Respondent admitted the allegations of the complaint as to commerce matters.

II. THE LABOR ORGANIZATION INVOLVED

United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The setting and issues*

The historical facts herein set forth were stipulated by all parties.

On February 24, 1949, the Union filed with the Board, at its First Regional Office, a petition for representation. (Case No. 1–RC–913.) A consent election was not obtained, but a hearing was held in New Haven on April 14, 1949. On May 20 the Board issued a Decision and Direction of Election, in which it made the following pertinent findings: "The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees at Employer's New Haven, Connecticut, plant, excluding guards, foremen and foreladies,[1] and other supervisors as defined in the Act.

Pursuant to the Board order, an election was held on June 16. At its conclusion, a tally of ballots was furnished the parties showing that 78 valid ballots had been cast for the Union, 81 against the Union, and that 40 ballots had been challenged—36 by the Respondent and 4 by the Union. No objections to the conduct of the election were filed within the time provided therefor.

Since the challenged ballots were sufficient in number to affect the results of the election, the Regional Director caused an investigation to be conducted. On August 24 he issued and served upon the parties a report on challenges, in which he recommended that the challenges as to 8 ballots be sustained, that a ruling as to 1 ballot be held in abeyance, and that the challenges as to 31 ballots be overruled and these ballots be opened and counted.

[1] "The Employer would include in the unit as nonsupervisory employees, 7 working foreladies and 8 working foremen. The Employer has a complement of 235 employees working in 15 departments located in 3 interconnected buildings of from 1 to 5 floors in height. Each department has from 3 to 27 employees and is under the direction of a forelady or a foreman. The Employer asserts that supervisory authority is exercised only by the factory manager or by the production manager. We do not agree. Although the foreman and foreladies do not have authority to hire, discharge, or discipline employees, they do responsibly direct the work of subordinates. Accordingly, we find that, with the exception of Ralph DeMaio, they are supervisors within the definition of the Act. We shall exclude them. *Ohio Power Company,* 80 NLRB 1334; *Morowebb Cotton Mills Company,* 75 NLRB 987. Ralph De Maio is a mechanic who, together with an assistant, spends all his time repairing machines. We find that he is not a supervisor. We shall therefore include him in the unit."

On September 9 the Respondent filed exceptions to a part of this Report, claiming that 26 of the employees whose votes were challenged had been permanently laid off, and that 1 was not a supervisor at the time of the election. Thereafter, on September 27 and October 14, 1949, the Board issued an Order and an Amended Order directing that a hearing be held on the issues raised by the Respondent's exceptions. A hearing was held on October 26 and 27. On November 25 the hearing officer issued and served upon the parties a report in which he recommended that the Board overrule the challenges to the ballots of the 26 laid-off employees on the ground that they had been in fact temporarily laid off, and sustain the challenge to the ballot of the individual claimed by the Respondent not to have been a supervisor.

Following the issuance of this report the Respondent duly filed exceptions. On February 15, 1950, the Board directed that the 26 voters involved were eligible to vote, the challenges as to them were overruled, and the Regional Director was ordered to open and count their ballots. It likewise overruled the challenge as to the individual claimed by the Respondent not to have been a supervisor. Likewise the Board passed upon certain other recommendations previously made by the Regional Director as to certain challenged ballots.

On February 21, 1950, the Regional Director issued a revised tally of ballots, in which he found that a "majority of the valid votes has been cast for United Rubber, Cork, Linoleum and Plastic Workers of America, CIO."

On March 2, 1950, the Board issued a Certification of Representatives, finding that the Union had been selected by a majority of employees in the appropriate unit as their collective bargaining agent. The Respondent thereafter filed with the Board a motion to reconsider the decision. On March 8 the Board denied the motion.

By letter to the Respondent, on March 20, 1950, the Union requested recognition for purposes of collective bargaining, and asked for a meeting date for the purpose of negotiating a contract.

At all times thereafter, and specifically on June 7, 1950, the Respondent has refused to negotiate and bargain with the Union as the exclusive representative of employees in the appropriate unit.

The Respondent readily admits that it has refused to bargain, and continues to refuse to bargain, with the Union. It offers two reasons for its refusal: (1) The fact that at the time the Board election was held the officials of the CIO had not complied with provisions of Section 9 (h) of the Act; (2) its claim that the Board's determination as to the supervisory status of certain employees was erroneous.

B. *Conclusions*

The Board has already issued its determination as to the appropriate unit, and as to the eligibility status of the employees claimed not to have been supervisory by the Respondent. At the hearing counsel for the Respondent conceded that no motion had been filed subsequent to the Board findings requesting an opportunity to produce additional or new evidence to support its contentions as to these individuals. No new evidence was offered at the hearing before the undersigned. Therefore it is concluded and found that there is no merit to the Respondent's claim that the Board's unit determination was erroneous.

In accordance with Board policy, set forth in *J. H. Rutter-Rex Manufacturing Company, Inc.*, 90 NLRB 130, the Trial Examiner finds no merit in the Respondent's position that it is justified in refusing to bargain with the Union because CIO officials had not, at the time the representation case was initiated, complied with certain provisions of the Act.

It is therefore concluded and found that: (1) In June 1949, the Union was and at all times since then has been the exclusive representative of all employees, for the purposes of collective bargaining, in an appropriate unit consisting of all production and maintenance employees of the Respondent at its New Haven plant, exclusive of guards, foreman, foreladies, and all other supervisors as defined in the Act; (2) at all times since March 20, 1950, the Respondent has refused and continues to refuse to bargain collectively with the Union as the exclusive representative of its employees in the said appropriate unit; and (3) by such refusal to bargain the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the Respondent has refused to bargain with the Union as the exclusive representative of its employees in the appropriate unit, it will be recommended that upon request the Respondent bargain collectively with the Union.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees at the Respondent's New Haven, Connecticut, plant, excluding guards, foremen and foreladies, and other 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.

3. United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, was on June 16, 1949, and at all times since then has been the exclusive representative of all employees in said unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By failing and refusing to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]