In the Matter of THE B. F. GOODRICH COMPANY *and* FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER NO. 98

Case No. 8–C–1916.—Decided January 9, 1947

Mr. Thomas E. Shroyer, for the Board.

Messrs. Lisle M. Buckingham and *C. D. Russell*, of Akron, Ohio, for the respondent.

Mr. Lorin Hibbard, of Cleveland, Ohio, and *Mr. Charles J. O'Meara*, of Akron, Ohio, for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND

ORDER

On September 12, 1946, Trial Examiner Charles W. Schneider 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.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, The B. F. Goodrich Company, Akron, Ohio, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to recognize and to bargain collectively with Foreman's Association of America, Chapter No. 98, as the exclusive representative of all floor foremen, shift foremen, chief schedulers,

senior schedulers, chief dispatchers, and senior dispatchers employed by the respondent at its Akron, Ohio, plant;

(b) Engaging in any other acts in any manner interfering with the efforts of Foreman's Association of America, Chapter No. 98, to negotiate for or represent the employees in the aforesaid unit, as their 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 Foreman's Association of America, Chapter No. 98, as the exclusive representative of all floor foremen, shift foremen, chief schedulers, senior schedulers, chief dispatchers and senior dispatchers employed by the respondent at its Akron, Ohio, plant, in 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 in Akron, Ohio, copies of the notice attached to the Intermediate Report herein marked Appendix "A."[1] Copies of said notice, to be furnished by the Regional Director for the Eighth 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;

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

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that by certain letters and speeches addressed to the employees in the appropriate unit the respondent violated Section 8 (1) of the Act.

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision and Order.

---

[1] 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 decree of a Circuit Court of Appeals, there shall be inserted, before the words "A Decision and Order," the words:

"A Decree of the United States Circuit Court of Appeals Enforcing"

INTERMEDIATE REPORT

Mr. Thomas E. Shroyer, for the Board.

Messrs. Lisle M. Buckingham and *C. D. Russell*, of Akron, Ohio, for the respondent.

Mr. Lorin Hibbard, of Cleveland, Ohio, and *Mr. Charles J. O'Meara*, of Akron, Ohio, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by Foreman's Association of America, Chapter No. 98, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated July 3, 1946, against The B. F. Goodrich Company, Akron, Ohio, 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 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint (in addition to certain jurisdictional allegations) alleged, in substance, that the respondent: (1) on or about February 15, 1946, refused, upon demand, to bargain collectively with the Union as the exclusive bargaining representative of certain of the respondent's supervisory employees at its Akron, Ohio, plant, although the said employees constituted an appropriate bargaining unit, and although the Union had been designated by such employees as their exclusive collective bargaining representative; and (2) since about July 1, 1945, interfered with the organizational efforts of the afore-mentioned employees by means of written material distributed, and oral addresses directed, to them.

On July 10, 1946, the respondent filed its answer in which it admitted certain of the jurisdictional allegations of the complaint, but denied the commission of unfair labor practices. Specifically, the answer denied that the Union was a labor organization, and denied that the supervisory employees involved constituted an appropriate bargaining unit. The answer affirmatively averred that the said employees were employers and that the Board was therefore without jurisdiction; and, further, that the Board, by a determination that the employees constituted an appropriate bargaining unit, had acted arbitrarily, capriciously, and unreasonably.

Upon due notice, a hearing was held at Akron, Ohio, on July 17, 1946, before Charles W. Schneider, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union appeared and were represented. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the end of the Board's case the respondent moved to dismiss the complaint. This motion was denied without prejudice to its subsequent renewal. A similar motion was made at the close of the evidence, upon which ruling was reserved. The motion is hereby denied insofar as it is inconsistent with the findings and recommendations hereinafter made. A motion by counsel for the Board to conform the pleadings to the proof was granted without objection. Although afforded opportunity to do so, none of the parties argued the issues orally before, or submitted briefs to, the undersigned.

Upon the entire record in the case, including the record in Case No. 8–R–1874,[1] the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The B. F. Goodrich Company is a New York corporation operating a plant in Akron, Ohio, where it is engaged in the manufacture, sale and distribution of rubber and rubber-like products. During 1945 the respondent purchased and had delivered to the Akron plant, from sources outside the State of Ohio, raw materials and supplies valued in excess of $50,000,000. During the same period the respondent sold and shipped from the Akron plant to points in States outside of Ohio, manufactured products valued in excess of $100,000,000

II. THE ORGANIZATION INVOLVED

Foreman's Association of America, Chapter No. 98, is an unaffiliated organization admitting to membership supervisory employees of the respondent. It exists for the purpose of acting as a collective bargaining representative for such employees. It is therefore found, contrary to the position asserted in the respondent's answer, that the Association is a labor organization as defined in Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain collectively*

1. THE APPROPRIATE UNIT

On January 8, 1946, after a full hearing upon due notice, the Board issued a Decision and Direction of Election in which it found that the following supervisory employees of the respondent at its Akron, Ohio, plant, constituted an appropriate bargaining unit:[2]

> All floor foremen, shift foremen, chief schedulers, senior schedulers, chief dispatchers and senior dispatchers.

On January 17, 1946, the respondent filed a Petition for Rehearing and Reconsideration. On January 24, 1946, this petition was denied by the Board.

It is found that the above-described groups of employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.[3]

---

[1] See footnote 2, *infra*.

[2] *Matter of The B. F Goodrich Company*, 65 N L R B 294 (Case No 8–R–1874)

[3] At the instant hearing the respondent offered in evidence the transcript of certain testimony given by representatives or witnesses for the Foreman's Association of America in other Board proceedings in which the Association was seeking certification as a bargaining representative Some of these proceedings occurred prior to, but most subsequent to, the representation hearing in the instant case. This testimony (some of it relating to occurrences at the respondent's Akron plant) dealt with acts and attitudes of certain supervisory employees who were members of the Association, in carrying on their union activity Some of this testimony was admitted into evidence, without objection, at the instant hearing On the remainder, ruling was reserved by the undersigned The latter testimony is hereby admitted. In sum, the purpose of this evidence was to show

2. The Union's majority

On February 5, 1946, pursuant to the Board's Decision and Direction of Election, an election was held, under the direction and supervision of the Board's Regional Director, among the employees in the appropriate unit, to determine whether they desired to be represented by the Union for the purpose of collective bargaining. In this election, a majority of the said employees voted for the Union.[4] On February 19, 1946, no objections having been filed to the conduct of the election, the Board issued its Certification of Representatives, certifying that the Union was the exclusive collective bargaining representative of the employees in the appropriate unit.

It is found that on February 5, 1946, and at all times thereafter, the Union was, and is now, the exclusive representative of all the employees in the appropriate unit, within the meaning of Section 9 (a) of the Act, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to negotiate

Under date of February 14, 1946, the Union, by letter addressed to the respondent, requested a meeting with representatives of the respondent for the purpose of bargaining collectively concerning the employees in the appropriate unit.

Under date of February 15, 1946, the respondent, by letter to the Union, declined to negotiate. In this letter the respondent stated, in part, that:

> Until the certified result of the recent NLRB election has been upheld in appropriate Courts, the Company does not propose to negotiate with representatives of Local #98, Foreman's Association of America.
>
> * * * * * * *
>
> Although the results of the election held on February 5 . . . have not yet been certified to the company, we have already advised the National Labor Relations Board that the Company desires to be cooperative in referring the case to the Courts without delay.

4. Conclusions as to refusal to bargain

As has been seen, the Board, after full hearing, found that the employees involved constituted an appropriate bargaining unit. At an election thereafter held, a majority of the employees in the unit designated the Union as their bargaining representative; and such result was subsequently certified by the Board Following the designation, the respondent, although requested to do so, declined to negotiate with the Union until the election results had been upheld

---

an asserted irreconcilable conflict between the managerial status, so-called, of supervisory employees and union affiliation; the respondent's argument being that, having such facts before it, the Board's action in adhering to its decision that the employees here involved constituted an appropriate unit, was arbitrary and capricious The undersigned, however, finds no basis in this evidence for modification of the Board's unit findings.

[4] The results of the election were as follows:

Approximate number of eligible voters	755
Votes cast for the Union	413
Votes cast against the Union	301
Challenged ballots	15
Valid ballots counted plus challenged ballots	729

by the appropriate Court. The respondent thus refused to bargain collectively with the representative of its employees.[5]

It is therefore found that on February 15, 1946, the respondent refused, and that it now refuses, to bargain collectively with the exclusive representative of its employees in the appropriate unit; and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.[6]

B. The alleged unfair labor practices

The complaint also alleged that the respondent committed unfair labor practices by means of certain written material distributed to the employees in the appropriate unit, and by oral addresses delivered by executives of the respondent in meetings of the said employees arranged by the respondent.

During the period from November 5, 1945, to January 30, 1946, the respondent sent to each of the employees in the appropriate unit a series of letters in which it discussed working conditions of these employees, their duties, responsibilities, and privileges; and also discussed the Board-directed election. In sum, these letters were designed to persuade the employees to preserve the existing relationship with the respondent. On February 4, 1946, the day prior to the election, the employees in the unit were invited to attend meetings, apparently in the plant, at which they were addressed by T. G. Graham, the respondent's vice-president. Attendance was not compulsory, but employees were paid 2 hours' time for attendance. Graham's address was similar in context to the letters previously described. On February 8, several days after the election, the respondent sent letters to the employees in the unit advising them, *inter alia*, of the respondent's determination to test the validity of the Board's certification in the Courts.

The undersigned finds none of the declarations in these letters and speeches to be coercive *per se*. The statements were couched in language of reasonable persuasion. They were devoid of threats, derogation or villification of the Union, or veiled warnings that selection of the Union would result in less favorable working conditions. Nor are there any surrounding circumstances from which it can be inferred that the utterances constituted part of a pattern of conduct tending to interfere with or coerce the employees. The circumstances were not such as to give the utterances, temperate on their face, coercive effect. There is no evidence from which to infer that the respondent's actions were motivated by specific design to frustrate self-organization; or were part of a whole such plan. It will therefore be recommended that this allegation of the complaint be dismissed.

---

[5] No apparent question is raised with respect to the fact that the Union's request to the respondent to open negotiations, and the respondent's declination to do so, occurred prior to the issuance of the Board's formal certification. In any event, that fact is not important here. The Union's request was made after the Union had been designated, and no objections were filed to the election. Hence it was evident to the parties that the Board's certification would follow the election as a matter of course. In fact, on February 8, three days after the election and prior to the certification, the respondent sent letters to the employees in the unit (these letters being more specifically discussed hereinafter) in which it advised them of its intention to test the certification in the courts This determination was reiterated in the respondent's letter of February 15 in which it declined to meet with the Union It is clear that the respondent's refusal to negotiate was a continuing one based upon the respondent's unwillingness to bargain collectively with respect to the employees involved; and that it was not a refusal based upon the technical ground that no certification had as yet been issued.

[6] See *N. L. R. B.* v. *Packard Motor Car Co.*, 157 F. (2d) 80, 18 L. R. R. M. 2268 (C. C. A. 6).

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, insofar as they constitute unfair labor practices, 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

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended 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 collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

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

CONCLUSIONS OF LAW

1. Foreman's Association of America, Chapter No. 98, is a labor organization within the meaning of Section 2 (5) of the Act.
2. All floor foremen, shift foremen, chief schedulers, senior schedulers, chief dispatchers and senior dispatchers employed by the respondent at its Akron, Ohio, plant, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
3. Foreman's Association of America, Chapter No. 98, was, on February 5, 1946, and at all times thereafter has been the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.
4. By refusing on February 15, 1946, and at all times thereafter, to bargain collectively with Foreman's Association of America, Chapter No. 98, 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 (5) of the Act.
5. By said acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (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.
7. The respondent has not engaged in unfair labor practices by means of letters and oral addresses.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, including the record in Case No. 8-R-1874, the undersigned recommends that the respondent, The B. F Goodrich Company, Akron, Ohio, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America, Chapter No. 98, as the exclusive representative of all floor foremen, shift foremen, chief schedulers, senior schedulers, chief dispatchers, and senior dispatchers employed by the respondent at its Akron, Ohio, plant;

(b) In any manner interfering with the efforts of Foreman's Association of America, Chapter No. 98, to bargain collectively with it.

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

(a) Upon request, bargain collectively with Foreman's Association of America, Chapter No. 98, as the exclusive representative of all floor foremen, shift foremen, chief schedulers, senior schedulers, chief dispatchers and senior dispatchers employed by the respondent at its Akron, Ohio, plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Akron, Ohio, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Eighth 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;

(c) Notify the Regional Director for the Eighth Region (Cleveland, Ohio), in writing, within (10) ten days from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report the respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

It is further recommended that the complaint be dismissed with respect to the allegation that the respondent engaged in unfair labor practices by means of letters and oral addresses.

As provided in Section 203 39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board, may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

CHARLES W. SCHNEIDER,
Trial Examiner.

Dated September 12, 1946.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT in any manner interfere with the efforts of FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER NO. 98, to bargain collectively with us.

WE WILL BARGAIN collectively upon request with the above-mentioned union as the exclusive representative of all supervisory employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment; and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All floor foremen, shift foremen, chief schedulers, senior schedulers, chief dispatchers, and senior dispatchers employed at the Akron, Ohio, plant.

THE B. F. GOODRICH COMPANY,

By _____ _____
(Representative) (Title)

Dated_____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.