

In the Matter of THE B. F. GOODRICH COMPANY, LOUISVILLE, KENTUCKY and UNITED RUBBER WORKERS OF AMERICA, LOCAL UNION #253, CIO

Case No. 9-C-2059.—Decided February 20, 1946

DECISION

AND

ORDER

On May 15, 1945, the Trial Examiner 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 brief in support thereof. Upon due notice, at the request of the respondent, a hearing for the purpose of oral argument was scheduled before the Board at Washington, D. C., on January 22, 1946. The respondent did not appear; the Union appeared by counsel, but waived argument.

The Board has considered the rulings made by 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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the addition and qualification noted below:

The respondent contends in its brief, contrary to the finding of the Trial Examiner, that the militarized guards involved herein are not employees within the meaning of the Act, relying upon the decision of the Circuit Court of Appeals for the Seventh Circuit in *N. L. R. B. v. E. C. Atkins Co.*, 147 F. (2d) 730, setting aside, 56 N. L. R. B. 1056, and upon the decisions of the Circuit Court of Appeals for the Sixth Circuit in *N. L. R. B. v. Federal Motor Truck Co.*, and *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 146 F. (2d) 718, setting aside, 54 N. L. R. B. 984, and 53 N. L. R. B. 1046. The Supreme Court has vacated the judgments in the above-cited cases, and has remanded them to the

respective courts for reconsideration.¹ Thus, these decisions cannot be regarded as controlling precedents. Moreover, in several subsequent cases, the Board has reexamined the status of militarized guards, and has reaffirmed its position that they are employees within the meaning of the Act.² For the reasons set forth in these cases, we find no merit in the respondent's contention, and we agree with the Trial Examiner's finding.

Having found that the respondent engaged in certain conduct violative of the Act, we shall order it to cease and desist from engaging in such conduct. However, unlike the recommendations of the Trial Examiner, we shall confine our cease and desist order to employees who are guards.

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, Louisville, Kentucky, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating the guards concerning their union membership and activities;

(b) Threatening the guards with economic reprisal if they exercise their self-organizational rights;

(c) Warning the guards that they could not engage in concerted or union activity.

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

(a) Post at its plant at Louisville, Kentucky, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Ninth Region, shall, after being duly signed by the respondent's representatives, 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;

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

¹ 65 S. Ct. 1413

² See *Matter of Eclipse Machine Division, Bendix Aviation Corporation*, 60 N. L. R. B. 308; *Matter of Aluminum Company of America*, 61 N. L. R. B. 1066, and cases cited therein, and *Matter of Armour and Company*, 63 N. L. R. B. 1200.

Mr. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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 interrogate our guards concerning their union membership and activities;

WE WILL NOT threaten our guards with economic reprisal if they exercise their self-organizational rights;

WE WILL NOT warn our guards that they cannot engage in concerted or union activity.

All our guards are free to become and remain members of United Rubber Workers of America, or any other labor organization.

(Employer)

Date----- By-----
(Representative) (Title)

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

INTERMEDIATE REPORT

Mr. Robert Silagi, for the Board.

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

Mr. E. T. Rion, of Memphis, Tenn., for the Union.

STATEMENT OF THE CASE

Upon a first amended charge filed by United Rubber Workers of America, Local Union #253, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint dated March 3, 1945, against The B. F. Goodrich Company, Louisville, Kentucky, 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 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, were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance, that the respondent from about March 1, 1943: (a) questioned its employees as to their union affiliation and activities; (b) urged, persuaded and warned its employees to refrain from becoming or remaining members of the Union; (c) expressed disapproval of its employees joining any labor organization and the Union in particular; (d) advised its employees that it was contrary to respondent's policy for them to join the Union; (e) disparaged the results to be obtained

from joining the Union; (f) threatened its employees with discharge or reprisals if they became or remained members of the Union; and by the foregoing conduct engaged in unfair labor practices within the meaning of Section 8 (1) of the Act.

On March 20, 1945, the respondent filed a motion to strike, a motion for bills of particulars, and a motion for extension of the date of hearing. On March 23, 1945, the undersigned denied the motion to strike and the motion for postponement of the hearing; the motion for bills of particulars was granted in part and denied in part.¹

The respondent filed no answer.

Pursuant to notice, a hearing was held at Louisville, Kentucky, on April 3 and 4, 1945, before William R. Ringer, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and respondent were represented by counsel and the Union by a representative and all parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the conclusion of the hearing, upon motion by counsel for the Board and over objection by counsel for respondent, the pleadings were amended to conform to the proof respecting formal matters such as names, dates, and other minor matters. Counsel for the Board and for respondent argued orally upon the record. None of the parties has filed briefs.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The B. F. Goodrich Company is a New York corporation with its principal office at Akron, Ohio, and operates a plant at Louisville, Kentucky. At this plant, which is the only plant involved in this proceeding, respondent is engaged in the manufacture of synthetic rubber. The plant is owned by Rubber Reserve Company, an instrumentality of the United States Government, and is operated by respondent as agent under an agency agreement with Rubber Reserve Company.² Rubber Reserve Company owns the raw materials used and the finished products. It also furnishes the money for the plant's operation. The plant annually uses raw materials valued in excess of \$1,000,000, of which approximately 30 percent is shipped to the plant from points outside the State of Kentucky, and it annually produces finished products valued in excess of \$1,000,000, of which a substantial portion is delivered to points outside the State of Kentucky.

The respondent is engaged in commerce within the meaning of the Act.³

¹ On March 20, 1945, in response to respondent's motion for bills of particulars, the Board's attorney supplied respondent's counsel with data which was substantially the information ordered to be furnished by counsel for the Board in the subsequent order of the undersigned granting the motion in part.

² It was so stated on the record by counsel for the respondent. He declined, however, to furnish a copy of the agreement, stating that its provisions should not be disclosed for military reasons.

³ The Board has previously found companies operating plants for government instrumentalities to be engaged in commerce within the meaning of the Act. *Matter of War Hemp Industries, Inc.*, 57 N. L. R. B. 1709; *Matter of Sinclair Rubber, Inc.*, 57 N. L. R. B. 800; *Matter of Copolmeyer Corporation*, 52 N. L. R. B. 578; *Matter of Republic Aviation Corporation, Indiana Division*, 51 N. L. R. B. 1287; *Matter of The Lukas-Harold Corp.*, 44 N. L. R. B. 730; *Matter of United States Cartridge Company*, 42 N. L. R. B. 191. See also *N. L. R. B. v. Fainblatt*, 306 U. S. 601.

II. THE ORGANIZATION INVOLVED

United Rubber Workers of America, Local Union #253, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

1. Status of the plant guards as employees; background

The Union is presently the bargaining representative for production and maintenance workers in the plant under a contract signed in January 1945; the record does not indicate when a prior collective bargaining agreement was signed. In February 1943, organizational activity commenced among the plant guards who were 21 or 22 in number at all times material herein. Membership of the guards was solicited in the United Rubber Workers of America and not in Local 253.* As of the date of hearing, no charter had been sought for a local comprised of guard membership

The guards at the plant were enrolled in the auxiliary military police in March 1943. They wear blue guard-type uniforms with designatory guard badges and auxiliary military police insignia. They are hired and discharged through respondent's personnel office at the plant. An applicant for employment is referred by the United States Employment Service and is preliminarily interviewed in the respondent's personnel office. He is then asked to fill out one of the application blanks generally used in the plant. If the facts given indicate satisfactory qualifications, he is further interviewed by the personnel department and, if found satisfactory, is referred by Mr. Wilson, the Personnel Manager, to Guard Lieut. H. F. Thomas. If Thomas approves, the applicant is hired. Occasionally, applicants are investigated by the personnel department in addition to the interviews. Guards are paid their salaries by check through respondent's bank in the same manner and from the same account as are other salaried employees. They are under the direction of Lt. Thomas and Sergeant J. W. Holsclaw, both civilians employed by respondent and also members of the auxiliary military police. The guards receive no compensation from the Army; the respondent makes deductions from their pay for Social Security, income tax, and respondent's hospital and life insurance plans for its employees, they are eligible for membership, upon qualification, in respondent's annuity plan. Respondent gives salary increases to individual guards.

The undersigned finds that the plant guards are employees of the respondent within the meaning of the Act.

2. Events in 1943

In February 1943, as indicated above, an organizational drive commenced among the plant guards at respondent's plant. Application cards for membership in the United Rubber Workers of America were distributed outside the plant entrance among the guards.

Guard Willis Brown testified that sometime during March 1943, Guard Sergeant J. W. Holsclaw approached Brown at the latter's post during working hours and asked Brown whether he was participating in union talk at the plant; that Holsclaw then said ". . . you better not join the Union . . . we are going to

*There is no evidence of the guards ever having been joined in a bargaining unit with production and maintenance employees nor that any such unit was contemplated.

break up that Union talk around here . . . you men can't belong to the union . . . You guards don't have any right to join the Union;" that Holsclaw then asked which union Brown had joined and upon learning that it was the C. I. O. said ". . . that's the worst of the bunch."

Sergeant Holsclaw denied having ever discussed the Union with Brown. The undersigned was, however, impressed with Brown's straightforward manner, and considering, as will hereinafter be discussed, that Holsclaw admitted querying another guard [Livers] as to the Union's organizational campaign, the undersigned credits the testimony of Brown.⁵

In May 1943, respondent posted a notice dated May 24 on the guard's bulletin board in the plant. It was signed by R. V. Yohe, at the time plant manager of the Louisville plant, and stated in part that Lt. Russel [an army officer attached to the Fifth Service Command] had visited the plant on May 22 and would in the future inspect it. The notice continued on to say ". . . Lt. Russell stated that all of our guards were auxiliary military police and although they could belong to unions, *they could take no active part in them. They cannot strike.*" [Italics supplied.]

Shortly thereafter, during the same month, Yohe requested that the plant guards be brought to his office, as he testified, for ". . . two or three reasons. One was that I wished to meet each one of them individually." Guard Brown was brought in individually and guards Beasy and Livers were brought in at different times in separate small groups. Lt. Thomas, Sgt. Holsclaw, Plant Engineer Barnes, and Plant Production Superintendent Richards were identified by Brown, Beasy, and Livers as present at various of the conversations. Yohe testified as follows as to these conversations:

The substance of my conversation with them, as far as the Union was concerned was this; that the guard force, because of the duties assigned to it for the protection of the plant property, were considered in the estimation of the plant management to be part of that management, and because we felt that to exercise the proper protection of the plant itself, it must not be associated with any other group, but those responsible for the operation and safeguarding of the plant.

I also stated that I would not tell them they could not belong to any union or any group. I said that was their business and not mine. *If they did, however, wish to join any bargaining group such as being activated in the plant and organized at that time for production workers, we would transfer them, be glad to transfer them to production work so they could become eligible for that union.* [Italics supplied.]

Guard Brown, however, testified that Yohe told him, in part, that if "we had to belong to a Union then we would have to transfer to some other department." According to guard Beasy, Yohe "advised us against it" [the Union]. Guard Livers quoted Yohe as saying that "he didn't think the guards could belong to the Union." All three guards testified credibly as to these conversations. Their versions of Yohe's talks are consistent and, except as above indicated, are in substantial agreement with his. Although Lt. Russell and Sgt. Holsclaw were called as witnesses by respondent, they were not questioned concerning Yohe's statements. Plant Engineer Barnes and Plant Production Superintendent Richards were not called as witnesses. The undersigned credits the above indicated testimony of guards Brown, Beasy, and Livers as to the context of Yohe's remarks.

⁵ Brown's testimony was clear, concise, and credible. His testimony has been similarly credited, *infra*.

3. Events in 1944

After the talk by Yohe in May 1943, organizational activity among the guards subsided and did not resume until approximately June 1944. At that time, Sergeant Holsclaw approached guard Brown in the plant and asked Brown whether he had been talking to the men about the Union or signing them up, and whether Brown had heard any talk about joining the Union. Holsclaw then told Brown that he was aware of the activity of Brown and another individual (unidentified) in signing up guards in the Union and that it had to be broken up; that the men were making a mistake by joining the Union as they would receive less money with the Union than without one.⁶

During June 1944, guard Livers, while on duty in the plant, was approached by Sergeant Holsclaw and was asked whether he had signed a union application card or was active in the Union. Upon Livers' refusal to discuss the Union, Holsclaw cautioned him against signing a union card and further said, "You are going to get yourself in trouble and a lot of other fellows too."⁷

One morning during June 1944, in the plant cafeteria and before working hours, Brown passed out some application cards to another guard, Erhardt, who brought the cards to Lt. Thomas. The latter testified that he then spoke to Personnel Manager Wilson and told him, ". . . that if Mr. Brown wanted to join the Union that maybe he [Wilson] better ask him to transfer—wanted to join the production union, that's this union, . . . he [Wilson] better talk to him a little and see if he wanted to transfer into the plant." The following day Brown was called into Wilson's office where Wilson spoke to him in Lt. Thomas' presence.

Brown testified that Wilson asked him whether he had been distributing application cards; upon Brown's affirmative reply, Wilson asked him why he was doing so after Yohe had told the guards that they could not belong to the Union; asked him why he wanted the Union; asked him whether it was a matter of more money, in which case Brown might receive less pay with a union in the plant because respondent would not feel obligated to continue bonuses and vacations which were optional with respondent; and then offered him a transfer into the production department, which Brown rejected. Wilson testified that he offered Brown such a transfer but in general denied the balance of Brown's version. Lt. Thomas' version substantially agreed with Wilson's except that, according to Thomas, Wilson did ask Brown whether he wanted more money. In view of the partial admissions of Wilson and Thomas, and inasmuch as the statements attributed to Wilson are consistent with conduct of the respondent as heretofore found, the undersigned accepts Brown's version of this incident.

Between May and July of 1944, Beasy was questioned by Sergeant Holsclaw on several occasions concerning the Union and was told not to join; was told that the guards did not need a union and were getting along fine without one; and that it would do them more harm than good. On the last occasion, which was in July, Holsclaw asked him how many guards had signed up in the Union and told Beasy, "If you hang yourself, that is your fault."⁸

⁶ This finding is based upon the testimony of Brown who is the more credible witness. Sergeant Holsclaw, who has been previously discredited, denied ever discussing the Union with Brown.

⁷ This finding is based upon the credible testimony of Livers. Holsclaw admitted asking Livers whether he had received any union cards from anyone. In view of Holsclaw's partial admission and the fact that he has been elsewhere discredited, Livers' testimony as to this incident is credited.

⁸ This finding is based upon the testimony of Beasy. Holsclaw admitted speaking to Beasy during this period of time but contended that the conversation concerned Beasy's relations with other guards. His testimony was evasive and, as elsewhere, is not credited.

Beasy testified that in July 1944, Lt. Thomas spoke to him in the plant cafeteria and asked whether he knew anything about the activity of the Union in the plant and "how it was getting along." Thomas, however, testified that Beasy took the initiative in raising the topic of the Union at this time and that he (Thomas) merely "asked him [Beasy] how he was getting along and if everything was pleasing him"; that Beasy then asked "Are you referring to the Union?" and Thomas replied that he was not. From his observation of the witnesses and upon the entire record, the undersigned credits Beasy's version of this conversation.

4. Conclusions as to interference, restraint, and coercion

It is clear that from the outset of the organizational drive among respondent's guard employees, respondent engaged in conduct which discouraged and deterred self-organization. The organizational campaign began in February 1943, and was promptly followed in March by counter-activity of Sergeant Holsclaw and in May by the posted notice and by interviews of the guards by Superintendent Yohe. It then came to a standstill for approximately 1 year from May 1943 to May 1944, but, when resumed in June 1944, was promptly met by the interrogations of and statements to guards Brown, Beasy, and Livers by Thomas, Holsclaw and Wilson. The statement of Holsclaw to Livers that the latter would get into trouble if he signed a Union application card, the statement of Wilson to Brown that respondent might discontinue its bonuses and vacations for guards if they joined the Union, and the statement of Holsclaw to Beasy that by joining the Union he would "hang" himself, were threats of economic reprisal calculated to coerce the guards in their organizational efforts.

The statements to the effect that guards were precluded from joining the Union and the notice to the effect that they could take no active part in unions were obviously contrary to principles established by the Board in its interpretations of the Act.⁹

Accordingly, the undersigned finds, on the entire record, that respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in 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 thereof.

V. THE REMEDY

Since it has been found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. United Rubber Workers of America, and Local Union #253 thereof, affiliated with the Congress of Industrial Organizations, are labor organizations within the meaning of Section 2 (5) of the Act.

⁹ *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

2. By interfering with, restraining, and coercing its employees in the exercise of the 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 (1) of the Act.

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, The B. F. Goodrich Company, Louisville, Kentucky, its officers, agents, and assigns shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to join or assist United Rubber Workers of America, or Local 253 thereof, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or any other mutual aid and protection as guaranteed in Section 7 of the Act.

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

(a) Post at its plant at Louisville, Kentucky, copies of the notice attached to the Intermediate Report and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Ninth 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;

(b) File with the Regional Director for the Ninth Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

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 said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective July 12, 1944, as amended, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, 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. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writ-

ing to the Board within ten (10) days from the date of the order transferring the case to the Board.

WILLIAM R. RINGER,
Trial Examiner.

Dated May 15, 1945.

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, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Rubber Workers of America, or Local Union #253 thereof, CIO or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our employees are free to become or remain members of this union, or any other labor organization.

THE B. F. GOODRICH COMPANY, LOUISVILLE, KENTUCKY,
Employer.

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.