

**United States Rubber Company and Milan Independents, Inc.,
Petitioner. Case No. 32-RC-1256. August 12, 1959**

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before John E. Cienki, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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. The Intervenor contends that Petitioner is not a labor organization, and in support thereof was permitted to introduce evidence at the hearing as to Petitioner's formal organization, and alleged assistance given it by the Employer and the Milan Chamber of Commerce. Insofar as this evidence relates to the question of possible employer assistance, we find it is in effect an unfair practice allegation, and not properly litigable in a representation proceeding.² For the reasons stated in *Southeast Portland Drug Association*,³ we shall not consider such evidence, even though admitted in this proceeding. The record indicates that the Petitioner is an organization of the Employer's employees which exists, in part, for the purpose of bargaining collectively with the Employer concerning wages, hours, and conditions of employment. Accordingly, we find that it is a labor organization within the meaning of the Act.⁴

The labor organizations involved claim to represent certain employees of the Employer.

3. The Intervenor contends that its supplemental contract with the Employer, covering employees at the Milan plant here involved, was automatically renewed on April 9, 1959, thereby barring the instant petition filed on April 10, 1959.⁵ No notice was given by the Intervenor or the Employer to amend or terminate this supplemental agreement.

The contract alleged as a bar supplements a companywide agreement executed on April 9, 1957. Timely notice was filed by the president of the Intervenor's international union to terminate the companywide agreement, and on April 9, 1959, said agreement expired. The Petitioner and the Employer contend that the supple-

¹ The Intervenor, Local No. 383, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, was permitted to intervene on the basis of a contractual interest.

² *Grand Union Co.*, 118 NLRB 685, 688.

³ 124 NLRB 467.

⁴ See *Stewart Die Casting Division (Bridgeport) of Stewart Warner Corporation*, 123 NLRB 447.

⁵ By its terms, the supplemental contract was executed on June 5, 1957, and continued operative to April 9, 1959. It contained a 60-day automatic renewal clause providing for notice of intent to modify or terminate "this supplemental agreement."

mental agreement depended for its existence on the master contract, and expired with the master contract on April 9, thereby rendering timely the April 10 petition herein.

The supplemental agreement expressly states that it is "supplemental and subject to" the terms of the companywide agreement. The "union security" provision of the supplement is in itself incomplete, dealing only with the mechanics of checkoff, and specifically requires reference to the union-security clause of the master agreement. Likewise, certain provisions relating to holidays, vacations, overtime pay, and lunch periods are contained only in the master contract. The section on grievances contained in the Milan supplement expressly pertains only to grievances filed "according to the grievance procedure outlined in the Company-wide Agreement."

On the above facts, and the entire record, we find that the Employer and the Intervenor intended the supplemental agreement to be ancillary to and dependent upon the master agreement.⁶ We hold, therefore, that the supplemental agreement necessarily expired with the termination of the master agreement on April 9, 1959, and that it is not a bar to a present determination of representatives.⁷ Accordingly, we find that a question affecting commerce exists within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. 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:⁸

All production and maintenance employees at the Employer's Milan, Tennessee, plant, excluding office clerical employees, laboratory and technical employees, professional employees, watchmen and guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁶ See *New York Butchers Dressed Meat Company*, 81 NLRB 855.

⁷ See *U.S. Rubber Company*, 115 NLRB 240.

⁸ The appropriate unit is as stipulated by the parties, except that the Petitioner would exclude, and the Intervenor include, four employees classified as firemen-watchmen. During winter months, these employees tend boilers as well as perform watchmen's duties. They work rotating shifts, so that at least one is on duty at all times. They control access to the Employer's premises, and at night punch timeclocks in the course of their patrols. We find the firemen-watchmen are guards, and exclude them. *Consolidated Rendering Company*, 117 NLRB 1784.

Southeast Portland Drug Association and Independent Pharmacists and Clerks Association, Petitioner. *Case No. 36-RC-1393.*
August 12, 1959

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed, a hearing was held before Robert J. Wiener, hearing officer. The hearing officer's rulings made at the 124 NLRB No. 56.