

In the Matter of THE FIRESTONE TIRE & RUBBER COMPANY (SYNTHETIC RUBBER DIVISION, PORT NECHES, TEXAS) and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE NO. 31

In the Matter of THE FIRESTONE TIRE & RUBBER COMPANY (SYNTHETIC RUBBER DIVISION, PORT NECHES, TEXAS) and OIL WORKERS INTERNATIONAL UNION (CIO)

In the Matter of THE FIRESTONE TIRE & RUBBER COMPANY (SYNTHETIC RUBBER DIVISION, PORT NECHES, TEXAS) and PIPE FITTERS LOCAL UNION NO. 195 (AFFILIATE OF UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS & STEAM FITTERS OF THE UNITED STATES AND CANADA, AFL)

Cases Nos. 16-R-831, 16-R-837 and 16-R-900, respectively.—Decided May 29, 1944

*Mr. T. S. Markey*, of Akron, Ohio, and *Mr. K. K. Wyatt*, of Port Neches, Tex., for the Company.

*Mr. Earl H. Boswell*, of Orange, Tex., *Mr. L. E. Prothro*, of Beaumont, Tex., and *Mr. W. L. Grant*, of Houston, Tex., for the IAM.

*Messrs. F. H. Mitchell* and *Lloyd Crane*, of Port Neches, Tex., for Oil Workers.

*Mr. W. J. Burkett*, of Beaumont, Tex., for the Pipe Fitters.

*Mr. Orvil Inge*, of Fort Worth, Tex., and *Mr. J. L. Richard*, of Beaumont, Tex., for the Operating Engineers.

*Mr. Lee Cockerell*, of Beaumont, Tex., for the Teamsters.

*Mr. Joe A. Verret*, of Port Arthur, Tex., for the IBEW.

*Mr. Walter Monroe*, of Port Arthur, Tex., for the Carpenters and the Painters.

*Mr. Seymour J. Spelman*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon petitions duly filed by International Association of Machinists, District Lodge No. 31, herein called the IAM; Oil Workers Inter-

national Union (CIO), herein called the Oil Workers; and Pipe Fitters Local Union No. 195 (affiliate of United Association of Journey-men Plumbers & Steam Fitters of the United States and Canada), herein called the Pipe Fitters; alleging that questions affecting commerce had arisen concerning the representation of employees of The Firestone Tire & Rubber Company (Synthetic Rubber Division, Port Neches, Texas), herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert F. Proctor, Trial Examiner. Said hearing was held at Beaumont, Texas, on April 20 and 21, 1944. The Company, the IAM, the Oil Workers, the Pipe Fitters, International Brotherhood of Electrical Workers, Local Union 390, AFL, herein called the IBEW, International Union of Operating Engineers, AFL, herein called the Operating Engineers, International Brotherhood of Carpenters and Joiners of America, Local 610, AFL, herein called the Carpenters, United Brotherhood of Painters, Decorators, and Paper Hangers of America, Local No. 328, AFL, herein called the Painters, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 393, AFL, herein called the Teamsters, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

The Firestone Tire & Rubber Company, an Ohio corporation with its principal offices at Akron, Ohio, is engaged in the manufacture, sale, and distribution of rubber products. It operates plants in various parts of the country, one of which, the sole plant involved herein, is located at Port Neches, Texas, where it is engaged in the production of synthetic rubber. The raw materials utilized by the Company and the finished products produced at the Port Neches plant are of substantial quantity and value. Approximately 60 percent of the raw materials utilized at the Port Neches plant is shipped from points outside the State of Texas, and all of the finished product is shipped to points outside the State of Texas. The property of the Port Neches plant is owned by the Defense Plant Corporation, an instrumentality of the United States Government. The Company has complete charge of operations and full responsibility of employing personnel.

The Company admits, and we find, that it is engaged in commerce at its Port Neches plant within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Association of Machinists, District Lodge No. 31; Pipe Fitters Local Union No. 195 (affiliate of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada); International Brotherhood of Electrical Workers, Local Union 390; International Union of Operating Engineers; International Brotherhood of Carpenters and Joiners of America, Local 610; United Brotherhood of Painters, Decorators and Paper Hangers of America, Local No. 328; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 393, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.<sup>1</sup>

## III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to any of the labor organizations involved herein until it has been certified by the Board in an appropriate unit.

A statement of the Regional Director, introduced in evidence at the hearing, and statements of the Trial Examiner made at the hearing, indicate that each of the labor organizations involved herein represents a substantial number of employees in the unit it alleges to be appropriate.<sup>2</sup>

<sup>1</sup> The unions affiliated with the American Federation of Labor will sometimes be referred to collectively hereinafter as the AFL Unions

<sup>2</sup> The following table summarizes the statements of the Regional Director and the Trial Examiner referred to above:

Name of Union	Number of Employees in unit alleged appropriate by union	Number of Employees in alleged unit represented by union*
Machinists.....	51	49
Oil Workers.....	563	327
Pipe Fitters.....	41	42
I. B. E. W.....	27	23
Operating Engineers.....	124	29
Painters & Carpenters.....	14	17
Teamsters.....	35	27

\*The evidence of representation consists of authorization cards and application-for-membership cards which bear dates since October 1943 and which, except for those submitted by the Operating Engineers, were checked against the Company's pay roll of April 16, 1944.

We find that questions affecting commerce have arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

##### *General contentions of the parties*

The Oil Workers contends that all production, maintenance, food preparation and food dispensing employees at the Company's Port Neches plant, with certain exceptions, constitute an appropriate bargaining unit. The AFL Unions, except the Operating Engineers, seek units comprising, in the main, employees engaged in maintenance work. The Operating Engineers proposes a unit consisting chiefly of production employees. The Company took no precise position on the unit issue, stating only that it believed that certain named categories of its employees should be given representation in some unit or units.

##### *The plant organization*

The Company's Port Neches synthetic rubber producing plant consists of 16 buildings and functions as an integrated manufacturing unit comprising two main operating divisions: (1) the processing or production division and (2) the maintenance division. A third unit, a cafeteria, is housed in a separate building and serves the employees of a neighboring plant operated by a different company as well as employees of the Company. The processing division consists of the following departments: (1) tank farm; (2) pigment preparation; (3) reactor building; (4) recovery building; (5) rubber processing building; and (6) warehousing, shipping and receiving. The maintenance division is located in a machine shop, in and out of which the various maintenance employees work. The plant is entirely devoted to the manufacture of synthetic rubber products for the Rubber Reserve Corporation, an instrumentality of the United States Government.

##### *The unit proposed by the Carpenters*

The Carpenters seeks to establish a bargaining unit of carpenters, carpenters' helpers and apprentices, and operators of wood working machines, excluding technical, clerical, and supervisory employees. These employees work out of the machine shop performing maintenance work throughout the plant.

##### *The unit proposed by the Painters*

The Painters' proposed bargaining unit consists of all employees engaged in painting, either with brush or spray gun, and in the mixing

of paint, together with their helpers, excluding clerical and supervisory employees. These employees also work out of the machine shop of the maintenance division, performing maintenance painting throughout the plant.

*The unit proposed by the IBEW*

The IBEW desires to represent all instrument men, apprentices and helpers, all electricians, apprentices and helpers, and telephone and teletype operators, excluding clerical and supervisory employees. The electricians and instrument men are employed in the maintenance division. The telephone and teletype operators work in the Company's general offices, under the supervision of the office manager.

*The unit proposed by the Pipe Fitters*

The Pipe Fitters contends that all pipe fitters, pipe fitters' helpers, welders, operators of pipe turning machine, and employees performing pipe insulating work in and about the plant, excluding clerical and supervisory employees, constitute an appropriate unit. All of these employees, except the welders, are exclusively engaged in maintenance pipe fitting and closely related work.

*The unit proposed by the Teamsters*

The Teamsters seeks to represent the following group of employees: the so-called "yak" drivers, all employees engaged in loading and unloading cars, ice delivery men, stockroom clerks, and stockroom helpers who work in warehouses and storerooms, and receiving and shipping clerks.<sup>3</sup>

*The unit proposed by the IAM*

The IAM seeks to represent the following unit: All employees of the maintenance division, excluding plant protection, technical, clerical, and supervisory employees, and also excluding, except as stated below, those maintenance employees sought by the other AFL Unions. This unit, which may thus be described as a residual maintenance unit, would include 29 maintenance mechanics, 1 sheet metal worker, 1 machinist, 5 machinist helpers, 10 oilers, 4 welders, and "tool room clerks." The 4 welders are also claimed by the Pipe Fitters and the Oil Workers, and, as will appear below, the 10 oilers are claimed by the Operating Engineers and the Oil Workers. These conflicting claims

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<sup>3</sup> In its petition, the Teamsters stated its unit contention in somewhat different terms. The record shows, however, that the designations employed above more clearly identify the employees sought to be represented.

and other specific inclusions and exclusions will be treated in detail below.

*The unit proposed by the Operating Engineers*

The Operating Engineers desires to represent all production and mechanical operators, and their helpers, oilers, laboratory employees, boiler firemen and stationary engineer operators, excluding laborers, clerical and supervisory employees. Except for the laboratory employees and oilers, the categories designated by the Operating Engineers do not appear on the Company's classified pay roll and the exact unit contention of the Operating Engineers is therefore obscure. However, the record suggests that it is interested in representing, in addition to oilers and laboratory assistants, chemical operators and chemical operator helpers. These employees, approximately 326 in number, constitute the major part of the production staff.

*The unit proposed by the Oil Workers*

The Oil Workers seeks to represent the following unit: all production, maintenance, food preparation and food dispensing employees, including laboratory assistants below the rank of chemical engineer and technician, and stockroom helpers who devote less than 50 percent of their time to clerical work, but excluding telephone and teletype operators, timekeepers, nurses, receiving and shipping clerks, all other clerical employees, supervisors, and office, technical, professional and plant-protection employees.

In the absence of any collective bargaining history among the employees in the Port Neches plant, we are of the opinion that the employees in the units proposed by the AFL Unions, except as discussed below, might properly constitute separate units or be merged in the plant-wide unit proposed by the Oil Workers. In these circumstances we shall suspend our determination of the appropriate unit or units, pending the outcome of separate elections which we shall hereinafter direct.

As suggested above, there remains for consideration the general nature and specific composition of a number of the proposed groups.

*The IBEW group*

The IBEW proposes to include in the same group electricians, instrument men, and telephone and teletype operators. The instrument men, 13 in number, are engaged in maintaining various types of instruments throughout the plant. The Company agreed that these employees should be given the opportunity for representation in some

bargaining unit. The record fails to establish that the instrument men, on the basis of skill or function, belong in a craft unit of electricians. We shall therefore establish them as a separate voting group. The Company is opposed to the inclusion of telephone and teletype operators in any bargaining group. There are 4 telephone operators and 1 teletype operator. They work in the general offices of the plant, under the supervision of the general office manager. They perform no maintenance electrical work and do not appear to come in contact with the electricians. Since all other office employees are excluded from this and other units, we shall exclude the telephone and teletype operators.

*The Pipe Fitters group*

In addition to pipe fitters and their helpers, the Pipe Fitters seeks to include in its group the welders, who are also claimed by the IAM and the Oil Workers. There are four of these employees engaged in welding pipes and repairing damaged machine parts with electric and acetylene torches. The record affords no basis for allocating these employees either to the IAM group or the Pipe Fitters group, for, functionally, they are not clearly identified with either group. We shall therefore include them in the residual voting group hereinafter established. The Pipe Fitters would include in its unit employees engaged in pipe insulating work. There are two such employees but they are classified as "maintenance mechanics," a general category which is claimed by the IAM. However, at the hearing, the IAM relinquished its claim to those employees, since it was clear that their work is closely associated with pipe fitting. We shall therefore include them in the Pipe Fitters group. In all other respects, the group claimed by the Pipe Fitters is functionally coherent.

*The Teamsters group*

The Teamsters would include in its group "yak" drivers, employees engaged in loading and unloading cars, ice delivery men, certain stockroom clerks and helpers, and receiving and shipping clerks. There are 12 "yak" drivers. They are classified as "laborers" and drive gasoline powered light trucks which are used to pick up material at the warehouse and deliver it to box cars. It does not appear that these employees customarily perform any other kind of work. We are of the opinion, and find, that they constitute a sufficiently homogeneous and functionally coherent group to be established as a separate voting group. However, the facts do not justify the inclusion in this group of the other named categories of employees. The duties of the receiving and shipping clerks and the stockroom clerks are principally clerical in nature. The ice delivery men deliver ice to drink-

ing fountains around the plant. We perceive no basis for including such diverse and unrelated groups in a unit of truck drivers. Accordingly, we shall exclude them from the Teamsters' group and shall establish the "yak" drivers as a separate voting group.

#### *The IAM group*

The IAM is seeking what may be described as a residual craft maintenance unit. It would include 29 maintenance mechanics, 1 sheet metal worker, 10 oilers, 1 machinist, 5 machinist helpers, 4 welders, and "toolroom clerks." We have heretofore excluded the welders from the IAM group on functional grounds. We also believe that oilers should be excluded for the same reason. There are 10 oilers who are also claimed by the Operating Engineers and the Oil Workers. The record shows only that the oilers are engaged in oiling machines throughout the plant, but it fails to establish their functional identity with the other groups in the IAM's proposed unit. We shall therefore include them in the residual production and maintenance voting group hereinafter established.

As stated above, the IAM is claiming toolroom clerks. There is no such classification on the pay roll, although it does not appear that toolroom work is performed by some employees classified as stockroom helpers. However, since the record is not clear that there are any such employees regularly assigned to toolrooms, we shall exclude them from the IAM voting group. In all other respects, the group proposed by the IAM is functionally coherent and homogeneous, and we shall establish it as a separate voting group.

#### *The Operating Engineers and the Oil Workers groups*

As stated heretofore, the Oil Workers is seeking a plant-wide unit comprising, in addition to production and maintenance employees, those employees who are engaged in the preparation and dispensing of food. These employees, nine in number, are classified as waitresses, cook, and dishwasher. They work in the cafeteria—a separate building, under the supervision of a cafeteria manager. The cafeteria serves Firestone employees and also employees of a neighboring plant operated by a different employer. The Company is opposed to their inclusion in a unit of production and maintenance employees with whom they have little mutual interest or contact. We find merit in the Company's position, but are of the opinion that these cafeteria employees—a homogeneous group—should be afforded an opportunity for representation for the purposes of collective bargaining. Accordingly, we shall establish them as a separate voting group. The Company is also opposed to the inclusion of laboratory assistants.

The laboratory assistants whom the Oil Workers seeks to represent are hourly paid, non-professional employees engaged in routine sampling, testing, and analyzing. Their work, non-technical in nature, does not require a high degree of skill or specialized training. In view of these facts, we shall include the hourly paid, non-technical laboratory assistants in the residual voting group.

The unit proposed by the Operating Engineers is, in our opinion, inappropriate for the purposes of collective bargaining. It is neither plant-wide, departmental, nor craft in character. It would include some production employees such as chemical operators and their helpers, but not others, such as laborers. It would include some maintenance employees, such as oilers, but not others. However, as heretofore stated, it does include the majority of the production employees and therefore it most nearly resembles the voting group of the Oil Workers. We shall therefore permit the Operating Engineers to compete with the Oil Workers in the residual production and maintenance voting group.

All the parties agreed, and we find, that all technical, professional, clerical and plant-protection employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, shall be excluded from the voting groups.

Upon the basis of the entire record in the case and in accordance with the foregoing findings of fact, we shall direct that elections be held among the employees of the Company's Port Neches plant within each of the voting groups described below. There shall be excluded from each of said voting groups, in addition to others specifically mentioned therein, all technical, professional, clerical, plant-protection employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action. The respective voting groups shall be as follows:

(1) All carpenters, carpenters' helpers and apprentices and operators of wood working machines, to determine whether they desire to be represented by the Carpenters, or by the Oil Workers, for the purposes of collective bargaining, or by neither;

(2) All employees engaged in painting, either with brush or spray gun, and in the mixing of paint, and their helpers, to determine whether they desire to be represented by the Painters, or by the Oil Workers, for the purposes of collective bargaining, or by neither;

(3) All instrument men, apprentices and helpers, to determine whether they desire to be represented by the IBEW, or by the Oil Workers, for the purposes of collective bargaining, or by neither;

(4) All electricians, apprentices and helpers, to determine whether they desire to be represented by the IBEW, or by the Oil Workers, for the purposes of collective bargaining, or by neither;

(5) All pipe fitters, pipe fitters' helpers, operators of pipe turning machines, and employees performing pipe insulating work, to determine whether they desire to be represented by the Pipe Fitters; or by the Oil Workers, for the purposes of collective bargaining, or by neither;

(6) All "yak" drivers, to determine whether they desire to be represented by the Teamsters, or by the Oil Workers, for the purposes of collective bargaining, or by neither;

(7) All sheet-metal workers, maintenance mechanics (except those performing pipe insulating work); machinists, and machinists' helpers, to determine whether they desire to be represented by the IAM, or by the Oil Workers, for the purposes of collective bargaining, or by neither;<sup>4</sup>

(8) All cafeteria employees, including waitresses, cooks, and dishwashers, to determine whether or not they desire to be represented by the Oil Workers, for the purposes of collective bargaining; and

(9) All remaining production and maintenance employees, including chemical operators, chemical operator helpers, laborers, laboratory assistants, oilers, welders, and stockroom helpers who devote less than 50 percent of their time to clerical work, but excluding telephone and teletype operators, timekeepers, nurses, and receiving and shipping clerks, to determine whether they desire to be represented by the Oil Workers, or by the Operating Engineers, for the purposes of collective bargaining, or by neither.

As previously stated, there will be no final determination of the appropriate unit or units pending the results of the elections.

We shall direct that the questions which have arisen concerning the representation of employees of the Company's Port Neches plant be resolved, in part, by means of elections by secret ballot among the employees of the Port Neches plant within the voting groups hereinbefore specified. The employees eligible to vote shall be those who were employed in eligible categories during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the customary limitations and additions set forth in the Direction.<sup>5</sup>

<sup>4</sup> For the sake of clear identification, the employees in the IAM voting group are listed according to their designation on the Company's pay roll.

<sup>5</sup> At the hearing the participating labor organizations requested that their respective names appear on the ballots as hereinafter set forth in the Direction of Elections.

## DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Firestone Tire & Rubber Company, at Port Neches, Texas, elections by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees of the Company in each of the groups described below who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and further including employees in the armed forces of the United States who present themselves in person at the polls, but excluding employees who have since quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the elections, and further excluding all technical, professional, clerical and plant-protection employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

(1) All carpenters, carpenters' helpers and apprentices, and operators of wood working machines, to determine whether they desire to be represented by Carpenters Local 610, Port Arthur, Texas, AFL, or by Oil Workers International Union, CIO, for the purposes of collective bargaining, or by neither;

(2) All employees engaged in painting, either with brush or spray gun, and in the mixing of paint, and their helpers, to determine whether they desire to be represented by Painters Local No. 328, Port Arthur, Texas, AFL, or by Oil Workers International Union, CIO, for the purposes of collective bargaining, or by neither;

(3) All instrument men, apprentices and helpers, to determine whether they desire to be represented by Electrical Workers Local Union 390, AFL, or by Oil Workers International Union, CIO, for the purposes of collective bargaining, or by neither;

(4) All electricians, apprentices and helpers, to determine whether they desire to be represented by Electrical Workers, Local Union 390,

AFL, or by Oil Workers International Union, CIO, for the purposes of collective bargaining, or by neither;

(5) All pipe fitters, pipe fitter helpers, operators of pipe turning machines, and employees performing pipe insulating work, to determine whether they desire to be represented by Pipe Fitters and Welders Local Union No. 195, AFL, or by Oil Workers International Union, CIO, for the purposes of collective bargaining, or by neither;

(6) All "yak" drivers, to determine whether they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 393, AFL, or by Oil Workers International Union, CIO, for the purposes of collective bargaining, or by neither;

(7) All sheet-metal workers, maintenance mechanics (except those performing pipe insulating work), machinists, and machinists' helpers, to determine whether they desire to be represented by International Association of Machinists, District Lodge No. 31, AFL, or by Oil Workers International Union, CIO, for the purposes of collective bargaining, or by neither;

(8) All cafeteria employees, including waitresses, cooks, and dishwashers, to determine whether or not they desire to be represented by Oil Workers International Union, CIO, for the purposes of collective bargaining; and

(9) All remaining production and maintenance employees, including chemical operators, chemical operator helpers, laborers, laboratory assistants, oilers, welders, and stockroom helpers who devote less than 50 percent of their time to clerical work, but excluding telephone and teletype operators, timekeepers, nurses, and receiving and shipping clerks, to determine whether they desire to be represented by Oil Workers International Union, CIO, or by International Union of Operating Engineers, Local Union Number 450, AFL, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Elections.

[See *infra*, 56 N. L. R. B. 1310 for Supplemental Decision and Amendment to Direction of Elections.]