

In the Matter of SAMSON TIRE AND RUBBER CORPORATION and UNITED
RUBBER WORKERS OF AMERICA, LOCAL NO. 44

Case No. R-34

Rubber Industry—Election Ordered: controversy concerning representation of employees—refusal by employer to recognize union as exclusive representative; request by substantial number in appropriate unit; rival organizations—question affecting commerce: confusion and unrest among employees; strike threatened—*Unit Appropriate for Collective Bargaining:* production employees—*Certification of Representatives.*

Mr. Leonard S. Janofsky for the Board.

Finlayson, Bennett & Morrow, by *Mr. Frank G. Finlayson* and *Mr. Hubert I. Morrow*, and *Mr. E. S. Williams*, all of Los Angeles, Cal., for the Company.

Mr. G. B. Roberts, of Akron, Ohio, for the Union.

Mr. Joseph Rosenfarb, of counsel to the Board.

DIRECTION OF ELECTION

August 3, 1936

The National Labor Relations Board, having found that a question affecting commerce has arisen concerning the representation of the production employees, exclusive of office help, watchmen, medical staff, supervisors, foremen and other executives, of the Samson Tire and Rubber Corporation, Los Angeles, California, and that said employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, and acting pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of said Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby

DIRECTS that as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with the Samson Tire and Rubber Corporation, an election by secret ballot shall be conducted within a period of twenty (20) days after the date of this Direction of Election, under the direction and supervision of the Acting Regional Director for the Twenty First Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules

and Regulations—Series 1, as amended, among the production employees, exclusive of office help, watchmen, medical staff, supervisors, foremen and other executives, of the Samson Tire and Rubber Corporation, on the payroll as of the date of this Direction of Election, to determine whether they desire to be represented by United Rubber Workers of America, Local No. 44, or by the Factory Council.

MR. EDWIN S. SMITH took no part in the consideration of the above Direction of Election.

[SAME TITLE]

DECISION
AND
CERTIFICATION OF REPRESENTATIVES

September 10, 1936

STATEMENT OF CASE

On December 11, 1935, United Rubber Workers of America, Local No. 44, hereinafter called the Union, filed with the Regional Director for the Twenty First Region a petition for investigation and certification of representatives of the production employees, exclusive of office help, watchmen, medical staff, supervisors, foremen and other executives, of the Samson Tire and Rubber Corporation, Los Angeles, California, hereinafter called the Company. On April 4, 1936, the National Labor Relations Board, hereinafter called the Board, acting pursuant to Section 9 (c) of the National Labor Relations Act, hereinafter called the Act, and Article III, Section 3 of the National Labor Relations Board Rules and Regulations—Series 1, as amended, issued an order authorizing the Regional Director for the Twenty First Region to conduct an investigation and to provide for an appropriate hearing in connection therewith. On April 6, 1936, the Regional Director for the Twenty First Region, acting pursuant to the aforesaid order of the Board, issued a notice of hearing. Thereafter the Board, by appropriate order, postponed the date of hearing and extended the Company's time to answer. On April 15, 1936, the Company filed a motion to dismiss, wherein it questioned the constitutionality of the Act, and, without waiving its rights thereunder, an answer denying, *inter alia*, that the Union represents a majority of the production employees.

The hearing was held in Los Angeles, California before Rollin L. McNitt, a Trial Examiner duly designated by the Board, on April 20, 21, 23, 24, 28, May 15, 18, and 20, 1936. The Union and the Com-

pany were represented by counsel and participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties. The Trial Examiner denied the motion to dismiss, and his ruling is hereby affirmed.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of the production employees, exclusive of office help, watchmen, medical staff, supervisors, foremen, and other executives, of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of said Rules and Regulations—Series 1, as amended, issued a Direction of Election on August 3, 1936, in which it was found that said employees constitute a unit appropriate for the purposes of collective bargaining, and in which the Board designated the Acting Regional Director for the Twenty First Region as its agent to conduct the election. Merely for the purpose of expediting the election and thus to insure to the employees of the Company the full benefit of their right to collective bargaining as early as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

The election was conducted on August 21 and 22, 1936. Pursuant to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, an Intermediate Report upon the election was subsequently prepared by E. S. Neal, who conducted the election as agent of the Board, and duly served upon the parties. The Intermediate Report found that a majority of the employees eligible to vote participated in the election and that the United Rubber Workers of America, Local No. 44, had been selected by a majority of those voting. No objections to the ballot or to the Intermediate Report were filed by the parties.

Upon the entire record in the case, including the pleadings, the stenographic report of the hearing, and the documentary and other evidence received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

The Samson Tire and Rubber Corporation is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at Los Angeles, California, where it owns and operates a plant producing rubber tires, rubber tubes and rubber accessories. It is a unit of the United States Rubber Company which is a well integrated vertical organization with world-wide rami-

fications.¹ By means of the holding company and interlocking directorates the United States Rubber Company owns and controls 62 subsidiaries² through which its multifarious business is done, the encompassing extent of which can be gathered from the fact that it has eight per cent non-cumulative first preferred stock—\$100 par value, of which it has issued 690,000 shares, and of which there are 3,359 unissued shares; and common stock—no par value, 1,545,959 shares. One of these subsidiaries is the Samson Tire and Rubber Corporation. Eighty eight per cent of its stock is owned by the Samson Corporation, a wholly-owned subsidiary of the Meyer Rubber Company, which in turn is a wholly owned subsidiary of the United States Rubber Company. Furthermore, a number of the company's directors occupy corresponding positions with the Samson Corporation, the Meyer Rubber Company and the United States Rubber Company. An agreement³ entered into between the Company and the United States Rubber Company on January 1, 1931, and apparently still in force, provides in substance that the United States Rubber Company shall furnish the Company with patent rights and with legal, technical, financial and administrative assistance; that the production operations of the Company shall be directed to meet the requirements of the United States Rubber Company as to quality, quantity and date of production; and that the products furnished by the Company shall be sold by the United States Rubber Company or its subsidiaries wherever they desire and particularly in the States of Arizona, California, Idaho, Montana, Nevada, Oregon, Utah and Washington, and in Alaska and the Hawaiian Islands. The Company is admittedly a division or plant of the United States Rubber Company.⁴ Indeed

¹ Board's Exhibit No. 11e, p. 4. The Company's application for registration with the Securities and Exchange Commission, dated March 30, 1935, states

"The registrant through its subsidiaries manufactures and sells rubber goods of practically every kind, the principal general classifications being tires, waterproof and canvas rubber soled footwear, waterproof clothing, mechanical rubber goods used in industry such as hose, packing, belting, etc., and general products such as bathing apparel, druggists' sundries, rubber thread, "LASTEX", golf balls, soles and heels, etc. Products manufactured are listed in more detail under Item 12.

"Products are sold to all classes of trade throughout the world. Sales branches, usually with complete warehouse stocks are operated in the principal cities. A number of retail tire stores, where gasoline, oil, batteries, and other automotive products are also marketed, are operated in the United States. Sales, depending upon the nature of the product, are made to the consumer, retailer, dealer, jobber, chain store, mail order house, etc.

"The Company, through its plantations' subsidiaries, produces a substantial portion of its own crude rubber requirements in Malaya and Sumatra; and, through its principal operating subsidiary, U. S. Rubber Products, Inc., manufactures in its three mills in the South practically all of the cotton cord used in the production of its tires. Other materials are also produced, such as chemicals, reclaimed rubber, metal lasts and buckles and slide fasteners for clothing and footwear."

² Board's Exhibit No. 11e, p. 3.

³ Board's Exhibit No. 18a

⁴ Trial Examiner's Exhibit No. 1, which is a pamphlet containing information about working conditions in the Company plant, is addressed to the workers as employees of the United States Rubber Company and contains on its cover the seal of the United States

so complete is the control of the former by the latter that the labor relations in the Los Angeles plant are governed directly from the New York office of the United States Rubber Company.⁵

The chief raw materials used by the Company consist of crude rubber, latex, fabric and a number of other miscellaneous ingredients. A substantial part of the raw materials other than crude rubber and latex are shipped to the Company from localities outside of

Rubber Company and the following legend: "Samson Tire and Rubber Corporation Division of United States Rubber Co." Likewise Board's Exhibit No. 1a which is the by-laws of the Factory Council contains this statement among others of a similar nature: "This organization shall be known as the Factory Council of the Samson Plant of the United States Rubber Company"

⁵ The following are abstracts from Board's Exhibit Nos 20, 21, and 22, which are the official minutes of meetings of the Factory Council:

"REMARKS BY MR. C. S. CHING

"Chairman Rossier introduced Mr C S Ching, Director of Industrial and Public Relations of the United States Rubber Company. Mr. Ching spoke at some length on economic conditions, N I R A., and other subjects, saying in part.

"The management of the United States Rubber Company is endeavoring to conduct its affairs with character and a sense of fairness in all their decisions. The company is trying to meet situations as they come up, endeavoring to create a spirit of friendliness and cooperation in all their plants, realizing that the success of any organization can only be attained by cooperation and mutual understanding between management and employees."

"SAFETY

"Mr Quirk reported that with the exception of the one lost-time accident in the Mill Room in January, our accident experience for this year has been very good. In May and June Samson was in a tie for first place in the United States Rubber Co Safety Contest, and if every employee will promote and practice safety at all times during the rest of the year, Samson employees stand a very good chance of winning the \$300 prize for the greatest improvement in safety shown by any U S plant. In connection with safety, Mr. Quirk pointed out that plant cleanliness and tidiness materially aids in reducing accidents and accident hazards."

"VACATIONS

"Mr. Carpenter reported that as yet no definite vacation plan has been released by our New York office. He pointed out that due to the number of plants and their different locations, varying local conditions, etc, it is his personal opinion that it will be difficult if not impossible to work out a plan which will be effective this year. However, it is expected that a definite policy will be decided upon for next year."

"VISITOR TO PLANT

"Mr. Carpenter informed representatives that recently Mr L D. Tompkins, Vice President of the United States Rubber Co. and General Mgr. of the Tire Division, and Mr. J. B. Brady, Pacific Coast Sales Mgr, recently made a two day visit to our plant. Mr. Tompkins was very favorably impressed by the clean and orderly condition of the plant as a whole. It is gratifying to hear such favorable comments and it is hoped that everyone will continue with their best efforts to make Samson the cleanest and safest plant in the industry."

"LEAVE OF ABSENCE

"Mr. Rossier asked if it is necessary to write to New York to secure a 30-day leave of absence for an employee. It was explained that a leave of absence of 30 days or less may be approved by Mr. Carpenter. If an employee desires a leave of more than 30 days it is necessary to secure approval from our New York office, due to the fact that our Group Insurance and Retirement and Savings are handled in New York.

"If an employee desires a leave of absence he should first make arrangements with his foreman to be away from work. After securing approval of the foreman, the employee should then contact Mr. Quirk, who will get final approval from Mr. Carpenter, if the leave is for 30 days or less, or from the Board of Benefits and Pensions in New York if the leave is in excess of 30 days."

the State of California. All fabric used by the Company comes from mills owned and operated by United States Rubber Products, Inc., a subsidiary of the United States Rubber Company, in South Carolina, Georgia and Tennessee. The Company itself pays the expense of shipment to its plant. The miscellaneous ingredients are in some instances obtained directly from producers in States other than California, in some instances are purchased in California and shipped in from without the State at the sellers' direction, and in some instances are purchased in California from sellers who already have the goods in stock within the State.

All crude rubber and latex used by the Company is purchased in foreign countries for the account of a subsidiary of the United States Rubber Company, usually United States Rubber Products, Inc. It is shipped to Los Angeles by boat, and six employees of the Company sometimes aid in the unloading of latex from the boat. No employees of the Company engage in the unloading of crude rubber or in its transportation to the plant. At the plant the crude rubber is stored as the property of United States Rubber Products, Inc. When it is needed for use the Company secures authority from United States Rubber Products, Inc., to take delivery. Twenty per cent of the latex similarly stored by the Company is requisitioned by the United States Rubber Products, Inc., and is shipped to other plants of the United States Rubber Company. The remaining latex and all of the crude rubber are used by the Company.

Approximately 85 per cent by weight of the raw materials which are used by the Company at its plant come from outside of the State of California.

Substantial amounts of the Company's finished products are shipped by it to and sold by it in States and Territories of the United States other than California, including Washington, Oregon, Montana, Idaho, Wyoming, Utah, Nevada, Arizona, New Mexico, Oklahoma, Texas and Hawaii. The Company's sales are made through subsidiaries of the United States Rubber Company, usually United States Rubber Products, Inc. The Company also fills orders from the United States Rubber Export Co., Ltd., a subsidiary of the United States Rubber Company, for tires and tubes to be shipped to and sold in foreign countries. Sixty per cent of the finished products of the Company are shipped to and distributed at points in California, and the remaining 40 per cent are destined to points outside of California.

The plant of the Company has a daily capacity of approximately 5,000 tires and 5,000 tubes. During 1935 it operated at approximately 80 per cent of its capacity. In connection with its operations at the plant the Company employs about 680 production employees.

Of these, about 658 are engaged at the plant solely in production work with the exception of four who, together with two of the remaining 22, occasionally unload the liquid rubber called latex from vessels at the Port of San Pedro into tank cars. The remaining 22 employees divide their time between work in production processes proper and in connection with the handling of raw materials received at the plant and the handling of the finished products for shipment from the plant. At the times when they are engaged in handling the finished products for shipment, the 22 employees haul the same from the place of storage in the plant and load them on freight cars which a common carrier, namely, a railroad, has caused to be placed on a siding adjacent to a shipping platform that is connected with the plant. At other times these 22 employees haul the finished products from the place of storage in the plant to the shipping platform from whence they are loaded on trucks by the drivers, none of whom are employees of the Company.

The aforesaid operations of the Company constitute a continuous flow of trade, traffic and commerce among the several States.

II. THE FACTORY COUNCIL

In April, 1933, a so-called Factory Council was inaugurated among the employees at the plant under the guidance and inspiration of the management of the Company. According to Frederick S. Carpenter, the factory manager, he proposed the Factory Council plan to a group of employees that the management chose, who adopted the by-laws that the management proposed without substantial change. According to the by-laws the official name of the Factory Council is "Factory Council of the Samson Plant of the United States Rubber Company". Ten employee representatives elected by the employees, together with ten management representatives appointed by the management, constitute the Factory Council. All employees of the plant who have been in the service of the Company for 30 days, exclusive of foremen, assistant foremen, inspectors and executives, are eligible to vote for representatives to the Factory Council. At an election held among the employees of the plant in June, 1933, the Factory Council plan was approved. At the same election and by the same ballot the employee representatives were also chosen. No rival organization or plan existed at the time in the plant. The Factory Council has existed ever since in the plant and holds regular meetings. The employees are not required to pay dues to the Factory Council, all its expenses being paid by the Company. A stenographer who is secretary to one of the executives of the Company makes a shorthand report of the proceedings of the Factory Council and keeps its minutes.

III. THE UNION AND ITS ATTEMPTS TO BARGAIN COLLECTIVELY

The Union in the plant dates its existence since June, 1933, soon after the establishment of the Factory Council. It was then known as the Tire and Rubber Workers Union Local No. 18304, a Federal Labor Union, organized among the employees of the four major tire and rubber companies in Los Angeles. In February, 1934, a petition containing powers of attorney authorizing the Union to act as their representative for purposes of collective bargaining was circularized among the employees of the Company. Five hundred and twenty out of 600 signed the powers of attorney. In June, 1934, the membership of Local No. 18304 voted to subdivide it into four locals, each covering the employees of one of the four companies in Los Angeles. In July, 1934, a charter was issued by the American Federation of Labor creating United Rubber Workers Federal Labor Union No. 19747, consisting of members of former Local No. 18304 who were still employed at the plant of the Company. In the fall of 1934, after the management of the Company refused to recognize the Union as the collective bargaining representative of the employees of the Company, the Union requested the old National Labor Relations Board to make an investigation to ascertain among the employees of the Company their choice of a representative for purposes of collective bargaining. In November, 1934, under the supervision of the old Board, the signatures on the aforementioned powers of attorney were compared with those appearing on the payroll of the Company, and 375 out of 491 were found to be identical. Since this total still constituted a majority of the employees of the Company the Union was certified by the old Board on May 15, 1935, as the collective bargaining representative of the employees of the Company. Though repeated attempts were thereafter made by Local No. 19747 to bargain collectively with the Company, the Company refused to negotiate with the Union.

In September, 1935, at a convention held in Akron, Ohio, the United Rubber Workers of America, an International Union affiliated with the American Federation of Labor, was organized. On October 1, 1935, a charter was granted to the members of Local No. 19747 establishing them as Local 44 of the International.

There have been no revocations of the powers of attorney designating Local 18304 as the collective bargaining representative of the employees of the plant. The financial secretary of the Union testified that at the time of the hearing there were approximately between 500 and 550 members of the Union. Only employees of the Company are eligible to membership in the Union. The Company however refuses to recognize the Union as the representative of the employees for the purposes of collective bargaining.

IV. THE EXISTENCE OF A QUESTION CONCERNING REPRESENTATION AND ITS EFFECT ON COMMERCE

The Factory Council during its existence has taken up for adjustment a not inconsiderable number of employee grievances. However, the evidence is overwhelming that dissatisfaction exists among a considerable number of employees with the Factory Council as a vehicle for negotiation with the management of the Company. Among those testifying to this fact were officers of the Factory Council who were also officers of the Union. Indeed the evidence indicates that if the employees of the Company be not given the opportunity of selecting their own representative for purposes of collective bargaining, a strike involving all of the employees of the Company and threatening to stop its operations would be resorted to.

The Board concludes that a question exists concerning the representation of the employees of the Company. The controversy has caused confusion, uneasiness, and unrest among the employees, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE BARGAINING UNIT

There is no controversy on the point that the production employees, exclusive of office help, watchmen, medical staff, supervisors, foremen and other executives, constitute a unit appropriate for the purposes of collective bargaining.

THE TRIAL EXAMINER'S RULINGS ON MOTIONS

On motion of counsel for the Company, the Trial Examiner struck from the record the testimony of the financial secretary of the Union that its membership was upwards of 500. The reason assigned for this ruling was that the Union refused to submit its membership rolls for examination. This the Union was at liberty to do, since it is the established policy of the Board not to compel the Union to produce the membership rolls for examination lest its members be exposed to possible discrimination by the employer. Of course the membership rolls would have to be produced for examination if they were to serve as a basis for a certification of representatives without the means of an election. However, that was not the position of the Union. Admittedly, all that the Union requested was an election to determine the issue. Such being the case it was not incumbent on the Union to prove that it had a majority of the employees of the Company. Where a labor organization asks the Board to hold an election among employees in a bargaining unit to determine the

representative for purposes of collective bargaining, in order that an election be held it is necessary to prove only that a dispute exists among the employees as to the identity of the representative. It is not necessary for the labor organization to prove that its membership constitutes a majority of the employees in the plant.

Counsel for the Company, in cross-examining the president of the Union, elicited a statement from him to the effect that several employees of the Company were advocating a strike in the event an election was not held to determine the collective bargaining representative in the plant. When the witness refused to divulge the names of these employees, the Trial Examiner on the motion of counsel for the Company struck from the record the testimony of the witness pertaining to the matter of the strike. The witness was justified in refusing to reveal the names of the employees advocating a strike, since it is the policy of the Board not to expose workers to possible discrimination for advocating resort to legitimate labor activity.

However, there is other evidence in the record showing that a dispute exists among the employees concerning representation, and showing the existence of tension and uneasiness among them. The Trial Examiner's rulings were therefore harmless, and we leave them undisturbed.

THE INTERMEDIATE REPORT UPON THE ELECTION

The Intermediate Report upon the election, prepared and filed by E. S. Neal, Acting Regional Director of the Twenty First Region, who conducted the election as agent of the Board, found that a majority of the employees eligible to vote participated in the election and that the United Rubber Workers of America, Local No. 44, had been selected by a majority of those voting. The evidence clearly shows that those voting for the United Rubber Workers of America, Local No. 44, constituted a majority of those eligible to vote. The Intermediate Report should have so found.

CONCLUSIONS OF LAW

Upon the basis of the above findings the following conclusions of law are made by the Board:

1. A question affecting commerce has arisen concerning the representation of the employees of Samson Tire and Rubber Corporation, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The production employees, exclusive of office help, watchmen, medical staff, supervisors, foremen and other executives, constitute

a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

A petition for certification of representatives having been duly filed, and an investigation and hearing having been duly authorized and conducted, and an election by secret ballot having been conducted on August 21 and 22, 1936, among the production employees of the Samson Tire and Rubber Corporation, located at Los Angeles, California, pursuant to the National Labor Relations Board's Direction of Election dated August 3, 1936, and an Intermediate Report upon the secret ballot having been prepared by E. S. Neal, the agent of the Board designated to conduct the election, and duly served upon the parties, and no objections to the ballot and to the Intermediate Report having been filed with the Board by the parties pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

THEREFORE, 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, approved July 5, 1935, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED THAT United Rubber Workers of America, Local No. 44, has been selected by a majority of the production employees, exclusive of office help, watchmen, medical staff, supervisors, foremen and other executives, of the Samson Tire and Rubber Corporation, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of said Act, United Rubber Workers of America, Local No. 44, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.