

In the Matter of THE B. F. GOODRICH COMPANY<sup>1</sup> and UNITED  
RUBBER WORKERS OF AMERICA, LOCAL NO. 43

Case No. R-227

*Rubber Products Industry—Investigation of Representatives:* controversy concerning representation of employees; rival organizations; substantial doubt as to majority status; refusal by employer to recognize either of rival organizations as exclusive representative; threat of strike—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; eligibility for membership in both rival organizations; laboratory and factory office employees included in; nature of duties—*Election Ordered—Certification of Representatives.*

Mr. David Sokol for the Board.

Andrews, Blanche & Kline, by Mr. Eugene H. Blanche and Mr. J. L. McKnight, of Los Angeles, Cal., for The B. F. Goodrich Company.

Mr. George B. Roberts, for United Rubber Workers of America, Local No. 43.

Fogel, Beman & Jones, by Mr. Moe M. Fogel and Mr. Marshall Hickson, of Los Angeles, Cal., for Independent Rubber Workers Union, Local No. 2.

Mr. Millard L. Midonick, of counsel to the Board.

DIRECTION OF ELECTION

August 27, 1937

The National Labor Relations Board, having found upon an examination of the record in the above matter that a question affecting commerce has arisen concerning the representation of the employees of The B. F. Goodrich Company in its Los Angeles, California, plant, except supervisory employees and salesmen, and that all of the employees of the Company at its Los Angeles, California, plant, except supervisory, clerical, and salaried employees, and salesmen, but including factory office employees and laboratory workers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, 49 Stat. 449, and acting pursuant to the power vested

<sup>1</sup> The B. F. Goodrich Company was erroneously designated in the petition and amended petition for investigation and certification of representatives as "B. F. Goodrich Company."

in it 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 its investigation to ascertain representatives for the purposes of collective bargaining with The B. F. Goodrich Company at its Los Angeles, California, plant, an election by secret ballot shall be conducted within a period of ten (10) days after the date of this Direction of Election, under the direction and supervision of the 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 employees of The B. F. Goodrich Company in its Los Angeles, California, plant, except supervisory, clerical and salaried employees, but including factory office employees and laboratory workers, on its pay roll as of June 4, 1937, and excluding all who have since quit or been discharged for cause, to determine whether they desire to be represented by United Rubber Workers of America, Local No. 43, or Independent Rubber Workers Union, Local No. 2, for the purposes of collective bargaining with The B. F. Goodrich Company.

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

[SAME TITLE]

## DECISION

AND

## CERTIFICATION OF REPRESENTATIVES

*October 8, 1937*

### STATEMENT OF THE CASE

On June 4, 1937, United Rubber Workers of America, Local No. 43, herein called the United, filed with the Regional Director for the Twenty-first Region (Los Angeles, California), a petition alleging that a question affecting commerce had arisen concerning the representation of the employees in the Los Angeles, California, plant of The B. F. Goodrich Company, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 24, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to

conduct an investigation and to provide for an appropriate hearing in connection therewith. On July 8, 1937, the Regional Director issued a notice of hearing to be held at Los Angeles, California, on July 19, 1937. On July 16, 1937, the United filed an amended petition naming Independent Rubber Workers Union, Local No. 2, herein called the Independent, as a labor organization also claiming to represent some of the production and maintenance employees at the Los Angeles, California, plant of the Company. On July 16, 1937, the Regional Director issued an amended notice of hearing to be held at Los Angeles, California, on July 26, 1937, and on July 22, 1937, a second amended notice postponing the hearing until August 2, 1937, was issued. On July 22, 1937, the Independent petitioned for leave to intervene in this proceeding.

Pursuant to notice, a hearing was held in Los Angeles, California, on August 2, 1937, before Carey McWilliams, the Trial Examiner duly designated by the Board. The Board, the Company, the United, and the Independent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all the parties. During the course of the hearing, the Trial Examiner made numerous rulings on motions and on objections to the admission of evidence. We have reviewed all of the Trial Examiner's rulings and find that no prejudicial errors were committed. His rulings are hereby affirmed.

Pursuant to leave granted by the Trial Examiner, counsel for the Company submitted a brief on the question of the unit appropriate for purposes of collective bargaining.

On August 27, 1937, after examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of the employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it issued a Direction of Election designating the Regional Director as its agent to conduct an election among all of the employees of the Company at its Los Angeles, California, plant, except supervisory, clerical, and salaried employees, and salesmen, but including factory office employees and laboratory workers, which the Board found to be the unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. For the purpose of expediting the election and thus insuring 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.

Pursuant to the Board's Direction of Election, an election by secret ballot was conducted on September 8, 1937, by the Regional Director for the Twenty-first Region among all of the employees of the Company constituting the bargaining unit found appropriate by the Board. On September 11, 1937, the Regional Director issued and duly served upon the parties to the proceeding his Intermediate Report upon the secret ballot.

As to the results of the secret ballot, the Regional Director reported the following:

Total number eligible.....	704
Total ballots cast.....	562
Total number of blank ballots.....	5
Total number of void ballots.....	0
Total number of ballots cast for United Rubber Workers of America, Local No. 43.....	406
Total number of ballots cast for Independent Rubber Workers Union, Local No. 2.....	144
Total number of challenged ballots.....	7

No objection was filed which, in the opinion of the Regional Director, raised a substantial and material issue with respect to the conduct of the ballot, and the Regional Director forwarded the Intermediate Report to the Board in Washington, D. C.

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

#### FINDINGS OF FACT

##### I. THE COMPANY AND ITS BUSINESS

The Company is a corporation organized and existing since 1912 under the laws of the State of New York, and its principal executive offices are located in the City of New York. It succeeded to the business of an Ohio corporation with the same name, incorporated in 1870 by Dr. Benjamin F. Goodrich. The Company owns and controls widely scattered subsidiaries with which we are not concerned in this proceeding. The main plants of the Company are located at Akron, Ohio, where its general business offices are also situated. The Company's plant, located at Los Angeles, California, which it calls its Pacific Goodrich plant, is the subject of the petition in this case. This plant has a floor space of approximately 401,000 square feet, and in it are employed about 1,000 persons.

The Company, taking all of its plants and subsidiaries together, manufactures complete lines of solid and pneumatic tires, sold principally under the brand names "Goodrich", "Goodrich Silvertown", "Miller", "Diamond", "Brunswick", and "Hood", and airplane tires, tubes, accessories, drug sundries, hose, belting, packing, tubing,

mechanical goods, hard rubber products, rubber and canvas footwear, cutlass bearings—altogether more than 32,000 kinds of articles of rubber.

The Company's products are distributed and sold in the United States by subsidiary selling companies maintaining 501 branches, warehouses and retail stores, and in 100 foreign countries, through 210 wholesale distributors.

The principal materials entering into the production of articles at the Company's Los Angeles plant are pigments, fabric, reclaimed rubber, crude rubber, tube carton pieces, valve hardware, head wire, and tire wrapping. All such commodities are transported to the plant by rail, truck, or boat, none of which are either owned or controlled by the Company. Of all raw materials used, 91.35 per cent by weight (97.22 per cent by value) are transported to the plant from sources outside the State of California.<sup>1</sup>

The Los Angeles plant manufactures the following articles in amounts compiled from the records of January 1, 1936 to June 30, 1937:

Tires-----	1,942,035 units
Tubes -----	1,871,319 units
Rubber cement-----	1,066,641 pounds
Camel-back-----	672,500 pounds

Only the movement of tires, apparently typical of tubes and the other finished products,<sup>2</sup> can be clearly traced from the record. Slightly more than 50 per cent of the tires produced by the Los Angeles plant are shipped to customers within the State of California. Slightly fewer than 50 per cent are shipped to purchasers or branches in areas of the United States outside of California and west

<sup>1</sup> For the period from January 1, 1936 to June 30, 1937, the following chart of raw material sources has been prepared by the Company from its records, and it was read in evidence, with the consent of counsel for the Board and for the Company, as the testimony of the General Manager of the Company's Los Angeles plant:

Sources	Pounds	Percentage of pounds	Value	Percentage of value
Within the State of California-----	5,298,607	8 65	\$265,169 31	2 78
Without the State of California—Delivery F. O. B Los Angeles-----	28,175,994	46 02	\$3,352,706 00	35 10
Without the State of California—F. O. B shipping point-----	3,642,457	5 95	\$376,772 37	3 94
Shipments by Akron plant of the Company from points outside the State of California to the Los Angeles plant—F. O. B shipping point-----	24,106,553	39 38	\$5,558,672 71	58.18

More detailed statistics are to be found in Board Exhibit No. 6.

<sup>2</sup> Cf. Board Exhibit No. 7 (tabulation of types of commodities, and their weights and destinations, shipped from the Company's Los Angeles plant during the month of July 1937; it was testified by a competent witness that the month of July was comparable to the other months of 1937); Board Exhibit No. 6.

of the Rocky Mountains, Missouri, Kansas, Texas, Oklahoma, Hawaiian Islands. and Philippine Islands.<sup>3</sup>

## II. THE ORGANIZATIONS INVOLVED

United Rubber Workers of America, Local No. 43, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all employees in or around the Company's Los Angeles plant, including factory office and laboratory workers, except supervisory employees having the power to hire or discharge, watchmen, and clerical workers in the general business office.

Independent Rubber Workers Union, Local No. 2, is an incorporated labor organization. It admits to membership all employees in the Company's Los Angeles plant except "those connected with the management."

## III. THE APPROPRIATE UNIT

The Independent did not dispute, except in a few particulars, the contention of the United, as set forth in its petition and at the hearing, that the production and maintenance employees, exclusive of foremen, supervisory, and managerial employees, constitute an appropriate unit. The disagreement with the United arose from the desire of the Independent to exclude from the appropriate unit a group of approximately 12 laboratory employees and a group of approximately 25 factory office employees, both of which groups the United considered properly parts of the production and maintenance unit.

The Company contended that the laboratory and factory office employees represent the management in the checking and control of production departments. It urges that the differences between the production and maintenance employees and the laboratory and factory office employees in respect to hours of labor, basis of compensation,<sup>4</sup> and type of work were sufficient to indicate that no community of interest exists between the latter and the former groups. Other considerations, however, persuade us to the view, as urged by the United, that the laboratory and factory office employees should be

<sup>3</sup>The following table, prepared and introduced in evidence in the manner of the chart set forth in note 1 above, covers the period from January 1, 1936 to June 30, 1937:

Tires sold in California and shipped to California customers.....	1, 019, 242
Tires sold in California and shipped to points outside the State of California but within the boundaries of the United States.....	398, 903
Tires transferred to Goodrich branches outside the State of California.....	577, 194
Tires sold in California and shipped to the Hawaiian Islands.....	24, 638
Tires shipped to Company branch in Manila, Philippine Islands.....	18, 452

<sup>4</sup>There is nothing in the record to indicate that there is a marked difference in the rate of compensation, as distinguished from the manner or basis of computing it.

included with the larger production and maintenance group as one unit for the purposes of collective bargaining.

At the outset, it appears that both groups of employees in dispute are eligible for membership in each of the two labor organizations. Neither organization, therefore, would find it difficult to represent the laboratory and the factory office employees as part of the production and maintenance unit, and both organizations have thus in effect admitted that all of the employees under discussion are appropriately grouped in one unit.<sup>5</sup> Moreover, at least five of the laboratory employees have expressed a desire to be represented by the United and to participate with production and maintenance employees in elections, and it was not contradicted that several laboratory and factory office employees were numbered among the membership of the United at the time of hearing.<sup>6</sup> The Independent, a relatively new organization formed shortly after April 12, 1937, had apparently taken no steps to organize these employees prior to the time of the hearing. The United is an organization considerably older than the Independent. The argument advanced by the Company, that separate bargaining units along the lines now desired by it were employed by an employee's representation plan, which appears to have been dominated by the Company until its disestablishment on April 12, 1937, is entitled to little, if any, weight.

The function of the laboratory is to provide quality control during the manufacturing process. The laboratory workers inspect, analyze, and check raw material entering the plant, and, if found satisfactory, release it for production. As the raw material is carried through the processes of production, it is further tested and inspected at various stages by the laboratory employees, some of whom are permanently stationed in the production department while some intermittently return to the main laboratory situated in the connecting maintenance or mechanical building. The most explicit description of the work of the laboratory employees relates to the inspection of the finished cord, fabric, and rubber which form part of the tire. Samples of cord are unraveled and the number of strands counted, and its stretch and tensile strength are tested. All the rolls of fabric are run over an electric light which reveals defects to the eye of laboratory employees. Samples of rubber are tested for hardness and stretched to the breaking point. Finished tires are subjected to vigorous wear simulating road conditions, and they are then cut to pieces and the effects observed.

This description reveals that the great bulk of the duties of labora-

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<sup>5</sup> Cf. *Matter of Huth & James Shoe Mfg. Company and United Shoe Workers of America*, Case No. R-174, decided August 3, 1937, (*supra*, p. 220); *Matter of Acklin Stamping Company and International Union, United Automobile Workers of America, Local No. 12*, Case No. R-142, decided May 28, 1937, 2 N. L. R. B. 872.

<sup>6</sup> Cf. *Matter of Mergenthaler Linotype Company and United Electrical and Radio Workers of America*, Case No. R-186, decided September 1, 1937, (*supra*, p. 131).

tory employees consist in simple and repeated applications of the same chemical or mechanical tests. Their duties thus require little, if any, more expert training than that required of numerous other forms of skilled labor. There is no indication in the record that any of the laboratory workers are expert chemists with college or highly technical training, such as we have found to be on a separate plane of skill from ordinary production employees and for that reason without community of interest with them.<sup>7</sup> The laboratory workers exercise no discretionary or supervisory powers.

Similar considerations apply to the factory office employees. This group is to be distinguished from general, or front, office employees, a group of purely clerical and managerial employees whom neither the United nor the Independent desires to represent. The functions of the factory office are divided into two departments, technical and control.

The factory technical department receives tire designs and specifications, presumably from the main plants of the Company at Akron, Ohio. It is the duty of the employees of the technical department to determine and report whether the production departments follow those designs and specifications in the manufacture of tires. Again no indication is to be found that the duties of the technical department employees are to be considered different from other skilled workers. They exercise few, if any, discretionary and managerial powers.

The factory control department is further subdivided into the time-study division, the tire and tube scheduling division, and the material scheduling division. The time-study division employees carry pad, pencil, and stop-watch for the purpose of observing and recording the average time that the average production worker requires to perform various recurrent operations. The records of the time-study employees are then sent to the managerial officers of the Company for the determination of piece-work wage rates under the Bedeaux system.<sup>8</sup> The record does not indicate that the duties of the time-study employees are other than routine in character.<sup>9</sup> They exercise neither discretionary nor supervisory powers over the manual workers.<sup>10</sup>

<sup>7</sup> *Matter of Pennsylvania Salt Manufacturing Company and Local Union No. 12055 of Division No. 50, United Mine Workers of America*, Case No. R-262, decided September 24, 1937 (*infra*, p. 741); *cf. Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125*, Case No. R-127, decided June 30, 1937, 2 N. L. R. B. 772 (college trained engineers, draftsmen, and tool designers)

<sup>8</sup> For a description of the Bedeaux system, see *Matter of The Boss Manufacturing Company and International Glove Workers' Union of America, Local No. 85*, Cases Nos. C-115 and R-40, note 6, decided August 27, 1937 (*supra*, p. 400).

<sup>9</sup> *Cf. Matter of Mergenthaler Linotype Company and United Electrical and Radio Workers of America, Linotype Local No. 1222*, Case No. R-186, decided September 1, 1937, *supra*, p. 131 (time checkers).

<sup>10</sup> *Cf. Matter of Bendix Products Corporation and International Union, United Automobile Workers of America, Bendix Local No. 9*, Case No. R-220, decided September 16, 1937, *infra*, p. 682 (time checkers)

The tire and tube scheduling division employees receive monthly orders for each ensuing month for various amounts of the several types of tires and other commodities. The orders come from the management or general office of the Los Angeles plant. The scheduling employees thereupon determine the time necessary to produce the required amount of each article, and they fix the days during which the production department shall run or produce each article. The material scheduling division employees will thereupon take the tire run or schedule fixed by the scheduling division, and they will plan to have the necessary materials ready for the production department on the days scheduled for producing the specified articles. The record does not indicate that the duties of the employees of either the tire and tube scheduling or the material scheduling division are other than routine in character.<sup>11</sup> Despite the fact that the employees in the laboratory and factory office observe and check, and in a limited sense direct, the work of the production department, it is clear that their duties cannot be said to be supervisory in the usual sense of having the power to hire, discharge, promote, demote, or take part in the determination of matters of general policy.

The eligibility of laboratory and factory office employees to membership in either organization, the actual membership of several of each group in the United, and the nature of their duties, all compel us to take the view that the laboratory and factory office employees should be included with production and maintenance workers in the bargaining unit.

In order to insure the Company's employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that all of the employees of the Company at its Los Angeles, California, plant, except supervisory, clerical, and salaried employees, and salesmen, but including factory office employees and laboratory workers, constitute a unit appropriate for the purposes of collective bargaining.

#### IV. THE QUESTION CONCERNING REPRESENTATION

During the period after July 1934, two labor organizations existed in the Company's Los Angeles plant, the United and Company Union Co-operative Plan. The latter organization was discontinued on or immediately after April 12, 1937, the date of the Supreme Court decisions upholding the constitutionality of the Act. Very soon thereafter, the Independent was formed, and it has since competed with the United for members in the Company's plant.

<sup>11</sup> See *supra* note 9.

Bitter rivalry and open hostility have attended the membership drives and the organizational activities of these unions.

The Company admitted at the hearing that it did not know whether the United or the Independent represents a majority of employees within the appropriate unit. It did not assert, however, that neither organization represented a majority. Early in June 1937, the Company rejected the demand of the United for recognition as the exclusive bargaining representative of all the employees in the unit described above. The United claimed at that time, and has continued to claim, that it represents a majority in that unit. This claim is disputed by the Independent, which, however, did not know at the time of the hearing whether it represented a majority of employees. The Company does not now recognize either the United or the Independent as exclusive bargaining representative for all of the employees in the unit.

Although the Company did not seem desirous of resolving the question concerning representation, both the United and the Independent indicated that an election by secret ballot would properly ease the friction and unrest resulting from the present unsettled state of affairs.

We find, therefore, that a question has arisen concerning the representation of the employees of the Company.

We further find that an election by secret ballot is necessary to resolve this question.

#### V. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON COMMERCE

The record is replete with credible testimony revealing dissension, unrest, and bitter feeling among the members of the rival organizations in the plant. The question of representation has caused excessive rivalry which has several times brought the United to the verge of a strike. On July 18, 1937, a strike vote was actually taken by the United because of the denial of exclusive bargaining rights and also because of dissatisfaction with wages, hours, and other conditions of employment, a dissatisfaction aggravated by the absence of an orderly method of collective bargaining.

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of employees of the Los Angeles, California, plant of The B. F. Goodrich Rubber Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. All of the employees of The B. F. Goodrich Company at its Los Angeles, California, plant, except supervisory, clerical, and salaried employees, and salesmen, but including factory office employees and laboratory workers, constitute a unit appropriate for purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. United Rubber Workers of America, Local No. 43, having been selected by the majority of the employees in the aforesaid unit, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

## CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, 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. 43, has been designated and selected by a majority of all of the employees of The B. F. Goodrich Company at its Los Angeles, California, plant, except supervisory, clerical, and salaried employees, and salesmen, but including factory office employees and laboratory workers, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, United Rubber Workers of America, Local No. 43, 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.