

In the Matter of THE GATES RUBBER COMPANY and DENVER PRINTING PRESSMEN AND ASSISTANTS UNION No. 40, AND DENVER TYPOGRAPHICAL UNION, No. 49

*Cases Nos. R-697 and R-698.—Decided July 14, 1938*

*Rubber Industry—Investigation of Representatives:* controversy concerning representation of employees. employer's refusal to recognize unions unless and until each was chosen by majority of employees in a secret election—*Units Appropriate for Collective Bargaining:* (1) employees in the letter press printing department, excluding clerical employees; (2) employees in the composing room, stipulation as to—*Representatives:* proof of choice: comparison of lists of employees with union membership application cards, authorizations, and uncontroverted testimony concerning membership; testimony of certain union members and applicants for membership in union to the effect that they no longer wished to be represented by the unions, held relevant—*Certification of Representatives:* upon proof of majority status.

*Mr. Charles A. Graham,* for the Board.

*Mr. Hudson Moore* and *Mr. Dayton Denious,* of Denver, Colo., for the Company.

*Mr. W. D. Ament,* of Denver, Colo., for the Typographical Union.

*Mr. S. W. Johnson,* of Denver, Colo., for the Pressmen's Union.

*Mr. Francis Hoague,* of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On March 7, 1938, Denver Typographical Union No. 49, herein called the Typographical Union, and on March 10, 1938, Denver Printing Pressmen and Assistants Union No. 40, herein called the Pressmen's Union, filed with the Regional Director for the Twenty-second Region (Denver, Colorado) separate petitions, each alleging that a question affecting commerce had arisen concerning the representation of employees of The Gates Rubber Company, Denver, Colorado, 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 March 22, 1938, the National Labor Relations Board, herein called

the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. The Board, acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that the cases be consolidated for purposes of hearing.

On March 22, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Typographical Union, and upon the Pressmen's Union. Pursuant to the notice, a hearing was held on March 28 and 29, 1938, at Denver, Colorado, before Waldo C. Holden, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, and the Typographical Union and the Pressmen's Union by representatives. All parties 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 parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. Thereafter the Company filed a brief in each case. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. Except as set forth in Section VI hereof, the rulings are hereby affirmed.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY<sup>1</sup>

The Gates Rubber Company is engaged at its plant in Denver, Colorado, in the processing, fabrication, and manufacture of automobile tires, inner tubes, hose, v-belts, and similar products of the rubber industry. Of the raw materials purchased by the Company for its operations, approximately 75 per cent are shipped to the Company from outside the State. During 1937 the Company's gross sales exceeded \$11,000,000 in value, approximately \$8,000,000 worth of which were shipped to purchasers outside of Colorado.

The Company maintains at its plant a print shop which is principally engaged in printing stationery, forms for the office, factory, and sales departments, labels to indicate the manner of shipment and to designate the type of product, catalogues, advertising, and other printed matter for use by the Company. The print shop is divided

<sup>1</sup> At the hearing counsel for the Board and counsel for the Company stipulated the facts set out in this section.

into four départements. The instant proceedings involve only the employees of the letter press printing department and the composing room.

## II. THE ORGANIZATIONS INVOLVED

Denver Printing Pressmen and Assistants Union No. 40 is a labor organization affiliated with the American Federation of Labor, admitting to its membership all employees of the Company who work in the letter press printing department, excluding clerical employees.

Denver Typographical Union No. 49 is a labor organization affiliated with the American Federation of Labor, admitting to its membership all employees of the Company who work in the composing room.

## III. THE QUESTION CONCERNING REPRESENTATION

In the latter part of February 1938, the Pressmen's Union and the Typographical Union each sent a letter to the Company requesting a conference to discuss collective bargaining on behalf of the employees within the letter press printing department and the composing room, respectively. At the hearing counsel for the Company and counsel for the Board stipulated that at conferences held March 8, 1937 and March 14, 1937, respectively, the Company refused to bargain collectively with either Union "unless and until each union was chosen by the majority of the employees in a secret election."

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

## IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

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.

## V. THE APPROPRIATE UNIT

The petitions of the Pressmen's Union and the Typographical Union specified, counsel for the Company and counsel for the Board stipulated, and we find, that the employees of the Company working in the letter press printing department, excluding clerical employees, on the one hand, and the employees of the Company working in the composing room, on the other hand, constitute units appropriate for

purposes of collective bargaining and that said units will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

## VI. THE DETERMINATION OF REPRESENTATIVES

### A. *Letter press printing department*

At the hearing, there was introduced in evidence a list of employees in the letter press printing department as of March 7, 1938, showing the names of 15 employees within the first of the units which we have found above to be appropriate. There were also introduced in evidence cards signed by 10 of the said 15 employees, authorizing the Pressmen's Union to represent them for purposes of collective bargaining. Eight of the cards were signed in September 1937 and two in January 1938. The secretary-treasurer of the Pressmen's Union testified that another of the said 15 employees was a member of the Pressmen's Union of several years' standing. This testimony was not controverted.

Two employees who had signed the authorization blanks testified in response to questioning by counsel for the Company that they no longer wished the Pressmen's Union to represent them. This testimony was excluded by the Trial Examiner. We are of the opinion that this testimony was relevant to the question whether the Pressmen's Union should be certified on the record as the bargaining representative, and we therefore hold that the Trial Examiner erred in excluding it. However, the evidence as to the authority of the Pressmen's Union to represent nine employees remained unimpeached.

The Company introduced evidence relative to individual contracts covering wages, hours, and working conditions, which it had made with 10 employees within the appropriate unit, including 6 of the employees who had previously signed cards designating the Pressmen's Union to represent them. The Trial Examiner refused, however, to permit the introduction in evidence of the individual contracts. We find this ruling to be correct. The fact that an employee signs an individual contract cannot be held to reflect the desires of such employee regarding representation and does not constitute any bar to collective bargaining on his behalf.

We find that the Pressmen's Union has been designated and selected by a majority of the employees of the Company in the letter press printing department, excluding clerical employees, as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees within such unit for the purposes of collective bargaining, and we will so certify.

*B. Composing room*

At the hearing there was introduced into evidence a list of employees in the composing room as of March 3, 1938, showing the names of eight employees within the second of the units which we have found above to be appropriate. There were also introduced in evidence forms signed by six of the said eight employees, applying for membership in the Typographical Union. Five of the forms were signed in February 1938, and one in September 1937. We have consistently taken the view that an application for membership in a union is adequate evidence of the desire of the applicant in regard to representation, even though the applications have not been accepted by the union at the time of the hearing. The secretary-treasurer of the Typographical Union testified that another of the said eight employees was a member of the Typographical Union of several years' standing. This testimony was not controverted.

The Trial Examiner excluded testimony of two of the applicants to the effect that they no longer wished the Typographical Union to represent them. As stated above this exclusion was error, and we will consider the testimony. However, evidence of the designation of the Typographical Union as their representative by five of the eight composing room employees remained unimpeached. The Company introduced evidence relative to individual contracts covering wages, hours, and working conditions which it had made with six employees, including five of the employees who had previously signed applications for membership in the Typographical Union. The Trial Examiner refused, however, to permit the introduction in evidence of the individual contracts. For reasons set out above, we find this ruling to be correct.

We find that the Typographical Union has been designated and selected by a majority of the employees of the Company in the composing room as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees within such unit for the purposes of collective bargaining, and we will so certify.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

**CONCLUSIONS OF LAW**

1. A question affecting commerce has arisen concerning the representation of employees of The Gates Rubber Company, Denver, Colorado, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of the Company in the letter press printing department, excluding clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Denver Printing Pressmen and Assistants Union No. 40 is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

4. The employees of the Company in the composing room constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

5. Denver Typographical Union No. 49 is the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

### 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, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Denver Printing Pressmen and Assistants Union No. 40 has been designated and selected by a majority of the employees of The Gates Rubber Company, Denver, Colorado, in the letter press printing department, excluding clerical employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Denver Printing Pressmen and Assistants Union No. 40 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; and

IT IS HEREBY CERTIFIED that Denver Typographical Union No. 49 has been designated and selected by a majority of the employees of The Gates Rubber Company, Denver, Colorado, in the composing room, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Denver Typographical Union No. 49 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.