

In the Matter of WEST VIRGINIA PULP & PAPER Co. and UNITED
PAPER WORKERS, C. I. O.

Case No. 5-R-1312.—Decided November 23, 1943

Mr. David H. Werther, for the Board.

Messrs. Burgess Osterhaut, E. Nobles Lowe, and J. W. Townsen, of New York City; and *Mr. C. E. Boyd*, of Covington, Va., for the Company.

Mr. Samuel L. Rothbard, of Newark, N. J.; *Messrs. Ernest B. Pugh and Frank Grasso*, of Richmond, Va.; and *Mr. William Sherr*, of Covington, Va., for the C. I. O.

Mr. Joseph A. Padway, by *Mr. James A. Glenn*, of Washington, D. C.; *Mr. S. A. Stephens*, of Fort Edward, N. Y.; and *Mr. J. T. Whitaker*, of Covington, Va., for the Paper Mill Workers and Local 152.

Mr. E. E. Hollyfield, of Charleston, W. Va., and *Mr. Walter E. Shuey*, of Covington, Va., for District 50.

Mr. Lawson Wimberly, of Washington, D. C., for the I. B. E. W.
Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon petition duly filed by United Paper Workers, affiliated with the Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of West Virginia Pulp & Paper Co., Covington, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before C. W. Whittemore, Trial Examiner. Said hearing was held at Covington, Virginia, on October 8, 1943. The Board; the Company; the C. I. O.; International Brotherhood of Pulp, Sulphite and Paper Mill Workers, herein called the Paper Mill Workers, and its local at Covington, Local 152, herein called Local 152; United Mine Workers of America, District 50; and International Brother-

hood of Electrical Workers, A. F. L., herein called the I. B. E. W., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ At the commencement of the hearing, the Paper Mill Workers moved to dismiss this proceeding. The Trial Examiner did not rule upon this motion. For reasons which appear in Section III, below, the motion is granted. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.²

On October 21, 1943, the C. I. O. filed a motion to reopen the record in this proceeding and to amend the petition with respect to the unit set forth therein. For reasons which appear in Section III, below, the motion is denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

West Virginia Pulp & Paper Co. is engaged in the manufacture and distribution of pulp and paper mill products and chemical byproducts. Its principal office is at New York City and it owns and operates mills at Covington, Virginia; Mechanicsville, New York; Williamsburg and Tyrone, Pennsylvania; Luke, Maryland; and Charleston, South Carolina. The Company's plant at Covington is directly concerned in this proceeding.

The Company annually purchases for its Covington plant materials valued in excess of \$500,000, of which approximately 50 percent is brought to the plant from points outside Virginia. The value of products annually finished at the Covington plant exceed \$14,500,000, of which approximately 98 percent is shipped from the plant to points outside Virginia.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

¹ On November 18, 1942, the Board certified the I. B. E. W. as exclusive bargaining representative of electrical employees at the Company's Covington plant. *Matter of West Virginia Pulp & Paper Co.*, 45 N. L. R. B. 59. The I. B. E. W., being duly served with notice of the instant proceeding, appeared at the hearing to protect its interest with respect to these employees. When it appeared that none of the other labor organizations who were made parties to this proceeding desired to represent the electrical employees at the Covington plant, the I. B. E. W. withdrew from the hearing and took no further part therein.

² On October 21 and 22, 1943, the Company filed and duly served upon the parties motions to correct the transcript of record made at the hearing. In the absence of objections, the motions are granted. The transcript of the record made at the hearing is hereby deemed, and is, corrected in accordance with the motions of the Company.

II. THE ORGANIZATIONS INVOLVED

United Paper Workers is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

International Brotherhood of Pulp, Sulphite and Paper Mill Workers is a labor organization affiliated with the American Federation of Labor, Local 152, chartered by the Paper Mill Workers, admits to membership employees of the Company.

United Mine Workers of America, District 50, is an unaffiliated labor organization, admitting to membership employees of the Company.

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED APPROPRIATE UNIT

The Company is chiefly engaged in the manufacture of paper and paperboard and incidental byproducts. Its principal office is at New York City, where the work of its several plants is coordinated and general policies with respect to labor and safety rules are determined. The Company operates six plants, located respectively at Covington, Virginia; Mechanicsville, New York; Williamsburg and Tyrone, Pennsylvania; Luke,³ Maryland; and Charleston, South Carolina. The vice president of the Company is in general charge of all manufacturing processes. Each plant has a local manager in whom are vested wide powers of plant supervision. Plant managers consult with one another through the central office concerning over-all problems. Each plant has a purchasing department. Starch, sizes, and other principal raw products which can be better handled in an over-all contract are purchased through the Company's New York City office. Wood, another principal raw product, is purchased in part through the main office and in part through the offices of the several plants. Machinery is sometimes purchased through the plant offices and sometimes through the main office. Major engineering problems are worked out in the main office and machinery is purchased either through that office or, after consultation, through the several local plants. All sales of the Company's products are handled through the Company's sales offices at New York City, Chicago, and San Francisco. There is some exchange of equipment and machinery among the several plants and some infrequent exchange of employees. Hourly paid employees are listed on the several plant pay rolls. Some salaried employees are paid through the New York City office.

³ The plant at Luke is sometimes called the Piedmont plant.

At its Covington plant the Company makes wood pulp and converts it into paper board and paper, and manufactures byproducts from the chemicals reclaimed from the pulp liquor. The plant includes 10 or 12 separate buildings, which house the several general departments of the plant, including paper mills, pulp mills, a bleach and chalk plant, a boiler and steam power plant, a chemical plant, and a toll oil plant. The Luke and Williamsburg plants are set up under a similar departmental plan. There are some minor differences in manufacturing processes at the 3 plants due to differences in the nature of the products made. At the Covington plant the Company makes bond and Kraft paper and paperboard, at the Luke plant white papers and coated papers, and at the Williamsburg plant a finer type of printing paper. Production and maintenance employees at all 3 plants include machine operators, helpers, laborers, laboratory assistants, chemists, control testers, storeroom clerks, plant clerks, and guards. There are approximately 1,600 non-supervisory production and maintenance employees at the Covington plant, 1,400 at the Luke plant, and 325 at the Williamsburg plant. The Covington plant is about 165 miles from the Luke plant, and the Williamsburg plant more than 100 miles farther north than the Luke plant.

On October 11, 1937, the Board certified Local 152 as exclusive bargaining representative of production and maintenance employees at the Company's Covington plant.⁴ In January 1939 a consent election was conducted among production and maintenance employees at the Company's Luke plant and a second local union affiliated with the Paper Mill Workers won the the election. In April 1939, a consent election was conducted among production and maintenance employees at the Company's Williamsburg plant, and a third local union affiliated with the Paper Mill Workers won this election. Thereafter, on August 1, 1939, the Company and the three locals of the Paper Mill Workers entered into a written exclusive bargaining contract covering employees at the Covington, Luke, and Williamsburg plants. The contract was, by its terms, effective to August 1, 1940, and thereafter renewable from year to year, subject to termination on 30 days' notice from each renewal date. The Company's labor problems prior to the organization of its employees at these three plants were determined locally by the managers of each plant. When labor conditions at the Covington, Luke, and Williamsburg plants became stabilized by a contract with local unions of the Paper Mill Workers, the Company adopted the provisions of the contract, and the mill practices determined thereby, as its general labor policies.⁵

⁴ *Matter of West Virginia Pulp & Paper Co.*, 3 N. L. R. B. 673, 681.

⁵ Employees at the Mechanicsville and Tyrone plants are not organized. Electrical employees at the Charleston plant are organized and the I. B. E. W. is their bargaining representative. Other employees at the Charleston plant are not organized.

On August 17, 1940, the Company and the three locals of the Paper Mill Workers entered into a new contract covering employees at the three plants effective until August 1, 1941, with a renewal clause. On June 3, 1941, the parties agreed to extend this contract to August 1, 1942. On July 24, 1942, the parties entered into a new contract, effective until August 1, 1943, and renewable from year to year thereafter, subject to termination or revision upon 30 days' written notice prior to any terminal date. This contract specially provided that the 1942 vacation plan attached to the contract should be effective until August 1, 1943.⁶

On June 14, 1943, District 50 advised the Company that it represented a substantial number of employees at the Covington plant and urged the Company not to enter into any negotiations with the A. F. of L. for a new contract until the question of the representation of the Company's employees should be determined by the Board. On June 21, the Company notified District 50 that the Company recognized locals of the Paper Mill Workers as exclusive bargaining representatives of employees at the Covington, Luke, and Williamsburg plants and that the contract covering all such employees would not expire until August 1, 1943. On June 26, the C. I. O. notified the Company that the C. I. O. had filed a petition⁷ for investigation and certification of representatives with the Board, covering employees at the Covington plant, and that a substantial number of these employees had designated the C. I. O. as their bargaining representative. On June 28, the Company acknowledged the letter of the C. I. O., referring to the contract noted above.⁸

The C. I. O. and District 50 contend that a unit restricted to production and maintenance employees at the Covington plant constitutes an appropriate bargaining unit. The Company and the Paper Mill Workers contend that the proposed unit is not an appropriate

⁶ Representatives of the Company from the New York City office, the managers of the local plants, local union representatives of employees at the three plants, and an international representative of the Paper Mill Workers participated in negotiating these several contracts covering employees at the three plants.

⁷ The petition was verified on June 26, 1943, and received in the Regional Office on June 28, 1943.

⁸ On June 26, 1943, the Paper Mill Workers notified the Company by letter that its local unions at the Covington, Luke, and Williamsburg plants had voted not to reopen the agreement of August 1, 1942, but to permit the existing contract to remain in effect until August 1, 1944, and especially requested that the vacation plan of 1942 and 1943 be followed in 1944. On June 28, the Company consented to the proposals of the Paper Mill Workers and stated that the exchange of letters between them would constitute an understanding that the existing contract and the vacation plan would remain in effect until August 1, 1944.

The Paper Mill Workers contends that this arrangement to extend the existing contract for an additional year constitutes a bar to a petition for investigation and determination of representatives at this time. We find no merit in this contention. The extension of the existing contract was admittedly made after the Company had notice that the C. I. O. had filed the petition herein and that the C. I. O. and District 50 each contested the rights of the Paper Mill Workers to represent employees at the Covington plant. *Matter of Trailways of New England, Inc.*, 46 N. L. R. B. 310; *Matter of Russell Heel Company*, 41 N. L. R. B. 45.

bargaining unit, but that such employees at the Covington, Luke, and Williamsburg plants constitute a single appropriate bargaining unit.

In the absence of bargaining history among the Company's employees, it would appear that employees at the Covington plant might properly constitute a bargaining unit apart from employees at the other plants of the Company or that they might form part of a multiple plant unit with employees in like categories at one or more plants of the Company. Upon the circumstances disclosed in the record in the earlier representation proceeding, cited in footnote 2 above, we found that production and maintenance employees at the Covington plant constituted an appropriate bargaining unit and we certified Local 152 as their bargaining representative. Subsequent to the certification, the Paper Mill Workers organized the production and maintenance employees at the Luke and Williamsburg plants, respectively, and won separate elections conducted among them. Since August 1939 representatives of the Paper Mill Workers and its three locals have bargained as a committee with the Company for employees at these three plants. No bargaining has been conducted on the basis of a 1-plant unit. While the Board has often found that employees at several plants of a single employer constitute separate appropriate units, where employees at a number of plants have chosen the same bargaining representative, the Board has looked with favor upon the consolidation of such separate units into a single bargaining group.⁹ In the instant proceeding there is nothing in the record to indicate that the Paper Mill Workers has become inactive as the bargaining representative of the Company's employees at the Covington plant. There is likewise no indication that the Covington employees have repudiated the Paper Mill Workers as their bargaining representative on a scale such as would impel us to a conclusion that the Paper Mill Workers no longer represents a majority among them.¹⁰ Under these circumstances, we find no reason to disturb the bargaining pattern of a three-plant unit which has developed among the Company's employees as the result of their contracts with their employer.¹¹

During the course of the hearing, counsel for C. I. O. indicated that the C. I. O. was willing to enter into an agreement for a consent election to be conducted among employees at the Covington, Luke, and Williamsburg plants. Counsel for the C. I. O. stated at the hearing that the C. I. O. had extended its organizational efforts among employees at the Luke and Williamsburg plants and already claimed a

⁹ *Matter of Chrysler Corporation*, 46 N. L. R. B. 411, 415, and cases cited therein.

¹⁰ The C. I. O. submitted 481 cards and District 50, 476 cards, all bearing apparently genuine signatures of employees on the July 1, 1943, pay roll of the Covington plant. Of the cards submitted by the C. I. O. and District 50, 172 are duplicates. There are approximately 1,660 production and maintenance employees at the Covington plant covered under the existing contract.

¹¹ Cf. *Matter of Potlatch Forests, Inc.*, 51 N. L. R. B. 288; *Matter of The France Stone Company*, 51 N. L. R. B. 452.

substantial membership among these employees. The representative of District 50 stated that he was without definite knowledge of the membership of District 50 among employees at the Company's plants other than the Covington plant. The Trial Examiner specifically questioned whether the C. I. O. desired to stay the proceedings herein, to amend its petition to cover employees at the three plants designated, and to have a further hearing when all parties who might have interest in the petition so amended might have adequate notice thereof. The C. I. O. refused to amend its petition and the hearing proceeded on the basis of the issues thus raised. On October 21, 1943, the C. I. O., while affirming again the propriety of the 1-plant unit prayed in its petition, filed a motion to reopen the record and amend its petition to include employees in the 3-plant unit covered by the contracts between the Company and the Paper Mill Workers.

We think that the C. I. O. has shown insufficient reason for the granting of this motion. During the course of the hearing, on October 8, 1943, the representative of the C. I. O. stated that the C. I. O. had a substantial interest among employees at each plant in the 3-plant unit. In support of its motion, filed on October 21, 1943, to amend the petition to include employees in the 3-plant unit, the C. I. O. filed an affidavit alleging that it represented 1,010 employees among them. There are approximately 3,425 employees in the 3-plant unit presently covered under the contract between the Company and the Paper Mill Workers. In view of the showing tendered by the C. I. O., we are of the opinion that the record does not so clearly indicate that there is a question concerning the representation of the Company's employees in the 3-plant unit as to justify us in holding an election at this time. Further inquiry now made would not disclose that the Paper Mill Workers did not represent a majority of employees in the 3-plant unit on August 1, 1943, when the extension of its contract became operative. While neither the contract nor its extension *per se* precludes us from further action, we are of the opinion that, under the circumstances above set forth, it would be contrary to the best interests of the Company's employees to make a more extended investigation at this time. For this reason, and upon the basis of the entire record in this proceeding, we shall dismiss the petition filed herein.

ORDER

On the basis of the foregoing findings of fact, and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of West Virginia Pulp & Paper Co., Covington, Virginia, filed by United Paper Workers, C. I. O., be, and it hereby is, dismissed.