

In the Matter of KIMBERLY-CLARK CORPORATION and LOCAL 380, UNITED PAPER, NOVELTY AND TOY WORKERS INTERNATIONAL UNION (CIO)

Case No. 18-R-841.—Decided January 14, 1944

Mr. S. Norman Moe, of Menasha, Wis., and *Mr. M. H. Kettenhofen*, of Neenah, Wis., for the Company.

Mr. Bert J. Mason, of Niagara, Wis., for the C. I. O.

Mr. Emil A. Noren, of Rothschild, Wis., for the Paper Makers.

Mr. Eugene Wiedenbeck, of Kaukauna, Wis., for the Pulp Workers.

Mr. Lyle Kallenbach, of Niagara, Wis., for the Independent.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Local 380, United Paper, Novelty and Toy Workers International Union (CIO),¹ herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of the employees of Kimberly-Clark Corporation, Niagara, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Niagara, Wisconsin, on November 12, 1943. The Company, the C. I. O., International Brotherhood of Paper Makers (AFL), herein called the Paper Makers, International Brotherhood of Pulp, Sulphite & Paper Mill Workers (AFL), herein called the Pulp Workers, and Paper Mill Workers Union, herein called the Independent, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues and to file briefs with the Board. At the hearing the Trial Examiner reserved ruling upon the Company's motion to dismiss the petition, on the ground that its contract with the Independent is a bar to a present determination of representatives. For

¹At the hearing the Trial Examiner granted the motion of the C. I. O. to amend the petition so as to designate the C. I. O. by the name set forth in the above caption.

reasons stated in Section III, *infra*, we hereby deny the motion. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Kimberly-Clarke Corporation is a Delaware corporation which operates 6 paper manufacturing plants in the States of Wisconsin and New York. At its Niagara, Wisconsin, plant, the only plant involved in this proceeding, the Company manufactures wood pulp, paper, and paper specialties. Each month the Company purchases for use at its Niagara, Wisconsin, plant raw materials valued in excess of \$200,000, of which approximately 85 percent is shipped to the Company from points outside the State of Wisconsin. Each month the Company sells approximately \$420,000 worth of finished products, of which over 65 percent is shipped from said plant to purchasers outside the State of Wisconsin. The Company admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Local 380, United Paper, Novelty and Toy Workers International Union is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

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

International Brotherhood of Pulp, Sulphite & Paper Mill Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Paper Mill Workers Union is an unaffiliated labor organization, admitting to membership employees of the Company.

III THE QUESTION CONCERNING REPRESENTATION

On December 7, 1942, the Company and the Independent executed a closed-shop collective bargaining contract, effective according to its terms until October 1, 1943, and thereafter from year to year unless terminated by written notice delivered by one party to the other not later than September 1, 1943, or any succeeding anniversary thereof. On August 30, 1943, the Independent advised the Company in writing that there were certain desirable amendments to the aforesaid contract

which it wished to discuss with the Company. By letter dated September 3, 1943, the Company informed the Independent that it would meet with the Independent on September 14, 1943, for the purposes of discussing the proposed amendments. At the hearing the parties stipulated that the C. I. O. wrote the Company on or about September 6, 1943, claiming to represent a majority of the employees within an alleged appropriate bargaining unit and requesting recognition as their exclusive bargaining representative. By letter dated September 9, 1943, the Company declined to accord the C. I. O. such recognition because of the alleged existence of the contract between it and the Independent. Thereafter, on September 23, 1943, the Company and the Independent entered into a second closed-shop contract which purportedly supersedes their prior agreement. On September 27, 1943, the C. I. O. filed its petition herein.

Since the Independent's written notice of August 30, 1943, stayed the operation of the automatic renewal clause contained in the contract of December 7, 1943, and since the Company had notice of the C. I. O.'s representation claim and request for recognition approximately 17 days prior to the date on which the contract of September 23, 1943, was executed, we find that said contract of September 23, 1943, cannot operate as a bar to an immediate determination of representatives.²

A statement prepared by the Regional Director, which was introduced into evidence at the hearing, as supplemented by a statement made by the Trial Examiner on the record, indicates that the Paper Makers and the Pulp Workers, jointly, and the C. I. O., each represents a substantial number of employees in the unit hereinafter found to be appropriate.³

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

² See *Matter of Ecor, Incorporated*, 43 N. L. R. B. 313; and *Matter of Joseph P. Cattie & Brothers, Incorporated*, 47 N. L. R. B. 81.

³ The Regional Director reported that the C. I. O. submitted 99 application for membership cards bearing apparently genuine, original signatures of persons whose names appear on the Company's pay roll of October 1, 1943, which contains the names of 445 persons in the alleged appropriate unit; that the Paper Makers submitted a sworn statement setting forth the names of 43 employees of the Company who are members of the Paper Makers and whose names appear on the aforesaid pay roll. The Trial Examiner stated on the record that the Pulp Workers submitted a petition signed by 28 persons who purportedly designated the Pulp Workers as their exclusive bargaining representative, and whose names appear on the aforesaid pay roll of the Company. The Independent relies upon its contract with the Company to substantiate its claim of representation.

We are of the opinion that the Paper Makers and Pulp Workers, jointly, and the C. I. O., each represents a substantial number of employees in the unit which we hereinafter find to be appropriate in view of the closed-shop contract between the Company and the Independent. See *Matter of Chicago Molded Products Corporation*, 49 N. L. R. B. 756, and cases cited therein.

IV. THE APPROPRIATE UNIT

Contentions of the parties

The C. I. O. and the Independent contend that all hourly paid production and maintenance employees of the Company, excluding clerical employees, technical employees, executives, departmental superintendents, tour foremen, super-calendar foreman, and all other supervisory employees comprise an appropriate bargaining unit.

The Paper Makers seeks a unit comprised of all employees in the paper mill department of the Company's Niagara, Wisconsin, plant, including tour foremen, super-calender foreman, and paper testers, but excluding supervisory employees and engineers.

The Pulp Workers desires a unit consisting of all production and maintenance employees of the Company, including the three engineers in the paper mill department whom the Paper Makers would exclude from its proposed unit, but excluding clerical employees, supervisory employees, and all employees in the paper mill department whom the Paper Makers includes in its proposed unit. The Company favors a plant-wide unit.

The operations of the plant

The Company's Niagara, Wisconsin, plant is comprised of numerous buildings which house the various operations of the Company. It is divided into eight departments: (1) the wood yard where pulp wood is received and unloaded; (2) the wood room where the pulp wood is prepared for further processing in the (3) groundwood and (4) sulphite departments; these latter departments produce the chemically treated wood pulp from which the (5) paper mill manufactures paper and paper products; (6) the engineering department which handles all engineering problems and maintenance in the plant; (7) the material handling department which has charge of loading and unloading raw materials, pulp, and paper; and (8) the warehouse which handles all equipment, maintenance supplies, and operating supplies used in the plant. Generally speaking, the plant is comprised of a long row of contiguous buildings which house the various production and maintenance departments. The manufacturing operations commence in the wood room at the upper end of the plant where the raw pulp wood is processed into wood pulp, treated, and then taken to the paper mill department where it is processed into paper. Other departments then prepare the finished product for shipping.

The paper mill department which performs the main manufacturing operations of the plant is divided into subdepartments or sections known as (1) the beater room, (2) the clay preparation sub-

department, (3) the coating making subdepartment, (4) the paper making machine section, (5) the super-calender subdepartment, and (6) the roll finishing subdepartment. The paper mill department occupies several floors in one building. The paper making machines are on the main floor, the beater room occupies part of the main floor and part of the basement, the coating making subdepartment is also in the basement, the clay preparation subdepartment is located on a floor adjacent to and slightly above the main floor, and the super-calender subdepartment is on a floor above and "ahead" of the main floor. There are employed in the paper mill department 114 persons who work under the supervision of a departmental superintendent. The superintendent, three tour foremen, and the super-calender foreman are the only salaried employees in this department. All other employees are hourly paid and include the following classifications: machine tenders, machine helpers, back tenders, third, fourth, and fifth hands, all of whom are relatively unskilled workers; and beater engineers, beater men, coating operators, coating makers, coating testers, paper testers, calender men, and clay mixers, who are specially skilled employees.

Bargaining history

In the latter part of December 1940, the Independent requested the Company to recognize it as the exclusive bargaining representative of all hourly paid production and maintenance employees employed at the Niagara, Wisconsin, plant. The Company refused to accord the Independent such recognition unless and until it was certified by the National Labor Relations Board or the Wisconsin Employment Relations Board. Thereafter, on February 17, 1941, the Company and the Independent entered into an agreement for an election to be conducted by the National Labor Relations Board. On March 10, 1941, the Regional Director advised the parties that the Independent had polled a majority of the valid votes cast in the consent election conducted on March 4, 1941, and accordingly was entitled to recognition as the exclusive bargaining representative of the Company's hourly paid employees. On April 10, 1941, the Company and the Independent entered into their first collective bargaining contract covering the hourly paid production and maintenance employees. Thereafter, the Independent requested the right to amend said agreement by adding a closed-shop provision. On October 14, 1941, a referendum was conducted among the said employees of the Company by the Wisconsin Employment Relations Board. The results of this referendum indicated that over three-fourths of said employees favored a closed-shop agreement. Such an agreement was entered into on December 7, 1942. These facts show that collective bargaining

at the Company's Niagara, Wisconsin, plant has been conducted on an industrial or plant-wide basis since April 10, 1941, or for over 2½ years.

Inasmuch as it is apparent that the Company's operations are highly integrated in that each department is functionally dependent upon all other departments and since collective bargaining at the Company's Niagara, Wisconsin, plant has been conducted on an industrial basis for over 2 years, we are of the opinion that collective bargaining should continue on this basis.

Supervisory employees

All parties except the Paper Makers and Pulp Workers desire to exclude the tour foremen employed in the paper mill from the appropriate unit. The record clearly shows that the tour foremen may make effective recommendations with respect to hiring, discharging, promoting, and disciplining the employees whom they supervise. Accordingly, we shall exclude tour foremen from the appropriate unit. We shall likewise exclude the super-calendar foreman, since he appears to exercise supervisory authority in the super-calendar subdepartment similar to that exercised by the tour foremen.

Concluding finding

We find that all hourly paid production and maintenance employees employed at the Company's Niagara, Wisconsin, plant, excluding clerical employees, technical employees, executives, departmental superintendents, tour foremen, super-calendar foreman, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

At the hearing, the Paper Makers stated that if the Board directed an election in an industrial unit, it did not desire to be afforded a place on the ballot, since under its constitution it could not bargain for classifications of employees other than those included in its alleged appropriate unit. The record is silent with regard to whether the Pulp Workers will desire to participate in the election which we hereinafter direct. In view of the substantial showing of representation made by the Paper Makers and Pulp Workers jointly, we shall afford them a place on the ballot as joint participants and, if they are selected by a majority of the employees voting in the election

hereinafter directed, they will be jointly certified as the single representative of the employees comprising such unit. We shall, however, permit either or both, of said labor organizations to withdraw from participation in the election if they so desire. We shall direct that the question concerning representation which has arisen be resolved by means of an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Kimberly-Clark Corporation, Niagara, Wisconsin, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding employees who have since quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Local 380, United Paper, Novelty and Toy Workers International Union (CIO); by Paper Mill Workers Union; by International Brotherhood of Paper Makers and International Brotherhood of Pulp, Sulphite & Paper Mill Workers, jointly; for the purposes of collective bargaining, or by none.