

In the Matter of BRIGHTWATER PAPER COMPANY and UNITED MINE  
WORKERS OF AMERICA, DISTRICT 50, LOCAL #12796

*Case No. 1-R-1704.—Decided February 5, 1944*

*Mr. Walter J. Donovan*, of Adams, Mass., and *Mr. L. Hamilton Garner*, of New York City, for the Company.

*Grant & Angoff*, by *Mr. Samuel E. Angoff*, of Boston, Mass., and *Mrs. Geneva Kleiner*, of Adams, Mass., for Local #12796.

*Mr. John N. Alberti*, of North Adams, Mass., and *Mrs. Mildred Burnett*, of Adams, Mass., for the IPWU.

*Mr. William Feldesman*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by the United Mine Workers of America, District 50, Local #12796, herein called Local #12796, alleging that a question affecting commerce had arisen concerning the representation of employees of Brightwater Paper Company, Adams, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John W. Coddaira, Jr., Trial Examiner. Said hearing was held at Adams, Massachusetts, on December 29 and 30, 1943. The Company, Local #12796, and Independent Paper Workers Union No. 1, herein called the IPWU, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the hearing the IPWU moved to dismiss the petition. Subsequent to the hearing the IPWU made application to amend its motion to dismiss. The application to amend the motion is granted, but, for reasons stated in Section III, below, the motion to dismiss is denied. Also following the hearing the IPWU moved to correct the record in minor respects. None of the other parties has opposed the motion to correct the record, and it is accordingly granted. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded and availed themselves of the opportunity to file briefs with the Board. Inasmuch as the briefs adequately

discuss the issues, the requests of the Company and the IPWU for oral argument are denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Brightwater Paper Company, a Delaware corporation having a sales office in New York City, is engaged at its plant in Adams, Massachusetts, in the manufacture of fine writing paper. Its annual business is in excess of \$1,500,000. Approximately 90 percent of the raw materials it utilizes in its operations comes from outside the Commonwealth of Massachusetts, and about 60 percent of its finished products is shipped to points outside the Commonwealth of Massachusetts. The Company admits that it is engaged in commerce, within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

United Mine Workers of America, District 50, Local #12796, and Independent Paper Workers Union No. 1, are labor organizations admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On October 20, 1941, the Company entered into a collective bargaining agreement with an unaffiliated labor organization of its employees, herein called the Independent,<sup>1</sup> cancelable on and after June 1, 1942, upon 90 days' notice by either party. A contract containing detailed seniority provisions was executed by the same parties on September 12, 1942, as a supplement to their 1941 agreement. According to its terms, the supplemental contract was terminable during its first 90 days upon immediate notice by either party, and thereafter on 90 days' notice given by either of the parties. It also provided that in the event of its termination, no other agreement between the parties was to be affected. In connection with a consent election which was subsequently held, the Company, the Independent, and United Mine Workers of America, District 50, herein called District 50, agreed in writing on August 23, 1943, that the existing contract was to remain in force "with the exception of the bargaining agency if [District 50 won] the election, until such time as a new agreement is executed . . ." The consent election was held under the auspices of the Board's Regional Director on September 2, 1943. Both District 50 and the Independent appeared on the ballot. On September 8 the Regional Director reported that the Independent had received 119 votes, District 50 98, and "neither" 3. In his report, the Regional Director cer-

<sup>1</sup> The Independent's full title is identical with that of the IPWU.

tified that the Independent had been "designated and selected by a majority of the employees in the agreed unit as the exclusive bargaining representative of the employees within the unit."

At a meeting of the Independent on September 26, new officers were elected. On October 31 another meeting of the Independent was held, and a committee was appointed to revise its bylaws. Almost since its inception in 1937 or 1938, the Independent utilized a set of bylaws in the conduct of its affairs, although it is not entirely clear from the record that they were ever formally adopted. These bylaws contained no provision for merger or affiliation with another organization, and they read that the Independent "cannot be disbanded as long as 20 members wish to carry it on." Following the meeting of October 31, an official of District 50 assisted in the preparation of new bylaws. Thereafter, on November 15 notices were posted throughout the plant announcing a "Very Important Meeting" of the Independent to be held November 21. As announced, a meeting was held on November 21 with 42 members present.<sup>2</sup> Except for a few changes, the bylaws which had been prepared were adopted. Provision was made in the adopted bylaws for the Independent's dissolution "by a vote of two-thirds of the dues paying members present at a regular meeting," and for its affiliation with another labor organization "by consent of two-thirds vote of the members present at a regular meeting." At the same meeting, almost immediately after the acceptance of the bylaws, a proposal was made for affiliation with District 50. A vote was taken on the proposal, and 38 voted for, and 4 against, affiliation. It was then determined to appropriate the sum of \$20 for a charter from District 50.

The succeeding day, a committee of employees conferred with Henry J. Guild, the Company's president. Guild was given a letter dated that day which read as follows:

At the regular meeting of the Independent Paper Workers Union #1 held in the Zylonite Boys Club, Sunday, November 21, 1943, the union voted to affiliate with District #50 United Mine Workers of America.

Therefore, this is to notify you that of this date wer (sic) are cancelling our present contract with you and according to same we are giving you this ninety day notice of cancellation.

Very truly yours,

GENEVA [KLEINER], *Sec.*

GENEVA [KLEINER],

*Former Secretary of Independent Paper Workers Union #1  
Present Secretary to United Mine Workers of America  
District #50, Local 12796*

<sup>2</sup> Several witnesses estimated the Independent's membership at this time. The lowest estimate was 70 and the highest 150.

Guild then inquired if the committee represented "District 50 of the United Mine Workers of America." Upon receiving an affirmative reply he informed those present that he could not "meet with them," inasmuch as the Independent was the legally designated bargaining representative of the employees. Later that day members of the committee again conversed with Guild, insisting that he treat with them since they had merely voted to affiliate with District 50 and had not as yet received a charter. Guild told them that he would advise them later concerning his position in the matter.

On December 5, 20 employees withdrew from a meeting held by the group favoring affiliation with District 50. The 20 dissenters, claiming to be members of the Independent, held a meeting of their own that day and proceeded to elect officers.

By means of a printed announcement dated December 9, the Company apprised its employees that it "must continue to recognize only the Independent Paper Workers Union No. 1" as their representative for the purposes of collective bargaining. On December 11 the Regional Director met with representatives of the Company, the group favoring affiliation with District 50, or Local #12796,<sup>3</sup> and the group opposed to such affiliation, or the IPWU. All parties agreed that the Company would deal with each group's grievance committee until a solution to the problem was found.

Since December 11 the IPWU has held two meetings, one having been attended by 38 members and the other by 22, and its grievance committee has frequently met with the Company's representatives.<sup>4</sup> About December 20 several adherents of the IPWU, as representatives of its entire membership, filed a bill in equity in the Superior Court of the Commonwealth of Massachusetts. The bill named as parties defendant a banking institution and certain members of Local #12796, alleged, *inter alia*, unlawful conspiracy of the individual defendants, and prayed, among other things, the return of certain assets and an adjudication of the rights of the IPWU's members.

Asserting that the act of affiliation with District 50 was illegal and that it is the Independent, the IPWU raises the Regional Director's certification of September 8, 1943, and the contract of October 20, 1941,<sup>5</sup> as bars to a present determination of representatives, and asks for the dismissal of the petition. The Company's position is similar to the IPWU's. But Local #12796, arguing that affiliation with District 50 was lawfully accomplished, insists that the IPWU is not the Independent. It requests the direction of an election.

<sup>3</sup> Local #12796 accepted its charter from District 50 the following day.

<sup>4</sup> The IPWU claims that 74 of the Independent's members as of November 21 are its members in good standing.

<sup>5</sup> Together with the supplement of September 12, 1942, and the understanding of August 23, 1943.

It is readily apparent that establishment of the Independent's identity is dependent upon the legality of the act of affiliation with District 50, an issue which we do not consider our function to determine.<sup>6</sup> While the contract, even if deemed to be unaffected by the purported notice of cancellation, is not a bar, for the reason that it is of indefinite duration,<sup>7</sup> the Regional Director's recent certification of the Independent, under other circumstances, would foreclose these proceedings. However, there is a substantial, unresolved doubt regarding the identity of the certified labor organization. In these circumstances, we are constrained to conclude that the certification does not operate as a bar.<sup>8</sup>

A statement of the Acting Regional Director, introduced into evidence at the hearing, indicates that Local #12796 represents a substantial number of employees in the unit hereinafter found appropriate.<sup>9</sup>

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.

#### IV. THE APPROPRIATE UNIT

In substantial accordance with the stipulation of the parties, we find that all employees of the Company engaged in all its production, maintenance, and power departments, excluding office and clerical employees, executives, superintendents, foremen, and 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.<sup>10</sup>

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by 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

<sup>6</sup> See *Matter of Federal Iron & Metal Co.*, 46 N. L. R. B. 597; and *Matter of Professional Building Corporation, etc.*, 45 N. L. R. B. 42.

<sup>7</sup> See *Matter of General Electric Company*, 48 N. L. R. B. 1044; and *Matter of Carrier Corporation*, 46 N. L. R. B. 1319.

<sup>8</sup> See *Matter of Edw'n Bell Company*, 46 N. L. R. B. 619; and *Matter of American Agricultural Chemical Company*, 46 N. L. R. B. 684.

<sup>9</sup> The Acting Regional Director reported that Local #12796 submitted 154 membership cards bearing apparently genuine original signatures of persons listed on the Company's pay roll for the week ending December 4, 1943, containing the names of 274 employees in the unit alleged to be appropriate in the petition.

<sup>10</sup> This, in substance, was the unit agreed upon by the parties who were involved in the consent election of September 2, 1943.

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 Brightwater Paper Company, Adams, Massachusetts, 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 First 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 any 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 United Mine Workers of America, District 50, Local #12796, or by Independent Paper Workers Union No. 1, for the purposes of collective bargaining, or by neither.