

IN THE MATTER OF KIMBERLY-CLARK CORPORATION *and* INTERNATIONAL BROTHERHOOD OF PAPER MAKERS (AFL) AND INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER MILL WORKERS (AFL)

*Case No. 13-R-2062.—Decided March 15, 1944*

*Mr. S. Norman Moe*, of Neenah, Wis., for the Company.

*Padway & Goldberg*, by *Mr. A. G. Goldberg*, of Milwaukee, Wis., *Mr. Rasmus Anderson*, of Green Bay, Wis., and *Mr. Raymond Richards*, of Appleton, Wis., for the Pulp Workers.

*Padway & Goldberg*, by *Mr. A. G. Goldberg*, of Milwaukee, Wis., *Mr. Emil A. Noren*, of Rothschild, Wis., and *Mr. Arthur E. Pintin*, of Ashland, Wis., for the Paper Makers.

*Mr. Orval Leffel*, of Menasha, Wis., and *Mr. Louis Nabbefeld*, of Appleton, Wis., for the Independent.

*Mr. Seymour J. Spelman*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed jointly by International Brotherhood of Paper Makers (AFL) and International Brotherhood of Pulp, Sulphite & Paper Mill Workers (AFL), herein respectively called the Paper Makers and the Pulp Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Kimberly-Clark Corporation, Neenah, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert Ackenberg, Trial Examiner. Said hearing was held at Appleton, Wisconsin, on December 21, 1943. The Company, the Paper Makers, the Pulp Workers, and the Lakeview Independent Union, herein called the Independent, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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

constitutes a bar to a present determination of representatives. For reasons stated in Section III, *infra*, said motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Kimberly-Clark Corporation is a Delaware corporation engaged in the manufacture and sale of various types and grades of paper, packing, insulating, and absorbent materials, and numerous related products, at seven mills in the States of Wisconsin and New York. The instant proceeding concerns the Badger-Globe and Lakeview mills, two of three mills which the Company operates at Neenah, Wisconsin. At the Lakeview mill, the Company produces paper specialties; at the Badger-Globe mill, it produces asphalt wadding for insulation and asphalt impregnated wadding. The average monthly value of these products is approximately \$1,680,000, of which 96 percent represents products shipped from the two mills to points outside the State of Wisconsin. Approximately 64 percent of the raw materials employed at the two mills is shipped from points outside the State of Wisconsin. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act

#### II. THE ORGANIZATIONS INVOLVED

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

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

Lakeview Independent Union is an unaffiliated labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On September 14, 1939, following a hearing and election by secret ballot, the Independent was certified by the Wisconsin Employment Relations Board as the exclusive bargaining representative of a unit consisting of all hourly paid employees at the Company's Lakeview and Badger-Globe mills. Thereafter, the Independent and the Company entered into a series of contracts covering said unit. One of such

contracts was executed in December 1942, and provided for a term expiring October 1, 1943, with automatic renewal from year to year thereafter in the absence of a notice of intention to terminate served by either party upon the other at least 30 days prior to the end of any term. Following timely notice by the Independent on August 16, 1943, the parties entered into negotiations for a new agreement. On September 22, between 10 and 10:30 a. m., a new agreement was executed to take effect on October 1, the expiration date of the then current agreement.<sup>1</sup>

However, on September 10, 1943, 12 days before the new contract had been executed, the Paper Makers wrote to the Company, stating that it was organizing the Badger-Globe and Lakeview mills, claiming a substantial membership therein, and requesting the Company to refrain from "renewing or negotiating" a contract with any other labor organization until the question of representation was resolved. On September 18, the Company replied, stating that it was under legal obligation to continue recognition of the Independent until its employees selected a different representative, and it could not therefore accede to the Union's request that it refrain from negotiating a new agreement.

On September 22, between 10 and 10:15 a. m., in a telephone conversation with Sidney Shattuck, the industrial relations representative of the Company, Emil Noren, representative of the Paper Makers, made a request for recognition, and on behalf of both the Paper Makers and Pulp Workers, for a conference with representatives of the Company. At the hearing, Shattuck first testified that the conversation had dealt only with the setting of a conference date. Later, he admitted that a claim for recognition was made by the Paper Makers. A conference was set for September 25, which fact was confirmed by Rasmus Anderson, representative of the Pulp Workers, in a telephone conversation on the same or the next day in which Anderson asserted a claim in behalf of the Pulp Workers to represent a substantial number of the Company's employees. The record does not establish whether these telephone calls preceded or followed the signing of the agreement.

On September 25, Shattuck, Noren, Anderson, and other representatives of the Company and the two unions, met to discuss recognition. Both Noren and Anderson testified that at the conference of September 25, they claimed to represent a majority of the employees at both the Lakeview and Badger-Globe mills. Shattuck testified

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<sup>1</sup> Although the language of this new agreement is not entirely clear as to the effective date, the subsequent conduct of the parties indicates that it was intended to go into effect on October 1, 1943. A bulletin posted at the mill by the Company recited that the agreement went into effect on October 1, 1943, and, at the hearing, an officer of the Independent testified to the same effect.

that he did not realize that the unions were interested in the Lakeview mill from anything he learned at the meeting of September 25, or at any time prior to said meeting. However, he subsequently changed this testimony when confronted with the Paper Makers' letter of September 10, and the Company's reply of September 18, in which both mills are discussed. We find therefore that, at this conference, the unions asserted an interest in both mills. We further find, in view of the positive testimony of both Noren and Anderson, not directly controverted by any witness for the Company,<sup>2</sup> that the interest asserted by the unions at this conference was a claim to represent a majority of the employees at both mills. The unions were not informed at this conference, nor did they have knowledge, at the time, of the agreement executed on September 22, by the Independent and the Company.

The Company contends that the agreement executed on September 22, 1943, constitutes a bar to a present determination of representatives, because, prior to that date, the Company was not on notice of a sufficient claim of interest by the petitioning unions to raise a question of representation. We are of the opinion that this contention must be rejected, for, although the claim of interest embodied in the letter of September 10, may have been insufficient, the subsequent claims of interest, asserted prior to the effective date of the new agreement (October 1, 1943), were adequate to raise a question of representation. That the effective date of an agreement, in these circumstances, rather than the date of execution is decisive, was determined by the Board in the *Foster-Grant* case.<sup>3</sup> We there decided that where the automatic renewal of a contract is prevented by the timely notice of the contracting union, notice of conflicting claims of representation given prior to the effective date of a succeeding contract is sufficiently timely to prevent the succeeding contract from acting as a bar. We find, therefore, that the agreement executed on September 22, to go into effect on October 1, constitutes no bar to a present determination of representatives.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Paper Makers and the Pulp Workers, jointly, represent a substantial number of employees in the unit hereinafter found appropriate.<sup>4</sup>

<sup>2</sup> Asked whether Noren had, at this conference, claimed to represent a majority of the employees at both mills, John C. Simonich, the Company's acting director of industrial relations replied: "I do not think so; I do not think that he stated it in just that way." In reply to the same question, Shattuck stated: "As I recall your comments, Mr. Noren, it was that you claimed a substantial majority in the Badger-Globe Mill, in your category. That was the impression left upon me."

<sup>3</sup> See *Matter of Foster-Grant Co., Inc.*, 54 N. L. R. B. 802.

<sup>4</sup> The Field Examiner reported that the Pulp Workers submitted 227 authorization cards dated from September 1 to October 6, 1943, and 335 signatures on a petition by employees

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

The parties are, in effect, in substantial agreement on the appropriate unit. At the hearing, the Paper Makers and the Pulp Workers amended their joint petition, stating four alternative units. The Company and the Independent agreed, and we find, that one of these—a single unit of all hourly paid production and maintenance employees at the Lakeview and Badger-Globe mills, excluding office clerical and supervisory employees is appropriate. This is substantially the same unit established in the contracts between the Company and the Independent.

The petitioning unions wish to include in the unit boss machine tenders (tour foremen), while the Company and the Independent desire their exclusion as supervisory employees. There are three tour foremen at the Badger-Globe mill and six at the Lakeview mill. They perform no manual work, but spend their time in instructing and training new employees. In each mill, the tour foremen on the night shift act as superintendents. The recommendations of these employees with respect to hiring, promotion, and discharge are accorded substantial weight. They are paid a salary and have not been included in the bargaining unit in the past 4 years. We find that boss machine tenders (tour foremen) are supervisory employees and we shall therefore exclude them from the unit.<sup>5</sup>

The parties agreed that the chief operators in the Kotex, Kteenex, and Delsey departments of the Lakeview mill, the head painter, and the head loaders in the engineering and materials department of the same mill, should be included in the unit. However, it appears that all of these employees spend about 75 percent of their time in supervisory work. The chief operators direct the work of from 75 to 150 employees; the head painter directs the work of from 6 to 20 employees; and the head loaders direct the work of from 20 to 25 employees. All these employees are paid an hourly wage which is from 5 to 20

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of the Lakeview mill, dated from November 29 to December 4, 1943, all 582 signatures appearing to be genuine and original. He further reported that the Paper Makers submitted a list of members in good standing consisting of 167 names whose application cards had been forwarded to the New York office of the International. The list is dated November 12, 1943. Of the 749 names represented on all the evidence submitted, 724 are the names of persons appearing on the Company's pay roll of September 29, 1943, which contains the names of 1,986 employees in the unit hereinafter found appropriate. The Independent relied upon its contract to establish its interest in this proceeding.

<sup>5</sup> See *Matter of Kimberly-Clark Corporation*, 54 N. L. R. B. 601, in which similar employees were found to be supervisory employees and therefore excluded from the unit.

percent higher than the wage of the next most highly paid employees of their departments. The evidence shows that their recommendations with respect to discharge of employees under their direction are accorded substantial weight. We find these employees to be supervisors and we shall accordingly exclude them from the unit.

The parties are in disagreement with respect to the shipping clerk at Lakeview mill, the petitioners desiring his inclusion. The record discloses that the shipping clerk is paid a salary, has the power to hire and discharge employees, directs the work of from 25 to 30 people, and has been excluded from the Independent's contract unit. It is clear that he is a supervisory employee and we shall exclude him from the unit.

The Company employs 19 guards at both mills, whom the Company and the Independent wish to include in the unit. It appears that these guards were sworn into the auxiliary military police, and at one time carried arms and wore uniforms. At present, they no longer bear arms or wear uniforms, but are still subject to the jurisdiction of the auxiliary military police. It was stated that they would be demilitarized soon and would then be returned to production and maintenance classifications. Inasmuch as the guards are still affiliated with the auxiliary military police, we shall exclude them from the unit.<sup>6</sup>

We find that all hourly paid production and maintenance employees at the Company's Lakeview and Badger-Globe mills, excluding guards sworn into the auxiliary military police, office clerical employees, tour foremen (boss machine tenders), employees at the Lakeview mill classified as shipping clerk, chief operators of the Kotex, Kleenex, and Delsey departments, head painter, head loaders of the materials and engineering department, and all or 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

In accordance with the desire of the petitioning unions, we shall accord 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 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 payroll period immediately preceding the date of the Direction of Election

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<sup>6</sup> See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

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, Neenah, 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 Thirteenth 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 those 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 International Brotherhood of Paper Makers and International Brotherhood of Pulp, Sulphite & Paper Mill Workers, jointly, affiliated with the American Federation of Labor, or by the Lakeview Independent Union, for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.