

In the Matter of WORTHY PAPER COMPANY ASSOCIATION,<sup>1</sup> EMPLOYER  
and INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 602,  
AFL, PETITIONER

Case No. 1-RC-423.—Decided October 28, 1948

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.\*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner, and International Brotherhood of Paper Makers, AFL, herein called the Intervenor, are labor organizations claiming to represent employees of the Employer.

3. The question concerning representation:

On July 1, 1947, the Employer and the Intervenor executed a collective bargaining agreement including in its coverage the employees here sought to be represented by the Petitioner and containing the following termination provisions:

This agreement shall remain in effect up to and including July 1, 1948, and from year to year thereafter; subject to termination by either party by written notice at least sixty (60) days immediately prior to July 1 in any year, and sent by registered mail.

Either party desiring changes or amendments to this Agreement at the expiration of the same shall give the other party at least sixty (60) days' notice in writing by registered mail *imme-*

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<sup>1</sup> As corrected at the hearing.

\* Chairman Herzog and Members Reynolds and Murdock.

*diately prior to July 1 in any year* that a change is desired; otherwise, the Agreement remains in force and effect without change.

In the event that notification of such desired change is so filed, the Agreement nevertheless continues in full force and effect in all its terms, during negotiations. (Emphasis supplied.)

On April 28, 1948, the Intervenor formally notified the Employer, in part, as follows:

In accordance with the provisions of our agreement and the requirements of the Labor Management Relations Act of 1947, we are hereby notifying you of our desire to modify the agreement by changing rates and such other conditions and matters as may be finally agreed to.

On April 30, 1948, the Employer replied, expressing willingness to negotiate. Thereafter, the Employer and the Intervenor commenced negotiations, which, at the date of hearing, June 30, 1948, were still in progress.

On May 8, 1948, the Petitioner, by letter, advised the Employer of its representation claim, and on May 12, 1948, placed on file the petition herein.

The Employer and Intervenor contend that, in the absence of appropriate termination notice by either of them, their contract automatically renewed itself and thus constitutes a bar to the petition filed after operative date for automatic renewal. They argue that the Intervenor's April 28 notice of desire to modify the contract and the consequent negotiations between them were within the express modifications provision of the contract and, therefore, did not affect the contract's automatic renewal. We find no merit in these contentions. The contract provides for notice by either party of desire to change or amend the agreement at least 60 days *immediately prior to July 1*, the annual terminal date of the contract. This notice provision coincides with the termination notice required by the contract for either party to forestall its automatic renewal. Whether the notice specified a desire to change or a desire to terminate, in either case we construe such notice filed, as here, immediately prior to the automatic renewal date of the contract, as intended to prevent the agreement from automatically becoming effective for another year.<sup>2</sup>

This construction is further supported by the fact that elsewhere in the contract separate provision is made permitting either party to "open the wage scale for reconsideration, by giving fifteen days

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<sup>2</sup> See *Matter of Duquesne Light Company*, 71 N. L. R. B. 336; *Matter of E. I. DuPont de Nemours & Company, Inc.*, 73 N. L. R. B. 439; *Matter of Indianapolis Power & Light Co.*, 76 N. L. R. B. 136.

notice in writing to the other party." Under these circumstances, the contract provision that if notice of desire to modify is given, the contract shall continue in full force and effect during negotiations, can only be taken to mean that the old contract shall remain in effect until negotiations are completed for a new contract, at which time the latter shall supersede. Thus construed, the contract between the Employer and the Intervenor during the period of their negotiations constituted at best, a contract of indefinite duration and, as such, cannot operate to preclude this proceeding.<sup>3</sup> Accordingly, we find that no bar exists to a present determination of representatives.

We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Petitioner seeks a separate unit of all engineers and firemen in the Employer's power plant,<sup>4</sup> excluding supervisors. The Intervenor and the Employer oppose the severance of this group from the established plant-wide bargaining unit. The Intervenor has bargained for the latter unit since November 1945, when, pursuant to the results of a consent election, it was designated by the Board as the collective bargaining agent for these employees.

The Employer is engaged at its plant at Springfield, Illinois, in the manufacture of writing papers, cover papers, text papers, drawing papers, and specialty papers. The power unit, which produces steam, adjoins the main building and is separated therefrom by a brick wall containing doors leading to the plant proper. In the manufacture of paper, the Employer utilizes the steam produced by the power unit to a substantial extent in various processing steps. The employees in this power unit maintain the fires, clean the boilers, haul coal, dispose of ashes, and generally produce the steam for production purposes and for heating the premises. In addition, these employees,<sup>5</sup> when working nights and on Saturdays and Sundays, make the rounds<sup>6</sup> of the plant each hour checking for fires and trespassers. When performing these additional duties, they are neither armed nor deputized, and have no authority to make arrests. There is little contact between the production employees and the power plant employees during working hours and substantially no interchange between these groups.

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<sup>3</sup> *Matter of Duquesne Light Co., ibid.* For the reasons stated herein, the Intervenor's motion to dismiss on the ground of contract bar is hereby denied.

<sup>4</sup> There were three firemen and one engineer employed at the time of the hearing.

<sup>5</sup> All these employees rotate shifts every 7 days so that each performs the limited watchman duties described.

<sup>6</sup> It takes approximately 10 to 15 minutes to make the rounds of the plant and punch the time clocks located at various stations therein.

The Employer and the Intervenor contend that as steam is an essential element in the Employer's paper manufacturing operations, the employees in question, producing the steam, are intimately related to the production process and should therefore not be severed from the existing plant-wide unit.

It appears that the functions of the employees in the Employer's power plant are essentially the same as those generally performed by powerhouse employees engaged in the production of steam in other industrial plants. While a substantial portion of the steam produced by the power plant is utilized directly in the manufacturing process, this product of the power plant is in nowise related or equivalent to the end-product of the Employer's operations. This is, in our opinion, an important factor which distinguishes the present case from the *Lynn Gas* decision,<sup>7</sup> relied upon by the Intervenor. That case is further distinguishable because it involves a public utility plant, as to which the Board favors the establishment of an industrial and ultimately a system-wide unit.<sup>8</sup> Nor can the power plant employees in the present case, because of some evidence of integration of their operations in the production scheme, be considered an inseparable part of the over-all production unit.<sup>9</sup>

We find no merit in the Intervenor's further contention that these employees may not be established as a separate unit because they spend part of their time performing unskilled and unspecialized functions, such as making rounds as watchmen, hauling coal, and removing ashes. It is sufficient that the major proportion of their working time is devoted to powerhouse duties.<sup>10</sup> As powerhouse employees they may, in accordance with established precedent, appropriately be represented in a separate bargaining unit.<sup>11</sup>

Accordingly, we find that all firemen and engineers employed by the Employer at its North Agawam, Massachusetts, plant, excluding all other employees, and supervisors, may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

However, we shall make no final unit determination at this time, but shall be guided in part by the desires of these employees as ex-

<sup>7</sup> *Matter of Lynn Gas & Electric Co.*, 78 N. L. R. B. 3.

<sup>8</sup> *Ibid.*

<sup>9</sup> Cf. *Matter of Ford Motor Company (Maywood Plant)*, 78 N. L. R. B. 887; see also *Matter of Hunter Packing Company*, 79 N. L. R. B. 197.

<sup>10</sup> Conversely, we find that these employees, spending only a minor part of their time as watchmen, are not guards within the meaning of Section 9 (b) (3) of the Act. Cf. *Matter of Radio Corporation of America (R. C. A. Victor Division)*, 76 N. L. R. B. 826.

<sup>11</sup> *Matter of Kimberly-Clark Corporation*, 78 N. L. R. B. 102; *Matter of The Kendall Company*, 77 N. L. R. B. 385; *Matter of Smith Paper, Incorporated*, 76 N. L. R. B. 1222; *Matter of American Sugar Refining Company*, 76 N. L. R. B. 1009; *Matter of E. W. Bliss Company*, 76 N. L. R. B. 475.

pressed in the election hereinafter directed. If a majority vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit.

### DIRECTION OF ELECTION <sup>12</sup>

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees described in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by International Union of Operating Engineers, Local 602, AFL, or by International Brotherhood of Paper Makers, AFL, or by neither.

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<sup>12</sup> Any participant in the election herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.