

In the Matter of IMPERIAL PAPER AND COLOR CORPORATION and
DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL UNION 12962
and INTERNATIONAL ASSOCIATION OF MACHINISTS

Case No. 2-RE-76.—Decided February 28, 1946

Mr. J. E. Singleton, of Glens Falls, N. Y., by *Mr. Louis Jackson*, of New York City, for the Company.

Mr. Wayne M. Brayfield, of Albany, N. Y., and *Mr. John Signor*, of Glens Falls, N. Y., for District 50.

Mr. Robert Reber, of New York City, and *Mr. William H. Bradt*, of Albany, N. Y., for the Machinists.

Mr. Jerome J. Dick, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Imperial Paper and Color Corporation, Glens Falls, New York, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert Silagi, Trial Examiner. The hearing was held at Glens Falls, New York, on December 6, 1945. The Company; District 50, United Mine Workers of America, Local Union 12962, herein called District 50; and International Association of Machinists, herein called the Machinists, 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. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Imperial Paper and Color Corporation is a New York corporation with its general offices in Glens Falls, New York. Its plant in Glens

Falls is the only one involved in this proceeding. At this plant the Company manufactures pigment colors and chemicals. During the year ending November 30, 1945, the Company purchased raw materials valued in excess of \$1,000,000, of which approximately 90 percent came from points outside the State of New York. During the same period, sales of the Company's finished products exceeded \$1,000,000 in value, of which approximately 90 percent was shipped to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, Local Union 12962, is a labor organization, admitting to membership employees of the Company.

International Association of Machinists is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Confronted with conflicting demands by District 50 and the Machinists for recognition as the exclusive bargaining representative of its oilers, the Company filed its petition with the Board setting forth this fact, and requesting an investigation and certification of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that District 50 represents a substantial number of oilers.¹

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 DETERMINATION OF REPRESENTATIVES

District 50, which has an agreement with the Company covering all production employees, contends that oilers are a part of this contract unit. The Machinists, on the other hand, has a contract with the Company embracing all machinists, sheet metal workers, millwrights, and welders, and their respective helpers and apprentices, and it

¹ The Field Examiner reported that District 50 submitted three cards, of which two bore the names of oilers listed on the Company's pay roll. There are three oilers in the Company's employ.

The Machinists submitted no cards, relying on its contract with the Company and past bargaining history as evidence of its interest.

asserts that oilers form a part of its contract unit. The Company takes a neutral position with respect to the issue which has been raised.

There are three oilers presently employed by the Company. Approximately 90 percent of their time is spent in lubricating pulleys, shafting, mechanical agitators, and centrifuges. Two men work throughout the entire plant, whereas the third is confined to the bichromate department. Their work is essentially unskilled and requires no special education, training, or experience. Oilers are selected from among production employees.

Before 1940, the Company's machines had been lubricated by production employees who performed this function in addition to their normal production duties. Since that time, however, lubricating has been done by full-time oilers. In October 1942, the Company and Local Union 1063 of the Brotherhood of Painters, Decorators and Paperhangers of America, herein called the Painters, signed a contract for 1 year. This contract covered all production workers, and excluded employees under the recognized jurisdiction of craft unions such as the Machinists. In 1943, the contract between the parties was renewed, and the situation as to the craft unions still exists. During 1942 and 1943, the Company's maintenance employees were contemporaneously bargained for under contracts with craft unions, including the Machinists.²

By mutual agreement between the Painters and the Machinists, and with the acquiescence of the Company, when a production employee was promoted and became experienced as an oiler, he would transfer his union membership from the Painters to the Machinists and would be considered by the unions as a machinist's helper. But the record shows that in 1944 no such transfer took place, and oilers retained their membership in the Painters.

In the fall of 1944, District 50 filed a petition seeking bargaining rights on behalf of the Company's production employees in essentially the same unit as had been represented by the Painters. Pursuant to a Decision and Direction of Election by the Board,³ an election was conducted among all production employees in this unit. All maintenance employees represented by craft unions, including the Machinists, were specifically excluded from the unit. The Company and District 50 entered into a contract dated March 10, 1945, covering the unit in which District 50 was certified by the Board. The Machinists took the position at that time that the oilers were not included in that unit.

² The agreements with the Painters contained a modified union-shop provision, and those with the craft unions, a union-shop provision requiring membership in the particular union under whose jurisdiction a worker fell.

³ *Matter of Imperial Paper and Color Corporation*, 59 N. L. R. B. 734.

It is evident from the record and the Board's decision in the previous case that the inclusion or exclusion of oilers was not considered or adjudicated. The history of collective bargaining indicates that the oilers have been represented in both a unit of production employees and a unit of maintenance employees. We are of the opinion, therefore, that they may be represented in either type of unit.⁴ We shall direct an election among the oilers so that they may indicate their desire as to whether or not they should be added to the established bargaining unit represented by District 50, or the established bargaining unit represented by the Machinists. Our determination as to how they shall be bargained for will depend, in part, upon the results of this election.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among all oilers employed by the Company at its Glens Falls plant, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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 this Direction.

If the oilers vote for District 50, they will be taken to have indicated a desire to be bargained for as part of the production unit now represented by that union. Conversely, if they vote for the Machinists, they will be taken to have indicated a desire to be bargained for as part of the unit of certain maintenance employees now represented by that organization.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Imperial Paper and Color Corporation, Glens Falls, New York, 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 Second Region, acting in this matter as agent for the National Labor Relations Board, and

⁴It is clear, and all parties agree, that oilers do not constitute a separate appropriate unit.

subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the voting group described 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 District 50, United Mine Workers of America, Local Union 12962, or by International Association of Machinists, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.