

In the Matter of ALBEMARLE PAPER MANUFACTURING COMPANY, EMPLOYER and CONGRESS OF INDUSTRIAL ORGANIZATIONS, PETITIONER

Case No. 5-R-2274.—Decided August 19, 1946

Messrs. R. E. Cabell and Charles H. Robertson, of Richmond, Va., for the Employer.

Messrs. T. D. du Cuennois and Ernest B. Pugh, of Richmond, Va., for the Petitioner.

Mr. Conrad A. Wickham, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

Upon a petition duly filed, hearing in this case was held at Richmond, Virginia, on June 5, 1946, before George L. Weasler, Trial Examiner. 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 National Labor Relations Board makes the following:

FINDINGS OF FACT

I: THE BUSINESS OF THE EMPLOYER

Albemarle Paper Manufacturing Company is a Virginia corporation having its main office and principal place of business in Richmond, Virginia, where it is engaged in the manufacture of Kraft specialties, laminating, blotting and cover paper. During the calendar year 1945, the Employer purchased \$4,000,000, of which 100 percent was purchased and shipped to the Employer's mills from points outside the Commonwealth of Virginia. During the same period, the Employer's manufactured products were valued at approximately \$6,000,000, of which \$5,000,000 was sold and shipped to places outside the Commonwealth of Virginia.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

70 N. L. R. B., No. 15.

II. THE ORGANIZATION INVOLVED

The Petitioner, Congress of Industrial Organizations, is a labor organization claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

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

IV. THE APPROPRIATE UNIT

The Petitioner seeks a unit of all the Employer's foremen at its three mills in Richmond, Virginia, including all paper inspectors and the timekeeper at the Employer's Brown's Island mill, but excluding machine tenders and all personnel having the rank of assistant superintendent or above. The Employer contends that (a) foremen are not employees within the meaning of the Act, and (b) if a unit is set up, certain categories of foremen should be excluded on the grounds that they constitute a higher level of supervision than others. Although there is no history of collective bargaining concerning the unit requested, the Employer is presently under contract with an affiliate of the Petitioner covering its production and maintenance employees.¹

The Employer operates 3 mills, all located in Richmond, Virginia, known as the Brown's Island mill, the Hollywood mill and the Riverside mill, which employ 250, 100, and 50 employees, respectively. The Employer's executives include a president, vice president, production manager and personnel manager. Each mill has a superintendent, 1 or 2 assistant superintendents, and foremen of different classifications which vary according to the particular mill. The Brown's Island mill also employs 1 combined timekeeper and assistant personnel manager and 4 paper inspectors, all of whom the Petitioner would include and the Employer exclude.

The parties have agreed to exclude assistant superintendents and higher ranking officials, as well as the machine tenders in the Hollywood mill. They have also agreed to include the following foremen: car shipping, local and truck shipping, finishing department, yard department and beater shift foremen in the Brown's Island mill; the shipping, finishing department and coating foremen in the Hollywood mill; and the shipping foremen in the Riverside mill. We find these exclusions and inclusions to be appropriate.

¹ Local 690, United Paper Workers of America, C. I. O.

The Employer would exclude, the Petitioner include, the four foremen, the general beater foreman, the electrician foreman, the power plant foremen, and the maintenance department foreman at the Brown's Island mill; the maintenance foreman at the Hollywood mill; and the night foreman at the Riverside mill. No position has been taken by either party as to the assistant car shipping foreman at the Brown's Island mill.

All foremen of the Employer have the authority to effect changes in the status of employees under their supervision, and all are charged with the enforcement of the Employer's rules and policy, in the formulation of which they participate through weekly foremen's meetings with the management and monthly foremen's safety meetings. They are also all accorded similar vacation privileges, which have additional advantages over those extended to production and maintenance workers.

As to the first contention of the Employer, that foremen are not "employees" within the meaning of the Act, both the Board² and the courts,³ in considering the status of supervisory personnel, have held to the contrary. Accordingly, we find that the foremen involved in this proceeding are employees within the meaning of the Act.

As to the Employer's contention that the unit, if set up, should exclude certain categories of foremen which constitute a higher level of supervision, a majority of the Board⁴ believes, on the basis of its reasoning in prior decisions,⁵ that certain foremen in the instant proceeding do constitute such a higher level, and should, therefore, be given an opportunity by separate voting to determine whether or not they wish to be included in the same unit as those in the lower level. Accordingly, we shall make no final unit determination at this time, but will be guided, in part, by the desires of the employees involved as expressed in the elections hereinafter directed. The employees to be included in the higher level will vote in Group I, and are specifically ruled upon below in our individual treatment of the several mills. All other foremen will vote in Group II. Should the employees voting in Group I select the Union, they will be taken to have indicated a desire to be included in a single bargaining unit with the employees of Group II.

² *Matter of California Packing Company*, 66 N. L. R. B. 1461; *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386; *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298; *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294; *Matter of Packard Motor Car Company*, 64 N. L. R. B. 1212, and 61 N. L. R. B. 4

³ *N. L. R. B. v. Armour & Company*, 154 F. (2d) 570 (C. C. A. 10); *N. L. R. B. v. Skinner & Kennedy Stationery Company*, 113 F. (2d) 667 (C. C. A. 8).

⁴ Chairman Herzog and Member Reilly.

⁵ *Matter of The White Motor Company*, 67 N. L. R. B. 828; *Matter of Kelsey-Hayes Wheel Company*, 66 N. L. R. B. 570; *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997.

Brown's Island mill

Tour foremen: The Employer employs four employees in this category, three of whom work 6 days per week on a rotating, three-shift basis. The fourth tour foreman relieves each of the others, as well as the Employer's beater shift foremen, 1 day per week. On the day shift, the tour foreman operates under the supervision of the mill superintendent. He is in charge of the paper machine crews and responsible for the amount of production. He has authority to make changes in raw materials to insure proper production, and to reject, divert, or hold manufactured paper, if substandard, for disposition by the superintendent.⁶ On the night shifts, the tour foreman is the acting superintendent of the plant, supervising, in addition to his own men, the beater shift foremen, the three power plant employees, and the oilers. He can, at night, to meet an immediate situation, transfer men from one department to another. Only in cases of major breakdown is he required to call the mill superintendent. Normally he, himself, handles all emergencies at night, calling on the appropriate foreman to accomplish required repairs. If necessary, he is authorized to shut down the mill to wash up, sew or change wires and felts, or make necessary repairs. He is paid on an hourly basis, receiving, with overtime, approximately \$77 per week, with a guaranteed weekly minimum of \$30.⁷

The majority of the Board is of the opinion that the tour foremen, on the basis of their additional authority and responsibility on the night shifts, before being included in a unit of all foremen, should be given the opportunity by separate voting to determine whether or not they desire to be in the same unit with the members of Group II. We shall, therefore, direct that the tour foremen vote in Group I.

Beater general foreman: This employee is a technical expert on color formulas and paper-making chemicals, about which he assists and advises the superintendent concerning the manufacturing process and conditions in the beater room department, which is the stock preparation department of the mill. He works only on the day shift, during which time he directly supervises the beater shift foremen, over whom he has the authority to hire or discharge. At night, he leaves instructions for them to follow. His pay is on a salary basis at the rate of \$93 per week.

A majority of the Board believes that this employee, because of the authority he exercises over the beater shift foremen, who are supervisory employees in their own right, should also be given the opportunity to vote separately. We shall, therefore, include him in Group I.

⁶ Formerly, authority to reject, divert, or hold rested in the Employer's paper inspectors.

⁷ This guarantee is also given the beater shift foremen, although their hourly wage schedule is somewhat lower. No other foremen are extended this guarantee.

Electrician foreman: This employee supervises his own crew of four or five men. He works only on the day shift, except when required by emergencies to be present at the mill at night, and exercises no supervision over other supervisory employees. He is paid a weekly salary of \$79. We shall include him in the unit and direct that he vote in Group II.

Power Plant foreman: This employee supervises his own crews, having approximately 18 men under him. He directs the operation of the steam boilers, the turbo-generators, and the receiving and storing of coal. He works in the daytime, but is on call in the event of emergency breakdowns. No authority is exercised by him over other supervisory employees. He receives a weekly salary of \$82. We shall include him in the unit and direct that he vote in Group II.

Maintenance department foreman: This employee is known as the "master mechanic." He is in charge of the maintenance and repair of the mill's machinery, general equipment and buildings. The crew under his supervision consists principally of millwrights and mechanics, of which there are approximately 40 in number. He exercises no authority over any supervisory employees of the Employer and receives a salary of \$93 per week. We shall include him in the unit and direct that he vote in Group II.

Assistant car shipping foreman: This employee assists the car shipping foreman, whom the parties have agreed to include, in supervising the loading of railroad cars. He assumes complete charge of this operation in the absence of his superior. At no time does he perform manual work. His pay is \$0.91 per hour. Although the parties failed to state their positions as to this employee, we find his duties to be supervisory and shall include him in the unit. We shall direct that he vote in Group II.

Timekeeper and assistant personnel manager: Until recently, this employee has been known simply as the "timekeeper" in the Brown's Island mill, his duties in this respect being merely to maintain time records of the plant employees.⁸ The major portion of his duties for the past 7 years, however, has been concerned with personnel work, performed in the capacity of assistant to the Employer's personnel manager. Although this has been largely in connection with the personnel at the Brown's Island mill, he actually does most of the Employer's routine employment, interviewing applicants and sending them to the appropriate foremen for the latter's rejection or approval. He also assists in the preparation of the weekly pay roll and distribution of labor costs for the accounting department. He has no one under his supervision, but performs the staff function of keeping the

⁸ These duties are performed in the Hollywood and Riverside mills by the assistant superintendent and superintendent, respectively

foremen and superintendent advised on the Employer's labor policies. We are of the opinion that his work is confidential, and that he is not identified in interest with the employees in the unit here sought. We shall, therefore, exclude him from the unit.

Paper inspectors: There are four of these employees in the Brown's Island mill, three of whom work on a rotating shift basis similar to that of the tour foreman, while the fourth acts as their relief and spends the remainder of his time as a test man. The duties of a paper inspector include the maintenance of records on the weight, size and number of rolls of paper manufactured, the time required to produce particular orders, and the cutting of stencils. He keeps informed on tests and specifications, and informs the tour foremen of any deviation therefrom. He exercises no supervision over other employees, receives pay at the rate of \$1.04 per hour, and vacation benefits similar to those extended the production and maintenance employees. We find that these employees are not supervisors. We shall, therefore, exclude the paper inspectors from the unit:

Hollywood mill

Maintenance foreman: This foreman is the only exclusion requested by the Employer at the Hollywood mill. He serves in the same capacity as the maintenance department foreman at the Brown's Island mill, whom we have included in the unit, although he performs the work for both the Hollywood and Riverside mills. He is paid a salary of \$67.50 per week. We shall include him in the unit and direct that he vote in Group II.

Riverside mill

Night foreman: This employee is the only exclusion requested by the Employer at the Riverside mill. He serves in an identical capacity to the tour foremen at the Brown's Island mill, whom we have decided to place in a separate voting group in order that they may express their desires concerning inclusion in a single unit of foremen. A majority of the Board believes that the night foreman, because of his similar status, should be given a like opportunity. We shall, therefore, direct that he vote in Group I.

We shall direct that separate elections be held among the employees in the voting groups described below who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction:

Group I: All tour foremen and the beater general foreman in the Brown's Island mill, and the night foreman at the Riverside mill,

excluding all employees of the rank of assistant superintendent and above, the timekeeper and assistant personnel manager of the Brown's Island mill, all paper inspectors, all machine tenders, and all employees included in Voting Group II, as set forth below.

Group II: All the Employer's foremen, including the electrician foreman, the power plant foreman, all maintenance foremen, shipping foremen, and the assistant car shipping foreman in the Brown's Island mill, all beater shift foremen, finishing department foremen, yard department foremen and coating foremen, but excluding all employees of the rank of assistant superintendent and above, the timekeeper and assistant personnel manager of the Brown's Island mill, all paper inspectors, all machine tenders, and all employees included in Voting Group I, as set forth above.

As stated above, there will be no final determination of the appropriate unit pending the results of the elections.

DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Albemarle Paper Manufacturing Company, Richmond, Virginia, separate elections 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 Fifth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, as amended, among employees in the voting groups 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 prior to the date of the elections, to determine in each of the voting groups whether or not they desire to be represented by Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. GERARD D. REILLY, concurring separately:

My position in this case is similar to that expressed in my concurring opinion in *Matter of The Midland Steel Products Company, Parish & Bingham Division*.⁹ As in that case, I would direct no elec-

⁹ 65 N. L. R. B. 927

tion in the present matter for the reasons stated in my dissenting opinion in *Matter of Packard Motor Car Company*,¹⁰ and further, in this case, for the reasons set forth in my dissenting opinion in *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*.¹¹ Since the majority of the Board entertain a contrary view, however, I wish to concur in the conclusion that the tour foremen, the beater general foreman and the night foreman herein should be balloted separately so as to ascertain whether or not they desire to be in the same bargaining unit which includes the other foremen of the Employer. There is sufficient evidence in the record to indicate that the duties and responsibilities of the first group are distinguishable from those of the second.

Mr. JOHN M. HOUSTON, concurring separately:

For the reasons stated in my concurring opinion in the *Midland Steel* case,¹² which I find equally applicable here, I would provide for only one voting group of all foremen of the Employer.

¹⁰ 64 N. L. R. B. 1212, and 61 N. L. R. B. 4

¹¹ 66 N. L. R. B. 386.

¹² 65 N. L. R. B. 997.