

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. United Steelworkers of America, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the Respondent at its Worcester, Massachusetts, plant, including shipping and receiving room employees and inspectors, but excluding office employees, departmental clerks, executives, foremen, assistant foremen, draftsmen, professional employees, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. United Steelworkers of America, C. I. O., was on July 20, 1950, and at all times since has been, the exclusive representative within the meaning of Section 9 (a) of the Act of all employees in the aforesaid unit for the purposes of collective bargaining.

4. By refusing to bargain collectively with United Steelworkers of America, C. I. O., as the exclusive bargaining representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]

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WEST VIRGINIA PULP AND PAPER COMPANY *and* UNITED PAPERWORKERS OF AMERICA, CIO, PETITIONER. *Case No. 6-RC-848. October 16, 1951*

#### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph C. Thackery, hearing officer. 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

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

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

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representa-

tion of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The parties are in agreement as to the description of the appropriate unit as consisting of all production and maintenance employees at the Employer's Tyrone, Pennsylvania, plant, excluding all office and clerical employees, professional employees, guards, and supervisors as defined in the Act. They disagree, however, as to the unit placement of gate watchmen, fire watchmen, the wood scaler, tour foremen, boss beatermen, the bleach plant foreman, the painter foreman, and the labor construction foreman, all of whom the Employer would exclude from the unit.

*Gate watchmen:* The Employer contends that three employees classified as gate watchmen should be excluded from the unit upon the ground that they are guards within the meaning of the Act. These employees, who work on a three-shift basis, are regularly assigned to the main gate of the plant. Their duties are to report fires, to report infractions of the Employer's rules, to prevent the removal of property without proper authority, and to see to it that only duly authorized persons enter or leave the plant. The fact that these watchmen are not armed, deputized, or uniformed does not detract from their status as guards within the meaning of the Act.<sup>1</sup> Because these employees are employed to enforce against employees and other persons rules to protect the property of the Employer, we find that they are guards within the meaning of the Act. Accordingly, we shall exclude them from the unit hereinafter found appropriate.

*Fire watchmen:* The Employer also contends that three employees classified as fire watchmen should be excluded from the unit upon the ground that they are guards within the meaning of the Act. These employees are not interchangeable with gate watchmen. Fire watchmen work from 3 p. m. to 7 a. m. and make regular tours of the plant, observing whether or not fires are threatened. If they discover a situation which requires remedial action, they report that fact to the foreman in charge of that area. Their employment is admittedly required<sup>2</sup> by fire insurance laws, and is not concerned with the enforcement of the Employer's own policies or rules.

The broad function of these fire watchmen to protect life and property from fire hazards is insufficient to bring them within the definition of "guard" as defined in the Act, which specifically prescribes that such an individual be employed as a guard to enforce rules against employees and others. Accordingly, we find that the employees whose function is limited to fire protection are not guards.<sup>2</sup> Because

<sup>1</sup> *Fruit Growers Supply Company*, 94 NLRB 909.

<sup>2</sup> *Argonne National Laboratories*, 89 NLRB 1236, 1237; *Carbide and Carbon Chemicals Corporation*, 79 NLRB 83, 86-87; *Standard Oil Company of California*, 79 NLRB 1466, 1474.

they appear to share interests in common with other production and maintenance employees, we shall include fire watchmen in the unit hereinafter found appropriate.

*The wood scaler:* The Employer contends that the wood scaler should be excluded from the unit upon the ground that his duties are supervisory, clerical, and confidential. The scaler performs very little manual labor. He measures the amount of wood delivered by the Employer's suppliers and determines whether or not the wood meets the Employer's specifications. Approximately one-third of his time is spent in scaling or measuring wood and the balance in making tabulations of the amount and varieties of wood delivered. Payments to the Employer's suppliers are based upon the records which he compiles. Although two other employees assist him from time to time as extra wood scalers, it does not appear that he exercises any supervisory authority with respect to these employees. Nor does he perform a supervisory function by informing the truck drivers to which pile the wood should be taken for unloading. Insofar as the alleged confidential aspects of his employment are concerned, it does not appear that the wood scaler has anything to do with the Employer's labor relations. It is true, as the Employer contends, that the wood scaler must be a thoroughly honest and trustworthy employee. However, the Employer has not shown in what manner his inclusion in the unit would conflict with the proper discharge of his duties. Because the wood scaler's duties are not connected with the Employer's labor policies, we find that he is not a confidential employee and that, despite the clerical aspect of some of his work, his interests and duties are sufficiently allied with those of the other employees to warrant his inclusion in the unit hereinafter found appropriate.<sup>3</sup> Accordingly, we shall include the wood scaler in the unit.

*Tour foreman:* The Employer contends that 4 employees classified as tour foremen should be excluded from the unit upon the ground that they are supervisors within the meaning of the Act. They work on rotating shifts and are directly responsible to the pulp mill superintendent. Each of the tour foremen has a crew of 23 or 24 men. Moreover, when assigned to a shift working between 4:30 p. m. and 8 a. m. a tour foreman has complete charge of and is responsible for the operations of the pulp mill. As each of the tour foremen is solely responsible for the production of the employees under him at times when no other supervisors are present, we believe that tour foremen must, of necessity, have the authority responsibly to direct employees on their shifts.<sup>4</sup> Accordingly, we find that tour foremen are supervisors and we shall exclude them from the unit.

<sup>3</sup> *Northern Redwood Lumber Company*, 88 NLRB 272, 277; *Veneer Products Inc.*, 81 NLRB 492, 494.

<sup>4</sup> *California Spray-Chemical Corp.*, 86 NLRB 453, 454-455. *Southern Industries Company*, 92 NLRB 998 (adjusters, shift foremen).

*Boss beatermen:* Each of these four employees, who the Employer contends should be excluded as supervisors, has a crew of 11 or 12 employees. Boss beatermen are directly responsible to the paper mill superintendent and appear to be on a level with the boss machine tenders, who the parties agree are supervisors. Boss beatermen are responsible for the successful operation of the beater room, which includes the responsibility for the ingredients and colors put into the beaters. As part of their over-all responsibility, they make temporary transfers of employees between machines to maintain a balanced working force. Although they are qualified to do any work in the beater room, boss beatermen do very little manual labor and receive a substantially higher rate of pay than do beatermen. Moreover, the record indicates that boss beatermen work on rotating shifts and, therefore, are all responsible for the production of the employees under them at a time when no other supervisors are present. Upon the basis of all the foregoing facts, we find that boss beatermen are supervisors, and we shall exclude them from the unit.<sup>5</sup>

*Bleach plant foreman:* This employee, whom the Employer would exclude upon the ground that he is a supervisor, is responsible for the production of chemicals in the bleach, electrolytic, and chalk plants. He is also responsible for the repairs made to the machinery in such plants, and directs the work of a crew of 31 employees. Although the bleach plant foreman is directly responsible to a superintendent who works the same hours as the bleach plant foreman and has jurisdiction over the same employees and machinery, it appears that all work orders are channeled through the bleach plant foreman, and that the superintendent has very few direct contacts with the employees. Upon the basis of the foregoing, we find that the bleach plant foreman responsibly directs the work of other employees.<sup>6</sup> Accordingly, we find that the bleach plant foreman is a supervisor and we shall exclude him from the unit.

*Painter foreman:* The Employer contends that the painter foreman should be excluded from the unit upon the ground that he is also a supervisor. The painter foreman is in charge of a group of nine employees and is directly responsible to the superintendent of construction. The painter foreman, subject to the general direction of the superintendent, requisitions materials, assigns painters, and determines in what manner the painting will be done. It also appears that he can effectively recommend changes in the grade classifications of the painters under his charge. Accordingly, we find that he is a super-

<sup>5</sup> *The Connecticut Electrical Manufacturing Co.*, 94 NLRB 1449; *Southern Industries Company*, *supra*; *California-Spray Chemical Corp.*, *supra*.

<sup>6</sup> *Rodney Milling Company*, 88 NLRB 177, 178-179; *Virginia Gear and Machine Corporation*, 88 NLRB 58, 59.

visor within the meaning of the Act<sup>7</sup> and we shall exclude him from the unit.

*Labor construction foreman:* The Employer likewise contends that the labor construction foreman should be excluded from the unit upon the ground that he is a supervisor. This individual is in charge of a working force of 22 employees and is directly responsible to the superintendent of construction. As part of his duties, the labor construction foreman plans the work of the labor force and assigns the employees in his charge to various jobs. The labor construction foreman does very little manual labor and has an assistant to aid him in the direction of the employees in his group. Upon the basis of the foregoing, we find that the labor construction foreman responsibly directs the work of other employees.<sup>8</sup> Accordingly, we find that he is a supervisor and we shall exclude him from the unit.

We find that all production and maintenance employees at the Employer's Tyrone, Pennsylvania, plant, including fire watchmen and the wood scaler, but excluding all office and clerical employees, professional employees, gate watchmen, guards, tour foremen, boss beater-men, bleach plant foremen, the labor construction foreman, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

<sup>7</sup> *Connecticut Electrical Manufacturing Co., supra; Todd Shipyards Corporation, 87 NLRB 627.*

<sup>8</sup> *Buckeye Rural Electric Cooperative, Inc., 88 NLRB 196, 197.*

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JOHN H. BARR MARKETING COMPANY *and* LOCAL INDUSTRIAL UNION  
No. 78, CIO. *Case No. 21-CA-993. October 17, 1951*

## Decision and Order

### STATEMENT OF THE CASE

Upon a charge filed January 2, 1951, and an amended charge filed February 12, 1951, by Local Industrial Union No. 78, affiliated with the Congress of Industrial Organizations, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued his complaint dated March 28, 1951, against John H. Barr Marketing Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1),