

Patterson-Sargent Division of Textron, Inc., and Paint, Chemical, Clerical, Warehouse and Industrial Workers Union, Local 1310, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO. Case 22-RM-300

December 16, 1968

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS

BROWN AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before James Brady, 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 National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, including the briefs filed by the Employer-Petitioner and the Union, 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. Employer-Petitioner is engaged in the manufacture of paint. It operates factories in Tulsa, Oklahoma, and North Brunswick, New Jersey, and has several warehouses and retail outlets throughout the United States. Across the street from its North Brunswick factory is Employer-Petitioner's headquarters office which exercises control over the entire Patterson-Sargent Division.

Prior to 1965, Patterson-Sargent was a division of H. K. Porter Company, Inc. In 1964, the Union, in three separate proceedings, was certified to represent three groups of employees at the North Brunswick plant. These units consisted of: (a) production and maintenance employees; (b) laboratory employees; and (c) office-clerical employees. In 1965, the Patterson-Sargent Division of H. K. Porter was acquired by the Vita Var Division of Textron, Inc. At that time, Vita-Var was manufacturing paint in a plant located in Newark, New Jersey. The headquarters office of Vita-Var was located in Orange, New Jersey. Employees of this office were unrepresented. Shortly after the acquisition, the headquarters offices of Patterson-Sargent were absorbed into Vita-Var's Orange office. In the process of consolidating the

clerical and administrative operations of the two companies, several clerical employees were shifted from the North Brunswick plant to the Orange office of Vita-Var.¹

In 1966, the Newark plant of Vita-Var was consolidated into the North Brunswick plant of Patterson-Sargent. In 1967, a new headquarters office for the Patterson-Sargent Division was set up across the street from the North Brunswick plant.

The instant dispute arose when the Union requested that the Employer bargain with it as the representative of the clerical employees in the North Brunswick headquarters unit. When the Employer refused, the Union invoked the contract arbitration machinery. The arbitrator held that the Employer violated the collective-bargaining agreement executed by the parties by refusing to include the headquarters clericals in the existing clerical unit.² The Employer refused to comply and filed a petition for an election among office clerical employees in the headquarters office.

The Union contends that (1) the existing collective-bargaining agreement for clerical employees covers the clerical employees in the headquarters unit and is, therefore, a bar to the instant proceeding; (2) the Board should defer to the arbitrator's finding to this effect; and, (3) in any event, the headquarters unit is part of the existing bargaining unit by accretion. The Employer contends that no accretion has occurred and that the arbitrator's decision is irrelevant because it only interprets the language of the contract and does not purport to pass upon the question of accretion.

We conclude that the instant case is governed by the principles set forth in *Beacon Photo Service, Inc.*³ In that case, the facts of which are almost identical to the facts presented here, the Board noted that two separate issues were presented: (1) whether the contract was intended to cover the disputed employees; and (2) whether assuming the first question is answered in the affirmative, the parties could so extend their contract without consent of the employees in dispute. The Board held that:

The first question can be answered by an arbitrator, but the second question is only for the Board. Even if an arbitrator should decide that the existing contract was intended to cover employees to be hired after the execution of the contract at the new facilities of the Employer, the Board will nevertheless refuse to find the contract a bar to a petition of representation at the new facilities unless these are an accretion to the contract unit.⁴

¹ Prior to this time, Patterson-Sargent's accounting operations were performed at offices in Pittsburgh, Pennsylvania. A data processing unit was located in Ambridge, Pennsylvania. Some clerical and accounting functions were performed at the Tulsa, Oklahoma, and North Brunswick plants. All these operations were absorbed into Vita-Var's office in Orange.

² Specifically, the arbitrator held that the Employer violated article

II, Section 4 which provided.

Any office classification removed from the bargaining unit which is returned to the bargaining unit at the Company's North Brunswick plant shall be covered by the new Labor Agreement so long as it is the same classification which has removed.

³ 163 NLRB No. 98.

⁴ *Id.* at 2-3

Accordingly, we need not decide in this case whether the arbitrator correctly interpreted article II, section 4 of the collective-bargaining agreement. The issue before us is whether the office clericals in the headquarters unit constitute an accretion to the existing clerical unit. We do not believe that such a finding is warranted here.

The functions of the headquarters unit are separate and distinct from the clerical functions performed in the plant itself. As noted above, the headquarters office exercises administrative and accounting responsibility over the entire Patterson-Sargent Division. In contrast, the clericals in the plant itself are concerned only with the operations of that particular plant. As a result, the clerical information, i.e., raw data concerning inventory, shipments, etc., which are sent from the plant to the office across the street is the same kind of information sent to the headquarters office from facilities in other parts of the country. Moreover, there are a significant number of job classifications in the headquarters office which are not present in the plant.⁵ Additionally, there is no evidence of any interchange among employees at the two locations and clericals at each are subject to separate supervision. Apart from the fact that raw data and other figures are sent from the plant to the headquarters through the company mailing system,

there is practically no contact between the two groups of employees. Lastly, we think it significant that there are only six employees in the office clerical unit in the plant. In contrast, there are approximately 24 clerical employees in the headquarters office who, the Union contends, should be added to this plant office clerical unit.

In view of the foregoing, we find that the clerical employees in the headquarters office are not an accretion to the existing office clerical contract unit, and, therefore, that the collective-bargaining contract relied upon by the Union, is not a bar to a present election. Accordingly, we find that a question concerning representation exists among the clerical employees at the Employer's headquarters office within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All office clerical employees employed at division headquarters' offices located at North Brunswick, New Jersey, excluding all other employees, sales people, confidential employees, guards, watchmen and supervisors as defined in Section 2(11) of the Act.

[Direction of Election⁶ omitted from publication.]

⁵ Joseph L. Petescia, Comptroller of the Patterson-Sargent Division testified that in the plant there were no accounts payable clerks, accounting clerks, payroll clerks, billing clerks, IBM operators, key punch operators, data control clerks, or office boys, as there were in the headquarters office.

⁶ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional

Director for Region 22 within 7 days after the date of issuance of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.