

**Down River Forest Products, Inc. and John Jacobs,
Petitioner and United Papermakers and Paperwork-
ers, Local No. 35, AFL-CIO. Case 4-RD-528**

July 24, 1973

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MILLER AND MEMBERS KENNEDY
AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held on February 25, 1973, before Hearing Officer Francis W. Hoerber.¹ Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 4, this matter was transferred to the National Labor Relations Board for decision. Thereafter, briefs were filed by the Employer, by the employees of Down River Forest Products, Inc., and by the Union.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Board has considered the entire record in this case, including the briefs of the parties, and hereby makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. United Paperworkers International Union, Local 35, Intervenor herein, is a labor organization claiming to represent certain employees of the Employer. Petitioner, an employee of the Employer in the unit involved herein, asserts on behalf of the employees that the Union is no longer the bargaining representative, as defined in Section 9(a) of the Act, of the employees for whom the petition is filed.

3. The Union and Corrugated Inner-Pak Corporation, as employer, entered into a recognition agreement on June 17, 1972, covering the Company's production and maintenance employees at its Con-

shohocken, Pennsylvania, plant. This recognition was granted at the Board's Regional Office in the presence of a Board field examiner, who also signed the recognition agreement. The Company stated in the agreement that it was satisfied that the authorization cards it examined contained original signatures and that said Union had been designated by a majority of the unit employees.

Corrugated Inner-Pak Corporation is a subsidiary of Narad, Inc., based in Plymouth, Michigan, and the recognition agreement was signed by Vice President Archie Richardson of the parent corporation and by "Mike Smith, general manager," at Conshohocken. However, at the hearing the parties stipulated that the "true" name of the company in June 1972 was actually Down River Forest Products, Inc., even though the name Corrugated Inner-Pak was in general use. In June 1972 two divisions at Conshohocken were being operated in the same factory, one the Specialties division which manufactured corrugated packaging components, and the other the Dor-Kor division, which manufactured the corrugated filler for flush doors. The latter has never had more than 12 or 13 employees. Both divisions were supervised by Edward DuFour,² and together the two divisions employed 55 to 60 employees. Both had equal floor space, 25,000 square feet. The Union obtained 40 to 50 cards in organizing this plant in May 1972.

About June 22, 1972, Hurricane Agnes inundated the plant with 7 feet of flood water from the Schuylkill River. The Dor-Kor division resumed full production earlier than the Specialties division. DuFour testified that the core "department" was in full operation by July 17, while the specialty "department" started up partially the last week in July. About August 1, Employer Down River Forest Products sold the Specialties division to an unrelated company.³ At the time of hearing the Dor-Kor employees numbered 13, of whom at least 10 had been employed in June 1972. Their cards, dated May 1972 and presented at the June 17 conference, are in evidence.

In the "latter part" of July, Union President King and Vice President Stratten stopped at the plant and were told by DuFour that cleanup was still going on and that the Company might not stay in business. King said they would be in touch again after Labor Day. On July 21 the Union sent a letter to the employees scheduling a meeting for July 26. Earlier it had

¹ The petition was filed November 13, 1972, and dismissed by the Regional Director on November 20, citing *Keller Plastics Eastern, Inc.*, 157 NLRB 583, which holds that once a valid recognition agreement is consummated, the parties have a reasonable time in which to negotiate an agreement. The employees of the Employer appealed, and the Board on February 6, 1973, reinstated the petition and ordered a hearing. An amended petition was filed February 15, by an attorney for "John M. Jacobs, in behalf of the employees of Down River Forest Products, Inc."

² At the hearing DuFour testified that he was presently vice president and general manager of Down River Forest Products, Inc., and that Mike Smith was formerly there as a management trainee or "plant manager."

³ The sale was announced to the employees at a meeting on August 2 attended by employees of both divisions. Union President King testified, without contradiction, that he later contacted the representative of the new owner, that an RM petition followed and then a charge by the Union, that both were withdrawn, that a complete contract was then negotiated which, at the time of hearing, still had to be ratified by the members.

sent a letter for a June 26 meeting which was not held because of the storm. At the July meeting, attended by 25 to 28 employees, the Union explored with the employees the contract provisions desired by them. On September 13 at a luncheon meeting with Smith, Richardson, and DuFour, King was advised that the Specialties division had been sold, that it was expected that there would be only three in that division within 6 months, that management thought the Union would not be interested in representing so few, but that management would negotiate if the Union wished. King also testified that at least two subsequent appointments for meetings were canceled because Richardson was on the West Coast.

On October 9 a meeting was held with DuFour at which the Union's proposed contract was presented.⁴ After that, according to King, he called DuFour several times before being told that the Employer had a counterproposal which it would like to use as a basis for further negotiations. This proposal was dated November 3, 1972. The decertification petition was filed on November 13.

A further effort to meet on January 2 was initiated by King but apparently was called off by union consensus.

The Employer would have the Board restrict the principle of *Keller Plastics* to unfair labor practice cases, contending that it is inapplicable to decertification cases,⁵ or find it inapplicable in view of the unusual circumstances here. The petitioning employees urge a number of contentions including that "only 13 of the original 59 employees are currently working for the original employer," as well as the nonsupervisory status of John Jacobs who individually filed the original petition and identified himself as a working foreman.⁶ The Union contends that there is no basis for decertification; that the Regional Director was correct in dismissing on November 20 on the basis of

Keller Plastics. It notes that the Employer's representatives who signed the recognition agreement personally examined the cards which formed the basis for that recognition; that the Union originally had a clear majority in the division of the Company which continues to operate: 10 out of 11, or out of 13 including those hired subsequent to November 13; and urges the applicability of recent wage control cases where the Board has granted additional time to bargain in order not to penalize a bargaining representative for unavoidable delay.

We find merit in the contention that the recognition agreement, in the circumstances of this case, should not bar an election at this time. There has been more than mere delay in the consummation of a bargaining agreement since the recognition agreement of June 17, 1972. The lapse of time has been accompanied by a change in the nature of the unit, from a two-division unit to a single division, resulting in a substantial reduction in the size of the unit as well, only a small portion of it still remaining. In the meantime, of course, the Employer has also suffered a financial setback from the storm damage by Hurricane Agnes. In face of these unusual circumstances which have intervened to affect the unit and the employment opportunities of the employees since they expressed a desire for representation more than a year ago, without a bargaining contract having been concluded, we believe that an election in which the employees remaining in the unit can express their present desire as to representation is in order.

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

4. We note that the Employer concedes that it is the alter ego of or successor to the employing entity which entered into the recognition agreement. After selling the Specialties division it did in fact bargain with the Union for the remaining division. For the purposes of this election, therefore, we find that the unit here sought is appropriate. Accordingly we find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of the Act:

All production and maintenance employees employed by the Employer at Conshohocken, Pennsylvania, at its Dor-Kor operation, excluding guards and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]

⁴ This proposed contract named the Employer as Corrugated Inner-Pak Corporation. King testified that it had been prepared before he had knowledge of the August 1 sale of one division, and he saw no reason not to use it as a basis for negotiations.

⁵ It would have the Board overrule *Dale's Super Valu, Inc.*, 181 NLRB 98, a decertification petition where an election was barred under the *Keller Plastics* principle. See also *Akron Telerama, Inc., d/b/a Akron Cablevision*, 191 NLRB 4, distinguishing between the impact of *Keller Plastics* and a complete collective-bargaining contract which may bar a petition.

⁶ The record shows that Jacobs had no supervisory authority in November 1972 or at the time of the February 1973 hearing. About September 18, 1972, he had been given a 20-cent-an-hour wage increase and accepted a promotion to supervisory training, a fact which he cleared with the Union a week later. The Union urged him to go ahead and accept the promotion as it had working foremen among its members.