Rock-Tenn Company, Mill Division, Inc. and Rock-Tenn Company (Partition Division), Employer-Petitioners[1] *and* United Paperworkers International Union, Local 1106[2] Union. Case 25-UC-128

11 March 1985

DECISION ON REVIEW AND ORDER CLARIFYING UNIT

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 18 June 1984 the Regional Director for Region 25 issued a Decision and Order in the above-entitled proceeding in which he dismissed the Petitioners' unit clarification petition which sought to separate the existing two-plant unit represented by the Union at Eaton, Indiana, into two single-plant units. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioners filed a timely request for review of the Regional Director's decision on the grounds, inter alia, that the Regional Director erred in failing to clarify the unit as requested.

By mailgram order dated 7 September 1984, the National Labor Relations Board (former Member Zimmerman dissenting) granted the Petitioners' request for review.

The Board has considered the entire record in this case, including Union's opposition, with respect to the issue under review and makes the following findings.

In 1968, the Clevepak Corporation purchased both a paper mill and a partition plant in Eaton, Indiana. In late 1968, in Case 25-RC-4089, the Union was certified to represent the stipulated two-plant unit involved herein, described as "All production and maintenance employees of the Clevepak Corporation." The first collective-bargaining agreement was entered into on 12 August 1969, and Clevepak and the Union continued to bargain on a two-plant unit basis. The most recent collective-bargaining agreement was effective through 11 August 1984.

However, on 1 August 1983 Clevepak sold the paper mill to Rock-Tenn Company, Mill Division, Inc., a Tennessee corporation, and sold the partition plant to Rock-Tenn, Inc. (Partition Division), a Georgia corporation. Both are separate operating divisions of Rock-Tenn Company, a holding company. In April 1984 Petitioners jointly requested to separate negotiations at each plant for a new contract. The Union refused, and Petitioners filed the instant unit clarification petition.[3]

The Regional Director dismissed the petition after a hearing, finding that the purchase of the two plants by the Employer and the resulting organizational changes had little, if any, effect on the day-to-day operations of the plant or on the employees' terms or conditions of employment. Therefore, he concluded that there was no substantial impact or effect on the appropriateness of the historical unit and that clarification of the unit was not warranted.

Petitioners contend that the Regional Director's decision fails to address the primary thrust of Petitioners' case: that the unit was inappropriate prior to the change in ownership. Petitioners contend that the Regional Director did not decide whether the existing unit was an appropriate unit; rather, he assumed that the unit was appropriate and thus focused his attention on whether the change in ownership made the unit inappropriate. Petitioners argue that while bargaining history is accorded weight, it is of limited significance where the unit does not conform to other standards of appropriateness. The Union acknowledges that where there are significant changes after a prior certification, the bargaining history on the former basis no longer has a controlling effect. However, the Union argues that in the instant case there have been no significant changes in these two operations since Petitioners assumed control of the plants. Thus, the Union contends that the Petitioners retained all the hourly and supervisory employees, retained the same equipment, still manufacture the same products through the same processes, and the employees still enjoy the same terms and conditions of employment they enjoyed with the predecessor employer. Yet, the Union acknowledges that the two facilities are autonomous in various respects: the two facilities maintain separate personnel functions and office facilities; day-to-day control over labor relations is a separate function; the employees enjoy separate wage rates; and there is no employee interchange between the two facilities and no substantial functional integration of the two plants. We find merit in Petitioners' contentions that the bargaining history on a two-plant basis should not be controlling here.

In the first few years of operation under Clevepak, the existence of the two plants in a single bargaining unit caused few problems. Stan Collins, the general manager of the paper mill since 1969, testified that the two operations were somewhat integrated at that time, with centralized control of

[1] Hereinafter referred to as Petitioners

[2] Hereinafter referred to as the Union

[3] The petition was filed on 3 May 1984

labor relations and recordkeeping. By the late 1970s, the unworkability of the multiplant unit became apparent to the plant and mill officials of Clevepak, and during both the 1978 and 1980 negotiations they proposed to the Union that they bargain for the employees as separate plant units. On both occasions, the Union rejected the proposals.

With the purchase by Rock-Tenn, both plants are now owned by separate corporations, which are separate operating divisions of Rock-Tenn, a holding company. The few remaining factors of commonality existing prior to the purchase, i.e., centralized labor control and single corporate control, ended. The record discloses that each plant is engaged in a totally different operation. The manufacturing processes are different and not functionally dependent on each other. The paper mill is a "milling operation" which converts raw materials into large rolls of paper. The partition plant is not a production facility in the same sense. Rather, it takes rolls of paper which it cuts, shapes, and folds into cardboard partitions for use in corrugated containers. Although the paper mill sells approximately 50 percent of its product to the partition plant, it does so at fair market value and makes a profit on the sales.

There is no interchange among the employees of the two facilities. None of the 47 employees in the mill has any duties in the partition plant; nor do employees in the mill have any contact with employees in the partition plant.[4] Each plant has separate and distinct corporate management and supervisory staff.

Labor relations control is completely decentralized. Each plant has its own personnel officer, and personnel records are kept separately. Labor relations policy decisions are developed along division lines. The current collective-bargaining agreement is administered on a separate basis for the partition plant and for the paper mill. Thus, any meaning given to ambiguous contract provisions by past practice at one plant has no bearing on the other plant's interpretation of the same provision. The effect is that a provision of the contract may be interpreted in the partition plant in one way, for example, and the same provision may be interpreted and applied entirely differently in the paper mill. Grievances are handled separately for each plant without consultation with the management of the other plant.

There are also dissimilarities in working conditions. The paper mill is a continuous, around-the-clock, operation. The work force is divided into four crews which work three rotating shifts, 7 days a week. The partition plant is a "job shop" process and is in operation only to fill certain jobs and orders. Generally, the partition plant operates only two 8-hour shifts per day, 5 days per week. Because of the continuous nature of the operation, production employees at the paper mill do not have any fixed breaks or lunch periods, while employees in the partition plant have two 10-minute breaks and one-half hour for lunch. The facilities are separated by approximately 250 feet; each has a different postal address and telephone number. Seniority at one plant does not carry over to the other plant if an employee transfers; however, an employee's seniority is honored for purposes of vacations, holidays, insurance, and other fringe benefits established by the collective-bargaining agreement. There is no job bidding between plants, and each plant does its own hiring. Similarly, layoffs and recalls are handled on a separate plant basis.

Based on the completely separate corporate and operational structure, the lack of functional integration between the paper mill and the partition plant, the decentralized labor relations policies of the two plants, and the absence of employee interchange or contact, we find that the former two-plant unit of employees at the paper mill and the partition plant is no longer appropriate, and that only separate units are appropriate.[5] We do not agree with the Union that, because of the "long history" of bargaining on a two-plant basis, separate units under Petitioners' mode of operations are inappropriate. While the Board places great weight on collective-bargaining history, it is not determinative where, as here, significant changes in the organizational structure and operations of the two plants have occurred which negate any community of interes that may have existed previously among the employees of the two plants. Thus, "compelling circumstances" exist here for disregarding the bargaining history on a two-plant basis. We find that the historical unit no longer conforms reasonably well to the normal standards of appropriateness. *Crown Zellerbach Corp.*, 246 NLRB 202, 204 (1979).[6] *Capehart-Farnsworth Co.*, 111 NLRB 800, 802 (1955); cf. *Mennen Co.*, 108 NLRB 355, 356 (1954). Accordingly, on the particular facts here, the unit clarification petition is reinstated, and we

[4] One paper mill employee on occasion "spots" trucks at the partition plant

[5] In these circumstances, the fact that employees enjoy certain common contractual benefits such as pension benefits, health insurance, and holidays does not warrant a contrary result

[6] Although the parties to the bargaining history in that case did not object to establishing separate units, the Intervenor sought to preserve the combined unit as does the Union here We are of the view that when the Board is called on to clarify an existing unit and the facts show that the existing unit is no longer appropriate, a lack of agreement among the parties should not affect our statutory responsibility

shall clarify the unit as requested by Petitioners to find that only separate plant units are appropriate.[7]

ORDER

It is ordered that the Certification of Representative issued by the Board in Case 25-RC-4089 in July 1969 for a unit comprised of paper mill and partition plants at Eaton, Indiana, presently owned by Employer-Petitioners and currently represented by the United Paperworkers International Union, Local 1106, be clarified so as to constitute two separate plant units.

[7] The Union asserts that clarification is not appropriate for upsetting an agreement or an established practice even if the agreement was entered into by one of the parties for reasons which it claims to be mistaken, or the practice has become established by acquiescence and not expressed consent *Union Electric Co*, 217 NLRB 666, 667 (1975) We do not agree that under the particular facts herein unit clarification is inappropriate *Columbia Gas Transmission Corp*, 213 NLRB 111, 112 (1974), cited by the Regional Director, is factually distinguishable There, the parties' bargaining history was of a 30-year duration, various consolidations, mergers, and reorganizations had occurred over the years and the parties continued to sign succeeding agreements on the same unit basis Here, on the other hand, the Petitioners acquired the plants only recently Although they continued to abide by the predecessor's collective-bargaining agreement for the brief period prior to its expiration, shortly after commencing operation they requested the Union to bargain on a separate plant basis consistent with Petitioners' separate organizational and operational structure, but the Union would not agree We do not view Petitioners' interim adoption of the two-plant agreement as precluding a resolution of this unit dispute In the *Columbia Gas* case, supra, former Chairman Miller in his separate concurrence stated, "If the two units proposed were shown to be appropriate units by our usual standards, and if the existing single unit had been rendered inappropriate by reason of organizational changes, I would grant the petition" for clarification We adopt this position, and to the extent any cases may suggest otherwise, they are overruled