

Batesville Casket Company, Inc. and Hill-Rom Company, Inc., Employer-Petitioners and Furniture and Casket Workers Local Union No. 525, a/w United Steelworkers of America (Upholstery Division), AFL-CIO, Case 25-UC-137

30 April 1987

DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN, BABSON, STEPHENS, AND
CRACRAFT

On 21 April 1986 the Regional Director for Region 25 issued a Decision and Order in the above-entitled proceeding in which he dismissed the instant unit clarification petition, which sought to separate the existing single unit of employees of the Batesville Casket Company, Inc. and Hill-Rom Company, Inc.,¹ represented by the Union at Batesville, Indiana, into two separate 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 his application of the principles set forth in *Rock-Tenn Co.*, 274 NLRB 772 (1985), by failing to clarify the unit.

By unpublished order dated 18 July 1986, a three-member panel of the Board (Member Babson dissenting) granted the Petitioners' request for review with respect to that issue.² Thereafter, the Union filed a brief on review.³

The Board has considered the entire record in this case, including all submissions by the parties with respect to the issue under review, and makes the following findings.

In 1947, in Cases 11-R-1192 and 11-R-1198, the Board certified the Union as representative of all production and maintenance employees of Batesville Casket Company and Hill-Rom Company, combined into a single unit.⁴ At that time, Bates-

ville Casket (a manufacturer of burial caskets) had 235 employees, and Hill-Rom (a manufacturer of hospital room furniture) had 15 employees; their work "complex" consisted of 3 adjacent and interconnected buildings where space and equipment were shared. The three Hillenbrand brothers were each officers of both Companies, and G.C. Hillenbrand was responsible for all manufacturing operations. The Companies had common personnel and labor relations policies and shared administrative, accounting, and purchasing functions. In addition, the employees of each Company accrued unitwide seniority, frequently performed work on the other Company's product, and could bid into positions with either Company.

In the early 1950s, additional production buildings were constructed and the Companies' manufacturing functions were moved into separate buildings. There is no evidence of any day-to-day interchange of either employees or supervisors since that time, although, as will be discussed, "transfers" or "moves" between the Companies are not infrequent. The Hillenbrand complex now includes three buildings containing Hill-Rom operations, two buildings containing Batesville Casket operations, and several additional buildings which are shared by the Companies, including an administration building, a medical facility, and a vehicle garage.

In the mid-1970s, the Companies established separate human resources (personnel) departments and, as with Hillenbrand's other subsidiaries, both now have separate boards of directors, officers, personnel managers, etc. At the time of the hearing in 1985, Hill-Rom employed 615 employees in Batesville, with additional production facilities located in Canada; Batesville Casket employed 575 employees in Batesville, with additional production locations in 3 other States.

Hillenbrand Industries prescreens all applications for employment at the main corporate office and acceptable applicants are referred to one or the other Company for interviews; the individual Companies then make the final decision as to selection or rejection of an applicant. Thereafter, discipline, termination, and promotion is handled by the individual Company. The Companies independently process grievances up to the third level, at which time the union grievance committee (consisting of one plant steward from each of the five manufacturing buildings) and Hillenbrand's senior counsel meet with the management of the particular Company involved. Decisions to proceed to arbitration

incorporated following the 1947 certification, and the Petitioners are presently two of its five wholly owned subsidiaries.

¹ Hereinafter referred to as Petitioners.

² The panel majority (Chairman Dotson and Member Babson) denied review of the Petitioners' contention that Batesville Casket Company, Inc. and Hill-Rom Company, Inc. are separate employers and hence cannot be compelled to engage in continued multiemployer bargaining. Member Johansen would have granted review of this issue; however, he regards himself as institutionally bound by the vote of the panel majority.

³ By letter dated 24 July 1986, the Petitioners requested that their request for review be treated by the Board as their brief on review.

⁴ In 1939, and again in 1947, the Board found that the Petitioners constituted a single employer and, based on the agreement of the unions and the Petitioners' failure to object (in 1939), and the agreement of the parties (in 1947), that the appropriate bargaining unit was one composed of employees of both Companies. See *Batesville Casket Co.*, 72 NLRB 650 (1947); *Hillenbrand Industries*, 13 NLRB 167 (1939). See also *Hillenbrand Industries*, 14 NLRB 316 (1939).

In both instances, the Board expressly found that Hillenbrand Industries was a trade name designating Petitioners. Hillenbrand Industries was

are made by the individual Company; however, Hillenbrand's counsel selects the arbitrators on behalf of management and generally tries any arbitration, although outside counsel also has been employed.

The record shows that an employee of one Company may apply for an opening at the other Company and, if hired, will be credited with overall seniority on completion of a probationary period. Similarly, although bumping is not permitted between these two employers, employees laid off by one of the two Companies may "move" to the other Company if there is an opening. After completing a probationary period, that employee will become a permanent employee with seniority rights carried over from the Company for which he originally worked. The evidence presented showed 23 such "transfers" or "moves" in the 6 months preceding the hearing alone.

The employees of Batesville Casket and Hill-Rom share similar pay scales, and many job classifications are common to both Companies. The average earnings of the employees at the two plants are approximately equal; employees receive identical Christmas bonuses and identical benefits, with the exception that Hill-Rom allows its employees to take vacation a day at a time if they desire while Batesville Casket does not. Plant and safety rules are issued by Hillenbrand and thus are identical for all of the production buildings, and employees from the two Companies participate together in Hillenbrand-sponsored social and athletic activities, as well as in union affairs and community events.

The parties have negotiated a series of consecutive contracts covering this bargaining unit over the past 50 years, and at no time prior to the instant proceeding has any party sought to modify or change the unit, even though Hillenbrand's vice president of human resources serves as spokesman of the Petitioners' bargaining committee, and Hillenbrand's senior counsel is a member of that committee as well.

The Regional Director dismissed the petition on the ground that the Board's clarification process is intended for recent and not historical changes. The Petitioners contend, however, that significant changes in the organizational structure and operations of the two Companies demonstrate that there is no longer any community of interest between the two groups of employees; thus, a combined unit of both Batesville Casket and Hill-Rom employees is no longer appropriate. Further, Petitioners contend that such changes need not be recent in order to justify the separation of the single unit into two separate units, relying on the Board's decision in *Rock-Tenn*.

It is well established that the Board's unit clarification process is not appropriate for upsetting an agreement of a union and an employer or an established practice of such parties concerning unit placement of various individuals or classifications.⁵ The Board determined in *Rock-Tenn*, however, to clarify an existing multiplant unit to constitute two separate single-plant units when it found that "compelling circumstances" existed for disregarding the bargaining history on a two-plant basis, and that the historical unit no longer conformed reasonably well to the normal standards of appropriateness.⁶

In *Rock-Tenn*, the union had been representing a combined unit of employees working at a paper mill and a partition plant since the purchase of the plants by the Clevepak Corporation in 1968, and the parties had negotiated successive collective-bargaining agreements covering employees in the combined unit. During both the 1978 and 1980 negotiations, Clevepak proposed bargaining for the employees as separate plant units. On both occasions, the union rejected the proposals. After Clevepak sold the paper mill and the partition plant to separately incorporated operating divisions of Rock-Tenn Company in 1983, the two corporations jointly requested separate negotiations at each plant for a new contract. The union refused, and the companies filed the unit clarification petition.

The Board found that, at the time of the 1983 purchases, there were few remaining factors of commonality between the two plants. Thus, each plant was engaged in a totally different operation with different manufacturing processes, each plant had separate and distinct corporate management and supervisory staff, labor relations control had been completely decentralized, and grievances were handled separately. There were many dissimilarities in working conditions, including different hours of operation, separate hiring, no job bidding between plants, no carryover of seniority if an employee transferred, and separate layoff and recall policies. The collective-bargaining agreement was administered on a separate basis for each plant, and the Board noted that an ambiguous contract provision might be interpreted in one way in one plant and in an entirely different way in the other.

The Board concluded that the significant changes in the organizational structure and operations of the two plants negated any community of interest that may have existed previously among employees of the two plants, and constituted "com-

⁵ See *Union Electric Co.*, 217 NLRB 666 (1975); *Columbia Gas Transmission Corp.*, 213 NLRB 111 (1974).

⁶ 274 NLRB at 773

elling circumstances" for disregarding the bargaining history on a two-plant basis. Accordingly, the Board clarified the unit as requested by the companies to find that only separate plant units were appropriate. In so doing, the Board specifically noted that the Rock-Tenn corporations had acquired the plants "only recently," and although they continued to abide by the predecessor's collective-bargaining agreement for the "brief period" prior to its expiration, "shortly" after commencing operations they requested the union to bargain on a separate plant basis. Hence, the Board concluded that their "interim adoption" of the two-plant agreement did not preclude resolution of the dispute.⁷

Contrary to the Petitioners' contention that the Regional Director erred in his application of *Rock-Tenn*, we find that the Regional Director properly applied that case and other relevant Board precedent⁸ to the facts of the instant case. Further, while in *Rock-Tenn* the Board adopted former Chairman Miller's concurring opinion in *Columbia Gas*,⁹ neither that concurring opinion nor the Board's decision in *Rock-Tenn* indicated that the Board should or would interfere with the composition of long-established bargaining units in the absence of *recent*, substantial changes.

In the instant case, as in *Rock-Tenn* and *Columbia Gas*, there is no ambiguity or dispute regarding the parties' long history of collective bargaining in the combined unit. Unlike the situation in *Rock-Tenn*, however, here there have been no recent, significant changes in the Petitioners' operations, and at no time before the instant petition was filed did either party seek to modify the existing unit or split it into two units as Petitioners now contend is appropriate.

The record clearly shows that the only "significant" operational changes involving the existing unit were the establishment of separate manufacturing plants and elimination of day-to-day interchange of employees, which occurred nearly 30 years ago, and the creation of separate personnel or human resources departments, which occurred over 10 years ago. No party disputes these facts.¹⁰

⁷ 274 NLRB at 774 fn 7.

⁸ The Regional Director also relied on *Sunar Hauserman*, 273 NLRB 1176 (1984); and *Union Electric Co.*, 217 NLRB 666 (1975).

⁹ Former Chairman Miller stated that "[i]f 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. 213 NLRB at 112. He concurred in the result reached by the majority, however, as he found that the two separate units proposed by the Employer were not appropriate, and that the existing unit had been rendered appropriate by bargaining history.

¹⁰ There is evidence, however, that the latter change, creation of separate human resources departments, resulted in little or no change in "labor policy" or "the procedure and process of collective-bargaining."

Further, the same employees continue to perform the same functions in the same locations under the same immediate supervision, and the changes have had no practical effect at all on several significant areas of personnel policy or labor relations because Hillenbrand Industries remains directly involved with screening all applicants and approving them for hire and with grievances and arbitrations on behalf of these two subsidiaries, as well as with the actual negotiation and execution of all collective-bargaining agreements.

In addition, the Companies have continued to negotiate as one with the Union as representative of their employees in a single combined unit, and successive agreements all have been agreed to on the same unit basis. Lastly, we note that, at this time, no party seeks an election among employees in the established unit or questions the status of the Union as the bargaining representative of the combined unit¹¹ or of either Company's work force.

We find that, although these two Companies function separately and autonomously in many respects, there continues to exist a high degree of commonality due to the relationship of the parent Company to its subsidiaries and the long history of bargaining as a combined unit. Thus, the great majority of the changes which the Petitioners rely on to support their request for separate plant units are not recent, having occurred over 30 years ago; it is obvious that such changes in no way have destroyed the stability of the bargaining relationship between these parties.

Accordingly, inasmuch as Petitioners have not shown that there have been *recent*, substantial changes in their operations, or that other compelling circumstances exist which would warrant disregarding the long-existing bargaining history of the two-plant unit, and as the single unit of Petitioners' employees is not contrary to the provisions of the Act, we find it would not further the Act's purpose of promoting industrial stability to clarify this established unit to constitute two separate units, merely because Petitioners now have asked us to do so. Accordingly, we affirm the Regional Director's dismissal of the instant petition.

ORDER

The Regional Director's dismissal of the petition is affirmed.

CHAIRMAN DOTSON, dissenting.

Contrary to my colleagues, I would grant the Employers' petition to clarify the existing two-plant unit to constitute two separate units. It is

¹¹ *National Education Assn.*, 206 NLRB 893 (1973).

clear that the historical (combined) unit is no longer appropriate when measured against the Board's usual standards. Thus, Batesville Casket and Hill-Rom are now entirely separate Companies, each with its own board of directors, management, and supervisory hierarchy. Their manufacturing facilities and equipment are separate and distinct, and there is no interchange of employees or supervisors. Each Company has its own administrative and human resources (personnel) departments, and handles its own promotions, discipline, and termination. Grievances are handled within the separate Company up to the third level, and it is the individual Company that makes the decision whether to pursue a grievance to arbitration.

Contrary to the "recency of change" requirement, which my colleagues purport to enunciate today, the standard articulated by Chairman Miller in his concurrence in *Columbia Gas Transmission Corp.*, 213 NLRB 111, 112 (1974), subsequently and specifically adopted by the Board as its standard, in *Rock-Tenn Co.*, makes no mention of recency.¹ Thus, it is immaterial that the changes which occurred in this case are not recent. It is undisputed that these changes did take place, and that the separate corporate and operational structure of these Companies, together with the lack of functional integration, the decentralization of labor policies, and the absence of employee interchange, have ne-

gated the community of interest which once existed between the employees of the Companies, and hence have rendered a combined unit inappropriate for purposes of meaningful and effective collective bargaining.

Section 9 of the Act mandates that the Board determine in each case what unit is appropriate for the purposes of collective bargaining. In my view, the majority is both abdicating this statutory responsibility and ignoring the realities of business and industry. Whether a single sudden or recent organizational change of enormous impact has occurred should be immaterial to the Board's consideration. The organizational result is the same regardless of whether the changes are sudden and recent or, instead, as in this case, evolved slowly over a longer period of time—the Board must take the case as it is presented and make its determination based on the facts before it.

Finally, I note that the decision in *Rock-Tenn*, changing Board policy, was announced barely a year before the instant petition was filed. Thus, I find it inappropriate to fault the Employers for not seeking to clarify sooner the historical and, in my view, now clearly inappropriate unit. Accordingly, as the two units proposed are shown to be appropriate units by the Board's usual standards, and as the existing single unit has been rendered inappropriate by reason of organizational changes,² I would grant the Employers' petition and clarify the unit into two separate, single-plant units, as requested.

¹ "If the two units proposed . . . were shown to be appropriate units by [the Board's] usual standards, and if the existing single unit had been rendered inappropriate by reason of organizational changes, [the Board should] grant the petition for clarification" 274 NLRB 772, 774 fn. 7 (1985).

² See *Rock-Tenn*, supra.