

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: March 7, 1997

TO : Rosemary Pye, Regional Director
Region 1

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice 339-2582

SUBJECT: Tree-Free Fibre Company
Case 1-CA-34278

This case was submitted for advice as to whether the International Union is the joint 9(a) representative.

FACTS

Bargaining History

Before 1968, Hudson Pulp and Paper Company owned a paper mill in Augusta, Maine. There were two bargaining units, each represented by a different international union and its affiliate local. These were the Pulp, Sulfitite and Paperworkers International Union (PSPIU) and its Local 57, and the United Papermaker & Paperworkers International Union (UPPIU) and its Local 84.¹

Statler purchased the mill in about 1968. The preamble of the 1968-71 collective-bargaining agreement states that the agreement is made between Statler, UPPIU, and its Local 84 and between Statler, PSPIU, and its Local 57. The recognition clause of the contract states that the Employer recognizes the "signatory Unions" as the sole collective-bargaining agent, although the copy of the agreement provided by the International contains no signature page.

In about 1972, the UPPIU and PSPIU merged to form the United Paperworkers International Union (the International). In 1976, in Case 1-RC-14604, the International was certified as the collective-bargaining representative of a unit of inspectors and technicians. This small unit of fewer than 20 employees had its own contract for a brief period. It was included with the larger unit of more than 500 employees in the next contract.

¹ There is no record of certification.

The International and Locals jointly negotiated the contracts for 1985-1988, 1988-1991, 1991-1994, the most recent written agreement.² In June 1994, the International gave Statler the 60-day notice to modify the contract and begin new negotiations.³ Article XV, Section 2 of the International's constitution provides:

Negotiations for collective-bargaining agreements shall be subject to supervision by, and their terms, conditions and termination shall be subject to, the approval of the International President.

The 1985, 1988, 1991, and 1994 collective-bargaining agreements all contain the same cover page, preamble, and recognition language.⁴ The cover page reads: Labor Agreement between Statler Tissue Division and the United Paperworkers International Union, AFL-CIO, CLC, Locals 57 and 82. The recognition clause identifies the Locals as the sole collective-bargaining representative.⁵ The preamble, however, states that both the International and the Locals are parties to the contract, and the agreements refer to the

² The 1994-1995 agreement, which was never reduced to writing, made only economic changes.

³ Under Article 41, either party can give notice of a change or modification (emphasis added).

⁴ The International was unable to provide copies of any of the agreements between 1971 and 1985.

⁵ Article 2, Section 1 of the collective-bargaining agreements provides:

The Company agrees to recognize the signatory Locals as the sole collective bargaining agent for its employees in the work which properly comes under its jurisdiction in (sic) including those employees as certified NLRB (Case NO. 1-RC-14604), but excluding office clerical employees, salesmen, lab, assistants, professionals employees, all guards and supervisory (sic) as defined by the National Labor Relations Act.

International and the Locals collectively as the "Union."⁶ The contracts are signed by representatives of the International and the Locals. In short, the International and Locals are both clearly parties to the contract. The contract differentiates between the International and the Locals at different provisions. Thus, the agreements call for the Locals to handle grievances at the first and second step and for the International to handle grievances and arbitration at subsequent steps.⁷ The union-security clause provides for membership in the Union.⁸ The Employer is required to send the names of new employees to the Locals⁹ and to deduct union dues and fees and to make them available to the financial secretaries of the Locals.¹⁰ The no-strike clause is binding only on the Locals.¹¹ The agreement provides for the Employer to pay representatives of the Locals in the contract negotiations.¹² In the agreement,

⁶ The preamble to the collective-bargaining agreement provides:

This agreement made by and between the Augusta plant of Statler Tissue Division of Statler Industries (hereinafter referred to as "the Company") and the United Paperworkers International Union, AFL-CIO-CLC and its Augusta Locals No. 82 and No. 57 (hereinafter called "the Union").

⁷ Article 4.

⁸ Article 2, Section 3.

⁹ Article 2, Section 4.

¹⁰ The Region issued a complaint in Cases 1-CA-32576 and 1-CA-33071 based upon charges filed by the Locals against Statler in August 1995. The complaint alleged that the Locals were the exclusive collective-bargaining representative. Statler admitted this allegation. The identity of the 9(a) representative was not viewed as an issue at the time. Pursuant to a non-Board settlement, the Union requested withdrawal of the charges and dismissal of the complaint.

¹¹ Article 14.

¹² Article 5, Section 2.

the Union is responsible for non-discrimination,¹³ the receipt of notice of disciplinary action,¹⁴ and representation of employees at disciplinary meetings as an alternative to the shop steward.¹⁵ The contract also permits payment of Union committee members at conferences (as opposed to negotiations)¹⁶ and postings of notices of Union meetings on the company bulletin boards without prior approval.¹⁷ Finally, in a minor provision of the contract, one employee is allowed to work for the International for up to a year while seniority continues to accrue.¹⁸

International's Demand for Recognition and Bargaining with the Successor

In the spring of 1996, Tree-Free purchased the mill from Statler.¹⁹ Most of the managers and supervisors were retained. In late May, the International sent Tree-Free a letter requesting that it recognize the International as the collective-bargaining representative of the Tree-Free employees. The letter was written on International letterhead and signed by the International's representative, as well as the president of the Local 57.²⁰

Tree-Free responded by letter dated June 11. It declined to bargain and stated that it "believe[s] that a secret ballot is the appropriate means for determining if

¹³ Article 2, Section 1.

¹⁴ Article 4, Section 2.

¹⁵ Article 4, Section 3.

¹⁶ Article 5, Section 1.

¹⁷ Article 18.

¹⁸ Article 20, Section 6.

¹⁹ Statler has since ceased operations.

²⁰ The Local 57 President signing the letter is not employed by the Employer. According to the International, Local 82 President Ted Danforth was then employed by the Employer and, therefore, the International did not ask Danforth to sign.

Tree-Free's employees wish to be represented by the United Paperworkers International Union, AFL-CIO, CLC."

On October 31, 1996, a 8(a)(5) complaint issued alleging the Locals as the 9(a) representative. Respondent Tree-Free admitted that allegation.

Position of the Parties

The International asserts its claim of joint collective bargaining representative for the following reasons: (1) Statler recognized and bargained with the Locals and the International as the joint collective-bargaining representative; (2) the introductory language of the Statler contract shows the parties are the Locals and the International and the contract thereafter references them as the Union; (3) Tree Free had acknowledge that Statler and the Locals and the International were signatories to the contracts; (4) Tree Free was aware of the joint recognition, and (5) Tree Free did not timely claim to misunderstand the bargaining request or the identity of the bargaining representative. Further, the International asserts that it never paid attention to the recognition clause since it was never an issue in negotiations. Thus, it does not know how the recognition language got changed from recognizing the "Unions" to recognizing only the Locals.

The Employer asserts, based on the recognition clause, that the Locals, not the Internationals, were the sole exclusive bargaining representative, and therefore, the International's demand to recognize and bargain with the International was defective.

ACTION

Complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(5) by refusing to recognize and bargain with the International Union, a joint representative of unit employees.

Prior to 1968, predecessor employer Hudson recognized the PSPIU and its Local 57 in one bargaining unit and the UPPIU and its Local 84 in another bargaining unit. In 1968, Statler purchased the mill and recognized those unions as the "sole collective bargaining union", that is, as the joint representative. After the merger of PSPIU and UPPIU to form the UPIU, the UPIU and Locals 57 and 84 jointly negotiated successor contracts. At some point after the

merger, the language in the recognition was changed from recognizing the "Unions", to recognizing the signatory Locals as the sole bargaining representative. There is no available bargaining history to indicate why this change was made. The International asserts that it never paid attention to the recognition clause since it was never an issue in negotiations. Thus, it does not know how the recognition language got changed from recognizing the "Unions" to recognizing only the Locals. However, it is clear that despite this changed recognition language, there was no change in how the parties continued to deal with each other. Thus, both the International and Locals 57 and 84 continued to be parties to the contract, and jointly negotiated and administered the contract. The International and the Locals individually sign the contracts; the preamble and cover page indicate that the contract is between the International **and** the Locals, and the preamble refers to the International and the Locals as the "Union". Further, under Article 41, either party can give notice of a change or modification. Various other provisions of the contract differentiate between the International and the Locals as to responsibilities under the contract. Thus, the Locals handle grievances at the first and second steps and the International handle grievances and arbitration at subsequent steps. Thus, but for the unexplained change in the recognition clause, there would be no doubt that the International and the Locals are joint 9(a) representatives.

Absent negotiating history explaining this change, it will not be inferred that the parties intended to make a dramatic change in the collective bargaining representative. This is particularly true in circumstances where the International continues to be a party to the contract.

Our conclusion as to joint representative status is strengthened by the Board's decision in BASF-Wyandotte Corp.²¹ In BASF, an employer unlawfully withdrew recognition during the life of a contract in circumstances where the certified local disclaimed representational status, but the International, which the Board found to be the joint representative, continued to claim representational status. There, the International had been a party with the local to contracts and the International representative actively participated in negotiations and contract administration. Here, as in BASF, the International is a party to the contract and over the years

²¹ 276 NLRB 498 (1985).

has been intricately involved in both contract negotiations and contract administration. This involvement was not merely as an agent of the Locals; rather, the International's constitution gives it the right to supervise and approve all agreements.

As joint bargaining representative, the International bargaining demand was valid.²² Therefore, the Employer violated Section 8(a) (5) by refusing to recognize and bargain with the International Union, a joint representative of unit employees.

B.J.K.

²² See Pharmaseal Laboratories, 199 NLRB 324 (1972); Suburban Newspaper Publications, 230 NLRB 1215, 1270 n.4 (1977).