

In the Matter of WEST VIRGINIA PULP & PAPER COMPANY and LOCAL
No. 152, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER
MILL WORKERS

Case No. R-257.—Decided September 15, 1937

Paper Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; rival organizations; substantial doubt as to majority status; refusal by employer to recognize either of rival organizations as exclusive representative—*Unit Appropriate for Collective Bargaining:* all employees in plant except those on salary basis; no controversy as to—*Election Ordered—Certification of Representatives.*

Mr. Reeves R. Hilton for the Board.

Gleason, McLanahan, Merritt & Ingraham, by *Mr. Henry Clifton, Jr.*, of New York, N. Y., for the Company.

Mr. Millard L. Midonick, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

On July 2, 1937, Local No. 152, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, herein called Local 152, filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of West Virginia Pulp & Paper Company, Covington, Virginia, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 26, 1937, the Board, acting pursuant to Article III, Section 3. of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing in connection therewith. On August 3, 1937, the Regional Director issued a notice of hearing to be held at Covington, Virginia, on August 16, 1937. On August 12, 1937, the Regional Director issued a notice of change of place of hearing to be held at Baltimore, Maryland. The Company and Local 152 were served with both notices, but Employees' Protective Association, Covington Mill, herein called the Association, which had been named in the petition as also claiming to represent employees of the Com-

pany, was served with neither. However, a letter¹ dated July 10, 1937, from a representative of the Association, was directed to the Regional Director. It set forth that the Association had heard of the petition by Local 152 but was unable to employ counsel; that the membership of the Association encompassed a majority of the employees of the Company at its Covington, Virginia plant; that the Association did not desire an election; that the Association desired advice and information from the Regional Director. At the hearing subsequently held this communication from the Association was treated as a petition for intervention.

Contrary to both notices, the hearing was in fact held on August 16, 1937, at Washington, D. C., before James G. Ewell, the Trial Examiner duly designated by the Board, in accordance with a consent² signed by representatives of the Company, Local 152, and the Association. By this consent and by the comprehensive stipulation of these parties read into the record at the hearing, the Company, Local 152, and the Association have waived all objection to the intervention of the Association and to the jurisdiction of the Board over the persons of each of them.

The Board, the Company, and Local 152 were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all the parties. During the course of the hearing the Trial Examiner made numerous rulings on motions and on the admission of evidence, and no objections were made nor exceptions taken thereto. The Trial Examiner's rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

West Virginia Pulp & Paper Company, incorporated in Delaware in 1899, has its principal business office in New York City, and owns and operates a mill in Covington, Virginia. The Company is engaged in the manufacture and distribution of pulp and paper products and chemical by-products. The processes of manufacture include soda, sulphate and sulphite pulp preparation, and paper manufacturing by the Fourdrinier and Cylinder Machines process. Engaged in these operations are approximately 1800 workers in the Company's Covington, Virginia, mill, of which number about 110 are salaried employees. Among the 110 salaried employees are included all those occupying supervisory positions.

¹ Board Exhibit No. 2

² Board Exhibit No. 3.

It is stipulated by the Company, Local 152, and the Association that approximately 70 per cent of the raw materials used by the Company are obtained from states other than the State of Virginia. The principal raw materials used are pulp wood from West Virginia and North Carolina, coal from West Virginia, clay from Georgia, and sulphur from Texas. These substances are shipped to the Company's mill by railroad and motor truck. In addition to these raw materials the Company uses in the manufacture of its products Fourdrinier and Cylinder paper machines, rewinders, calenders, cutters, trimmers, pulp digesters, chippers, kilns, rotary furnaces, power plant, boiler, and other equipment. These machines and replacement and repair parts have been and are being purchased principally in Massachusetts, Delaware, Ohio, New York, Connecticut, Pennsylvania, Virginia, Wisconsin, Illinois, and Missouri, and are shipped by railroad to the mill.

About 95 per cent of the finished product is shipped by railroad out of the State of Virginia to other states, principally New York, Illinois, New Jersey, and Pennsylvania. The volume of production for the last peak month of operation, June 1937, was approximately 13,725 tons, and the pay roll for the same period amounted to \$198,882. The gross value of the Company's products at the mill for the year November 1935 to November 1936 amounted to \$11,310,665.26. The product is sold directly by salesmen and through agents to printers, publishers, and paper converters. The Company is considered a major factor in the industry. It advertises its products in trade publications and by direct advertising. It belongs to the American Paper and Pulp Association.

II. THE ORGANIZATIONS INVOLVED

Local No. 152, International Brotherhood of Pulp, Sulphite & Paper Mill Workers is a labor organization. It admits to membership all workers in the Company's mill, except supervisory, clerical, and salaried employees.

Employees' Protective Association, Covington Mill, is a labor union which likewise admits to membership all workers in Company's mill, except supervisory, clerical, and salaried employees.

III. THE APPROPRIATE UNIT

It is stipulated by the Company, Local 152, and the Association that a unit composed of all employees at the Company's mill, except those employees compensated on a salary basis, is the proper unit for the purposes of collective bargaining.

In view of this stipulation by all the parties and in the absence of any facts brought forward at the hearing which would indicate

that this unit is not the proper one, and in order to insure the Company's employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that all the employees of the Company at its Covington, Virginia, plant, except those employees compensated on a salary basis, constitute a unit appropriate for the purposes of collective bargaining.

IV. THE QUESTION CONCERNING REPRESENTATION

Of approximately 1700 eligible workers, Local 152 claims to represent over 1000 and the Association claims to represent more than 1100. It is certain only that each has a substantial number of members among the employees of the Company. It is stipulated by the Company, Local 152, and the Association that the Company has no knowledge of which organization represents a majority of its employees, and that the Company questions particularly such a claim made by Local 152, the petitioner herein. It appears from the record that the Company has refused and will refuse, in the absence of a certification by the Board, to recognize representatives of either of the rival labor organizations as the exclusive representatives of all the employees in the appropriate unit for the purposes of collective bargaining, but will bargain with the representatives of each organization only for its membership. It is agreed by stipulation of the Company, Local 152, and the Association that an election pursuant to an order of the National Labor Relations Board is desired by the parties thereto.

We find, therefore, that a question has arisen concerning the representation of the employees of the Company.

We further find that an election by secret ballot is necessary to resolve this question.

V. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I, above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONDUCT OF ELECTION

At the hearing the parties to this proceeding stipulated that all employees of the Company on the pay roll of June 1, 1937, and within the appropriate unit stated above, shall be eligible to vote. We shall so order.

CONCLUSIONS OF LAW

On the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of the employees of the Covington, Virginia, mill of West Virginia Pulp & Paper Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. All of the employees of the Covington, Virginia, mill of West Virginia Pulp & Paper Company, except those employees compensated on a salary basis, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with West Virginia Pulp & Paper Company, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among all of the employees of the Covington, Virginia, mill of West Virginia Pulp & Paper Company on its pay roll during the work week of June 1, 1937, except those employees compensated on a salary basis, and those who since have quit or have been discharged for cause, to determine whether they desire to be represented by Local No. 152, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, by Employees' Protective Association, Covington Mill, or neither, for the purposes of collective bargaining.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

October 11, 1937

On July 2, 1937, Local No. 152, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, herein called Local 152, filed with the Regional Director for the Fifth Region (Baltimore, Maryland)

a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of West Virginia Pulp & Paper Company, Covington, Virginia, herein called the Company.

Notice of hearing to be held at Covington, Virginia, on August 16, 1937, and notice of change of place of hearing to Baltimore, Maryland, were issued and served by the Regional Director upon the Company and Local No. 152. In accordance, however, with a consent¹ signed by representatives of the Company, Local 152, and the Employees Protective Association, Covington, herein called the Association, which had been named in the petition as a labor organization claiming to represent employees of the Company, the place of hearing was changed to Washington, D. C. The hearing was held there on August 16, 1937, before James G. Ewell, the Trial Examiner duly designated by the Board.

On September 15, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot be held among all of the employees at the Covington, Virginia, mill of West Virginia Pulp & Paper Company on its pay roll during the work week of June 1, 1937, except those employees compensated on a salary basis, and those who since have quit or have been discharged for cause, to determine whether they desired to be represented by Local No. 152, International Brotherhood of Pulp, Sulphite, and Paper Mill Workers, by Employees' Protective Association, Covington mill, or neither, for the purposes of collective bargaining.

Pursuant to the direction, balloting was conducted on September 28, 1937. Full opportunity was accorded to all parties to this investigation to participate in the conduct of the secret ballot and to make challenges.

As to the results of the secret ballot, the Regional Director reported:

Total number eligible.....	1,599
Total ballots cast.....	1,494
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of ballots cast for Local 152.....	928
Total number of ballots cast for the Association.....	525
Total number of ballots cast for neither of the above named labor organizations.....	41

The agent of the Board who conducted the ballot caused to be served upon the parties to the proceeding his Intermediate Report on the conduct of the ballot. No objection was filed to the conduct of the ballot or the Intermediate Report thereon, and the Regional

¹ Board Exhibit No. 3.

Director forwarded the Intermediate Report to the Board in Washington, D. C.

NOW THEREFORE by virtue of and pursuant to power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Local No. 152, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, has been selected by a majority of all of the employees at the Covington, Virginia, mill of West Virginia Pulp and Paper Company, except those employees compensated on a salary basis, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, Local No. 152, International Brotherhood of Pulp, Sulphite & Paper Mill Workers, is the exclusive representative of all of such employees of West Virginia Pulp and Paper Company for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.