

In the Matter of ZELLERBACH PAPER COMPANY and INTERNATIONAL  
LONGSHOREMEN AND WAREHOUSEMEN'S UNION, LOCAL 1-26

*Case No. R-355.—Decided December 3, 1937*

*Paper and Paper Products Merchandising Industry—Investigation of Representatives:* controversy concerning representation of employees; rival organizations; substantial doubt as to majority status created by duplication of signatures evidencing membership in rival organizations; picketing by one of rival organizations—*Unit Appropriate for Collective Bargaining:* employees in operating department; no controversy as to—*Election Ordered*

*Mr. David Sokol*, for the Board.

*Ehrlick, Naylan & Crum*, by *Mr. Philip Ehrlick* and *Mr. Philips H. Richards*, of Los Angeles, Cal. for the Company.

*Mr. Carey McWilliams*, of Los Angeles, Cal., for the Longshoremen.

*Mr. Otto J. Emme* and *Mr. Thomas L. Brooks*, of Los Angeles, Cal., for Local 598.

*Mr. Joseph B. Robison*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 9, 1937, International Longshoremen and Warehousemen's Union, Local 1-26,<sup>1</sup> herein called the Longshoremen, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Zellerbach Paper Company, Los Angeles, California, herein called the Company, at its Los Angeles warehouse, 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 September 24, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series I, as amended, ordered an investigation and authorized

<sup>1</sup>The name of the union appears on the petition as "Longshoremen and Warehousemen's Union." The petition was amended to correct the name on October 14, 1937, at the hearing in this case.

the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On September 30, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the Longshoremen, and International Brotherhood of Teamsters,<sup>2</sup> herein called the Teamsters, a labor organization named in the petition as claiming to represent some of the Company's employees. Pursuant to the notice of hearing and a further notice postponing the holding of the hearing for one day, a hearing was held in Los Angeles, California, on October 12 and 14, 1937, before Clifford D. O'Brien, the Trial Examiner duly designated by the Board. On October 12, at the hearing, General Warehousemen's Union 598, herein called Local 598, a labor organization chartered by the Teamsters, moved to intervene in the proceedings. The motion was granted by the Trial Examiner. Counsel for all parties stipulated that they had been served with proper notice of the hearing.

On October 15, 1937, Local 598 petitioned the Board to reopen the hearing for the purpose of introducing certain newly-acquired evidence. After considering this petition and the objections thereto filed by the Longshoremen on October 16, 1937, the Board notified the parties that the hearing would be reopened on October 21, 1937, for the limited purpose of introducing the evidence described in the petition of Local 598, and for the introduction of testimony by the Longshoremen to rebut the effect of that evidence. The hearing was closed on October 21, 1937.

At the hearing the Board, the Company, the Longshoremen, and Local 598 were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The 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

Zellerbach Paper Company was incorporated in the State of California on May 23, 1907. It is a wholly owned subsidiary of Crown Zellerbach Corporation, which was incorporated in Nevada in 1924. The Company is engaged in the distribution of all types and descriptions of paper and paper products. None of these articles are produced by the Company itself, all of them being bought from other

<sup>2</sup>Although the name of this organization so appears in the petition, its full name is International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America.

concerns in the same form as that in which they are distributed. Merchandise is purchased from mills located in all of the paper producing centers in the United States, including cities in Washington, Oregon, Wisconsin, Ohio, and Massachusetts. The merchandise is shipped either directly to the customers of the Company, located in such states as California, Oregon, Washington, Utah, Nevada, Arizona, New Mexico, Missouri, and Illinois, or to its own warehouses, located in California, Oregon, Washington, Utah, and other states. Merchandise which is shipped first to Company warehouses is later reshipped, sometimes to customers located in states other than those in which these warehouses are located.

Most of the Company's sales are made directly to consumers, or to converters who, by additional manufacturing processes, reconvert the articles purchased into the form in which they are sold to the consuming public. The Company uses all means of transportation, including rail, truck, and boat. In addition to the warehouses located in the states named above, the Company has offices in 19 cities located in California, Nevada, Arizona, Oregon, Washington, Utah, Missouri, Illinois, and New York. Through its parent corporation, Crown Zellerbach Corporation, the Company is part of a nation-wide system for the production and distribution of paper and paper products.

The Los Angeles warehouse of the Company has 220 employees. The merchandise there handled is received from points both within and without California, and is shipped to customers within and without the State. At least 51 per cent of the merchandise distributed by the Company is purchased from vendors located outside of California. A substantial portion, the exact amount of which it is impossible to ascertain, moves in interstate commerce. Between October 1, 1936 and September 30, 1937, more than half of the paper and paper products received by the Company at its Los Angeles and other California warehouses came from outside of the State of California, and amounted to more than \$1,000,000 in value. During the same period, a substantial portion of the merchandise shipped from the Company's California warehouses was sold and delivered to customers in Utah, Washington, Oregon, Nevada, Arizona, and the Territory of Hawaii.<sup>3</sup>

## II. THE ORGANIZATIONS INVOLVED

International Longshoremen and Warehousemen's Union is a labor organization affiliated with the Committee for Industrial Organization. Local 1-26 received its charter from the parent organization

<sup>3</sup> The facts as given above are taken from Board's Exhibit No. 2, a stipulation entered into by counsel for the Board and the Company, and the documents attached thereto.

on about September 21, 1937. This local was previously affiliated with the International Longshoremen's Association. In a referendum vote taken in the Pacific Coast District of that Association, the local transferred its allegiance to the International Longshoremen and Warehousemen's Union. Local 1-26 admits to membership all employees of the Company in its operating department, exclusive of supervisory and clerical employees.

International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America is a labor organization affiliated with the American Federation of Labor. General Warehousemen's Union 598, which intervened in this case, is a local of the Teamsters which admits to membership all of the employees in the operating department of the Company except the drivers. The latter are eligible to membership in Local 208 of the Teamsters, herein called Local 208. However, for the purposes of this proceeding, Local 598 claims to represent both groups of employees. No contention has been made by any representative of the Teamsters that the employees in the Company's operating department should be divided for any purposes.

### III. THE QUESTION CONCERNING REPRESENTATION

Before June 1937, none of the employees in the wholesale paper industry in the Los Angeles area were organized except the members of a craft group, the cutters, who had an organization of their own and had secured contracts with the various employers. In that month a warehouse organizing committee of the predecessor organization of the Longshoremen started a campaign on the West Coast. In July, it turned its attention to the Company and other wholesale paper houses. On July 30, 1937, after a majority of the warehouse employees had been organized, a proposed contract, which had been approved by the membership, was sent to the employers. The latter indicated a desire to bargain as a unit, and on August 27, 1937, a committee representing the employers met with a committee from the Longshoremen to consider the terms of the proposed contract. Prior to that time, on August 13, 1937, a list of the employees of the Company who had become members of the Longshoremen had been sent to the Company. Negotiations were continued on September 1 and 2, 1937, but by that time the Teamsters had presented its rival claims. There is evidence that up to September 1, 1937, the Company regarded the Longshoremen as representing a majority of its operating department employees and that considerable progress toward agreement was made on that date in the negotiations concerning the proposed contract.

A representative of the Teamsters testified that his first contact with the Company was on June 1, 1937. However, there does not

appear to have been any active attempt on the part of the Teamsters to secure the Company's employees as members until August 31, 1937. On that date a picket line of from 100 to 200 men wearing Teamsters armbands appeared at the warehouse. Its leaders stated that the pickets would stay until the Company's drivers joined their organization. The Company, in conference with its men, arrived at a temporary solution whereby the drivers and the Company's trucks stayed in the warehouse, and deliveries were made by hired equipment manned by members of the Teamsters. The following day, the drivers determined to make deliveries themselves, and although there was no picket line, considerable violence ensued throughout the city in the course of these deliveries. On September 2, 1937, the final day of negotiations between the Longshoremen and the employers, the Teamsters' picket line was reestablished. The Longshoremen requested the employers to secure an injunction against its rivals and when the employers refused, negotiations were terminated. During the course of the morning, the Company was informed that its drivers had all joined the Teamsters;<sup>4</sup> whereupon the picket line was withdrawn and deliveries were recommenced.

On September 3, 1937, the Teamsters' picket line reappeared, its leaders this time announcing their intention of securing the balance of the Company's operating department employees. The picket line continued at the plant on September 4 and 7, the 5th and 6th being holidays. During this period, the operations of the Company were completely at a standstill. On September 7, 1937, a majority of the operating employees of the Company signed applications in Local 598, and several others followed their example on the two succeeding days. Also on September 7, the Company signed a contract with the Teamsters, by the terms of which the former agreed to negotiate with the latter concerning the working conditions of the warehousemen and drivers, provided that a majority of those employees were members of the contracting union.<sup>5</sup> On September 8, 1937, the Teamsters submitted a list of its members to the Company. On the following day, the Longshoremen filed the petition which is the basis of this proceeding, and the Company was notified that this petition had been filed.

On September 18 and 21, 1937, the Longshoremen wrote to the Company,<sup>6</sup> claiming to represent a majority of the employees, and requesting a meeting. The Company acknowledged receipt of the first communication and requested a list of the men the Longshoremen claimed to represent.<sup>7</sup> On September 22, the Longshoremen pre-

<sup>4</sup> Presumably the drivers signed applications in Local 208. Their names do not appear on any of the applications to membership in Local 598. Intervenor's Exhibit No. 1.

<sup>5</sup> Petitioner's Exhibit No. 13. The contract also provided for arbitration, and forbade strikes and lock-outs.

<sup>6</sup> Petitioner's Exhibits Nos. 9 and 10.

<sup>7</sup> Petitioner's Exhibit No. 5.

pared a list of its members and notified the Company that this list was being sent to the Board for comparison with the Company pay roll.<sup>8</sup> On the same day, however, the Company wrote to the Teamsters acknowledging receipt of the list sent to it on September 8, 1937, and recognizing the Teamsters as bargaining agent for its members.<sup>9</sup> On the same day it also wrote the Longshoremen,<sup>10</sup> enclosing a copy of the letter to the Teamsters. There have been some negotiations since that date between the Company and the Teamsters, but no contract covering conditions of employment has been reached.

On October 6 and 7, 1937, the Longshoremen circulated a document among the Company's employees by the terms of which the signers reaffirmed their desire to remain members of the Longshoremen and stated that they had been forced to accept membership in the Teamsters against their will. Thirty-seven signatures were obtained. On October 14, 1937, the day that the first hearing in this case was closed, the Teamsters circulated a document to which they obtained 45 signatures.<sup>11</sup> By its terms, the signers stated their desire to remain members of the Teamsters and that any Longshoremen document signed by them was void.

At the present time, therefore, a question concerning representation has arisen by reason of the fact that there are two unions claiming to represent a majority of the employees here involved, and the fact that the Company, although bargaining with one of them for the benefit of its own members, has recognized the possibility of being required to bargain with the other, if it is designated by a majority of the employees.

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

From September 3 to 7, 1937, the operations of the Company at its chief warehouse were completely at a standstill due to the picket line maintained by the Teamsters, in connection with the dispute described above.

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 has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

<sup>8</sup> Petitioner's Exhibit No. 11. The list was sent to the Board on September 24; Petitioner's Exhibits Nos. 12 and 12a.

<sup>9</sup> Petitioner's Exhibit No. 6a.

<sup>10</sup> Petitioner's Exhibit No. 6.

<sup>11</sup> It was for the purpose of introducing this list that the hearing in this case was reopened on October 21, 1937.

## V. THE APPROPRIATE UNIT

All of the parties are agreed that the employees in the operating department of the Company, with the exception of the cutters, constitute a unit appropriate for the purposes of collective bargaining. The Company's pay roll for October 1, 1937, covering employees of that description was admitted in evidence.<sup>12</sup> The only employees among the 71 appearing on that list about whom there is question are four foremen and one assistant foreman. According to the testimony of P. K. Holland, the Company's manager, each of the foremen has complete supervision over one of the four parts of the operating department. They engage in manual labor "on occasion" and have no authority to hire or discharge, but they make recommendations to the personnel department, with whom that authority rests. It will be seen, however, that their recommendations are entitled to great weight since they work directly with the men and are in constant contact with them. The assistant to the city delivery foreman has "subordinate authority" and takes charge in the absence of his superior. He also has limited authority to recommend hiring and discharging. While Holland testified that any employee has the right to make such recommendations, it is clear in any case that the efficient operation of the various parts of the operating department is substantially the responsibility of these five men. They will be excluded from the appropriate unit.

We find that the employees in the operating department of the Los Angeles warehouse of the Company, exclusive of foremen, the assistant foreman, and cutters, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and collective bargaining, and otherwise effectuate the policies of the Act.

## VI. THE DETERMINATION OF REPRESENTATIVES

The record in this matter contains at the present time (1) a list of the men who had been members of the Longshoremen prior to September 22; (2) application cards, of warehousemen only, to membership in the Teamsters; (3) a list of men who on October 6 and 7, 1937, claimed to be loyal to the Longshoremen; and (4) a list of men who on October 14, 1937, claimed to be loyal to the Teamsters. The Company submitted its October 1 pay roll for the operating department.<sup>13</sup> It lists 71 men, 14 of whom are drivers. In addition five of

<sup>12</sup> Board's Exhibit No 5

<sup>13</sup> Board's Exhibit No. 5. While the date of this pay roll is not decisive of the issues in this case, the pay roll can be used for the purpose of making a rough estimation of the situation.

those listed are foremen or assistant foremen and hence not within the unit found appropriate by the Board. Comparing the names on the various union documents with the pay roll, it appears that by September 22, 1937, 47 out of 66 in the appropriate unit had become members of the Longshoremen. This membership, however, had been acquired prior to September 1, 1937. By September 9, 1937, 45 out of the 52 men in the appropriate unit, exclusive of drivers, had signed application cards in Local 598.<sup>14</sup> On October 6 and 7, 1937, 34 out of 66 of the men affirmed their allegiance to the Longshoremen, and on October 14, 1937, 44 out of the same 66 affirmed their allegiance to the Teamsters. Without going in detail into the number of duplications between these four compilations, it is sufficient to state that the names of 15 men appear on both of the October lists.

In order to rebut the effect of the applications to membership in the Teamsters, and, at the reopening of the hearing in this proceeding, in order to rebut the effect of the signed petition put in evidence by the Teamsters, witnesses for the Longshoremen testified that the Teamsters had resorted to intimidation by violence and threats of violence.<sup>15</sup> While the testimony was quite general in character, all of the witnesses, including a company executive, and the only witness called by the Teamsters agreed that, at least on September 1, 1937, employees of the Company had been subjected to attacks. It is indeed significant that none of the employees could be induced to testify voluntarily, and the absence of direct evidence of violence practiced upon those men is quite possibly due to fear of further violence.

This much is clear. A majority of the employees in the operating department of the Company, for reasons best known to themselves, have signed whatever documents have been placed before them at any time. Although the latest list of names was procured by the Teamsters, in view of the continued vacillation of the employees, it is apparent that none of these documents, whether in the form of application cards or memorials, can be accepted as proof that the signers have definitely selected any of the labor organizations here involved as their representative for the purposes of collective bargaining.

We find that the question concerning representation which has arisen can only be resolved by means of an election by secret ballot.

In accordance with our usual practice, eligibility to vote in the election will be extended to those who were in the employ of the

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<sup>14</sup> As noted above, the record does not disclose how many of the 14 drivers joined Local 208 of the Teamsters

<sup>15</sup> Prior to the commencement of the hearing the Longshoremen filed two requests for the issuance of subpoenas on a large number of persons, including employees of the Company and members of the Los Angeles police force, in order to prove the practice of intimidation by the Teamsters. These requests were denied by the Board.

Company, within the appropriate unit, during the pay roll period immediately preceding September 9, 1937, the date of the petition, exclusive of those who have voluntarily quit or have been discharged for cause between that period and the date of the election.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Zellerbach Paper Company, Los Angeles, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of Zellerbach Paper Company in the operating department of the Los Angeles warehouse of the Company, exclusive of foremen, the assistant foreman, and cutters, 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 the purposes of collective bargaining with Zellerbach Paper Company, Los Angeles, California, 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 Twenty-First 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, among those employees of Zellerbach Paper Company in the operating department of the Los Angeles warehouse of the Company, exclusive of foremen, the assistant foreman, and cutters, who were in the employ of the Company during the pay roll period immediately preceding September 9, 1937, excluding those who have voluntarily quit or have been discharged for cause between that period and the date of the election, to determine whether they desire to be represented by International Longshoremen and Warehousemen's Union, Local 1-26, affiliated with the Committee for Industrial Organization, or by General Warehousemen's Union 598, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

## SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

*January 19, 1938*

By Decision dated December 3, 1937, the National Labor Relations Board, herein called the Board, as part of the investigation authorized to ascertain representatives for the purposes of collective bargaining with Zellerbach Paper Company, herein called the Company, directed the Regional Director for the Twenty-first Region, acting as agent for the Board, and subject to National Labor Relations Board Rules and Regulations—Series 1, as amended, to conduct an election by secret ballot among the employees in the operating department of the Los Angeles warehouse of the Company, exclusive of foremen, the assistant foreman, and cutters, who were in the employ of the Company during the pay roll period immediately preceding September 9, 1937, to determine whether they desired to be represented by International Longshoremen and Warehousemen's Union, Local 1-26, herein called the Longshoremen, affiliated with the Committee for Industrial Organization, or by General Warehousemen's Union 598, herein called Local 598, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

Pursuant to said Direction of Election, the Regional Director conducted an election by secret ballot on December 17, 1937.

On December 18, 1937, the Regional Director caused to be served on the parties his Intermediate Report on the conduct of the ballot.

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

Total number eligible.....	66
Total number of ballots cast.....	66
Total number of ballots cast for the Longshoremen.....	33
Total number of ballots cast for Local 598.....	31
Total number of ballots cast for neither organization.....	2
Total number of blank, void, and challenged ballots cast.....	0

Subsequent to the service of the Intermediate Report, Local 598 filed a protest objecting to certification of the Longshoremen. The Regional Director, having found that the protests raised no substantial or material issue, forwarded the Intermediate Report to Washington, D. C.

Two of the three specifications in the protest of Local 598 dealt solely with the fact that no union had secured a majority of the votes cast in the election. This fact will be further considered below. - The other specification dealt with the fact that certain foremen and a sub-

foreman were kept from balloting in the election. This specification raises no problem which was not considered and dealt with by the Board in its Decision in this case. Moreover, a list of those eligible to vote, which excluded the men in question, was posted prior to the election, and no objection was made to their exclusion; nor did they attempt to vote when the election was held.

In *Matter of Interlake Iron Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*,<sup>1</sup> the Board, in reaffirming its policy of providing a space on the ballot, in elections involving two or more rival unions, in which a voter may indicate that he does not desire either of the named unions to represent him, stated that, "In the event that the election in the present case results in none of the three preferences obtaining a majority of the votes cast, we will, upon the request of the labor organization receiving the greater number of votes, promptly direct a run-off election in which the ballot will allow employees the opportunity to vote for or against this organization."

In the instant case, a majority of the employees in the appropriate unit have indicated a desire to bargain collectively with the Company, although they have accorded neither of the rival unions a majority. On January 10, 1938, the Longshoremen, having received the greater number of votes, requested, by a letter addressed to the Board, that a run-off election be held. The Board finds that the question concerning representation can best be resolved by a run-off election and will so direct.

#### DIRECTION OF ELECTION

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<sup>1</sup> 4 N. L. R. B. 55.

pany during the pay roll period immediately preceding September 9, 1937, excluding those who have voluntarily quit or have been discharged for cause between that period and the date of the election, to determine whether or not they desire to be represented by International Longshoremen and Warehousemen's Union, Local 1-26, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining.