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Twin Coast Newspapers Inc. d/b/a  
Press Telegram 530-6067-2060  
Case 21-CA-28345

This case was submitted for advice as to whether the Employer violated Section 8(a)(5) by insisting to impasse on certain provisions in an addendum to the current agreement where the addendum was to cover employees who had been added to the contractual bargaining unit as a result of a Globe<sup>1</sup> election.

FACTS

The Los Angeles Newspaper Guild, Local 69 (hereafter called the Union) has for many years represented a unit at the Press Telegram (hereafter called the Employer), which included employees in the editorial, circulation, PBX and maintenance operations departments.<sup>2</sup> The current collective bargaining agreement between the Employer and the Union runs from March 1, 1989 through February 28, 1993. Article I, Section 2 of the current agreement states as follows:

The kind of work either normally, or presently performed within the unit covered by the contract, and new or additional work either (1) assigned to be performed within the said unit, or (2) of the same nature in either skill or function as the kind of work either normally or presently performed in the said unit, is recognized as the jurisdiction of the Guild, and the performance of such work shall be assigned to employees within the Guild's jurisdiction. Nothing in

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<sup>1</sup> Globe Machine and Stamping Co., 3 NLRB 294 (1983).

<sup>2</sup> The unit consists of 550 employees.

this section shall be construed to alter the Publisher's present practice or method of operation.

On October 24, 1990, the Union filed a petition to represent the previously unrepresented swamper employees.<sup>3</sup> The Union and the Employer signed an election agreement which stated that if a majority of the swampers selected the Union as their bargaining representative, they would become part of the existing unit. A majority of the swampers selected the Union as their representative, and on December 17, 1990, the Union was certified as the swampers' bargaining representative. The certification stated that the Union may bargain for the swampers as part of the existing unit.

On March 26, 1991, the parties began to bargain over the swampers' terms and conditions. The Union presented proposals dealing only with wages and fringe benefits. The Employer rejected the proposals and offered an entire agreement for the swampers which contained many terms that were inferior to those contained in the existing agreement. The proposal included a management rights clause and an open shop provision; did not provide for dues checkoff; offered fewer medical benefits, holidays and vacations; proposed less sick leave; outlined a grievance procedure with stricter time limits; and offered no pay increases during the term of the proposal, which ran longer than the existing agreement. While the Employer was proposing a separate agreement, the Union demanded that the existing agreement be applied to the swampers except for wages and conditions unique to swampers.

At the second and third meetings, the Union signed off on the Employer's proposals which corresponded to terms in the existing agreement, including parts of the health and welfare benefits, the bulletin boards provision, and the arbitration provision. However, the Employer continued to offer a separate agreement, while the Union argued that the existing agreement should be applied to the swampers.

At the fourth session, on June 4, 1991, the Employer offered a proposal stating that the swampers' agreement would be a supplement to the existing agreement,

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<sup>3</sup> At all relevant times, the employer employed two swampers, both of whom worked in the circulation department.

acknowledging that the swampers were added to the existing bargaining unit, and making the swampers' agreement coterminous with the existing agreement. However, this proposal retained terms which were different from some of those in the existing agreement.

Six subsequent meetings led to changes in the parties' positions and a narrowing of differences. However, the Employer continues to insist upon an open shop clause;<sup>4</sup> no dues checkoff;<sup>5</sup> a management rights clause;<sup>6</sup> a red-circled wages provision;<sup>7</sup> and separate sick leave, holiday and vacation provisions. The Region has concluded that the parties have reached impasse in their negotiations on union security, checkoff, management rights; and recircling of the current swampers' wages.

#### ACTION

The Section 8(a)(5) charge should be dismissed, absent withdrawal, because (1) this is not a good case in which to argue that the employer is insisting on a "totally separate agreement so designed as to effectively destroy the basic oneness" of the certified unit within the meaning of dicta in Federal-Mogul Corporation<sup>8</sup> and (2) Article I, Section 2 (the Coverage Provision) of the collective-bargaining agreement does not render the current collective bargaining

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<sup>4</sup> The proposed open shop clause reads as follows: Union Membership

Union membership shall be voluntary. No employee working as a swamper shall be required to be a member of the Union as a condition of employment. The current contract has a standard union security clause.

<sup>5</sup> The Employer's proposal states: Union Dues

It shall be the responsibility of the Union to collect any dues or membership fees required of employees. There shall be no dues checkoff. The current contract provides for dues checkoff.

<sup>6</sup> The Employer's management rights proposal reads as follows: Management Rights The publisher, unless specifically limited by other provisions of this Agreement, retains all prerogatives associated with the management of employees working under this Agreement. The current contract does not contain a management rights clause.

<sup>7</sup> Under the Employer's proposal, the hourly wage rate for swampers would be less than the two swampers are earning at the present time, but they would be "red-circled" at the rates they are now earning. The Union had proposed a substantial wage increase for the swampers. Also the current agreement specifies, "Employees receiving above the scale shall be increased in the same amount as the dollar increase, if any, provided in the respective classification".

<sup>8</sup> Federal-Mogul Corporation, 209 NLRB 343, 345-46 (1974).

agreement automatically applicable to the swampers in any part.

Upon a union petition, a Globe election is held to determine whether a group of previously unrepresented employees wish to remain unrepresented or to be included in an existing union-represented bargaining unit.<sup>9</sup> If a majority of the unrepresented employees vote to become a part of the unit, the union and the employer must bargain about the newly Globed-in employees as part of the larger unit which they selected through the Globe election.<sup>10</sup>

However, while the union and the employer must bargain for one contract to cover all employees in the unit when the existing contract expires, the employer has no obligation and the union has no right to automatically apply the existing contract to the newly Globed-in employees.<sup>11</sup> Instead, both parties have a duty to bargain in good faith over the interim terms and conditions of employment for the newly represented employees.<sup>12</sup>

In Federal-Mogul Corporation, the union charged that the employer had violated 8(a)(5) by refusing to bargain with the Union about the Globed-in employees and by unilaterally applying the terms of an existing agreement to a group of setup employees who had selected the union to represent them as part of the existing production and maintenance unit. In holding that this employer conduct had violated 8(a)(5), the Board refused to allow either party to escape its obligation to separately bargain over the terms and conditions for these employees.<sup>13</sup> The Board noted that contracts often contain separate or special provisions for particular groups and that that sort of bargaining was needed there. The Board further reasoned that if a Globe election mandated application of the existing agreement, it would be at odds with the holding of H.K. Porter Co., Inc. v. NLRB<sup>14</sup> that the Board cannot compel parties to agree to substantive contract provisions.

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<sup>9</sup> Globe Machine and Stamping Co., supra; Armour and Company, 119 NLRB 623 (1957); Lubbock Typographical Union No. 888, 196 NLRB 177 (1972).

<sup>10</sup> Southern Indiana Gas & Electric Company, 284 NLRB 895, 898 (1987).

<sup>11</sup> Federal-Mogul Corporation, supra; Southern Indiana Gas & Electric Co., supra; Wells Fargo Armored Service Corporation, 300 NLRB No. 149 (1990).

<sup>12</sup> Wells Fargo Armored Service Corporation, supra, slip op. at 2.

<sup>13</sup> Federal-Mogul, supra at 344.

<sup>14</sup> 397 U.S. 99 (1970).

<sup>15</sup> However, the Board stated that its decision did not "suggest that either party may adamantly insist to impasse upon a totally separate agreement so designed as to effectively destroy the oneness of the unit which we have found appropriate." <sup>16</sup>

In Southern Indiana Gas and Electric Company, the Board affirmed the general principles enunciated in Federal-Mogul. The original unit in Southern Indiana Gas included the production, transmission, and distribution employees of the utility company. In a Globe election, the bill collector employees voted to be included in the existing unit. When the union and the employer began to bargain, the union stated that it would bargain only over terms and conditions unique to the bill collectors and that the existing contract should govern all other terms and conditions. The employer insisted not only that the parties bargain for an entirely separate agreement for the newly Globed-in bill collector employees, but that the parties bargain over whether the bill collectors be included in the existing unit at all. While the Board found a Section 8(a)(5) violation as to the employer's refusal to recognize the bill collectors as part of the existing unit, the Board held that the employer was not obligated to apply the existing terms and conditions to the bill collectors.<sup>17</sup> In reversing the Administrative Law Judge's order to apply the existing contract to terms and conditions of mutual applicability, the Board held that either party was free to reject the terms of the existing agreement and bargain separately over terms and conditions, although in the future the parties would be obligated to bargain over the unit as a whole.

Most recently, the Board reaffirmed these principles in Wells Fargo Armored Service Corporation, supra. In Wells Fargo, the employer refused to recognize a group of Globed-in vault guards as part of the existing unit of guards. Additionally, the employer rejected the union's position that the parties bargain only over conditions

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<sup>15</sup> Federal-Mogul, supra at 344. The Board further noted the unfairness of allowing employees to vote to be covered by a contract which did not contemplate their inclusion. Id.

<sup>16</sup> Federal-Mogul, supra at 345-346. The Board went on to state that it need not reach that issue because the evidence would not support such a finding in that the employer adamantly refused to bargain about any of Globed-in employees' terms and conditions. Id. at 345.

<sup>17</sup> Southern Indiana Gas, supra at 895.

unique to the vault guards, and that the terms and conditions of the existing agreement be applied for all other subjects. The Board found a Section 8(a)(5) violation in the employer's refusal to bargain with the union about the vault guards as part of the existing guard unit, but held that the employer's refusal to apply the terms of the existing contract was not unlawful. The Board then ordered the parties to bargain over the terms and conditions of the newly represented employees.<sup>18</sup>

In the instant case, we concluded that the Employer met its obligation to recognize the swamper as part of the existing unit and did not violate the Act by insisting to impasse on certain contract provisions which are different from those in the contract covering the rest of the unit. Initially, we note that the Employer's proposal stated that the swamper were part of the existing unit and further, that the proposal's provisions would continue only as long as the existing agreement. It is clear that under Southern Indiana Gas, supra, and Wells Fargo, supra, either party is privileged to insist to impasse upon bargaining on a separate agreement to cover the Globed-in employees for the remainder of the term of the contract covering the rest of the unit as long as the employer recognized that these Globed-in employees are part of the unit. Accordingly, the Employer had a right to bargain for a separate agreement for the swamper covering the duration of the existing agreement.

However, this case presents the issue raised in dicta in Federal-Mogul, supra, of whether the specific provisions on which the Employer insisted to impasse constitute "a totally separate agreement so designed as to effectively destroy the oneness of the unit" found appropriate by the Board. Neither Federal-Mogul, Southern Indiana Gas nor Wells Fargo addressed this issue, because there was no bargaining on substantive proposals and the substance of those proposals was never in issue. We concluded that the proposals on which the Employer insisted to impasse, i.e., union security, checkoff, management rights and redcircling of swamper wages, did not rise to the level of separateness envisioned by the Board in Federal-Mogul. Consequently, this is an inappropriate vehicle in which to present to the Board the issue left open in Federal-Mogul, i.e., whether

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<sup>18</sup> Wells Fargo, supra, slip op. at 2.

and when insistence on a totally separate agreement effectively destroys the oneness of the certified unit.

First, we note that other provisions in the Employer's proposal, which the Union accepted, corresponded to provisions in the existing agreement, including the health and welfare clause, the bulletin boards provision, the arbitration provision, and the affirmative action provision. Also, although there is nothing in the nature or prior working conditions of the swampers which would justify having different union security, checkoff and management rights provisions than the rest of the unit <sup>19</sup> and although these provisions are arguably important ones to the Union's bargaining status, there is nothing to indicate that these provisions are "so designed as to effectively destroy the oneness of the certified unit" or that they would necessarily do so. In fact, the Employer was apparently trying out, in bargaining for the swampers, proposals that it would like to request in bargaining for the whole unit. Consequently, this would not be a good vehicle in which to present to the Board the question raised by the Board in Federal-Mogul as to the circumstances in which insistence to impasse on a separate agreement would violate Section 8(a)(5).

We further conclude that Article I, Section 2 of the Coverage Clause of the collective bargaining agreement cannot be interpreted to require automatic application of any of the contract to the swampers. The clause refers to the jurisdiction of the Union, which, through the Globe election, has been broadened to include the swampers. The clause does not, however, make any reference to the application of the contract. Further, in the instant case, the employer has employed swampers since at least 1986 and the current contract became effective on March 1, 1989.

For all of the above reasons, the instant charge should be dismissed, absent withdrawal.

R.E.A.

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<sup>19</sup> The Employer's proposal as to the swampers' wages is at least arguably recognizes differences between the swampers and the other unit employees.