

United Paperworkers International Union Eriez Local Union No. 620, AFL-CIO and International Paper Company

United Paperworkers International Union, AFL-CIO and International Paper Company

United Paperworkers International Union, AFL-CIO, CLC and International Paper Company

Local 14, International Paperworkers International Union, AFL-CIO, CLC and International Paper Company

International Brotherhood of Firemen and Oilers, AFL-CIO and International Paper Company

Local 246, International Brotherhood of Firemen and Oilers, AFL-CIO and International Paper Company

Local 197, United Paperworkers International Union, AFL-CIO, CLC and International Paper Company

United Paperworkers International Union, AFL-CIO, CLC and International Paper Company. Cases 6-CB-8207-1, 6-CB-8207-2, 6-CB-8362-1 (formerly 1-CB-7313-1), 6-CB-8362-2 (formerly 1-CB-7313-2), 6-CB-8362-3 (formerly 1-CB-7313-3), 6-CB-8362-4 (formerly 1-CB-7313-4), 6-CB-8363-1 (formerly 1-CB-7332-1), and 6-CB-8363-2 (formerly 1-CB-7332-2)

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On December 17, 1991, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondents filed exceptions and a supporting brief, the General Counsel filed a limited exception and a supporting brief, and the Charging Party and the General Counsel filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs¹ and has

¹The General Counsel's unopposed motion to supplement record to include documents relied on by the administrative law judge is granted.

The General Counsel's motion to strike documents submitted to the Board by the Respondents is granted as these documents were not presented at the hearing and, therefore, are outside of the record. *A.J.R. Coating Corp.*, 292 NLRB 148 fn. 1 (1988).

The Respondents' motion to consolidate this proceeding with another unfair labor practice proceeding pertaining to a pooled voting procedure involving another employer and to hold the instant proceeding in abeyance is denied as the action requested would unduly delay this proceeding and would not otherwise effectuate the purposes of the Act.

decided to affirm the judge's rulings,² findings, and conclusions as modified, and to adopt the recommended Order as modified.³

The Respondents represent separate appropriate bargaining units of International Paper Company's employees in which contracts are separately negotiated. The issue is whether, as the judge found, the Respondents have unlawfully bargained with International Paper by adopting and maintaining a pooled voting ratification procedure under which agreement to each of the separately negotiated contracts may rise or fall on the aggregate result of the pooled vote. As the judge found, the Respondents on March 3, 1990, declared the creation of a contract ratification voting pool involving bargaining units at 24 locations of the Employer. Under the pool's procedures, employees in the participating units first vote for or against ratification of their own separately negotiated contracts. Regardless of the outcome of the individual unit's vote, the votes pro and con from all the units are pooled and tabulated together. If a majority of the pool's total votes is against ratification of these separate contracts, there is no ratification of *any* contract irrespective of the individual vote of any participating unit.

We agree with the judge that the pooled voting contract ratification procedure violated Sections 8(b)(3) and 8(d) of the Act because the pool's structure and operation impermissibly impose extraneous non-bargaining unit considerations into the collective-bargaining process. In adopting the judge's findings, however, we do not rely on his findings that the pool violates the Act simply because it results in a delay in the bargaining process. Although it is true that completion of the bargaining process is delayed, this is an inherent *effect* of the pool's structure and operation which conditions agreement on the aggregate vote of the pool's members. It is not, however, necessarily deducible from this effect that the procedure was adopted in order to postpone or frustrate agreement on contracts,

The General Counsel's and the Charging Party's motions to expedite decision are denied.

²We affirm the judge's ruling excluding certain evidence proffered by the Respondents in support of their contention that the Employer's labor relations are centrally controlled, inasmuch as such evidence would not privilege the adoption and maintenance of the pooled voting procedure as alleged in the complaint. We note that the Respondents presented relevant evidence pertinent to the pool's objectives and effects.

³In adopting the judge's recommended Order that the Respondents must promptly execute written contracts at the Employer's Androscoggin and Strathmore facilities "if appropriate," we do not foreclose the Respondents from seeking to establish at compliance that the International Union withheld approval of the contracts at these facilities for substantive reasons unrelated to the pool.

Because there is no finding that the Respondents independently violated Sec. 8(b)(1)(A) of the Act, we shall delete from the recommended Order the general injunctive "like or related" language recommended by the judge and we have substituted a new notice reflecting this modification.

any more than such a motive is necessarily inferred in cases in which lawful forms of economic action such as strikes, lockouts, or the replacement of economic strikers can be perceived as having the effect of delaying agreement.

The pool runs afoul of the Act, not because of delay as such, but because its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit's contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit's contract. The result is a system that allows for refusal to sign an agreement on the basis of a nonmandatory subject of bargaining, i.e., subjects that do not concern the wages, hours, and working conditions of the unit covered by that agreement. Accordingly, we find that the pool violated Section 8(b)(3) and (d) as alleged.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, United Paperworkers International Union, AFL-CIO, CLC; United Paperworkers International Union Eriez Local Union No. 620, AFL-CIO; Local 14, International Paperworkers International Union, AFL-CIO, CLC; Local 197, United Paperworkers International Union, AFL-CIO, CLC; International Brotherhood of Firemen and Oilers, AFL-CIO; Local 246, International Brotherhood of Firemen and Oilers, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(b).
2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with International Paper Company, as the exclusive bargaining agents of separate appropriate units of International Paper Company's employees, by adopting, adhering to, and maintaining a pooled voting contract ratification procedure which inherently delays the completion of the collective-bargaining process; unlawfully preconditions acceptance of one bargaining unit's collective-bargaining agreement on approval of other

unrelated bargaining units; and operates to chill and deter the process of collective bargaining.

United Paperworkers International Union, AFL-CIO, CLC will rescind section 4 of article 15 of its constitution providing for such pooled voting contract ratification procedures.

UPIU and United Paperworkers International Union Eriez Local Union No. 620, AFL-CIO will execute a written contract with International Paper Company at its Erie facility embodying the proposal ratified by the Local's membership on or about June 8, 1990.

UPIU and Local 14, International Paperworkers International Union, AFL-CIO, CLC, as well as International Brotherhood of Firemen and Oilers, AFL-CIO, and Local 246, International Brotherhood of Firemen and Oilers, AFL-CIO, will tally forthwith the ballots cast in the contract ratification vote conducted among the Local's membership for International Paper Company's Androscoggin facility on or about March 11, 1990, disclose the results of the tally to International Paper Company, and, if appropriate, promptly execute a written contract with International Paper Company at its Androscoggin facility embodying the proposal ratified by the Local's membership on or about March 11, 1990.

UPIU and Local 197, United Paperworkers International Union, AFL-CIO, CLC will tally forthwith the ballots cast in the contract ratification vote conducted among the Local's membership for International Paper Company's Strathmore facility on or about July 7, 1990, disclose the results of the tally to International Paper Company and, if appropriate, promptly execute a written contract with International Paper Company at its Strathmore facility embodying the proposal ratified by the Local's membership on or about July 7, 1990.

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, CLC;
UNITED PAPERWORKERS INTERNATIONAL UNION ERIEZ LOCAL UNION No. 620, AFL-CIO; LOCAL 14, INTERNATIONAL PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, CLC;
LOCAL 197, UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, CLC;
INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, AFL-CIO;
LOCAL 246, INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, AFL-CIO

Kim R. Siegert, Esq., for the General Counsel.
Lynn Agee and Michael Hamilton, Esqs., for the Respondents.
Andrew E. Zelman, Joyce E. Margulies and Nancy B. Levine, Esqs., for the Charging Parties.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Respondent Unions represent separate appropriate bargaining units of Charging Party International Paper's employees. General Counsel alleges in his amended consolidated complaints¹ that Respondent Unions have violated Section 8(b)(3) and (d) of the National Labor Relations Act by maintaining a pooled voting contract ratification procedure. Under this procedure, as General Counsel avers:

If there is an affirmative vote of the total [pooled ballots of the participating Local Unions], each one of the Local Unions [which] had a favorable vote in their location will have a a binding collective bargaining agreement. Any Local [which] had a negative vote for the collective bargaining agreement will be free from the pool and may continue [its] bargaining or form another pool. If there is a negative vote of the total pool votes, then there will be no agreement at any location.

Respondent Unions, although generally admitting the maintenance of the pooled voting contract ratification procedure as alleged in the complaint, deny violating the Act. Respondent Unions also argue, *inter alia*, that this proceeding is barred by the time limitations of Section 10(b) of the Act.

Hearings were held on the issues raised in Pittsburgh, Pennsylvania, on May 21, 22, 23, 24, 29, and 30, 1991. On the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT²

International Paper (IP) is admittedly an employer engaged in commerce as alleged. Respondents United Paperworkers International Union (UPIU), its named constituent Locals and other named Unions are admittedly labor organizations as alleged.³ UPIU and its constituent Locals represent units of employees at 66 of IP's some 200 facilities. These 66 facilities spread from Maine to Florida and New York to California. And, the products produced at these facilities range from pulp and envelopes to treated poles and nonwoven fabrics. (See G.C. Exh. 16.)

The constitution of UPIU provides in art. 15 for the ratification of collective-bargaining agreements. (See G.C. Exh. 2, art. 15.) Section 2 of art. 15 states:

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.

¹Unfair labor practice charges and amended charges were filed in the above cases on June 26, July 20, August 31, and September 4, 1990. Amended consolidated complaints issued on May 1, 1991. The complaints were later further amended.

²The evidence summarized below is essentially undisputed. As demonstrated, there are no significant or material conflicts of testimony necessary to a resolution of the matters in issue here.

³Respondents UPIU and its Local 197 are representatives of a unit at IP's Strathmore paper mill; Respondents UPIU and its Local 14, with Respondents International Brotherhood of Firemen and Oilers and its Local 246, are joint representatives of a unit at IP's Androscoggin mill; and Respondents UPIU and its Local 620 represent a unit at IP's Erie mill. See G.C. Exhs. 16 and 17.

In August 1988, the UPIU amended article 15 of its constitution to add the following section 4:

In some instances, Locals may choose to engage in coordinated bargaining to enhance their bargaining strength. In order to assure that bargaining is meaningful and orderly, it will be necessary to allow pool voting with the supervision of the president under Art. 15, Section 2 Should a group of Locals choose this course of action, the following procedures apply:

1. Participating Locals shall announce their commitment to allow their votes on a collective bargaining agreement to be pooled with other Locals making the same commitment.
2. The Locals shall agree on major issues they wish to pursue in collective bargaining.
3. Each Local shall continue its independent decision making in their separate bargaining units.
4. Votes taken on contract proposals will be tallied at each location. The results will then be sent to the International president who will tally the pooled votes. The existence of a contract will be governed by Art. 15, Section 1 of the Constitution.⁴

UPIU Vice President Boyd Young generally claimed that "the pool was formed in June 1989," recalling that this pooling procedure was first discussed at a meeting of the International Paper Union Council in June 1989. Young, who served as chairman of this Council, testified:

The pooling process was discussed at a Council meeting. Really we had a bargaining session with IP Following that negotiation . . . we had a Council meeting and the participating Locals felt it necessary to form some group to resist concessions, and asked that they form a bargaining pool The documents were drafted up at that particular Council meeting, distributed to the Locals to take back to their memberships [for] consideration and for them to mail them back to me.

See General Counsel Exhibits 4 and 83(a) to 83(ff), pooled voting agreements later executed by the various Local Unions in 1989, 1990, and 1991. See also General Counsel's Exhibit 9.⁵

Young elsewhere testified as follows:

Q. Now on March 3, 1990, the pool was officially declared by you, isn't that true?

A. That is true. . . .

⁴Respondent UPIU, in adding sec. 4 to art. 15, as quoted above, asserted in the resolution of its executive board, *inter alia*, the NLRB has failed to protect American workers' collective bargaining rights; . . . employers in the last decade seized on the government hostility toward unions to achieve concessions in bargaining by locking out employees and permanently replacing them during strikes; . . . the entire American labor movement agrees that alternative economic weapons are needed in order to secure bargaining strength for unions [See R. Exh. 22.]

⁵The coordinated bargaining agreements to be executed by participating Local Unions state as "objectives" (1) "common contract expirations within a recognized pool," and (2) "to resist concessions." See G.C. Exh. 4.

Q. Now isn't it true that you have had numerous conversations about the pool with [IP Director of Employee Relations James] Gilliland prior to March 3, 1990, when the pool was declared?

A. I have had discussions with Gilliland, yes. . . .

Q. And isn't it also true that prior to March 3, 1990, that your response to his questions regarding whether the pool was in effect was that there was no voting pool and that there would be no pool until you declared its existence?

A. That is a fact.

Q. Now, once you declared the pool to be in existence on March 3, 1990, that fact was publicized from that point on, isn't that true?

A. Yes, that is true⁶

And, UPIU Local 14 President William Meserve similarly acknowledged that he was present at the council meeting held on March 3, 1990, "the day the pool was declared to be in effect . . . to be in existence" (See also G.C. Exhs. 60(b) and (c), 62, 64, 66, and 84.)

Counsel for UPIU explained in a letter dated March 15, 1990—shortly after the UPIU had "declared" the pool "to be in existence"—"how the pool voting procedure is conducted" (G.C. Exh. 56):

[A]t the conclusion of the [contract ratification] vote at each Local, the ballots and tally of those ballots are sent to the International president, who in turn will count all of the votes after the last Local has voted. If there is an affirmative vote of the total, each one of the Locals who had a favorable vote in their location will have a binding collective bargaining agreement. Any Local who had a negative vote for the collective bargaining agreement will be free from the pool and may continue their bargaining or form another pool. If there is a negative vote of the total pool votes, then there will be no agreement at any location.

See also General Counsel's Exhibit 8, where the UPIU later explained: "The contract at any one location is considered ratified only if there is a vote in favor of ratification by a majority of all votes cast in the pooled Locals."

UPIU Vice President Young claimed that the ballots cast by the membership of participating Locals during each Local's ratification vote are initially "impounded" and consequently the results of the Local Union's ratification vote would not "normally" be made known to the Employer; these "impounded" ballots are sent to the International for later counting; "there are 35 Locals I think that have opted to get into the pool"; "some of [their] contracts don't expire [until] 1994 [see G.C. Exh. 17]"; and "we have set a date of December 1991 to count ballots . . . those Locals whose contracts don't expire until 1994 are not going to be participants in this pool"

⁶Young, when questioned about the June 1989 Council meeting where the pool was initially discussed, acknowledged that "the pool didn't exist at that time"—"it was something that could very well exist and hadn't been declared" Young also acknowledged: The Local Unions were not bound until the pool was officially declared in March [1990]. Once the pool was officially declared, then the documents that they signed would be enforced.

Respondent UPIU had announced initially, when the pool procedure was "declared," that the "International president will tally the ballots after all the Local Unions in the pool have voted" and "the vote tally at one location must remain confidential until after all of the votes in the pool have been tallied" (See G.C. Exh. 5. See also G.C. Exhs. 65 and 66.) UPIU Vice President Young admitted that "originally we didn't set a date" for counting the "impounded" ballots; "this decision was not made early on"; later "sometime in 1990" a "decision" was made "that we would count the votes in December 1991"; and Management was then apprised of this "decision." Young recalled:

The Company would make offers in various locations and they would have a ratification vote and those votes would be sent to our International president, and . . . that number started growing, then we had to set a date to cut it off, so we set December 1991.

Young elsewhere acknowledged that the "decision" to count the "impounded" votes of the pooled Locals in December 1991 was actually made in "late 1990" some 9 months after the pooling procedure had been "declared"; IP representative Gilliland "probably" was "advised of that" "decision" in January 1991; and, in the meantime, ratification votes had been taken at a number of pooled Locals and the "impounded" ballots sent on to the International.⁷

Young also explained the possibilities involved in counting the aggregate "impounded" ballots. Young acknowledged that—assuming at the time the International counts the "impounded" ballots some 10 or more participating Locals have held ratification votes with 6 voting in favor and 4 against their separate contract offers—there would still be "no contract ratification in any location" if a majority of the total or aggregate "impounded" ballots is against ratification. Young further acknowledged:

[The voting membership of] each [participating] Local is not looking at a sister Local's contract to see what concessions they wanted to give up or didn't want to give up and say we approve or we disapprove . . . they are simply saying we like our contract . . . and that will determine whether the other contract[s] may or may not be ratified

In addition,

[Y]ou may have a number of small [participating] Locals with a few votes that vote to reject and you may have a very large Local that votes in the affirmative and [its] votes may outweigh the others you may have one Local that could outvote everybody else in the pool

Conversely, where the "pooled majority" is against "ratification," there is no "ratification" for all the Locals. As Young agreed, "I think that two [large] Locals if they voted

⁷As noted, the coordinated bargaining agreement to be executed by a participating pool Local Union states as an "objective" of the pool procedure "common contract expirations within a recognized pool." Gilliland testified, however, that such common expiration dates have not been proposed in any of the negotiations with the Unions. And, as shown in G.C. Exh. 17, the latest contract for a pool participant will not expire until March 5, 1994.

almost unanimously could either bar or accept; . . . it could go either way . . . [because of] sheer numbers”

UPIU required at the outset a vote of the Local Union’s membership for each Local to join this voting pool plan. As noted above, a coordinated bargaining agreement was then executed and sent on to the International. (See G.C. Exhs. 4, and 83(a) to 83(ff).) Initially, UPIU Vice President Young had stated:

Once the agreement is signed by the president and vice president of the Local, you do not get out until we accomplish our objectives, or until the International president agrees to release the group [G.C. Exh. 9; cf. Tr. pp. 65, 91 to 92.]

UPIU stated in a later publication that a Local “can . . . get out of the pool once it has voted to get in,” “but only with the agreement of the other Local Unions participating.” (See G.C. Exh. 8.) There is, however, no formal or written provision or explanation as to how a Local would thus “get out”; no Local apparently has yet been released of this obligation; and, as the record shows, it seems unlikely and improbable that such a release could be obtained. As UPIU Local 14 President William Meserve wrote on May 14, 1990 (G.C. Exh. 63):

There are 30 Locals . . . that are now in the pool and that number is still increasing. This new pool is determined to stand together. Unlike any other pool, once in this one, they can’t get out.

See also General Counsel’s Exhibits 72 and 60(d).

Approximately 35 Local Unions representing units of employees at some 24 IP facilities have joined this pooling plan. The memberships of these participating Local Unions range from about 70 to 1200. Collective-bargaining agreements have already expired at about 17 of these participating locations. Such agreements expire at different dates, the latest being March 5, 1994. (See G.C. Exhs. 83(a) to 83(ff) and 17, and Tr. pp. 952 to 953.) As stipulated, contract ratification votes were in fact taken by the memberships at some nine participating Local Unions on various dates in 1989 and 1990 and the respective ballots and tallies sent on to the International. (See Tr. pp. 1186 to 1187.) Nevertheless, as further acknowledged, no collective-bargaining contracts have been executed at the pooled facilities since the pool was “declared” in March 1990, although 15 contracts have been signed at nonparticipating IP locations. (See G.C. Exh. 42.)⁸

Robert Gittere, manager of human resources at IP’s Erie mill (G.C. Exh. 17), testified that the collective-bargaining agreement there was to expire on June 10, 1990; negotiations for a new contract commenced on April 27; the parties met at 17 sessions; the Employer presented its “final and best offer” at the last session on June 5; and at the initial meeting:

Tony Sweeney indicated he would be spokesman for the International and Tom [Carney] would be the

spokesman for the Local Union [Local 620]. I then asked . . . about their ability to negotiate and ratify a contract . . . particularly in light of the bargaining pool that we understood the Local had voted to join. Carney told me that the Local was there and prepared to negotiate a collective bargaining agreement . . . and Sweeney answered for the International . . . [that] Wayne Glenn, International president, had reserved the right to himself to execute an agreement . . . because he was the only one who could release a Local from its obligation to the bargaining pool . . . that he [Sweeney] and Carney both felt that if we were able to get an acceptable contract out of these negotiations, Glenn would in fact release the Local from the pool and allow them to execute the contract.

Gittere recalled that at the last session the Employer presented its “final economic offer” to the union representatives; later the union representatives, including Sweeney and Carney, met again with the Employer; and

they indicated that they had a particular problem with a particular part of our proposal that dealt with not paying Union representatives to attend third step grievance meetings and negotiations, and asked if we could do something I told them that it was fairly important to me, but that if it was holding us up . . . I can modify that . . . in exchange for the . . . assurance that the negotiating committee would recommend to the membership the remainder of the offer we had on the table. They considered and said that while they were pleased with the economic offer, they could not recommend all of the offer because some of the language items would still present them with a problem, . . . [but] they would be willing to recommend that the membership not reject the offer, sort of a backhanded recommendation. . . . [W]e agreed

The Local Union held a membership meeting to vote on acceptance or rejection of the Employer’s offer on June 8, resulting in 577 votes in favor of and 379 votes against acceptance of the Employer’s offer. (See G.C. Exh. 79.) However, on June 11, following efforts “to reach [International President Glenn] to urge him to release [the Local] from the pool because they had in fact a ratified contract,”

Tom Carney called me [Gittere] and told me that he had spoken with Marshall Smith [International vice president for the region], and Smith had told Carney that the International, Wayne Glenn, would not allow execution of the agreement at Erie until the Local Union had discharged its obligation to the pool.

UPIU Vice President Young acknowledged that “the reason the International did not execute that contract was because Local 620 is a member of the pool,” “all the Locals hadn’t voted yet” and “there has been no total tally.” Company Representative Gittere noted that there have been no further contract negotiations since the “final offer” was accepted by the Local Union’s membership.

James Livingston, manager of human resources at IP’s Androscoggin mill (G.C. Exh. 17), testified that contract negotiation sessions commenced there on September 21, 1989;

⁸UPIU Vice President Young acknowledged that the International Union has executed the contracts ratified by nonpool Local Unions even though such contracts are “noncompetitive” or “concessionary.” As noted, a stated “objective” of the UPIU’s coordinated bargaining agreement is “to resist concessions.”

the parties met during eight sessions; the Employer presented the union representatives with its “best proposal” at the eighth session on February 12, 1990; a ratification vote was held on March 11, 1990; and on March 12, 1990, UPIU Local 14 President William Meserve and Livingston had the following conversation:

I [Livingston] asked Bill [Meserve] how the [ratification] vote went, and he said he didn’t know because the ballots had been sealed in the ballot box and sent to Wayne Glenn in Nashville. I asked him why, and he said because a coordinated bargaining pool had been formed in a meeting in Nashville on March 3 [some nine days earlier], and both Locals [involved in this unit’s negotiations], UPIU Local 14 and IBFO 246, were members of that bargaining pool.

Livingston had heard nothing “about the bargaining pool” prior to that time. Meserve then apprised Livingston that some 19 IP facilities were in the pool. The parties subsequently had no “further meetings” “for purposes of contract negotiations,” and Livingston has not learned “the results of the vote.”

Eleanor Bliss, assistant manager of operations at IP’s Strathmore Paper Company (G.C. Exh. 17), testified that contract negotiations started there on June 11, 1990; the parties met during 11 sessions; the last session was on July 2, 1990, when the Employer presented its “best and final offer”; Local Union 197 held a ratification vote on July 7; Local 197 recording secretary, Charles Scott first apprised the Employer on August 7 that the contract had not been ratified and he would not reveal the “tally”; and no further contract negotiations were held. Bliss explained that prior to the commencement of negotiations, she did not receive any “direct notification” from the UPIU or its Local 197 “about the existence of a voting pool”; at the first session “the Company asked the Union a series of questions about the pool” (see G.C. Exh. 55); and later, in response, the Union provided a copy of General Counsel’s Exhibit 56, counsel for UPIU’s letter dated March 15, 1990, quoted above.

IP Director of Employee Relations James Gilliland generally explained “the things that happen in a pooled location during the collective-bargaining process and the things that happen in a location that is not in the pool,” as follows:

Traditionally over the years when we entered into a collective bargaining process at a location, we would bargain until a conclusion, put out an offer, the people would either ratify and we would have a contract, or they would reject it. If they rejected it, we would go back to the table and try to seek some kind of accommodation that would result in a satisfactory labor agreement In a pool location . . . once the offer has been put on the table . . . [i]n some situations we don’t know whether the contract was ratified or rejected. In some situations we are told that the contract was ratified but the contract was not executed. In some situations we are told that the contract was rejected. But what happens in any of those situations is that the bargaining process comes to a screeching halt and it is not hard to understand why. For example, in a place like Erie [see G.C. Exh. 17] . . . what incentive is there to go back to the bargaining table . . . [and in] a situation

where we don’t know what the result of the vote is, what incentive is there to go back to the table? . . . If you look at the date of the last bargaining session on G.C. Exh. 17, you will find in most cases the last bargaining session occurred months or years ago because once the contract has been handled, rejected, accepted, voted on, or whatever, in a pool location, there is virtually no conversation that takes place after that because there is no incentive for either party to go back to the table.⁹

The pooled voting contract ratification procedure in issue here involves some 24 IP locations in 14 States. Nine of the facilities are pulp and paper mills; six are paper mills; and nine are converting facilities. (See G.C. Exh. 17.) IP’s director of employee relations Gilliland testified that a pulp and paper mill takes in wood in raw form; digests the product; washes the product; sends the product to a bleaching facility; and sends the pulp product to the paper mill where it is manufactured into paper. Operations differ in various pulp and paper mills. The equipment is large and diverse. And there are also different kinds of bleaching facilities.

Gilliland explained:

It would be very difficult for a guy who was a machine tender on the linerboard machine at Pineville . . . to go to Riverdale . . . and try to operate [the] number 15 machine in Riverdale . . . because the products made and the kinds of requirements for the operations of those machines are so different. By the same token, a guy who is running a very small . . . machine at one of the specialty mills would have a very difficult time going to Pineville and operating the huge linerboard machine. [And,] the pulp mill operator in a mill that doesn’t have a continuous digester would be lost in a pulp mill that does because the equipment is completely

⁹The record also contains references or warnings by union officials of possible massive strikes as a consequence of or attending use of this pool procedure. UPIU Vice President Young explained: By this pool group agreeing to work without agreements, the contract expires, and if a number or many of the Locals in the pool would agree to strike . . . we assume that it would be very difficult for IP to replace that number of workers [I]f a large number of them [Locals] was to decide that they wanted to strike and did at the same time, we think that would also assist us in resisting permanent replacement.

And, International president Glenn wrote the executive committee of the IP Council during late 1990 (G.C. Exh. 72):

For the pool to work you have to be willing to use it, i.e., take collective action. Do you believe that you can convince 2/3 of all the Locals in the pool to pass a strike vote?

Further, IP representative, Gilliland recalled stating to UPIU Vice President Young: “You know this won’t work without the threat of a deliverable strike,” and Young agreed. Gilliland also attributed to Young the statement that “one of the things that might happen to us in December 1991 is a massive strike.” Young did not specifically deny the above statements attributed to him by Gilliland. Young, however, generally denied telling Gilliland “that this pool was a strike pool”—pool locals “could . . . strike” “the same way they could prior to the pool being formed” after a separate strike vote.

The evidence of record also attributes to one Edward Garvey, whose agency status is disputed, references and warnings of a massive strike in December 1991 as a consequence of this pool procedure. See C.P. Exhs. 4 and 5.

different. . . . Some of these mills are very state-of-the-art in terms of [their] kinds of controls. This creates a difference, for example, in the kinds of skills that a maintenance employee would have to have, a mechanic, a repairman, an electrician. . . . So, even within the pulp and paper group there are vast differences in the kinds of equipment, the size of the equipment, and the kinds of skills required to operate that equipment.

Further, paper mills are generally smaller than pulp and paper mills because they do not make the pulp product; “these facilities differ primarily in the size of the paper machines and kinds of products that they manufacture”; and “a lot of them are specialty mills” And, finally,

Converting plants are always much smaller than pulp and paper mills in terms of equipment A bag machine, for example, might well fit into this room whereas a paper machine and its related equipment might not fit into this building [M]ost of these converting plants require extremely complex cleaning . . . that you don’t find typically in a paper mill. So, there is no comparison between a converting plant and a paper mill. No comparison in size, capital investment, scope of operation, skills required, [or] output

As General Counsel’s Exhibit 17 shows, the products at these various facilities range from pulp, linerboard, fine papers, specialty papers, bleached board, book printing papers, bags, cartons, and boxes, to liquid packages. Gilliland noted that products manufactured at converting plants could not be manufactured at a mill; various products manufactured at one converting plant could not be manufactured at another; and while “there are some products for example that can be manufactured in more than one of these facilities . . . that is the exception rather than the rule.”

Collective-bargaining contracts at the pool facilities involved here expire at different dates ranging from 1987 to 1994. (See G.C. Exh. 17.) Gilliland testified that these contracts are not bargained jointly with other facilities. Gilliland explained:

Q. Who actually does the bargaining at the various IP facilities on behalf of the Employer . . . currently?

A. The mill or facility manager and human resources manager for that location, and the packaging locations because some of the plants are so small. There may be one personnel guy or woman who handles several plants. But in the mills that is never true. There is always a human resources person at the facility who handles the bargaining with the facility manager.

Q. And who currently is performing the bargaining at the various facilities on G.C. Exh. 17 for the Union?

A. Well, typically, it is the International representative who handles that region as well as a Local bargaining committee made up of elected officials of the Local Union.

Q. Does the same representative of the UPIU handle the negotiations at each facility?

A. Oh no, in fact [of] the 24 facilities on this list . . . I would expect that there are 20, 21, 22 different reps who handle those negotiations.¹⁰

This record shows no significant shifting or transferring of equipment, work or personnel from one IP facility involved in this pool to another. Gilliland explained that there is “a very limited exchange of equipment on a very rare basis” among the various IP facilities; “there have been cases where equipment has been moved from a mill to another mill but that has been very rare indeed.” And, Androscoggin Human Resources Manager Livingston testified:

There are no transfer provisions in the labor agreement. However, individuals may go from one facility to another to look at equipment or how it runs. They don’t actually perform bargaining unit work while they are there.

Livingston, dealing with some 1100 Androscoggin mill unit employees, noted that the above situation occurs “very infrequently.” Moreover, Gilliland assertedly had no knowledge of IP “transferring a bargaining unit employee from one mill to another for the purpose of allowing it to operate during a strike.” Cf. General Counsel’s Exhibit 35 and (Tr. pp. 1020 to 1024) (pertaining to “contingency plan manning requirements” in the event of work stoppages). Gilliland agreed, however, that IP “follows a practice of transferring salaried people from facility to facility as part of the career path,” and “salaried people” “temporarily cycle in and out and back and forth during [a] work stoppage.”¹¹

Moreover, wages and benefits vary significantly from one IP facility to another. As collective-bargaining agreements for some 22 of the facilities involved herein show,¹² wage

¹⁰ Counsel for Respondent Unions note in their brief (pp. 3 to 4) that “prior to 1985 the Union had two multiple bargaining units”; “in 1984 the parties negotiated the break-up of the last of the multiples . . . ; and all subsequent contracts were negotiated at the Local level.”

¹¹ In addition, with reference to testimony pertaining to work “recently performed at the Androscoggin mill that represents products shipped under the Thilmany [mill] label,” Gilliland explained the limited “volume” of the work involved, as follows:

For the first four months of this year through the end of April, the Androscoggin mill had manufactured and sold 150,000 tons of product. Of that total, 5,280 tons were what has been described as . . . Thilmany product.

See Tr. pp. 1118, 397, 777, 1140, and 1152. As counsel for IP acknowledges (Br. p. 47), “the Androscoggin mill does produce a small amount of product for the Thilmany mill.”

¹² See the following collective-bargaining agreements at some 22 of the facilities involved in this pool:

G.C. Exh. 18(a)—Pineville
G.C. Exh. 19(a)—Thilmany
G.C. Exh. 20(a)—Ward
G.C. Exh. 21—Turners Falls
G.C. Exh. 22(a)—Tekoa
G.C. Exh. 23(a)—Riverdale
G.C. Exh. 24(a)—Texarkana
G.C. Exh. 25(d)—Natchez
G.C. Exh. 26(a)—Ticonderoga
G.C. Exh. 27(c)—Beckett
G.C. Exh. 28(a)—Mobile

rates differ drastically; vacations and holidays vary and holidays are allocated differently; methods of calculating seniority and probationary periods vary; grievance procedures differ; and the required notice for contract termination varies. See the compendium entitled “Comparison Of Selected Contract Provisions At Pooled Locations,” annexed as Exh. “A” to the briefs of General Counsel and Charging Party.

In addition, as IP Director of Employee Relations Gilliland testified, “with regard to the proposals that are being tendered [by the Employer] at the locations in the pool,”

I would presume they all contain proposals to increase wages. I presume that they all have some form of improvements in benefits or others. Some of them may have concessionary proposals, others do not. The kinds of contract language changes negotiated by the parties would be totally dissimilar. The local issue items that make up a part of the package will be totally dissimilar

Thus, employer contract proposals for facilities involved herein show,¹³ inter alia, there are significant differences in proposed wage increases from facility to facility; offers differ widely in range and application of such proposed increases; cash bonus offers range from zero up; treatment of shift differential and wage adjustment proposals differ at certain facilities; treatment of proposed elimination of Sunday premium pay differs at various locations; treatment of elimination of holiday premium pay, where proposed, differs at various locations; company contributions to medical insurance and proposals pertaining to life insurance benefits differ at various locations; proposals regarding sickness and accident vary at locations; and proposed company contributions

G.C. Exh. 29(a)—Androscoggin
 G.C. Exh. 30(a)—Erie
 G.C. Exh. 31(a)—Jackson
 G.C. Exh. 32(a)—Cinn. S.
 G.C. Exh. 33(a)—Cinn. M.
 G.C. Exh. 34(a)—Akrosil
 G.C. Exh. 35—Tallman
 G.C. Exh. 36—Minneapolis
 G.C. Exh. 37—Fond Du Lac
 G.C. Exh. 38(a)—Auburndale
 G.C. Exh. 39(a)—Turlock

¹³ See the following employer contract proposals at facilities involved in this pool:

G.C. Exh. 18(b)—Pineville
 G.C. Exh. 19(b)—Thilmany
 G.C. Exh. 20(b)—Ward
 G.C. Exh. 22(b)—Strathmore
 G.C. Exh. 23(b)—Riverdale
 G.C. Exh. 24(b)—Texarkana
 G.C. Exh. 25(c)—Natchez
 G.C. Exh. 25(f)—Natchez
 G.C. Exh. 26(b)—Ticonderoga
 G.C. Exh. 27(b)—Beckett
 G.C. Exh. 29(b)—Androsc.
 G.C. Exh. 29(c)—Androsc.
 G.C. Exh. 30(b)—Erie
 G.C. Exh. 31(b)—Jackson
 G.C. Exh. 32(b)—Cinn. S.
 G.C. Exh. 33(b)—Cinn. M.
 G.C. Exh. 34(b)—Akrosil
 G.C. Exh. 38(b)—Auburnd.
 G.C. Exh. 39(b)—Turlock

for safety shoes even vary from location to location. See the compendium entitled “Components Of Company Contract Proposals IP Pool Locations,” annexed as Exhibit B to the briefs of General Counsel and Charging Party. The Employer’s noneconomic proposals, also summarized in part in Exhibit B, supra, show—as counsel for Charging Party IP argue (see Br. pp. 51 to 61)—separate proposals “unique to the facility” ranging from funeral pay to parking privileges.

Counsel for Charging Party IP acknowledge in their brief that “it is certainly true that some Company proposals—such as the elimination of premium pay for Sunday and holiday work—appeared on the Company agenda at virtually all locations” However, counsel explain (see Br. pp. 55 to 61):

It is not contested that the Company has chosen to pursue certain objectives—such as eliminating premium pay for work on Sundays and holidays—through its collective bargaining process. . . . [E]ven within areas . . . described as corporate objectives (i.e., Sunday premium, holiday premium, cap on medical insurance) . . . the final offers vary regarding those topics at each pooled location . . . it has not demanded the elimination of Sunday premium at every location . . . some locations chose not to eliminate Sunday premium . . . others chose to phase out Sunday premium . . . [the] same is true regarding the elimination of holiday premiums

Further,

[B]argaining parameters originate from each facility, Gilliland and his staff make recommendations to the facility, and then the parameters are submitted to business management for approval [T]he pre-negotiation parameters setting process is not stagnant or rigid but rather changes based upon the needs of the particular facility. Moreover, once negotiations begin, parameters can be and have been changed

See the testimony of Gilliland, Tr. pp. 296 to 308, 1076 to 1077, 1124 to 1125. See also the so-called bargaining parameters involving pool participating facilities (R. Exhs. 41, 43, 44, 50–54, and 56), and the compendium entitled “A Comparison Of Bargaining Parameters With Final Offers,” attached to Charging Party IP’s brief as Exhibit C, demonstrating not only the variety of prenegotiation bargaining parameters, but also each facility’s flexibility in dealing with such parameters.

Thus, for example, as Gilliland explained with respect to the elimination of Sunday premium pay,

Some of our locations paid double time for the elimination of Sundays for Sunday premium. Some places paid time and a half. There was a distinction between those locations based on the economic impact on the employees. There was one location . . . where the facility manager adjudged that he was going to have a strike if he didn’t drop that item, so he did. . . . There were other locations—there was one . . . where the Sunday premium elimination was not even proposed in

that round of bargaining but it was three years later in a subsequent round of bargaining¹⁴

And, as demonstrated above, there were significant variances and differences in the Employer's current contract proposals at participating pool facilities.¹⁵

Discussion

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees subject to the provisions of Section 9(a)" Section 8(b)(3), in turn, makes it an unfair labor practice for a labor organization or its agents "to refuse to bargain collectively with an employer, provided it is the representative of his employees, subject to the provisions of Section 9(a)" Section 9(a) provides for exclusive appropriate bargaining unit representation. Section 8(d) defines the obligation "to bargain collectively," as

[T]he performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party

¹⁴ Gilliland elsewhere noted: "There were a few places that didn't eliminate it all, there were a few places that eliminated half of them and there were some places that eliminated it all immediately. There were others where they phased out the reduction generally over a period of several years"

¹⁵ There was testimony and related evidence adduced pertaining to bargaining at various IP facilities prior to the inception of the pool ratification procedure in issue here. Thus, as noted by counsel for Respondent Unions, "prior to 1985 the Union had two multiple bargaining units"; "in 1984 the parties negotiated the break-up of the last of the multiples . . . ; and all subsequent contracts were negotiated at the Local level." Counsel for Respondent Unions further note that the "Union continues to maintain two pension multiples for bargaining pension issues."

In addition, as noted by counsel for IP and Respondent Unions, in 1987, there was a lock out at IP's Mobile mill and there were strikes at the Androscoggin, Lock Haven and DePere mills. About the same time, final contract offers had been ratified at IP's Pine Bluff, Corinth and Natchez facilities. The UPIU president refused to execute these ratified contracts because they were concessionary (pertaining to the elimination of premium pay for Sunday work). Such concessions were also involved in the pending strikes and lock-out. In September 1988, IP and UPIU officials met to discuss a "quid pro quo" which the Employer might offer in return for the elimination of Sunday premium pay in conjunction with the contract negotiations pending at IP's Vicksburg facility. The agreed upon "quid pro quo"—known as the "Vicksburg package"—consisted of a cent 25 wage adjustment for production shift workers; a shift differential of 0—20—35; and a 401(k) plan. The UPIU president then agreed to lift his ban against signing the concessionary contracts. However, at Pine Bluff, Corinth and Natchez—although the unit employees were offered the option of taking the Vicksburg package or their previously ratified concessionary contracts—the unit employees voted to stay with their previously ratified contracts. As Exhibit B shows, supra, elements of the Vicksburg package appear in later and current company offers; nevertheless, this record makes clear that the pending offers vary significantly at the various facilities involved.

Counsel for General Counsel contends that the pooled voting ratification procedure in issue here violates the above proscriptions of the Act because it "inherently delays the completion of the collective bargaining process"; "unlawfully preconditions acceptance of one bargaining unit's collective bargaining agreement upon approval of other unrelated bargaining" units; and "operates to chill and deter the process of collective bargaining." Counsel for Charging Party IP similarly argues that this pool procedure "necessarily delays the bargaining process"; "prevents the parties from concluding negotiations in one bargaining unit until events extraneous to that unit occur at a later date"; constitutes a "de facto expansion of individual bargaining units because culmination of bargaining in one unit depends on events and circumstances extraneous to that bargaining unit"; and "frustrates" and "prevents meaningful collective bargaining."

Counsel for Respondent Unions reply that "pool voting is an economic weapon used in response to an industry's concessionary bargaining stance"; it "is merely the Union's response to [a] centralized concessionary assault"; it is a "legitimate form of bargaining pressure whether or not it delays the completion of negotiations"; there is no "effort to enlarge the bargaining units"; and "its purposes [are] to serve legitimate Union objectives directly related to the interests of employees in each of the individual units." Counsel for Respondent Unions cite, inter alia, in support of these and related contentions, "the tremendous growth of the Employer and the resulting bargaining leverage." over the years; "bargaining leverage lost in 1984 when it dismantled former bargaining multiples"; IP "corporate objectives" and "parallel proposals" to "all bargaining units . . . since 1985" by an employer which "conducts negotiations with the Union in a centralized fashion"; and 1987 strikes and lockout activity involving four IP facilities and conduct during those disputes. See also the testimony of Professor and Associate Dean Julius Getman, (Tr. pp. 1199 to 1235).

In *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 485, 486 (1960), the Supreme Court recognized that "[c]ollective bargaining . . . is not simply an occasion for purely formal meetings between management and labor while each maintains an attitude of take it or leave it; it presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract"; though "the parties need not contract on any specific terms . . . they are bound to deal with each other with a serious attempt to resolve differences and reach a common ground." Similarly, in *NLRB v. Katz*, 369 U.S. 736, 747 (1962), the Supreme Court held that the parties must refrain not only from behavior "which reflects a cast of mind against reaching agreement," but from behavior "which is in effect a refusal to negotiate or which directly obstructs or inhibits the actual process of discussion."

The Board, with Court approval, "has repeatedly admonished that parties to collective bargaining are obligated to display as great a degree of diligence and promptness in the discharge of their bargaining obligations as they display in other business affairs of importance," for "[a]greement is stifled at its source if opportunity is not accorded for discussion or so delayed as to invite or prolong unrest or suspicion." See *Little Rock Downtowner*, 145 NLRB 1286, 1305 (1964) and cases cited and quoted, *enfd.* 341 F.2d 1020 (8th Cir. 1965). Moreover, "the signed agreement has been

regarded as the effective instrument of stabilizing labor relations and preventing, through collective bargaining, strikes and industrial strife"; and Congress, "in thus incorporating in the new legislation the collective requirement of the earlier statutes, included as part of it the signed agreement, long recognized under the earlier acts as the final step of the collective bargaining process." See *H. J. Heinz Co. v. NLRB*, 311 U.S. 513, 525 (1941).

In addition, an employer or labor organization runs afoul of this statutory bargaining obligation by "importing [an] extraneous issue into the [unit] bargaining situation" For, as the Board explained in *Standard Oil Co.*, 137 NLRB 690 (1962), enfd. 322 F.2d 40 (6th Cir. 1963),

We also agree . . . that [the union] violated Section 8(b)(3) by refusing under the circumstances here to sign, upon reaching agreement, contracts covering its bargaining units [W]e find that the delay in signing was unlawful only because, as [the union] knew, the international's and council's withholding of approval was unrelated to any dissatisfaction with the contract terms themselves, but was based upon the unilateral decision to approve no agreement with the company until negotiations were satisfactorily concluded by another local at [another] unit. By thus importing this extraneous issue into the bargaining situation . . . [the union] clearly failed to meet its bargaining obligation in refusing to sign its completed agreement at that location.¹⁶

The Board, applying these principles in *Utility Workers Local 111 (Ohio Power Co.)*, 203 NLRB 230 (1973), enfd. 490 F.2d 1383 (6th Cir. 1974), agreed that the unions there had violated Section 8(b)(3) by

demand[ing] and insist[ing] that identical offers had to be made by the companies for all of the units, and threaten[ing] that no offer with respect to any single unit would be accepted or submitted to ratification until concurrent offers had been made for all of the other units.

And, earlier, in *South Atlantic Gulf Coast District (Lykes Bros. Steamship Co.)*, 181 NLRB 590 (1970), enfd. 443 F.2d 218 (5th Cir. 1971), the court of appeals stated:

The Board found that the respondent unions . . . were guilty of a violation of Section 8(b)(3) of the Act. The Board's order requires that the respondents cease and desist from insisting that negotiations be concluded with respect to employees outside their respective units as a condition precedent to the execution of

¹⁶In *Painters Local 850 (Morgantown Glass)*, 177 NLRB 155 (1969), the Board explained:

In *Standard Oil Company*, [supra], the Board held, *inter alia*, that for a local to defer signing a collective bargaining agreement pending approval by its international is not in itself unlawful. We agree with this view where as here the necessity for such approval is clearly understood by the parties, and if the international's withholding of approval is related to dissatisfaction with the contract terms and not to extraneous issues. . . . [T]he decision [to withhold approval is] related to the terms and conditions of employment being negotiated . . . for the unit employees it represented and not to any terms and conditions of employment elsewhere

a contract. The Board further ordered the respondents to execute the agreement reached

When parties to collective bargaining reach a final agreement on the terms of the agreement, they have a duty to execute that agreement by written contract, and this duty may not be avoided by injecting extraneous issues into the negotiations. . . . A union enjoying statutory status as the exclusive representative of all employees within a bargaining unit may not unilaterally extend the scope of its agency authority and insist to impose upon the employer's capitulation to the demands of other employees and other unions. . . . [T]o attempt to expand the bargaining power and influence of the longshoremen beyond the bounds of the Board authorized appropriate unit constituted an unfair labor practice. . . . [Citations and quotations omitted.]

On the other hand, *United States Pipe & Foundry Co. v. NLRB*, 298 F.2d 873 (5th Cir. 1962), cert. denied 370 U.S. 919 (1962), and *Steelworkers (Lynchburgh Foundry)*, 192 NLRB 773 (1971), enfd. 80 LRRM 2415 (4th Cir. 1972), cited by counsel for Respondent Unions, rest on significantly different considerations. Thus, in *United States Pipe*, the question raised was

whether, by prearrangement among themselves, three unions, certified bargaining representatives of three separate bargaining units, simultaneously negotiating separate contracts with the same employer, may insist as a condition to agreement that all three contracts under consideration shall expire on the same common date.

The court of appeals explained:

Under the facts of this case viewed realistically, a common expiration date of all three contracts had a vitally important connection with the "wages, hours, and other terms and conditions of employment" of the employees at each plant. Without a common expiration date, any union striking for a new contract on a different date might have to "bail with a sieve" while the employer shifted its production activities to the other plant or plants.

The court further observed:

Concededly, there is no legal obstacle to the right of the [employer] to insist adamantly that the three contracts continue to expire on different dates. Correspondingly, we think there is no valid legal reason why each union, with the consent of the other unions, cannot insist just as adamantly that all three contracts expire on some common date.

In *Lynchburgh Foundry Co.*, the company had two plants separated by a distance of 100 miles. Both plants performed parallel and interchangeable work. It was not uncommon for the company to move work from one factory to the other. The production and maintenance employees at both units were separately represented but members of the same union. And, the separate unit contracts were virtually identical in substantive provisions and had common expiration dates. The question raised was

whether the respondent [unions] violated Section 8(b)(3) when they submitted the company's January 1970 wage increase proposals, separately made to the [two] bargaining units, to a ratification vote by the members of both units voting as a group.

The administrative law judge noted:

[I]t is important to bear in mind the close community of interest that exists between the [two] bargaining units; . . . the employees of the two units work for the same employer at plants which are not geographically remote; . . . to a substantial extent they are engaged in the manufacture of the same products and have overlapping work functions and similar skills; . . . they are members of the same union; [t]hough separate unit lines have always formally been observed in the conduct of negotiations, the same individual has acted as chief spokesman for the union bargaining teams in the two units, and this has been true also . . . on management's side of the bargaining table; . . . the separate contracts negotiated for the two units have been virtually identical in their substantive provisions; . . . the employees in each of the two units had a substantial and direct interest both in continuing the parity that had been achieved in wage scales and in maintaining the common expiration dates that had been established for the two units.

The administrative law judge then reasoned:

[W]ith wage scales no longer identical, there was a conceivable risk that the company might be motivated to transfer work to the lower scale plant. More important, however, with different expiration dates, the economic power of each of the units would be substantially reduced since the company would then be in a position in the event of a strike to transfer some of its work from the struck plant to the other.

. . . .
In my view, the reasoning of the Court [in *United States Pipe*] controls decision here. It is evident that the only way the respondents could maintain common expiration dates for the [two] bargaining units, when confronted with the company's January 1970 conditional wage proposal, was through a common response to the company's proposals by both units

However, the administrative law judge carefully confined the scope of his decision, stating:

My conclusion . . . is predicated on the particular factual context of this case, taking specially into account (a) the community of interests between the two units; (b) the limited scope of the company's proposal that was voted on; (c) the interdependence of its two component parts (wage increase conditioned on contract extension); (d) the fact that the pooled vote was agreed to by the designated representatives of each of the two units concerned; and (e) the specific and legitimate unit objective I need not indicate whether my conclusion in this respect would have been the same if the company's separate proposals had been only for a wage increase without an accompanying contract extension

condition. Nor do I intimate any view . . . if respondents had submitted to a pooled ratification vote of both units contract proposals that were of direct concern to the employees of only one but not both of the units.¹⁷

The Board and court of appeals agreed.

The stated "objectives" of the pooled voting contract ratification procedure in issue here are to achieve "common contract expirations within a recognized pool" and "to resist concessions." Counsel for General Counsel and counsel for Charging Party IP do not seriously dispute that Respondents UPIU and its some 35 pool participating Local Unions may adamantly pursue such "objectives" in negotiating collective-bargaining agreements at the approximately 24 facilities involved. Of course, the bargaining representatives for the Employer at these facilities may also adamantly resist such "objectives" and, hopefully, through good-faith bargaining, the parties will find a way to resolve their differences and reach a common ground to be embodied in a signed collective-bargaining contract.

Likewise, counsel for General Counsel and counsel for Charging Party IP do not seriously dispute here that Respondent International may similarly pursue these stated "objectives" by refusing to execute locally ratified collective-bargaining agreements which violate these "objectives." The representatives of the parties can then bargain further and, hopefully again, through good-faith bargaining, the parties will find a way to resolve their differences and reach a common ground to be embodied in an acceptable signed collective-bargaining contract.

The evidence of record illustrates that this process works well. Thus, for example, at the IP Erie facility, the International and Local Union representatives negotiated in June 1990 a contract containing, inter alia, concessionary provisions. However, through the give and take of collective bargaining, the parties found a common ground to resolve their differences. The Local Union, as a consequence of this accommodation, did not oppose the contract and the membership voted decisively to ratify the contract. And, years earlier in 1987 and 1988, the International repeatedly withheld its signature from locally ratified concessionary contracts until the parties ultimately sat down and negotiated an acceptable "quid pro quo" for such concessions known as the "Vicksburg package." Then, the International withdrew its refusal to sign such concessionary contracts acceptable to the Local Unions' memberships.

In short, the pursuit of such stated "objectives" or like or related goals by either the UPIU or its Local Unions is prima facie lawful. The real question, however, is whether the pooled voting ratification procedure as adopted and implemented here impermissibly burdens and delays the collective-bargaining process and, consequently, runs afoul of the prescriptions of Section 8(b)(3) and (d) of the Act. I find and conclude that the instant pooled voting contract ratification procedure in fact impermissibly burdens, delays, and prevents the parties for many months and even years from

¹⁷The administrative law judge distinguished *Standard Oil Co.*, supra, because "respondents' agreement in this case to have both units take a common position on the company's offer was primarily designed to preserve the existing simultaneous expiration dates, an objective . . . directly related and not extraneous to legitimate unit interests."

reaching agreement, and thus unlawfully discourages them from engaging in any meaningful give and take to reach a common ground during this unprecedented hiatus.

The instant pooled voting contract ratification procedure is, in effect, a device which tends both to discourage and prevent the parties from reaching and signing an agreement and, thus, achieving a common ground through good faith bargaining resulting in a signed contract. Significantly, despite the stated "objectives" of the instant pool, none of the participating locals, whose contracts expire at different times over a span of 7 years, have even proposed common expiration dates. Likewise, the International, despite its ability to decline signing locally ratified concessionary contracts, has readily signed such agreements for nonparticipating Local Unions during this same period and would have similarly signed the ratified Erie contract but for this pooled voting ratification procedure. Instead, the people of Erie will have to wait until late 1991 or possibly 1994, depending on which version of this pool is followed, to know whether their locally ratified contract is viable. And, in like vein, the people of Androscoggin and Strathmore will have to wait a similar period to find out whether there was Local ratification and pool aggregate approval as well.

As IP director of employee relations, James Gilliland explained:

Traditionally over the years when we entered into a collective bargaining process at a location, we would bargain until a conclusion, put out an offer, the people would either ratify and we would have a contract, or they would reject it. If they rejected it, we would go back to the table and try to seek some kind of accommodation that would result in a satisfactory labor agreement In a pool location, . . . once the offer has been put on the table . . . [i]n some situations we don't know whether the contract was ratified or rejected. In some situations we are told that the contract was ratified but the contract was not executed. In some situations we are told that the contract was rejected. But what happens in any of those situations is that the bargaining process comes to a screeching halt and it is not hard to understand why. For example, in a place like Erie [see G.C. Exh. 17] . . . what incentive is there to go back to the bargaining table . . . [and in] a situation where we don't know what the result of the vote is, what incentive is there to go back to the table? . . . If you look at the date of the last bargaining session on G.C. Exh. 17, you will find in most cases the last bargaining session occurred months or years ago because once the contract has been handled, rejected, accepted, voted on, or whatever, in a pool location, there is virtually no conversation that takes place after that because there is no incentive for either party to go back to the table.

Moreover, the instant pooled voting ratification procedure unlawfully imposes "extraneous issues" into the separate unit contract negotiations at the some 24 facilities involved here. Ratification of a contract negotiated by Local and International representatives at each separate facility and approved by its Local members will depend not on the terms of that locally negotiated contract, but instead will depend on

whether or not the majority of the aggregate "impounded" ballots for all participating Locals favors such ratification. These "impounded" ballots, however, were cast months or years earlier by other Local members in favor of or against ratification of their separately negotiated contracts. As UPIU Vice President Young acknowledged:

[The voting membership of] each [participating] Local is not looking at a sister Local's contract to see what concessions they wanted to give up or didn't want to give up and say we approve or we disapprove . . . they are simply saying we like our contract . . . and that will determine whether the other contract[s] may or may not be

Further,

[Y]ou may have a number of small [participating] Locals with a few votes that vote to reject and you may have a very large Local that votes in the affirmative and [its] votes may out weigh the others you may have one Local that could outvote everybody else in the pool

Conversely, where the "pooled majority" is against "ratification," there is no "ratification" for all the Locals. As Young agreed, "I think that two [large] Locals if they voted almost unanimously could either bar or accept; . . . it could go either way . . . [because of] sheer numbers"

As noted, some 35 local unions representing units of employees at some 24 IP facilities have joined this pooling plan. The memberships of these participating Local Unions range from about 70 to 1200. Collective-bargaining agreements have already expired at about 17 of these participating locations. Such agreements expire at different dates, the latest being March 5, 1994. Contract ratification votes were in fact taken by the memberships at some nine participating Local Unions on various dates in 1989 and 1990 and the respective ballots and tallies sent on to the International. Nevertheless, no collective-bargaining contracts have been executed at the pooled facilities since the pool was "declared" in March 1990, although 15 contracts have been signed at nonparticipating IP locations concededly containing "concessionary" provisions.

Ultimately, in late 1991 or 1994, these "impounded" ballots will be counted. The Erie facility bargaining process, cited above, illustrates this problem. There, the local and International representatives negotiated a contract which was decisively ratified by the local membership during June 1990. However, Erie's contract ratification will depend on whether the "impounded" aggregate ballots of possibly one or two other participating locals favor their separately negotiated contracts.

This record makes clear that, not only do the contracts at the various facilities involved expire on different dates over a 7 year span, they are separately negotiated; they involve facilities in 14 States which are significantly diverse and produce a variety of different products; the manufacture of the same product in more than one facility "is the exception rather than the rule"; there is no significant shifting or transferring of equipment, work or personnel from one IP facility involved in this pool to another; and, as the collective-bargaining agreements for some 22 of the facilities involved herein show, wage rates differ drastically; vacations and holi-

days vary and holidays are allocated differently; methods of calculating seniority and probationary periods vary; grievance procedures differ; and the required notice for contract termination varies. In addition, employer contract proposals for facilities involved herein show, inter alia, there are significant differences in proposed wage increases from facility to facility; offers differ widely in range and application of such proposed increases; cash bonus offers range from zero up; treatment of shift differential and wage adjustment proposals differ at certain facilities; treatment of proposed elimination of Sunday premium pay differs at various locations; treatment of elimination of holiday premium pay, where proposed, differs at various locations; company contributions to medical insurance and proposals pertaining to life insurance benefits differ at various locations; proposals regarding sickness and accident vary at locations; and proposed company contributions for safety shoes even vary from location to location. Likewise, the Employer's noneconomic proposals also show proposals unique to the facility ranging from funeral pay to parking privileges. Under these circumstances, for the ratification of one unit facility contract to depend upon the aggregate ballots cast by sister Locals impermissibly injects extraneous and irrelevant nonunit considerations into the collective-bargaining process. For, we do not deal here with the narrow issue raised in *United States Pipe & Foundry Co.*,

[W]hether, by prearrangement among themselves, three unions, certified bargaining representatives of three separate bargaining units, simultaneously negotiating separate contracts with the same employer, may insist as a condition to agreement that all three contracts under consideration shall expire on the same common date.

Nor do we deal here with the exceptional circumstances posed in *Lynchburgh Foundry Co.* where the Board found:

[T]he close community of interest that exists between the [two] bargaining units; . . . the employees of the two units work for the same employer at plants which are not geographically remote; . . . to a substantial extent they are engaged in the manufacture of the same products and have overlapping work functions and similar skills; . . . they are members of the same union; [t]hough separate unit lines have always formally been observed in the conduct of negotiations, the same individual has acted as chief spokesman for the union bargaining teams in the two units, and this has been true also . . . on management's side of the bargaining table; . . . the separate contracts negotiated for the two units have been virtually identical in their substantive provisions; . . . the employees in each of the two units had a substantial and direct interest both in continuing the parity that had been achieved in wage scales and in maintaining the common expiration dates that had been established for the two units.

Instead, on this record, I find and conclude that Respondent Unions have violated Sections 8(b)(3) and 8(d) of the Act by adopting, adhering to and maintaining a pooled voting contract ratification procedure which inherently delays the completion of the collective-bargaining process; unlawfully preconditions acceptance of one bargaining unit's collective-bargaining agreement upon approval of other unrelated bar-

gaining units; and, consequently, operates to chill and deter the process of collective bargaining.¹⁸

Counsel for Respondent Unions argue that the unfair labor practice charges filed herein (initially filed on June 26 and July 30, 1990) are barred by the 6-month time limitation of Section 10(b) of the Act. Counsel assert:

The pool voting procedure at issue in this action was formulated in June 1989 with full knowledge of the Employer immediately following its inception Charging Party had adequate knowledge of the pool's ratification procedure far outside the six month 10(b) limitation

However, counsel for Respondent Unions ignore the undisputed testimony of UPIU Vice President Young, as follows:

Q. Now on March 3, 1990, the pool was officially declared by you, isn't that true?

A. That is true. . . .

Q. Now isn't it true that you have had numerous conversations about the pool with [IP director of employee relations James] Gilliland prior to March 3, 1990, when the pool was declared?

A. I have had discussions with Gilliland, yes. . . .

Q. And isn't it also true that prior to March 3, 1990, that your response to his questions regarding whether the pool was in effect was that there was no voting pool and that there would be no pool until you declared its existence?

A. That is a fact.

Q. Now, once you declared the pool to be in existence on March 3, 1990, that fact was publicized from that point on, isn't that true?

A. Yes, that is true.

Young, when questioned about the earlier June 1989 council meeting where the pool was initially discussed, acknowledged that "the pool didn't exist at that time"—"it was something that could very well exist and hadn't been declared" Young also acknowledged:

The Local Unions were not bound until the pool was officially declared in March [1990]. Once the pool was officially declared, then the documents that they signed would be enforced.

And, UPIU Local 14 President William Meserve similarly acknowledged that he was present at the council meeting held on March 3, 1990, "the day the pool was declared to be in effect . . . to be in existence"

On this record, I reject the 10(b) argument of counsel for Respondent Unions. I find that the initial charges filed herein were well within the 6-month time limitation period. The pooled voting contract ratification procedure in issue here, by the uncontroverted testimony of Respondents' officials, did not "exist" and had no binding legal effect until March 1990. Likewise, I reject counsel for Respondents' related ar-

¹⁸As noted above, the evidence of record attributes to, inter alia, one Edward Garvey, whose agency status is disputed, references and warnings of a massive strike in December 1991 as a consequence of this pool procedure. See C.P. Exhs. 4 and 5. It is, however, unnecessary on this record to resolve Garvey's disputed agency status.

gument citing another earlier pool created in 1987. As counsel elsewhere acknowledges (Br. p. 6), that "pool was dissolved . . . in 1988."¹⁹

CONCLUSIONS OF LAW

1. Respondent Unions are labor organizations as alleged.
2. Charging Party Employer is an employer engaged in commerce as alleged.
3. Respondent Unions have violated Section 8(b)(3) and (d) of the Act by adopting, adhering to and maintaining a pooled voting contract ratification procedure which inherently delays the completion of the collective-bargaining process; unlawfully preconditions acceptance of one bargaining unit's collective-bargaining agreement upon approval of other unrelated bargaining units; and, consequently, operates to chill and deter the process of collective bargaining.
4. The unfair labor practices found herein affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondent Unions will be directed to cease and desist from engaging in the conduct found unlawful and like or related conduct, and to post the attached notice. Affirmatively, Respondent UPIU will be directed to rescind section 4 of article 15 of its constitution providing for such pooled voting contract ratification procedures.

In addition, Respondent UPIU and Respondent Local 620 will be directed to execute a written contract with IP at IP's Erie facility embodying the proposal ratified by the Local's membership on or about June 8, 1990. Respondent UPIU and Respondent Local 14, as well as Respondent IBFO and Respondent Local 246, will be directed to forthwith tally the ballots cast in the contract ratification vote conducted among the Locals' membership for IP's Androscoggin facility on or about March 11, 1990, disclose the results of the tally to IP, and if appropriate promptly execute a written contract with IP at IP's Androscoggin facility embodying the proposal ratified by the Locals' membership on or about March 11, 1990. And, Respondent UPIU and Respondent Local 197 will be directed to forthwith tally the ballots cast in the contract ratification vote conducted among the Local's membership for IP's Strathmore facility on or about July 7, 1990, disclose the results of the tally to IP, and if appropriate promptly execute a written contract with IP at IP's Strathmore facility embodying the proposal ratified by the Local's membership on or about July 7, 1990.²⁰

¹⁹Counsel for Charging Party move to strike attachments B and C and any references thereto from counsel for Respondents' brief. Counsel for General Counsel joins in this motion. Counsel for Respondents reply urging that the motion be denied. Attachment B purports to be a seminar paper entitled "Employer Decisions to Operate During Strikes: Consequences And Policy Implications." Attachment C purports to be a copy of Professor Getman's testimony before the House Subcommittee on Labor-Management Relations. The motion is denied. I have read the attached documents solely for purposes of understanding the arguments advanced by counsel for Respondents. I attach no substantive weight to the factual recitations contained therein except to the extent such information is already a part of this record.

²⁰This record makes clear that the ratified Erie facility contract was not executed because of the pooled voting contract ratification

ORDER²¹

Respondents United Paperworkers International Union, AFL-CIO, CLC; United Paperworkers International Union Eriez Local Union No. 620, AFL-CIO; Local 14, International Paperworkers International Union, AFL-CIO, CLC; Local 197, United Paperworkers International Union, AFL-CIO, CLC; International Brotherhood of Firemen and Oilers, AFL-CIO; Local 246, International Brotherhood of Firemen and Oilers, AFL-CIO, their officers, agents, and representatives shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with International Paper, as the exclusive bargaining agents of separate appropriate units of IP's employees, by adopting, adhering to and maintaining a pooled voting contract ratification procedure which inherently delays the completion of the collective-bargaining process; unlawfully preconditions acceptance of one bargaining unit's collective-bargaining agreement upon approval of other unrelated bargaining units; and operates to chill and deter the process of collective bargaining.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Respondent United Paperworkers International Union, AFL-CIO, CLC, will be directed to rescind section 4 of article 15 of its constitution providing for such pooled voting contract ratification procedures.

(b) Respondent UPIU and Respondent United Paperworkers International Union Eriez Local Union No. 620, AFL-CIO, will be directed to execute a written contract with IP at IP's Erie facility embodying the proposal ratified by the Local's membership on or about June 8, 1990.

(c) Respondent UPIU and Respondent Local 14, International Paperworkers International Union, AFL-CIO, CLC, as well as Respondent International Brotherhood of Firemen and Oilers, AFL-CIO, and Respondent Local 246, International Brotherhood of Firemen and Oilers, AFL-CIO, will be directed to tally forthwith the ballots cast in the contract ratification vote conducted among the Locals' membership for IP's Androscoggin facility on or about March 11, 1990, disclose the results of the tally to IP, and if appropriate promptly execute a written contract with IP at IP's Androscoggin facility embodying the proposal ratified by the Locals' membership on or about March 11, 1990.

(d) Respondent UPIU and Respondent Local 197, United Paperworkers International Union, AFL-CIO, CLC, will be directed to tally forthwith the ballots cast in the contract ratification vote conducted among the Local's membership for IP's Strathmore facility on or about July 7, 1990, disclose the results of the tally to IP, and if appropriate promptly execute

procedure found unlawful herein. Likewise, this record sufficiently establishes that, to the extent the tallies of ballots may also show ratification at Androscoggin and Strathmore, such contracts would similarly not be executed for this unlawful reason.

²¹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

a written contract with IP at IP's Strathmore facility embodying the proposal ratified by the Local's membership on or about July 7, 1990.

(e) Post at their business offices and meeting halls copies of the attached notice marked "Appendix."²² Copies of said

²² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

notices, on forms provided by the Regional Director for Region 6, after being signed by Respondents' representatives, shall be posted by Respondent Unions immediately upon receipt in conspicuous places, including all places where notices to members are customarily posted, and be maintained for 60 consecutive days. Reasonable steps shall be taken to ensure that notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director Respondents in writing within 20 days from the date of this Order what steps have been taken to comply.