

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 11

MEADWESTVACO CORPORATION<sup>1</sup>

Employer

and

Case No. 11-RC-6684

COVINGTON PAPERWORKERS UNION LOCAL 675

Petitioner

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS

Intervenor

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, MeadWestvaco Corporation (hereinafter “the Employer”), is a Delaware corporation with a facility located in Covington, Virginia, where it is engaged in the design, development, manufacture, and non-retail sale of packaging supplies. The Petitioner, Covington Paperworkers Union Local 675 (hereinafter “the Petitioner”), seeks to represent a bargaining unit comprised of all production and maintenance employees of the Covington, Virginia Mill of MeadWestvaco Corporation, excluding electrical employees, office clerical employees, supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and all employees employed as guards as defined in the Labor Management Relations Act of 1947, as amended.

---

<sup>1</sup> The name of the Employer was amended at the hearing. Further, I note that the parties' briefs as well as the Intervenor and Employer's contract spells MeadWestvaco as one word, so I have entitled this decision to correctly reflect the Employer's name.

There are approximately 975 employees in the bargaining unit sought by the Petitioner. United Steel, Paper and Forestry, Rubber, Energy, Allied Industrial and Service Workers (hereinafter “the Intervenor”), which currently represents the Employer’s unit employees, intervened in the proceeding.

A hearing officer of the Board held a hearing, and all parties filed post-hearing briefs, which have been carefully considered. As evidenced at the hearing and in the briefs of the parties, there is one issue for determination.<sup>2</sup> The Intervenor contends that there is a contract bar to an election, whereas the Petitioner and the Employer argue to the contrary.

I have considered the evidence and the arguments presented by the parties on the issues. As discussed below, I have concluded that that there is no contract bar to an election, and, accordingly, I shall direct an election in the unit described below. To provide a context for my discussion of the issues, I will provide a recent history of the bargaining between the Employer and the Intervenor, and set forth the legal standards for contract bar, after which I will provide my analysis and conclusions regarding this issue.<sup>3</sup>

---

<sup>2</sup> At the hearing, the Intervenor contended that the Petitioner did not constitute a labor organization within the meaning of Section 2(5) of the Act. In its brief, however, the Intervenor concedes that the Petitioner is a labor organization.

<sup>3</sup> At the hearing, the parties initially stipulated that the petitioned for unit was appropriate. Following that stipulation, the Intervenor changed its position and sought to expand the unit by asserting that employees of subcontractors filling positions in excess of six months should also be included in the bargaining unit. The Employer and Petitioner disagree. The record reflects that for at least the last fifteen years, subcontractors’ employees have performed work for the Employer on an ongoing basis, and that some of the work is similar to that of unit employees. The record further reflects that one of the Employer’s managers provides instructions to a subcontractor’s manager as to what tasks need to be accomplished. The record further shows that the Employer does not hire, fire, or supervise the subcontractor’s employees, or set their wages, hours, benefits, or other terms or conditions of employment. In sum, the record does not establish that the Employer has a joint employer relationship with its subcontractors, a necessary predicate before the inclusion of those employees could be considered. The record further establishes that the unit described herein has historically never included the employees of subcontractors, and that the Intervenor has never bargained on their behalf. Finally, the Intervenor has demonstrated no showing of interest. In that regard, the Board’s casehandling manual, Section 11023.2 requires that “[a] union, in order to urge the adoption of an appropriate unit differing in substance from that claimed appropriate by a petitioner or the employer involved, must demonstrate designation by at least 30 percent of the employees in the unit thus urged.” In its brief, the Intervenor now asserts that the record is insufficient to determine whether the disputed employees should be included in the bargaining unit. For all of those reasons, I conclude that the unit should not be

## **I. Contract Bar**

### **A. Bargaining History**

The Intervenor presently represents the Employer's unit employees. The record does not reflect when the Intervenor was initially certified. Article XXII of the parties'<sup>4</sup> most recent contract provides that the contract "shall take effect as of December 1, 2001 and shall continue in effect until December 1, 2006, and from year to year thereafter, unless it shall be terminated as hereinafter provided." That Article further provides as follows:

If either party shall desire to make any change in this Agreement or to terminate it, such party shall give notice to that effect to the other party hereto not less than thirty days prior to December 1, 2006, or the December 1 of any year thereafter said notice shall indicate but not be limited to any changes or amendments that the party giving such notice shall desire to make in this Agreement. Such notice having been so given, unless the parties hereto shall otherwise agree in writing, this Agreement shall terminate at 12:01 a.m. on December 1, following the giving of such notice provided, however, if the parties hereto have not reached an Agreement within the thirty days after the giving of such notice, the Agreement shall automatically be extended until one party or the other indicates that further negotiations are terminated.

On September 15, 2006, the Intervenor gave notice to the Employer to change or to terminate the contract. The parties began negotiations in October 2006, but as of December 1, 2006, the parties had not reached agreement on a new contract, nor had the parties agreed in writing to extend the contract beyond December 1. Thereafter, the parties agreed, based on the contract's language, that the contract would be extended, and that either party could terminate the contract at some point in the future if either side elected to do so. To date, neither the Intervenor nor the Employer has given any notice to terminate negotiations. The petition in the present case was filed on October 29, 2007.

---

expanded to include employees of subcontractors. Additionally, I have found appropriate the stipulated unit as modified by the usual exclusions found to be appropriate by the Board.

<sup>4</sup> The contract is between the Employer and Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO, on behalf of its affiliated Local Union 2-0675.

## **B. Legal Standard, Analysis, and Conclusion**

In the present case, the Intervenor asserts that there is a contract bar which precludes an election. The Employer and the Petitioner argue otherwise. Under the Board's contract-bar doctrine, the existence of a collective-bargaining agreement may preclude an election involving employees covered under that contract. *Direct Press Modern Litho*, 328 NLRB 860, 860 (1999) The purpose of the Board's contract bar rules is to achieve a balance between the competing goals of industrial stability and employee free choice. *Id.* Under contract-bar principles, a party may file a petition for an election within a unit covered by an existing contract, during an open period from 60 to 90 days prior to the contract's expiration. *Crompton Company*, 260 NLRB 417, 418 (1982) Accordingly, a contract is required to have a fixed term in order that an interested party can determine when a representation petition may be appropriately filed. *Id.* Thus, a contract of an indefinite duration does not act as a bar to a representation petition. *Ellis Tacke Co.*, 229 NLRB 1296, 1302 (1977) It is well-settled that the burden of proving that a contract is a bar is on the party asserting the doctrine. *Road & Rail Services*, 344 NLRB 388, 389 (2005).

In asserting that the instant petition is barred by the contract between the Intervenor and Employer, the Intervenor argues that the contract, by its terms, automatically renewed as of December 1, 2006, for an additional year to and through December 1, 2007. The Intervenor further contends that the petition is untimely here because it was filed on October 29, 2007, in the final 60 day insulated period prior to the termination of the parties' renewal agreement on December 1, 2007. In support of its argument, the Intervenor contends that pursuant to the contract's language, the parties' failure to reach an agreement within thirty days of the Intervenor's September 15, 2006 notice, resulted in the automatic renewal of the contract.

I find no merit to the Intervenor's argument. As urged by the Employer and Petitioner, in the circumstances presented here, the contract did not automatically renew.<sup>5</sup> Rather, the record establishes that once the Intervenor provided notice to the Employer to change or terminate their contract, the automatic renewal clause was rendered inoperable. Thereafter, the parties were unable to reach a negotiated agreement prior to the contract's expiration, and the last sentence of Article XXII was activated—specifically, that “the Agreement shall automatically be extended until one party or the other indicates that further negotiations are terminated.”

Thus, in accordance with the plain language of the contract, the parties have been operating on a day-to-day extension, which is terminable at will by either party. Where, as here, there is an open-ended agreement without a fixed termination date, interested parties are unable to ascertain when the open period begins and ends so that a rival petition may be timely filed. Accordingly, I find that since the Employer and Intervenor's extension agreement is of an indefinite duration, it does not operate as a bar to the present petition. See *Crompton Company*, 260 NLRB 417, 417-418 (1982) (Board concluded that parties' extension agreement intended to be effective until February 1, 1982, or any prior date if there was agreement by the parties in a new contract, was one of indefinite duration, and did not act as a contract bar); *Frye & Smith, Ltd.*, 151 NLRB 49, 50 (1965) (Board concluded that parties' extension agreement intended to maintain the terms of the expired contract in effect for a period of 30 days or until a new contract was signed, whichever occurred sooner, did not operate as a contract bar).

---

<sup>5</sup> In that regard, the Intervenor's reliance on *ALJUD Licensed Home Care*, 345 NLRB No. 88, slip op at 1 (2005), is misplaced. There, neither party notified the other of any intent not to renew their contract, and the agreement automatically renewed, which barred a petition filed during the renewal period. Those circumstances are not present here as it is undisputed that the Intervenor gave notice, and the renewal provision was not triggered.

## **II. CONCLUSION AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purpose of the Act to assert jurisdiction in the case.
3. The Union involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Covington, Virginia Mill of MeadWestvaco Corporation, excluding electrical employees, office clerical employees, guards and supervisors as defined in the Act.

## **III. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Covington Paperworkers Union Local 675, or by United Steel, Paper and Forestry, Rubber, Energy, Allied Industrial and Service Workers, or by neither. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharge for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB

359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, NC 27116-1467 on or before **February 20, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 336-631-5210. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact the Regional Office.

#### C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five full working days prior to 12:01a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

#### IV. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> St. N.W. Washington, DC 20570 and received by the Board in Washington by **February 27, 2008**. The request may not be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file on of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlrb.gov](http://www.nlrb.gov). On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated at Winston-Salem, North Carolina, on the 13<sup>th</sup> day of February 2008.

---

Willie L. Clark, Jr., Regional Director  
National Labor Relations Board  
Region 11  
4035 University Parkway, Suite 200  
P.O. Box 11467  
Winston-Salem, North Carolina 27116-1467