

ONE DAY STRONGER

How One Union Local Saved a Mill and
Changed an Industry—and What It Means for
American Manufacturing

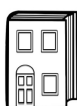


THOMAS M. NELSON

One Day Stronger

*How One Union Local Saved a Mill
and Changed an Industry—
and What It Means for
American Manufacturing*

Thomas M. Nelson



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BOOKS

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1.

On the Brink

“SO, YOU DO KNOW that one of your paper mills is about to go under?” my friend Tim Nixon asked me, just above the din of clanging pots and pans at the back of Green Bay’s Vintage Cantina restaurant. It was lunchtime on Thursday, September 14, 2017, a crisp early autumn day along the city’s bustling Washington Street corridor. Sitting across a metal and Formica table, Tim reminded me of Fezzik, the character André the Giant plays in *The Princess Bride*. Tim could be Fezzik’s burly little brother, except that instead of being an outlaw from Greenland like Fezzik, he is a senior partner at one of Wisconsin’s largest law firms.

“Which mill?” I asked Tim.

Why did I ask that? Was it a coping mechanism? I knew the answer: Appleton Coated in the village of Combined Locks.

“What do you mean, which mill?” Tim shot back, as if cross-examining a witness.

The Appleton Coated mill, one of the mainstays of the surrounding Fox River Valley’s historic paper industry, was in big

trouble. On August 18, a top-of-the-fold headline in the *Appleton Post Crescent* had seemingly sounded the death knell of the 127-year-old paper mill: "Appleton Coated seeks buyer, files for receivership."

In a sickening twist of irony, the story directly underneath that one reported, "State Assembly gives OK for \$3 billion offer to lure Foxconn," the \$39-billion Taiwanese electronics firm best known for supplying parts to Apple, to a site in southeastern Wisconsin. Governor Scott Walker had negotiated the deal with Foxconn CEO Terry Gou, and Walker's fellow Republicans in the state legislature had rubber-stamped it. A Foxconn facility would create jobs, but not high-quality ones like those at Appleton Coated and Wisconsin's other paper mills.

From Harrisburg, Pennsylvania to São Paulo, Brazil, Foxconn had a history of seeking gullible governments willing to dole out tax breaks for jobs that rarely appeared as promised. Along with this came a troubling labor and environmental record. Working conditions were so bad at one Chinese Foxconn facility that fourteen employees committed suicide. In exchange for the \$3 billion in local and state incentives, Foxconn said it would deliver Wisconsin 13,000 jobs and invest \$10 billion in a facility as big as seventeen football fields. Of course, no one really knew whether this time Foxconn would deliver on its promises. But Scott Walker was willing to bet the state's future—and his re-election—on it.

Meanwhile, a company with a history of providing solid jobs for Wisconsin workers was on the brink of collapse—and was getting no help from Walker or anyone else in his administration.

Despite challenging periods including the present, paper manufacturing has long been Wisconsin's most reliable employer, the industry that has withstood the test of time. Along the lower Fox River between Lake Winnebago and the port of Green Bay, over a dozen mills dot the banks. With \$13.2 billion in collective annual output, the mills power a regional economic ecosystem of converting operations, printers, pulpers, transport companies, wood yards, and

scores of other paper-related businesses. What's more, each mill sustains a local network of enterprises patronized by its employees, from hardware and grocery stores to doctors' and dentists' offices. The Fox Valley is not just the paper capital of Wisconsin, the Midwest, or the country; it's home to the highest concentration of paper mills in the world. Next to the Green Bay Packers and cheese, paper is what defines Wisconsin best—culturally, historically, and economically.

And while other industries have come and gone, unable to take root, paper has prospered. It has been with us for nearly a century and a half, and with a reasonable amount of support—government assistance that would amount to a small fraction of the Foxconn deal—it should be with us for as long again. Existing and innovative paper applications ensure that national and global paper markets will keep increasing, and, as a renewable resource, paper can be a core element of a Green New Deal.

But now one of the proud exemplars of that great papermaking tradition was in danger of dying forever, taking with it jobs and a way of life that had long sustained an entire community—Combined Locks, one of the smaller towns of Outagamie County, which I began serving as county executive in 2011. In most factory and mill towns, there is no other major employer. The local economy rises or falls with the wage structure of the factory or mill. Losing the mill would be devastating.

Ever since the August announcement that Appleton Coated had filed for receivership, I'd been thinking back to the closing of the NewPage paper mill in 2008. The village of Kimberly had already been struggling when NewPage shut its doors. Today, a nearby shopping center and strip mall are almost vacant. Most business expansion happens on the edge of the village, a mile from its downtown. If Appleton Coated went the same way as NewPage, another town and its residents would be plunged into economic decline.

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Of course, Tim Nixon and I were both well aware of this history. We both understood the seriousness of the dilemma faced by Appleton Coated, its workers, and the entire community of Combined Locks. But there didn't seem to be much we could do about it. I said as much to Nixon as we sat together that day in September.

Tim's interest in the case was more than that of a concerned citizen. As the state's top bankruptcy attorney, Tim had represented clients on every side of a long list of insolvency cases, and he was involved in the Appleton Coated cases as well—in this case representing a creditor, Kaukauna Utilities. But no matter which side or interest he represented in a case, Tim always did all he could to save the business. "That's not because I'm a nice guy," Tim will say with a self-deprecating wink. "It's because you are generally better off keeping the thing together. In disasters, even the banks rarely get paid in full. If I can make it *not* a disaster, the pie gets bigger and my client gets paid, and so do others, including workers."

That combination of common sense with idealism is typical of Tim Nixon. He's a classic blue-collar kid who rose to the top of his profession, including arguing cases before the U.S. Supreme Court, but always remembered where he came from—just as my mother always reminded me to do. Tim's dad was a union official in the Western Union office where he worked, and Tim's mom worked for one of the nation's largest United Steelworkers (USW) locals for twenty-five years. And he is proud of his union roots, to say the least. He likes to claim, "I had AFL-CIO tattooed on my ass when I was born."

In many ways, Tim personifies the unique and rich tradition of Wisconsin's progressive politics. The same ethos that spurred the careers and contributions of Fighting Bob LaFollette, Gaylord Nelson, Russ Feingold, and Gwen Moore can also be found in Tim Nixon. As counsel to the fee examiner in the 2009 General Motors bailout, he kept a legion of corporate attorneys honest by ensuring

federal tax dollars went toward making cars, not consultancy and legal fees.

So I was very interested in what Tim had to say about the Appleton Coated case. Over the years I've known Tim, I've learned a lot from him about how businesses go under and the complicated legal and financial entanglements that arise in their wake. In Tim's experience, most insolvency cases result directly from poor management decisions. Although managers will blame a hundred things, in nearly every case the underlying problem is that they have failed "to understand and respond to market forces," as Tim puts it. He and I had spent hours diagnosing the troubles of Appleton Coated, which Tim felt fit the pattern perfectly. The company had stuck with white grade paper for too long, even as the market for that product steadily shrank. Years before, they should have shifted into producing brown grades for cardboard packaging, a sector with better margins and increasing demand thanks to the huge growth in e-commerce that was delivering countless boxes of goods to consumers every year. When Appleton Coated fell into receivership, Tim wasn't surprised.

But he also wasn't ready to give up on the company.

"You're the county executive," he reminded me. "You have what, six hundred jobs at stake? An economic machine that keeps one of your communities alive. Look what happened with NewPage in Kimberly. That was a big deal. This will be bigger!" Tim slapped the table with his palm and almost knocked over the basket of nachos between us.

"I know all that," I replied. "But aside from lighting them up with a few press conferences, what can I do?"

Tim had an answer—one that only an expert steeped in bankruptcy law would have been able to suggest.

In filing for receivership, Appleton Coated had surrendered functional control to its chief creditor, Pittsburgh-based PNC Bank. A court-appointed receiver had legal control, but PNC called the

shots. Such arrangements are applications of the “golden rule”: he or she that has the gold makes the rules.

Wisconsin’s 1937 receivership law, known as Chapter 128 for the number of the statute, was originally designed to give individuals and enterprises in financial straits an easier route than going through the more expensive and complicated bankruptcy process. Receivership’s roots date back to the late nineteenth century, when so-called assignments for the benefit of creditors were first codified. Today, creditors, shareholders, and attorneys have increasingly been pushing businesses through receivership. Unlike Chapter 11 bankruptcy in federal courts, receivership in state courts has no restructuring costs, because there is nothing to restructure—it is like hospice for a business. It puts a court-appointed receiver in total control, subject to the wishes of the largest secured creditor, which in Appleton Coated’s case was PNC. The receiver can shut down a business and sell it without any regard for the workers or the business itself. The results are often brutal.

Yet hidden inside this dismal process was a hopeful, little-known provision of Chapter 128. As Tim explained to me over lunch that day, unlike in most other states, Wisconsin’s receivership law allowed people and groups with standing—that is, anyone affected by the potential business closure—to object to a sale. Those with standing to object could include employees, vendors, creditors, chambers of commerce, or elected officials—like me.

This was exciting news. It meant I might have more than the bully pulpit of public office to use as a weapon to fight for the paper plant and its workers. I might also have a legal tool at my disposal. Of course, there was no guarantee it would work. But even having a ghost of a chance felt a lot better than the sense of helplessness I’d been laboring under for the last month.

Tim and I talked through the practicalities. The court-appointed receiver for the Appleton Coated mill was Michael Polsky, the state’s go-to receiver in large, complicated cases. Tim credited

him with reviving Chapter 128 as a viable alternative to bankruptcy in Wisconsin in the 1990s. Polsky's responsibility as receiver was to monetize the mill's assets and sell them at auction to the highest bidder, whether that was someone who would keep the mill running as a going concern or an industrial scrap dealer who would scoop it up for a relative pittance and profit by collecting on accounts receivable, then selling the machinery and other physical assets.

The auction had already been scheduled and was less than a week away. Tim felt that the prospects for a sale to a company that would keep the mill running were scant. Many potential going-concern buyers had looked at the mill, but with only twenty-two business days between the receivership filing and the auction, they hadn't had time to complete a normal due diligence process. Tim believed the likeliest bidders would be industrial scrap dealers. After all, it was a lot easier to figure the immediate and near-term return on monetizing the accounts receivable and the physical assets than it was to figure the long-term return on running the mill.

The plan Tim suggested was simple. If the mill went to a scrap dealer, as Tim expected, I would file a formal objection with the court. The goal would be to win time for the mill to find an alternative buyer, someone who would keep it intact and run it as a mill. That was our one hope to save the plant and, with it, the town of Combined Locks.

"Let's do it," I said.

When my lunch with Tim was finished, I phoned Doug Osterberg, CEO of Appleton Coated, who got his general counsel, Ed Bush, on the line, too. I'd known them both for years. Quiet and unassuming, Osterberg was not your typical CEO who bounces around from job to job, industry to industry, caring less for the business than for the stock option packages he can claim. With a few brief detours, Doug had spent his entire career at Appleton Coated and its previous incarnations under a series of owners. He knew every nook and cranny of the facility. He also knew the names of

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every worker from the broke hustler to the machine tender, as well as their years of employment, their spouses, and their kids' ages. He was smart, and he cared.

Circling the closed loop of a condo subdivision southeast of Green Bay while looking for a campaign friend's house, I excitedly shared Nixon's suggestion that I use my standing as county executive to object to any sale of the mill to a scrap dealer. Osterberg and Bush were intrigued to learn that Chapter 128 allowed for such an objection, but they weren't ready to support my involvement.

Next, I needed to check in with the United Steelworkers (USW), the international union that represented the Appleton Coated workers in USW Local 2-144. I called Jon Geenen. Jon was a longtime friend who'd grown up in Kaukauna, just down Highway 96 from me. Now he was the USW's international vice-president. Our labor and political philosophies complemented each other well. It turned out he was already acquainted with the objection provision in Chapter 128. "We've looked at the angle. We don't think it'll help," he told me.

I was sorry about Geenen's pessimism, but not surprised. The 2010s were a tough decade for labor, especially in Wisconsin. In 2011, his first year as the state's forty-fifth governor, Republican Scott Walker had signed Act 10, which gutted collective bargaining rights for public sector employees. In 2015, the state legislature, dominated by the Republican Party thanks in large part to extreme gerrymandering, also passed a so-called right-to-work law hamstringing crucial labor organizing tools, and later that year eroded prevailing wage statutes that set wage floors for trade craft workers. The antilabor legislation winnowed union ranks, drained treasuries, and crushed spirits.

So none of the three allies I'd called to share Nixon's idea was overly excited about it—though none raised any serious objections. That was okay with me. This was a strategy I could implement on my own. And given my role in local politics, I knew I could use the tool of a formal objection not just to claim a day in court—and maybe

throw a monkey wrench into the receivership process—but also to generate publicity, sympathy, and citizen engagement on behalf of the Appleton Coated workers.

I would have loved to have their enthusiastic support from day one. But I had already made up my mind that I was going to go ahead.

With that simple decision—a long-odds gamble driven by the lack of any better options—Tim Nixon and I would set in motion a complicated saga that would lead to an unlikely outcome, one with important lessons to offer for countless other American communities facing the same forces of devastation that were confronting Combined Locks.