

In the Matter of DYE LOGGING COMPANY and LOCAL 5-238, IWA-CIO

Case No. 19-R-1137.—Decided October 14, 1943

Mr. George D. Riechers, of Tillamook, Oreg., for the Company.

Mr. A. F. Hartung, of Portland, Oreg., for the CIO.

Mr. C. A. Paddock, of McMinnville, Oreg., for the AFL.

Mr. Robert Silagi, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 5-238, International Woodworkers of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Dye Logging Company, Tillamook, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Tillamook, Oregon, on September 14, 1943. The Company, the CIO, and Local Union No. 2609, Lumber and Sawmill Workers, AFL, herein called the AFL, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Dye Logging Company is a copartnership engaged in logging operations near Tillamook, Oregon. The Company cuts timber entirely within the State of Oregon, but sells its logs to mills in the

52 N. L. R. B., No. 229.

vicinity of the Willamette River in Oregon and to mills near Grays Harbor in the State of Washington. Its annual sales amount to about \$300,000. The logs cut consist of approximately 45 percent spruce, which is cut into finished lumber to be used by airplane manufacturers outside the State of Oregon; 45 percent hemlock, from which the mills produce pulp and paper for interstate shipment; and 10 percent fir, which is used for the production of plywood used in airplane construction. All of the fir is shipped from the logging operation to Grays Harbor, Washington.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Local 5-238, International Woodworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Local Union No. 2609, Lumber and Sawmill Workers, chartered by the United Brotherhood of Carpenters and Joiners, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 13, 1941, the Company and the AFL entered into a contract of indefinite duration, terminable upon 60 days' written notice.¹ On May 20, 1943, the CIO requested recognition as the collective bargaining representative of the Company's employees. The Company refused this request stating that recognition would be contingent upon the CIO's certification by the Board in an appropriate unit. On May 27, 1943, the CIO filed its petition herein. The AFL urges its contract with the Company as a bar to a present election. Inasmuch as it has long been our established policy not to construe a contract of indefinite term as barring an election,² we find that the contract in question does not bar a present investigation and determination of representatives.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that both unions represent a substantial number of employees in the unit hereinafter found appropriate.³

¹ The pertinent clause in the contract recites that "When either party to this Agreement desires to modify or terminate this Agreement, he shall give written notice to the other party at least sixty (60) days in advance of such modification or termination."

² See *Matter of Gustina Brothers Lumber Company, et al.*, 41 N. L. R. B. 1243; see also *Matter of The American Coach & Body Co.*, 28 N. L. R. B. 508.

³ The Field Examiner reported that the CIO submitted 35 designations, all of which bore apparently genuine original signatures; that the names of 28 persons appearing on the designations were listed on the Company's pay roll of May 15, 1943, which contained the

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The CIO seeks a unit comprised of all production, maintenance, transportation, and construction employees of the Company, excluding full-time supervisory and office employees. This unit is substantially the same as the unit set forth in the contract between the AFL and the Company. The AFL maintains that the hook tender, bullbuck and road foreman were part of the contract unit for which it had bargained collectively. It therefore insists that these employees be included in the present appropriate unit. The Company would exclude these individuals as supervisory employees, while the CIO would include them.

The record shows that the hook tender supervises the activities of 15 to 18 employees. He has the right to hire and discharge, to make lay-offs and shift employees from one job to another. The evidence further shows that the bullbuck and the road foreman have the same authority. It is apparent that the authority and responsibilities vested by the Company in these employees meets the test normally applied by the Board in determining supervisory status,⁴ and we shall therefore exclude them.

We find that all production, maintenance, transportation, and construction employees of the Company, but excluding office employees, the hook tender, bullbuck and road foreman, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

The AFL and the Company would limit the right to vote to those employees who have been employed by the Company for at least 30 days. No substantial reason appearing for departing from our normal

names of 43 employees in the appropriate unit; and that the designations were dated during the month of May 1943.

The AFL submitted 35 application for membership cards, all of which bore apparently genuine original signatures. The names of 28 persons appearing on the cards were listed on the Company's pay roll of May 15, 1943, which contained the names of 43 employees in the appropriate unit. The cards were variously dated between 1939 and 1943.

The names of 15 persons are duplicated in the designation cards submitted by both labor organizations.

⁴ See *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733; and also *Matter of Douglas Aircraft Company, Inc.*, 49 N. L. R. B. 819.

practice, we shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Dye Logging Company, Tillamook, Oregon, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Nineteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause, to determine whether they desire to be represented by Local 5-238, IWA-CIO, or by Local Union No. 2609, Lumber and Sawmill Workers, AFL, for the purposes of collective bargaining, or by neither.