

In the Matter of LAKEVIEW LUMBER COMPANY and LOCAL 2701, LUMBER & SAWMILL WORKERS UNION, CHARTERED BY UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, A. F. OF L.

Case No. 19-R-1168.—Decided October 22, 1943

Mr. T. R. Conn, of Lakview, Oreg., for the Company.

Mr. Donald Gilman, of Lakeview, Oreg., and *Mr. William Wedel*, of Klamath Falls, Oreg., for Local 2701.

Mr. Cecil Moore, of Bend, Oreg., for the I. W. A.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Local 2701, Lumber & Sawmill Workers Union, chartered by United Brotherhood of Carpenters & Joiners of America, A. F. of L., herein called Local 2701, alleging that a question affecting commerce had arisen concerning the representation of employees of Lakeview Lumber Company, Lakeview, 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 Lakeview, Oregon, on September 20, 1943. At the commencement of the hearing the Trial Examiner granted a motion of International Woodworkers of America, Local No. 6-76, C. I. O., herein called the I. W. A., to intervene. The Company, Local 2701, and the I. W. A. appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing counsel for the Company moved to dismiss the petition. The Trial Examiner reserved ruling. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

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FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Lakeview Lumber Company is a partnership with its principal place of business at Lakeview, Oregon, where it is engaged in the operation of a sawmill. The Company manufactures about 24,000,000 board feet of lumber annually at its sawmill, approximately 95 percent of which is shipped to points outside the State of Oregon. All logs used by the Company are felled within the State of Oregon. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Local 2701, Lumber and Sawmill Workers Union, chartered by United Brotherhood of Carpenters & Joiners of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Local No. 6-76, International Woodworkers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 31, 1943, Local 2701 requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request.

On May 20, 1943, an election was held among the employees of the Company, with Local 2701 and the I. W. A. on the ballot. The election resulted in an indecisive vote. The Company contends that no election should be held at this time and that the petition should be dismissed because of the short period that has elapsed since the May 20, 1943, election. The record shows that Local 2701 has obtained 22 new membership application cards and that the I. W. A. has obtained 2 application cards since the May 20, 1943, election. We find the position taken by the Company to be untenable.¹

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that Local 2701 and the I. W. A. each represents a substantial number of employees in the unit hereinafter found to be appropriate.²

¹ See *Matter of Automatic Products Company*, 40 N. L. R. B. 941.

² The Field Examiner reported that Local 2701 and the I. W. A. presented 25 and 13 application cards, respectively, bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of August 2, 1943. There are approximately 49 employees in the appropriate unit.

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

Local 2701 urges that all production and maintenance employees of the Company, including truck drivers, but excluding supervisory and clerical employees, constitute an appropriate unit. The only controversy with respect to the unit concerns truck drivers. Local 2701 and the I. W. A. would include them in the unit while the Company would exclude them.

The Company has a contract with an individual for its hauling. The individual contractor has two truck drivers working for him. The truck drivers do not appear on the Company's pay roll and the Company does not exercise any supervision over them. We find that the truck drivers are not employees of the Company and we shall exclude them from the unit.

We find that all production and maintenance employees of the Company, excluding clerical employees, truck drivers of the independent contractor, and all supervisory employees who have the authority to hire, discharge, discipline, promote, 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

We shall direct that the question concerning representation which has arisen be resolved by means of an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding 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 Lakeview Lumber Company, Lakeview, 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 any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Local 2701, Lumber & Sawmill Workers Union, chartered by United Brotherhood of Carpenters & Joiners of America, A. F. of L., or by Local No. 6-76, International Woodworkers of America, C. I. O., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.