

In the Matter of IRWIN & LYONS PARTNERSHIP and LOCAL 116
INTERNATIONAL WOODWORKERS OF AMERICA

Case No. 19-R-1173.—Decided October 26, 1943

Mr. William E. Walsh, of Marshfield, Oreg., for the Company.

Mr. A. F. Hartung, of Portland, Oreg., for the C. I. O.

Mr. J. W. McInturff, of Marshfield, Oreg., for the A. F. of L.

Miss Melvern R. Krelow, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Local 116 International Woodworkers of America, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Irwin & Lyons Partnership, North Bend, 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 Marshfield, Oregon, on September 16, 1943. The Company, the C. I. O., and Local Union #2573 Lumber and Sawmill Workers, A. F. L., herein called the A. F. of L., appeared, participated, and 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 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

Irwin & Lyons is a partnership having its principal office and place of business in North Bend, Oregon. The Company is engaged in logging and lumber mill operations, maintaining three or four logging camps and a lumber mill in the State of Oregon. Only its South

Coos River logging operation, located south of the Coos River, in Oregon, is involved in this proceeding. The logs cut by the Company are converted into lumber, of which 95 percent is shipped to points outside the State of Oregon.

II. THE ORGANIZATIONS INVOLVED

Local 116 International Woodworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Local Union #2573 Lumber and Sawmill Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 20, 1943, the C. I. O. informed the Company that it represented a majority of the Company's employees at its South Coos River logging operation, and requested a conference for the purpose of negotiating a collective bargaining contract covering that operation. The Company refused on the ground that it doubted the C. I. O.'s majority.

A statement of a Field Examiner of the Board, introduced in evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit it alleges to be appropriate.¹

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 National Labor Relations Act.

IV. THE APPROPRIATE UNIT

The parties are in agreement that all production and maintenance employees of the Company at its South Coos River logging operation,

¹ The Field Examiner reported that the C. I. O. presented 49 designations, bearing apparently genuine signatures. Of the 49 designations submitted, 32, 1 dated in November 1942, 20 dated in July 1943, and 11 undated, bear the names of persons whose names appear on the Company's pay roll of July 31, 1943. Said pay roll contains the names of 63 persons within the alleged appropriate unit. At the hearing, the C. I. O., in addition, submitted to the Trial Examiner 15 applications for membership cards, bearing apparently genuine signatures, of which 10 bear the names of persons whose names appear on the Company's pay roll of July 31, 1943.

The A. F. of L. presented to the Trial Examiner, at the hearing, 15 cards, 9 of which bearing apparently genuine signatures and dated September 15, 1943, bear the names of persons whose names appear on the Company's pay roll of July 31, 1943.

Counsel for the Company argued that the Field Examiner's statement had no probative value; that the Company had no information as to the authenticity of the designations presented; and that the Field Examiner is not subject to cross-examination, and on these grounds objected to the introduction of that statement in evidence. The Trial Examiner overruled the objection. We have heretofore affirmed the rulings of the Trial Examiner; we find the Company's contentions are without merit. See *Matter of Interlake Iron Corporation*, 88 N. L. R. B. 139; and *Matter of Atlas Powder Company*, 43 N. L. R. B. 757.

excluding supervisory and clerical employees, and temporary construction workers at the Company's dam, constitute an appropriate unit. However, they are in disagreement with respect to certain employees' supervisory status, and with regard to the inclusion or exclusion of three truck drivers. The Company would exclude the camp superintendent, the river foreman, the hook tenders and the bull buck as supervisory employees; whereas the C. I. O. and the A. F. of L. would include all but the camp superintendent. The Company and the A. F. of L. would exclude the truck drivers on the ground that they are not employees of the Company; whereas the C. I. O. would include them.

The Company employs two or three regular hook tenders. Each of these employees is in charge of a machine, and has supervision over a crew normally consisting of seven or eight men. They work with their respective crews less than 50 percent of the time, and they have the authority to hire and discharge. The temporary hook tenders, of whom there are two, do not have the authority to hire or discharge, and will be replaced by regular hook tenders as soon as the Company is able to hire such persons. From the foregoing, it is clear that the regular hook tenders are supervisory employees. The evidence adduced in this proceeding does not establish the C. I. O.'s contention that hook tenders have always, in accordance with industry custom, been included in contract units.² Consequently, there is no reason here to depart from our practice of excluding all supervisory employees who fall within our customary definition; we shall therefore exclude hook tenders. We shall not, however, exclude the temporary hook tenders who appear not to possess the requisite supervisory status. Since the bull buck and the river foreman have supervisory authority similar to that of the hook tenders, we shall also exclude them.

The Company, at the present time, has oral agreements with certain individuals for the hauling of logs on an hourly basis. The three truck drivers engaged in hauling are paid by those individuals and are not on the pay roll of the Company; the Company only directs the drivers where to pick up and deliver the logs, and has no authority to hire or discharge them. We conclude that the truck drivers are not employees of the Company within the meaning of the Act. We shall, therefore, exclude them from the unit.

We find that all production and maintenance employees of the Company at its South Coos River logging operation, including the tem-

² See *Matter of Row River Lumber Company*, 30 N. L. R. B. 232, wherein the same unions here involved agree to exclude the hook tender, and the Board excluded them; and *Matter of Gustina L'rothers Lumber Company*, 41 N. L. R. B. 1243, in which there was a dispute with regard to the hook tender, the C. I. O. contending for his inclusion, and the A. F. L. his exclusion. The Board excluded him, stating that he was "boss of the logging crew" and that although it appeared that he occasionally did some physical work, he had authority to hire and discharge.

porary hook tenders, but excluding temporary construction workers at the Company's dam, clerical employees, the three truck drivers, the camp superintendent, the river foreman, regular hook tenders, the bull buck, and all 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

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 our Direction of Election, subject to the limitations and additions set forth therein.

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 Irwin & Lyons Partnership, North Bend, 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 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 and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Local 116 International Woodworkers of America, or by Local Union #2573 Lumber and Sawmill Workers, A. F. L., for the purpose of collective bargaining, or by neither.

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