In the Matter of Union Lumber Company and Local 2610, United Brotherhood of Carpenters and Joiners of America, A. F. L.

Case No. 20-R-913.—Decided November 12, 1943

Brobeck, Phleger & Harrison, by Mr. Gregory A. Harrison, and Newmark & Strong, by Mr. Charles A. Strong, of San Francisco, Calif., for the Company.

Mr. H. H. Williams, of Sacramento, Calif., and Mr. Chester Aldrich, of Fort Bragg, Calif., for the Union.

Mr. William C. Baisinger, Jr., of counsel to the Board,

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Local 2610, United Brotherhood of Carpenters and Joiners of America, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Union Lumber Company, Fort Bragg, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Merle D. Vincent, Jr., Trial Examiner. Said hearing was held at San Francisco, California, on October 6, 1943. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to file briefs with the Board. At the hearing the Trial Examiner reserved ruling upon the Company's motion to quash the subpena and subpena duces tecum issued on October 5, 1943, by the Board's Regional Office, requiring

¹Prior to the hearing the Company filed with the Board a written answer to the Union's petition in which it denied (1) the appropriateness of the unit sought by the Union, (2) that the Union represents any of its employees, (3) the existence of a question affecting commerce concerning the representation of its employees within the meaning of the National Labor Relations Act, and (4) that at its Fort Bragg operations it is engaged in commerce within the meaning of the Act. The Company also filed a written motion for continuance supported by an affidavit signed by its attorney. The motion for continuance was denied by the Acting Regional Director. At the hearing the Company orally renewed its motion for continuance. The Trial Examiner denied the motion.

⁵³ N. L. R B., No. 103.

the Company to produce at the hearing certain records and documents showing the general nature and extent of the Company's business and a list of the employees from the Company's most recent pay-roll records prior to the hearing, on the ground that the Company was unable to produce the required information on such short notice. The motion is hereby denied.² The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Union Lumber Company is a California corporation, engaged at Fort Bragg, California, and vicinity in felling and logging timber and processing lumber and lumber products. At its logging operations located near Fort Bragg, California, the Company fells all of the logs used in its sawmill located in Fort Bragg. During the calendar year 1942, the Company produced approximately 95,000,000 feet of lumber valued in excess of \$4,000,000, of which not less than 15,000,000 feet were sold f. o. b. Fort Bragg and shipped to points outside the State of California. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Local 2610, United Brotherhood of Carpenters and Joiners of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about August 8, 1943, the Union advised the Company in writing that it represented a majority of the Company's employees within an alleged appropriate bargaining unit and requested recognition as the exclusive bargaining representative of such employees. Receipt of said communication was acknowledged by the Company; however, the Company failed to answer the Union's request. Thereafter, the Union reiterated its request orally. The Company refuses to accord the Union such recognition because it denies the appropriateness of the bargaining unit sought by the Union.

² Subsequent to the hearing the Company complied, in part, with the subpena duces tecum by entering into a stipulation with counsel for the Board concerning the business of the Company. The stipulation is hereby made a part of the record

A statement prepared by a Field Examiner of the Board indicates that the Union represents a substantial number of employees within the unit hereinafter found to be appropriate.

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 Union contends that all production and maintenance employees employed at the Company's logging operations located in the vicinity of Fort Bragg, California, comprise an appropriate bargaining unit. The Company contends that the employees within the unit found to be appropriate by the Board in a prior representation case 4 involving the Company should be found to constitute an appropriate unit in the instant case. In that case the Board found that the appropriate unit included both the woods employees and the sawmill employees at Fort Bragg.

The Company's plant, comprised of an office building, a sawmill, and a planer mill, and the Company's commissary, are located at Fort Bragg, California. The plant and commissary employ approximately 600 and 30 employees, respectively, the majority of whom live in or near Fort Bragg. The Company owns two logging operations which are located within a radius of approximately 20 miles from Fort Bragg and are removed from each other by a distance of about 10 miles. Approximately one-third of the 325 to 350 logging operations employees live in the woods in quarters furnished by the Company and the remainder live in or near Fort Bragg and travel to and from work in buses provided by the Company. The Company's logging operations furnish all of the timber processed at the Company's plant. The Company employs a general manager who is in charge of all the Company operations located in the Fort Bragg area. Under the general manager is a superintendent in charge of the logging operations and a superintendent in charge of the plant operations. Under each superintendent is a separate supervisory staff. There is one employment office which hires employees for all of the operations within the Fort Bragg area. Separate pay rolls are maintained for the plant and the logging operations. There is some interchange of employees between the plant and the logging operations; however,

³ The Field Examiner reported that the Union submitted 219 application-for-membership cards bearing apparently genuine signatures of persons whom the Union contends are within the alleged appropriate unit. He further reported that since the Company refused to submit a pay roll, it is impossible to compare the names appearing on the cards with the names of the persons on the Company's pay roll or to determine the number of employees within the alleged appropriate unit. However, the Union claims there are approximately 330 employees within the unit

⁴ Matter of Union Lumber Company, 7 N L. R B, 1094.

this interchange is seasonal. During the wet season the flow of emplovees is toward the mill and in the dry season the flow is toward the woods. The nature of the work performed by the employees of. the logging operations differs substantially from that performed by the plant employees. The two groups of employees possess different skills and work under markedly different conditions. The Company argues that the finding made by the Board in the above-mentioned ' case 5 as to the appropriate unit militates against the establishment of a smaller unit limited to the employees of the Company's logging operations. We find the Company's contention to be without merit. Pursuant to the Direction of Election issued in the cited case, an election by secret ballot was held on July 13, 1938, to determine whether or not the Company's employees within the unit found to be appropriate desired to be represented by the petitioner, Lumber and Sawmill Workers Union, Local 2826, United Brotherhood of Carpenters and Joiners of America, A. F. L. The results of the election showed that no collective bargaining representative had been selected by a majority of the employees who voted, and therefore, the petition was dismissed. The Board is not bound by a principle analogous to that of the judicial doctrine of res judicata in matters involving a determination of the appropriate bargaining unit. A prior determination as to the appropriate unit is merely one of the circumstances which the Board in the exercise of sound discretion will consider should a question present itself in a subsequent proceeding involving the representation of such employees. In the prior proceeding involving the Company the question as to whether a unit comprised of the employees of the Company engaged in logging operations might be appropriate for the purposes of collective bargaining was not at issue, since the parties were in substantial agreement with respect to the scope of the unit. Our prior finding, however, was of no positive consequence since no exclusive representative was chosen as a result of the election nor has there been any collective bargaining conducted between the Company and any labor organization on the basis of our unit finding in said case. We have frequently held that employees of the logging operations of a company engaged in felling, logging, and milling timber may properly constitute a bargaining unit separate and distinct from the lumber mill employees where, as here, the two groups of employees are engaged in different types of work and the sawmill and logging camps are geographically separated by several miles. Ac-

See case cited in footnote 4, suprá.

⁶ See Matter of Pacific Greyhound Lines, et al, 9 N. L. R. B. 557; Matter of Jones & Laughlin Steel Corporation, et al, 37 N. L. R. B. 366; Matter of Kentucky Fluorspar Company, 52 N. L. R. B. 227.

¹⁷ See Matter of Buckley Hemlock Mills, Inc., Buckley Logging Company, 15 N. L. R. B. 498; Matter of C. D. Johnson Lumber Corporation, et al., 37 N. L. R. B. 251; Matter of California Door Company, Diamond Springs, Cal., 52 N. L. R. B. 68

cordingly, we conclude that the employees of the Company who are employed at the logging operations located in the vicinity of Fort Bragg, California, may comprise an appropriate bargaining unit.

There remains for consideration the composition of the appropriate unit. As previously noted the Union seeks a unit comprised of all production and maintenance employees employed at the Company's logging operations in the vicinity of Fort Bragg, California, including cook-house employees, railroad maintenance employees, construction employees, timekeepers, scalers, hook tenders, truck drivers, and "cat" operators, but excluding train crews, the superintendent and assistant superintendent, and logging foremen with authority to hire and discharge. The Company takes the position that such a unit should not include any employees who were excluded from the unit in the prior case. Thus it appears that the Company would exclude from the unit, in addition to the exclusions listed above, clerical employees, straw bosses, timekeepers, hook tenders, and watchmen. We shall discuss below each of the categories in dispute.

Clerical employees.

The Company considers as clerical employees those employees in the woods who prepare cost records, compile production figures, function as timekeepers, and maintain the records that are turned in by the scalers. The record indicates that these employees compile data concerning the logging operations which is transmitted to the Company's main office in Fort Bragg where it is incorporated into the Company's accounting records by the office clerical force. They work in close proximity to the production and maintenance employees in the woods and are under the direct supervision of the superintendent in charge of the logging operations. In view of these facts we see no reason why they may not be grouped with the woods employees for the purposes of collective bargaining. Accordingly, we shall include the time-keepers and other clerical employees working in the woods in the appropriate unit.

Straw bosses

The supervisory force in the woods comprises the woods superintendent who is in charge of both logging operations, two camp bosses, two chopping bosses, and several hook tenders. Each camp boss supervises the work of all the employees employed at his camp and possesses the authority to discharge employees. The chopping bosses work under the camp bosses. They supervise the work of fallers, buckers, and barkers, and have authority to recommend hire and discharge of employees under them. The hook tenders also work under the camp bosses. They supervise the employees who prepare the logs for shipment and also have authority effectively to recommend hire, discharge,

and discipline of employees working under their supervision. Inasmuch as the evidence concerning the duties and authority of these employees indicates that they exercise sufficient supervisory authority to effect changes in the status of employees of the Company, we shall exclude the camp bosses, chopping bosses, and hook tenders from the appropriate unit.

Watchmen

The watchmen employed in the woods are unarmed and are not auxiliary members of any branch of the armed forces. They are a type of employee whom we have frequently included in units of production and maintenance employees. Accordingly, we shall include the watchmen employed in the woods in the appropriate unit.

We find that all production and maintenance employees employed at the Company's logging operations located in the vicinity of Fort Bragg, California, including cook-house employees, railroad maintenance employees, construction employees, scalers, timekeepers and other clerical employees in the woods, watchmen, "cat" operators, and truck drivers, but excluding train crews, the superintendent, the assistant superintendent, camp bosses, chopping bosses, hook tenders, 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 Union desires that a pay-roll date near the date of its request for recognition be used in determining the eligibility of employees to vote in an election directed by the Board. We perceive no valid reason for departing from our usual practice in regard to the eligibility date. Accordingly, 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 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 Union Lumber Company, Fort Bragg, California, 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 Twentieth 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 any such 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 or not they desire to be represented by Local 2610, United Brotherhood of Carpenters and Joiners of America, A. F. L., for the purposes of collective bargaining.