

IN THE MATTER OF BOOTH KELLY LUMBER COMPANY *and* INTERNATIONAL
WOODWORKERS OF AMERICA, LOCAL UNION 5-246, C. I. O.

Case No. 19-R-1166.—Decided January 8, 1944

Mr. Lawrence T. Harris, of Eugene, Oreg., and *Mr. Ted Thomas*, of Seattle, Wash., for the Company.

Mr. A. F. Hartung, of Portland, Oreg., and *Mr. Max Gardner*, of Eugene, Oreg., for the C. I. O.

Mr. William V. Kelsay and *Mr. C. P. Richards*, of Eugene, Oreg., for the A. F. L.

Mr. Leon Novak, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Woodworkers of America, Local Union 5-246, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of the Booth Kelly Lumber Company, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Eugene, Oregon, on November 16, 1943. The Company, the C. I. O., and Lumber and Sawmill Workers Union, Local Union No. 2595, A. F. L., herein called the A. F. L., 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

Booth Kelly Lumber Company, having its principal place of business at Eugene, Oregon, is an Oregon corporation engaged in the
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business of producing, manufacturing, and selling of logs, lumber, and lumber products. It owns and operates a lumber mill or manufacturing plant and logging operations near Wendling, Oregon, in addition to which it owns and operates a manufacturing plant at Springfield, Oregon. During the year 1942 the Company produced approximately 41,948,000 board feet of lumber at its Wendling plant and approximately 43,660,000 board feet of lumber at its Springfield plant, at least 85 percent of which it sold, shipped, and transported from its plants in Oregon to points outside the State of Oregon. During the same period, the Company purchased machinery and equipment having an approximate value of \$99,909, approximately 25 percent of which was shipped to its Oregon plants from points outside 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

International Woodworkers of America, Local Union 5-246, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Lumber and Sawmill Workers Union, Local Union No. 2595, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 16, 1943, the C. I. O., in a letter to the Company, claimed that it represented a majority of the Company's road construction crew and requested a conference for the purposes of collective bargaining. Thereafter, at a conference with a representative of the C. I. O., the Company refused the demand of the C. I. O. for recognition, and took the position that the employees whom the C. I. O. sought to represent were already covered by an existing contract with the A. F. L. At the hearing, the A. F. L. took a similar position.

The contract upon which the Company bases its refusal to accord recognition to the C. I. O., is confined to the Company's operations at its Wendling plant.¹ The contract was dated August 7, 1942, and by its terms, was to continue in force up to May 15, 1943, and from year to year thereafter unless notice of a contrary intention was given 30 days prior to any anniversary date. No notice was given by either party to the contract prior to the renewal date on May 15, 1943. The C. I. O. contends that the contract does not cover the road construction employees.

¹ A similar contract executed between the company and the C. I. O., with which we are not here concerned, covers the Company's logging operations at its Springfield plant.

A determination of the issue thus raised necessitates analysis of the provision of the contract relating to the employees intended to be covered by the contract. The contract, which the A. F. L. and the Company now urge as a bar to the instant proceeding provides, in part:

During the life of this Agreement the Employer recognizes the Union as the sole and exclusive bargaining agency for all the Employer's employees in its mill and logging operations at Wendling, Oregon, exclusive of office employees, salesmen, foremen, and supervisory employees.

No specific provision is made in the contract with respect to the road construction crew. Furthermore, it is clear from the record, that, at the time when the contract in question was executed, and thereafter, the employees engaged in road construction were confined, for a major portion of their time, to the construction of roads and rights-of-way at a tract of land located about 20 miles from Wendling, and that at no time were such employees engaged in "the milling and logging operations at Wendling, Oregon."

Under the circumstances it does not persuasively appear that the contracting parties intended, at the time the contract was made, to include the road construction employees within the terms of the contract. We are of the opinion, and find, that the contract between the Company and the A. F. L. is not a bar to a present determination of representatives.

The statement of the Trial Examiner at the hearing indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.²

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 DETERMINATION OF REPRESENTATIVES

The C. I. O. contends for a separate unit of road construction employees, excluding clerical, office, and full-time supervisory employees. The A. F. L. contends that such a unit is inappropriate because it is already included in the unit of production and maintenance employees represented by the A. F. L., at the Company's Wendling plant. The Company, taking a similar position, argues further, that the road construction crew is a part of the Company's logging department.

² The Trial Examiner stated that the C. I. O. submitted to him 11 authorization cards bearing the apparently genuine signatures of persons whose names appear on the Company's pay roll for the period ending July 26, 1943. There are 19 employees in the unit which the C. I. O. alleges to be appropriate. The A. F. L. made no showing of membership, relying on its contention that its contract is a bar to this proceeding.

The record indicates that the employees here involved, are employed at Wendling for only a small portion of their working time.³ Most of the work of the construction crew is performed at a point some 20 miles from Wendling, and is confined chiefly to the construction of roads, and to repairing the Company's rights-of-way. Admittedly, the crew takes no part in actual logging operations.

In the light of all the facts and upon the entire record in this case, we are of the opinion that the road construction crew, excluding clerical and office employees, and supervisors, could properly function in a separate unit, as claimed by the C. I. O. Inasmuch as the road construction is under the indirect control and supervision of the Company's logging superintendent at Wendling, we are of the further opinion that these employees might also properly function in a unit with the mill and logging employees at Wendling, as claimed by the A. F. L. and the Company. Under the circumstances, we are of the opinion that the determination of the appropriate unit should depend, in part, upon the desires of the road construction employees.

We shall accordingly direct that an election by secret ballot be held among road construction employees of the Company, exclusive of clerical and office employees and all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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, to determine whether they desire to be represented by the A. F. L., or by the C. I. O., or by neither. If the employees in this voting group select the A. F. L., they will have thereby indicated their desire to be included in the unit of mill and logging employees at Wendling and will be part of such unit. If, however, these employees choose the CIO as their bargaining representative, they will have indicated a desire to constitute a separate and distinct unit.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Booth Kelly Lumber Company, Eugene, Oregon, an election by secret ballot shall

³ At the hearing, the Company's logging superintendent stated that during the 4 years preceding the hearing, the road construction crew performed only approximately 5 percent of its total work at Wendling.

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 road construction employees of the Company, exclusive of clerical and office employees, and all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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 and have not been rehired or reinstated prior to the election, to determine whether they desire to be represented by International Woodworkers of America, Local Union 5-246, C. I. O., affiliated with the Congress of Industrial Organizations, or by Lumber and Sawmill Workers Union, Local Union No. 2595, A. F. L., affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.