

In the Matter of MADISON LUMBER COMPANY and UNITED RETAIL,  
WHOLESALE & DEPT. STORE EMPLOYEES OF AMERICA, AFFILIATED WITH  
THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

*Case No. 15-R-1065.—Decided March 21, 1944*

*Messrs. Deutch, Kerrigan & Stiles and Mr. James H. Morrison, of  
New Orleans, La., for the Company.*

*Mr. Warren Woods, of New Orleans, La., for the CIO.*

*Mr. Bently G. Byrnes, of New Orleans, La., for the Council and the  
Millmen.*

*Mr. Leo Carter, of New Orleans, La., for the Teamsters.*

*Miss Frances Lopinsky, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Retail, Wholesale & Dept. Store Employees of America, affiliated with the Congress of Industrial Organizations, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Madison Lumber Company, New Orleans, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Lawrence H. Whitlow, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on February 3, 1944. The Company, the CIO, and New Orleans Building & Construction Trades Council, herein called the Council, and Millmen & Millwrights Local 1321, herein called the Millmen, appeared and participated.<sup>1</sup> All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.<sup>2</sup> 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.

<sup>1</sup> International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 270, A. F. of L. appeared and made an oral motion for intervention but withdrew its motion before it had been ruled upon by the Trial Examiner. The teamsters did not participate in the hearing.

<sup>2</sup> By stipulation of the parties, certain inaccuracies in the printed record were corrected. It is hereby ordered that said corrections be physically incorporated into the printed record.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Madison Lumber Company is owned and operated by Denninger, Inc., a Louisiana corporation. It operates a factory and mill in New Orleans, Louisiana, where it manufactures and distributes millwork and building materials. Materials shipped to the plant from States other than Louisiana amounted in value to between \$300,000 and \$400,000 during the year 1943. The value of material shipped by the Company out of the State of Louisiana amounted during that year to approximately \$90,000.

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

#### II. THE ORGANIZATIONS INVOLVED

United Retail, Wholesale & Dept. Store Employees of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

New Orleans Building Trades Council and Millmen and Millwrights Local 1312, both affiliated with the American Federation of Labor, are labor organizations admitting to membership skilled employees of the Company's sash department.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the CIO as the exclusive bargaining representative of its employees until the CIO has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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 requests a unit of all maintenance and production employees in the Company's plant, including the laborers in the sash

<sup>3</sup> The Field Examiner reported that the CIO submitted 62 authorization cards 40 of which bore the names of persons listed on the Company's pay roll of December 23, 1943, which contained the names of 87 employees in the appropriate unit; and that the cards were dated October, November, and December 1943.

Neither AFL organization claimed an interest other than in the sash department employees, which interest was established by their contract with the Company covering employees in that department.

department, but excluding all office, clerical and supervisory employees, and all employees in the sash department represented by the Millmen. The Millmen and the Council agree that the unit requested is appropriate except insofar as it would include sash department employees. The Company takes no position in the matter.

The Millmen has a contract with the Company concerning employees of its sash department. The coverage of the contract is as follows:

This contract shall cover all millwork employees of the undersigned employer engaged in production, including workers at machines or at benches and glazers, but shall not include helpers, off-bearers, packers, drivers, maintenance men, office and shipping employees, and all other employees not strictly engaged in the production of millwork.

The Millmen admits that the laborers in the sash department are denied membership in its organization and are not covered by its contract because of their lack of skill. The Council contends, however, that the laborers are free to enter another of its affiliate organizations and that they are represented by the Council in the same unit as the Millmen. Since the Millmen is the only constituent organization of the Council which represents employees of the Company, and since the Millmen's contract clearly excludes the laborers in the sash department we find no merit in the Council's contention. Moreover, the unit represented by the Millmen is based not upon departmental but upon craft considerations and the unit requested by the CIO is, in effect, a residual unit covering all maintenance and production employees other than those in the single craft group presently represented. We believe, therefore, that the laborers in the sash department may more properly be represented in the unit requested by the CIO than in the unit represented by the Millmen.

We find that all maintenance and production employees in the Company's plant, including the laborers in the sash department but excluding all office and clerical employees, all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, and all employees in the sash department other than laborers, 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 payroll period immediately preceding the date of the Direction of Elec-

tion herein, subject to the limitations and additions set forth in the Direction.<sup>4</sup>

### 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 Madison Lumber Company, New Orleans, Louisiana, 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 Fifteenth 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 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 United Retail, Wholesale & Dept. Store Employees of America affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

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<sup>4</sup> Neither the Millmen nor the Council has indicated that it has an interest in the unit herein found appropriate. Neither requests a place on the ballot.