

In the Matter of E. P. LOGGING COMPANY *and* LOCAL 384, INTERNATIONAL WOODWORKERS OF AMERICA, CIO

In the Matter of UMPQUA LUMBER COMPANY *and* LUMBER AND SAWMILL WORKERS, LOCAL UNION 2713, AFL

In the Matter of UMPQUA LUMBER COMPANY *and* LOCAL 7-384, INTERNATIONAL WOODWORKERS OF AMERICA, CIO

In the Matter of E. P. LOGGING COMPANY *and* TEAMSTERS AND AUTO TRUCK DRIVERS, LOCAL 57, AFL

Cases Nos. 19-R-1236, 19-R-1282, 19-R-1287 and 19-R-1290 respectively.—Decided April 24, 1944

Mr. E. W. Picco, of Myrtle Creek, Oreg., for the Logging Company and the Lumber Company.

Mr. Kenneth McKee, of Roseburg, Oreg., for the C. I. O.

Mr. C. P. Richards, of Eugene, Oreg., and *Mr. Oscar I. Slack*, of Roseburg, Oreg., for the AFL.

Mr. D. B. McFadyen, of Eugene, Oreg., for the Teamsters.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by International Woodworkers of America, Locals 384 and 7-384, CIO, herein collectively called the CIO; Lumber and Sawmill Workers Union, Local 2713, AFL, herein called the AFL; and Teamsters and Auto Truck Drivers, Local 57, AFL, herein called the Teamsters; alleging that questions affecting commerce had arisen concerning the representation of employees of E. P. Logging Company, Montesano, Washington, and Umpqua Lumber Company, Myrtle Creek, Oregon, herein collectively called the Companies, or respectively called the Logging Company and the Lumber Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Rose-

55 N. L. R. B., No. 274.

burg, Oregon, on February 28, 1944. The Company, the CIO, the AFL, and the Teamsters 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 reserved ruling upon the motion of the CIO to dismiss the petition of the Teamsters. For reasons set forth in Section IV, *infra*, said 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 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 COMPANIES

The E. P. Logging Company, a partnership consisting of two co-partners, Edward and Margaret Picco, maintains its principal office at Montesano, Washington, and conducts its principal operations at Myrtle Creek, Oregon. It is engaged in the felling, bucking, yarding, and loading of timber. At present, the Company produces about 1,800,000 board feet of logs per month, and when full production is reached, it will produce approximately 3,000,000 board feet of logs per month.

The Umpqua Lumber Company, an Oregon corporation with its principal office at Myrtle Creek, Oregon, is presently engaged in the business of transforming logs into rough lumber at its mill in Myrtle Creek. Ninety percent of the finished product is shipped to points outside the State of Oregon.

The Companies admit, and we find, that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Woodworkers of America, Locals 384 and 7-384, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Companies.

Lumber and Sawmill Workers Union, Local 2713, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Companies.

Teamsters and Auto Truck Drivers, Local 57, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Logging Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The record discloses that the Logging Company and the Lumber Company are unwilling to grant recognition to any of the labor or-

ganizations involved herein as the exclusive bargaining representative of any group of their respective employees without certification by the Board in an appropriate unit.

A statement of the Trial Examiner made at the hearing, indicates that the CIO, the AFL, and the Teamsters each represent a substantial number of employees in the unit it alleges to be appropriate.¹

We find that questions affecting commerce have arisen concerning the representation of employees of the Logging Company and the Lumber Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The CIO contends that the following two units are appropriate for the purposes of collective bargaining: (1) all production and maintenance employees of the Logging Company, including truck drivers, but excluding clerical and supervisory employees; and (2) all production and maintenance employees of the Lumber Company, excluding construction workers, and clerical and supervisory employees. The AFL is in general agreement with the units proposed by the CIO, but it would exclude the truck drivers of the Logging Company and would include the construction workers of the Lumber Company. The Teamsters seeks a unit comprising the truck drivers of the Logging Company. The Companies contend that the production, maintenance, and construction employees of both Companies, excluding truck drivers, clerical and supervisory employees, constitute a single appropriate unit.

The contentions of the parties raise the following three issues:

1. *Should employees of both Companies constitute a single unit?*

The Logging Company is a partnership consisting of two copartners, Edward and Margaret Picco. The Lumber Company is a corporation, with stock ownership divided between the White Star Lumber Com-

¹The Trial Examiner reported that in Case No. 19-R-1236 the CIO submitted 46 application for membership cards, all of which bore apparently genuine original signatures; that the names of 30 persons appearing on the cards were listed on the Company's pay roll of February 1944, which contained the names of 48 employees in the appropriate unit; and that the cards were dated from October 1943 to February 1944. The AFL submitted 12 application for membership cards, of which 5 bore names appearing on the aforesaid pay roll.

In Case No. 19-R-1282, the AFL submitted 22 application for membership cards all of which bore apparently genuine original signatures. The names of 14 persons appearing on the cards were contained on the Company's pay roll of February 26, 1944, which contained the names of 90 employees in the appropriate unit. The cards were dated from September to December 1943.

In Case No. 19-R-1287, the CIO submitted 44 application for membership cards, all of which bore apparently genuine original signatures, the names of 31 persons appearing on the cards were contained in the aforesaid pay roll.

In Case No. 19-R-1290, the Teamsters submitted a list bearing the names of 4 persons alleged to be members of the Teamsters. All of said names appeared on the Company's pay roll for February 1944, which contained the names of 5 employees in the alleged appropriate unit.

pany, whose ownership is not disclosed in the record, and Edward and Margaret Picco, Edward Picco is the general manager of both Companies. The employees of the Logging Company are engaged in felling trees, cutting them into logs, loading the logs on trucks, and transporting them a distance of 20 miles to the mill pond of the Lumber Company. At present the employees of the Lumber Company are engaged solely in transforming logs into rough lumber. Eventually, when the construction of the mills is completed, the employees will also finish the rough lumber. Both Companies maintain separate offices, separate pay rolls, separate supervisory staffs (except for Edward Picco who is over-all general manager) and in all ways are separate entities except for the common ownership as described above. There has not been, nor is there likely to be any interchange of employees between the two Companies. The Companies desire a single unit chiefly as a matter of bargaining convenience, while the AFL and the CIO contend that two separate units are appropriate. In view of the facts set out above, we are of the opinion, and find, that two separate units are appropriate for the purposes of collective bargaining.²

2. *Should the construction workers be included in the Lumber Company's unit?* The Company and the AFL would include these employees in the unit, while the CIO is opposed. Of the approximate 96 employees of the Lumber Company, 22 are construction workers engaged in completing the construction of a sawmill. The Company expects that this construction will continue for another year, at which time it hopes to absorb the construction employees into its production and maintenance staff. Although from time to time the construction workers substitute for absent production employees and also perform maintenance work in and about the mill, their principal work is the construction of the sawmill. They are classified as carpenters, assistants, and laborers, while the production and maintenance employees fall into the following classifications: sawyers, offbearers, lumber pilers, crane operators, trimmer men, edger men, filers, setters, doggers, and others. The skills required in various production jobs are substantially different from those required in construction work. Thus, the general manager testified that a construction carpenter could not perform the work of trimmer man, edger man, sawyer, or filer, all key jobs in production. There is evidence that there exists a differential in rate of pay between construction and production work, and that the rate of pay of those production jobs which could be performed by construction carpenters is less than that now received by said employees. The evidence further reveals that the permanent maintenance

² See *Matter of Buckley Hemlock Mills, Inc.*, 15 N. L. R. B. 498; *Matter of Schafer Brothers Lumber and Shingle Company*, 23 N. L. R. B. 1104.

staff will not include more than 6 or 7 employees. The Company states that it considers the 22 construction workers as permanent and regular employees, since it intends to absorb them into production and maintenance jobs when the present construction program is completed. However, we are of the opinion that notwithstanding the Company's intention, the possible future employment status of the construction workers with this Company cannot be relied on as criteria for our present unit determination. Nor does their present status justify, in our opinion, their inclusion in a unit of production and maintenance employees. The differences in skill, rate of pay, and nature of work between construction workers, on one hand, and production and maintenance employees, on the other, is such that there does not exist between them that degree of homogeneity and mutuality of interest which we require in establishing an appropriate unit. Accordingly, we shall exclude the construction workers from the unit. If, at some future date, any construction workers are, in fact, absorbed into production or maintenance jobs, then such employees will of course be included in the production and maintenance unit hereinafter found appropriate.

3. *Should truck drivers be included in the Logging Company unit?* The Teamsters petitioned for a separate unit of truck drivers of the Logging Company. The AFL and the Company are in agreement with the Teamsters' proposed unit, but the CIO contends that the truck drivers should be included in the unit of production and maintenance employees. As of February 26, 1944, the Logging Company employed 5 truck drivers who are engaged in hauling logs from the logging operations of the Logging Company to the Lumber Company's mill pond, a distance of 20 miles. These drivers were transferred recently to the Logging Company from another company also owned and operated by Edward Picco. When employed by the latter company, they worked as truck drivers and were bargained for by the Teamsters pursuant to contract. When transferred, they were assured by Picco that they would operate under the same working conditions as established in the aforesaid contract. Picco testified that he intends to use the truck drivers as a mobile unit, dividing their time, as the occasion demands, among the various companies in which he has an interest. The evidence shows there has been no transfer of truck drivers to other jobs. Included among the drivers is one Earl Jackson who, in addition to driving, directs the work of the other drivers, checks equipment to see that it is in proper operating condition, and can make effective recommendations with respect to hire and discharge of drivers under his direction. The facts show that Jackson is a supervisory employee within the meaning of our usual definition and he will, therefore, be excluded from the unit as such. On the basis of the foregoing facts we are of the opinion and

find that the truck drivers constitute a sufficiently homogeneous and identifiable group to function as a separate appropriate unit.

The parties are agreed, and we find, that all clerical and supervisory employees should be excluded from the units.

We find that the following three groups of employees constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. There shall be excluded from each of said groups, in addition to the enumerated exclusions, all clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.³

(1) All production and maintenance employees of the E. P. Logging Company, excluding truck drivers.

(2) All production and maintenance employees of the Umpqua Lumber Company, excluding construction workers.

(3) All truck drivers of the E. P. Logging Company.

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 Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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 E. P. Logging Company, Montesano, Washington, and Umpqua Lumber Company, Myrtle Creek, Oregon, separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from

³ The following persons are supervisory employees of the Logging Company: Manager (Edward Picco); Superintendent of Logging (John Blanche); Foreman of Cutting Crew (D. A. Halloway); Yarding and Loading Crew Foreman (C. E. Cook); Foreman of Road Construction Crew (Noble Ellison). The following persons are supervisory employees of the Lumber Company: Construction Foreman (E. J. Holland); Millwright Foreman (L. R. McIntosh); Head Millwright (James B. Olenhouse); Planing Mill Foreman (Oscar B. Peterson); Chief Engineer (Bill Slag); and the Mill Superintendent. The names in parentheses were the incumbents of the various supervisory positions at the time of the hearing. The record discloses that all these employees make effective recommendations with respect to changes in status of employees under their direction. The above list is not necessarily exclusive.

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 units found appropriate in Section IV, above, and set out below, 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, and further excluding all clerical 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:

(1) All production and maintenance employees of the E. P. Logging Company, excluding truck drivers, to determine whether they desire to be represented by International Woodworkers of America, Local 384, CIO, or by Lumber and Sawmill Workers Union, Local 2713, AFL, for the purposes of collective bargaining, or by neither;

(2) All production and maintenance employees of the Umpqua Lumber Company, excluding construction workers, to determine whether they desire to be represented by International Woodworkers of America, Local 7-384, CIO, or by Lumber and Sawmill Workers Union, Local 2713, AFL, for the purposes of collective bargaining, or by neither; and

(3) All truck drivers of the E. P. Logging Company, to determine whether they desire to be represented by Teamsters and Auto Truck Drivers, Local 57, AFL, or by International Woodworkers of America, Local 384, CIO, for the purposes of collective bargaining, or by neither.

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